DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 26339; Amdt. No. 93-62]

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: Final rule.

SUMMARY: This action amends 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. Under the rule as adopted, the FAA will 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 amendment is in response to a petition for rulemaking submitted by American Airlines and subsequent comments received on the petition and notice of proposed rulemaking. The FAA will 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 limit the number of such operations in any half hour. This amendment will 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, and may be extended. This action will 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.

EFFECTIVE DATE: Rule effective September 18, 1991.

FOR FURTHER 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:

Availability of Rule

Any person may obtain a copy of this rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267-8058. Communications must identify the amendment number of the rule. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

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 fewer 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 fewer 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 fewer than 75 and turbojet aircraft with a maximum seating capacity of fewer 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 And Canadair Petitions

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; 55 FR 46956, November 8, 1990).

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 fewer than 56 seats.

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

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

Notice 91-13

On May 8, 1991, the FAA proposed 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 fewer than 56 seats, and (2) to permit the temporary operation of turbojets (or other aircraft) with a maximum passenger seating capacity of 110 in certain commuter slots at O'Hare International Airport, subject to specific conditions. (56 FR 21404.) The FAA proposed to 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 was proposed in order to limit

potential effects on airport operations and preserve at least 75 percent of existing commuter slots used for small community service.

The second condition proposed was 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 of each half hour (beginning at 0645) and for 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.

The peak hours in which the limitation to two per half hour would apply were proposed as follows:

1015 through 1244
1715 through 1944

Third, the Notice proposed that 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 such conditions 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.

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

Finally, the FAA proposed that the amendment be limited 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 for an additional 1-year period pending a study of impacts and rulemaking to revise, expand, or curtail the program.

Comments on the Notice

FAA received more than 300 comments in response to Notice 91–13. A number of commenters representing communities promised or hoping for service by American Airlines supported the proposed rule on the basis of a presumption of improved air service to the commenter's community. These comments tended to be similar or identical to arguments that corresponded to the position taken by American. Several commenters opposed the rule, because of the potential increase in operating delays at O'Hare Airport and surrounding airspace or the potential adverse impact on small communities that would not support jet service. Other commenters supported the rule only on the condition that restrictions were imposed on the additional jet operations. The comments are summarized by subject.

Justification for the Rule

American and most of the commenters supporting the proposal offered the justification that the proposed rule would result in improved air service, i.e., service by jets rather than turboprops, from O'Hare Airport to approximately eight cities in the Midwest and Pennsylvania. This benefit is claimed only for the cities named in the American petition for rulemaking, and would be realized only if American actually initiates and continues jet service to those cities.

Under the Airline Deregulation Act of 1978, American and other carriers operating under the proposed rule can begin or cease service in any domestic market at any time without Government approval (with certain exceptions under the Essential Air Service program). Accordingly, there is no assurance that the communities anticipating service by American (and supporting the proposed rule) will be the actual beneficiaries of the additional jet operations at O'Hare. However, in view of the operating characteristics of the Fokker 100 and most other aircraft which would qualify for operation in commuter slots under the rule, the FAA believes it likely that operations under the rule will primarily benefit regional markets. Because the FAA cannot be certain of the cities which will benefit from the rule and cannot know if turboprop service to other cities may be cancelled to furnish commuter slots for new jet service elsewhere, the FAA does not treat improved air service to the cities named by American as supporting rationale for the rule.

On the other hand, the FAA believes that restrictions on access to airports and the National Airspace System should be the minimum necessary for safe and efficient movement of air traffic. To the extent American has identified a limited relaxation of High Density Rule restrictions at O'Hare Airport which will not adversely affect existing congestion and operating delays, and which will continue to provide commuter slots for service to smaller communities, the FAA believes that the requested measures can and should be adopted in the public interest. The actual measures adopted by the FAA are not precisely those requested by American, because the reduction in restrictions must apply to all eligible carriers, and because the agency intends to review the impacts of the new operations before further altering operating restrictions at O'Hare.

Aircraft Eligible To Use Commuter Slots (110-Seat Cutoff)

In its petition, American Airlines requested that jet aircraft with a certificated maximum passenger seating capacity of up to 110 seats be permitted to use commuter slots at O'Hare. The FAA proposal incorporated the 110-seat cutoff, but did not limit eligibility to jet aircraft. The City of Chicago and Continental Airlines suggested alternative criteria for the aircraft eligible to use commuter slots, including aircraft weight, wake turbulence characteristics, and aircraft performance. From an air traffic control standpoint, there is not a significant difference between aircraft in the 100–110 seat range such as the Fokker 100, and slightly larger jets such as smaller models of the DC–9 and Boeing 737 which would be permitted under the criteria suggested by the commenters. Approach and departure speeds and wake turbulence separation are similar for all such aircraft, although cruise speed and service ceiling may make some aircraft more suitable than others for service on medium- and long-haul routes. Amendment of the rule as suggested would have little effect at O'Hare at the present time, however. American apparently requires all of its portion of the eligible commuter slots for its new Fokker 100 operations; Air Wisconsin's jets are mostly (or all) fewer than 110 seats and are eligible for operation under the rule as proposed; and Great Lakes operates only aircraft that meet the existing definition of commuter aircraft and, therefore, would not be directly affected by the rule. Expanding the rule to cover aircraft of similar weight and performance but with higher seating levels will be considered in any extension or modification of the current rule or adoption of a similar rule at other high density traffic airports. However, because the suggested change in criteria would have no immediate effect, and would perhaps create more of an incentive for carriers to abandon regional markets in favor of longer-haul routes, the FAA is adopting the 110-seat criterion proposed in Notice 91–13.

Service to Small Communities

As mentioned previously, many commenters from communities such as Peoria and Springfield, Illinois; Fargo, North Dakota; Sioux Falls, South Dakota; and Madison, Wisconsin supported the proposed rule, with fewer restrictions than proposed by FAA, because of the expectation of receiving new or additional jet service from O'Hare Airport. Other commenters, including carriers, community representatives, and individuals, expressed concern that the proposal would serve as an incentive to discontinue turboprop commuter service between O'Hare and cities which do not generate sufficient traffic to support jet service.

The rule has no certain effect on service to any particular community. The rule simply reduces restrictions on the use of slots; it is each eligible carrier's decision whether to take advantage of the change, and if it does, whether to serve the same markets as in the past or to shift service to different markets. A carrier may well discontinue turboprop service in one market to add jet service in another market, as some commenters predict. It is also possible that the substitution of jets with approximately 100 passenger seats for small turboprop aircraft in a market may permit the carrier to serve the market with fewer flights per day, thereby actually freeing commuter slots for use elsewhere.

The FAA has retained several limitations on the use of slots which will limit the adverse effects of the adopted rule on smaller communities. First, the rule retains in the High Density Rule the general category of commuter slots, which are limited to use by turboprops and jets of a size suitable only for regional air service. Second, the FAA has limited the use of commuter slots for larger (but still relatively small) jets under this rule to no more than 25% of each carrier's commuter slots. Finally, the rule does not change the Department's control exercised over slots obtained by the Department for operations in accordance with an Essential Air Service (EAS) Program determination; such slots would be eligible for use with a 110-seat aircraft under this rule, but only in the same market, unless the Office of the Secretary of Transportation specifically approved the change (14 CFR 93.219, § 93.221(a)(6)).

While the review of the adopted rule during the 2 years following implementation is intended primarily to assure that the rule has no adverse effects on airport operations or ATC, the Office of the Secretary will, during the same period, consider the effects of implementation of the rule on air service to smaller communities.

Effect on Airport Delays and ATC

A number of commenters addressed the issue of whether the additional jet operations that would result from the proposed rule would add to the traffic congestion and operating delays that now exist at O'Hare Airport. O'Hare, with its current mix of jet and propeller-driven aircraft, has the third highest rate and the highest number of operating delays on all U.S. airports. Commenters differed on whether the number and timing of operations that would result from the proposed rule would have any effect on airport operations, and if so, whether airport delays would decrease or increase. As expressed in Notice 91–13, the FAA considers it highly likely that a substantial number of additional jet operations, even if offset by a reduction in turboprop operations, would adversely affect delays at O'Hare and in en route airspace in the Chicago region. Accordingly, the FAA proposed several limits on the extent of the possible operations under the rule, including a limit on the percentage of each carrier's commuter slots that could be used with aircraft up to 100 seats; a general limit on the maximum number of such operations each 30- and 60-minute period; and a more restrictive limit on operations per 30-minute period in peak traffic hours. The comments on the various restrictions are discussed separately.

The 25% Limit

In its NPRM, the FAA proposed to limit the maximum number of commuter slots that could be operated with aircraft having 56 to 110 seats to 25% of the total number of commuter slots held by a carrier. This 25% limit derived from the FAA's assessment that a higher limit would exacerbate ground and flight congestion at and around O'Hare. A second purpose, supported by the State of Michigan and other commenters, was to assure slots for small communities served only by smaller aircraft. Finally, application of the limit to each carrier assured that no single carrier would monopolize the opportunities presented by the proposal.

In its comments, American asked to raise the limit to 35%. Several businesses and political representatives who desire new or increased jet service to their communities asked for a further increase to 40% in two years. The basis for American's request was its claim that it could accommodate approximately 71 additional jet departures and arrivals (142 slots) at its existing gates, and will be adding more gates; American holds 281 slots through subsidiaries and therefore could theoretically accommodate the additional jets under a 35% limit. American commented that a 25% limit will prevent it from serving all the cities to which it wishes to fly Fokker 100's.

The City of Chicago Department of Aviation suggested that the 25% limit appeared to be conservative but did not suggest a higher limit. The Department of Aviation further commented that delays are incurred through miles-in-trial restrictions imposed between successive aircraft due to system inefficiencies and did not believe that delays would necessarily result from the substitution of jet aircraft for commuter turboprops if those inefficiencies were addressed. It asserted that efficiency should increase as the aircraft fleet mix becomes more homogeneous. Holding a differing view, Northwest Airlines commented that even a 25% limit would affect air carrier congestion in and beyond the Great Lakes area, and Northwest was uncertain if the limit would suffice to avoid exacerbation of delays. United Air Lines exhorted the FAA to retain the 25% limit and commented that the consequences were unclear if that limit were raised.

None of the comments denied that operations at high altitude would be affected by the rule. American and others suggested that flights under 24,000 feet would not introduce additional delays at O'Hare or en route in the region controlled by Chicago Center. The FAA draws no such distinction. As discussed below under "Exception for flights below 24,000", the amended rule could encourage concentrations in jet traffic patterns at O'Hare, exacerbating delays as more aircraft must join the sequence farther out, while the approach patterns for commuter turboprops become underutilized. Although the 25% limit may constrain American in the number of flights it can operate with Fokker 100 aircraft using commuter slots, the FAA believes the limit is necessary to prevent additional jet operations from increasing airport delays for all operations at O'Hare.

The FAA's second concern focuses on the Department of Transportation's interest in service to small and medium communities. American, which, through Simmons and American Eagle, holds most of the commuter slots eligible for use with aircraft up to 110 seats, has represented that it will use those slots to provide jet service to approximately eight small and medium communities.

Currently, American holds certain underutilized slots that could be used to provide air service to these communities. Several commenters were concerned about the effect on other communities, however. As the State of Michigan observed, "the present system of two slot pools (air carriers and commuters) provides the best assurance of continuing medium and small community air service as outlined in section 419 of the Airline Deregulation Act of 1978." USAir commented that the amended rule would undermine the distinction between these two slot pools.

The State of Michigan found its ability to recruit air services inhibited by the lack of slots available to commuters through purchase or trade, and commented that an allowance greater than 25% would not be in the best interest of small community air service. Great Lakes Aviation, a commuter with slots at O'Hare, commented that, even with the 25% limitation, the proposed rule would reduce the number of slots available to it for possible trades, and thereby hamper its ability to schedule services to meet small communities' needs. Pan Am Express commented that small communities will lose service under the rule as proposed, and Delta commented that such loss may invite reregulation.

The FAA agrees that the rule adopted poses a potential loss of service to small communities that cannot support jet service, depending on the decisions of carriers that currently hold commuter slots at O'Hare. The 25% limit on the use of commuter slots by aircraft up to 110 seats will cap the extent of that potential loss of service. The Office of the Secretary of Transportation will use the 2-year trial period to monitor the effect of the amended rule on service to small communities. The results of that review will be considered in any extension or modification of the rule.

Finally, applying the 25% limit on a per carrier basis will preclude potential monopolization by a single carrier of the commuter slots eligible for operation with aircraft up to 110 seats. Although comments were received on the allocation process (discussed below under "Allocation of operations under the rule among the carriers holding commuter slots at O'Hare"), no commenters suggested an alternative basis for determining how many commuter slots each carrier could use with 110-seat aircraft, other than providing no limit at all or allocating a higher percentage of slots for such use to all carriers.

The FAA believes that operations under the amended rule in excess of 25% of the total of commuter slots could significantly increase en route and airport delays. Larger aircraft permitted under the rule adopted generally fly at higher altitudes, have higher approach speeds, require longer runways, and have a greater impact on ramp congestion than the commuter aircraft currently using the slots that this amendment will affect. The limit also serves to preserve slots for operations in markets that would not sustain aircraft with greater seating capacities. Basing the allocation on a holder's current inventory of commuter slots precludes potential monopolization of the slots eligible for use with aircraft up to 110 seats. The FAA therefore has retained the 25% limit in the final rule adopted.

The 30/60 Minute Restriction

To prevent periodic concentrations of operations with aircraft up to 110 seats, the FAA proposed to restrict the number of eligible slots to six in each half hour and ten in any two consecutive half-hours. During the peak periods of 1015 through 1244 and 1715 through 1944, the use of commuter slots by larger aircraft would be further restricted to two per half hour.

American, its employees' union, and several communities asked to remove these restrictions from the final rule based on their common belief that the additional operations would not exacerbate air traffic congestion. American alternatively suggested that the time restrictions, if they must be imposed, be imposed per carrier, but only for operations above 24,000 feet. It further commented that the gate limitations requirement combined with the High Density Rule would preclude concentrations of operations within a given time frame. American did not provide information that controverted the FAA's conclusion that additional jet operations beyond those allowed by this amendment would have an adverse effect on airport and en route operating delays.

United and Northwest agreed with the FAA that these time restrictions are needed to minimize the burden on ATC and the impact on operations on and around the airport. United believed that expansion of the restriction could adversely affect operations to the substantial detriment of all passengers. Northwest was even uncertain whether the restrictions were sufficient to avoid additional delays and Delta Air Lines commented that the proposed rule did not contain adequate safeguards. Pan Am Express commented that jet operations could increase 10% in most half-hour increments during the daytime under the amended rule. The State of Michigan voiced a concern that the number of non-peak slots allowed under the amended rule was too high.

The FAA has concluded that, absent time restrictions, substitution of aircraft up to 110 seats for the commuter airplanes permitted under the original rule will add undue burdens on ATC airspace management and ground operations at O'Hare. If the substitution allowed under the rule is not restricted as the FAA proposed, additional delays in the air and on the ground at O'Hare, where overall operations are already at capacity, could be expected. Applying the same restriction to each carrier, which could double or triple the limit proposed by the FAA, fails to assure that the additional operations will not be unacceptably concentrated at certain times. It is very likely that, absent time restrictions, operations would be concentrated in peak periods, exacerbating delays, especially in adverse weather conditions. Until the FAA has actual experience indicating that operations under the rule adopted could be increased without further impact, the FAA believes that the proposed 30- and 60-minute restrictions represent the current practical limit of additional operations with aircraft up to 110 seats at O'Hare without exacerbating existing delays and congestion. Accordingly, the final rule retains the 30- and 60-minute restrictions.

Exception for Operations Below 24,000 Feet

Nearly all the air carrier commenters acknowledged that, because jets generally operate at higher altitudes, the substitution of jet aircraft for turboprops will add to the congestion of traffic at those higher altitudes. As Northwest commented, Chicago Center handles through traffic as well as flights to and from O'Hare, and the extra burden of jet operations at high altitude would contribute to delays at Detroit, Minneapolis, and other cities as well as congestion at O'Hare.

American commented that 75% of its small jet operations will be below 24,000 feet and those operations therefore will not affect high altitude airspace. American further commented that if the FAA's proposed 25% limit were raised to allow operation of 35% of the commenter slots at O'Hare with aircraft having up to 110 seats (see discussion above under "The 25% limit"), about 30 of its flights per day would be in high altitude airspace.

Supported by the communities whose comments it solicited, American suggested that flights below 24,000 feet

above mean sea level (MSL) feet be exempted from the 25% limit and the time period restrictions. The Chicago Department of Aviation commented, as did American, that the exchange of jets for commuter turboprops would not necessarily cause additional airspace delays at low altitude. The Department of Aviation's comments also recognized, however, that further delays might result under current ATC procedures as the added jet aircraft stretched out the traffic due to miles-in-trail restrictions imposed between successive aircraft.

Operations below as well as above 24,000 feet MSL affect the efficiency of en route operations and airport arrivals and departures. While high altitude sectors have a base of 24,000 feet MSL, a significant amount of en route traffic uses altitudes below that level. Chicago Center is responsible for control of aircraft beginning at 12,000 feet MSL on handoff from Chicago Radar Approach Control in the vicinity of O'Hare, and at lower altitudes elsewhere. As Pan Am Express observed, jet aircraft and turboprops use different approach patterns with different altitudes, separations and runway lengths. The amended rule, if unrestricted as American suggests, would concentrate traffic in the jet approach pattern and leave the commuter approach patterns underutilized. Restricting the substitution of jets for turboprops, however, regardless of their cruise altitude, will enable ATC to take advantage of O'Hare's runway configuration in handling a mixture of landing and departing aircraft.

The FAA must restrict the slot allocations as proposed to minimize possible additional congestion. The final rule therefore contains no exemption for flights conducted below 24,000 feet MSL.

Definition of Gates

The rule as proposed required that a gate be available without planned waiting time for operations of aircraft up to 110 seats in commuter slots. Air Wisconsin commented that the term "gate" needed clarification and suggested substituting "parking position." By contrast, American requested that jetbridges be required for jets operating under this amendment. American commented that the use of jetbridges reduces the number of passengers crossing ramp areas and decreases aircraft congestion on taxiways and ramps. American has represented that it has jetbridges available and will use them for its Fokker 100 operations.

Air Wisconsin commented that it currently uses ramp parking in assigned positions at a single gate for the British Aerospace 146 jet aircraft it operates in its air carrier slots. It further commented that it can accommodate up to 13 aircraft at one time and operates both its ATP turboprop and British Aerospace 146 jet aircraft, which has a smaller wingspan than the ATP, from the parking positions at that gate. Air Wisconsin said it has operated both jet and turboprop aircraft for a long time from its one gate at O'Hare without encountering any of the problems American predicts will occur if jetbridges are not required.

The FAA expressed in the NPRM its concern about the further ramp congestion that might result from this amendment. The purpose of the gate requirement is to prevent ramp and taxiway congestion that could result from operations of larger aircraft that cannot use the gates/parking positions used by the turboprop aircraft they replace. Ground operations at O'Hare cannot tolerate the further congestion that would result under this amended rule if jets are backed up on the ramp or taxiway while waiting for a parking position to become available to disembark passengers. Because ramp parking positions are now used by Air Wisconsin for jet operations without problem, the FAA will not require use of jetbridges at this time. The FAA does not intend the rule adopted, however, to permit an increase in the use of ramp parking for jets.

Accordingly, the term "gate" will be interpreted for this purpose to include jetbridges and also ramp parking areas routinely used on the issuance date of this rule for jet aircraft passenger embarking and disembarking. All additional gates used for operations under this amendment must be jetbridges. The FAA will closely monitor the impact of the rule adopted on ground congestion and passenger safety.

2-year Limit on the Rule

Several commenters requested the FAA to delete the provision, as proposed in Notice 91–13, that would limit the effectiveness of this rule to a 2-year time period. In particular, AAL and representatives of several communities commented that the ability to use larger aircraft in commuter slots should be a permanent change to the High Density Rule. United, Northwest, Delta, USAir, Pan Am Express, and other commenters, on the other hand, believed that the FAA should study the effects of the rule prior to making the changes permanent and, therefore, supported the 2-year limitation.

The FAA believes that further review of the effects of the rule on airport operations and on the air traffic control system is important, in the event that the rule has adverse effects which recommend against permanent adoption. Therefore, the agency has retained the 2-year limitation on the effectiveness of this rule. However, the FAA agrees with American and other commenters that if the rule is working without significant problems, it should not be permitted to expire pending rulemaking to extend it. Accordingly, the rule as adopted provides that if the FAA determines that the rule should be extended or that further study is warranted, the Administrator of the FAA may extend the effectiveness of this amendment under the present terms by publishing notice of the extension in the **Federal Register** prior to the expiration of the time period.

Furthermore, the FAA does not consider it necessary to delay changes for the entire 2-year period if it becomes clear within that time that additional operations will not cause operational problems. That determination cannot be made until there has been some period of operation with all or most of the additional jet operations permitted under this amendment. If the additional jet (or other 75–110 seat aircraft) operations are determined not to have an adverse effect on ATC or airport congestion and delay, then the FAA will consider petitions to revise further the limits on use of commuter slots at that time.

Delta and Pan Am Express both requested the FAA to develop objective criteria by which to evaluate the effect that this rule has on the ATC system and on service to smaller communities. The FAA continually reviews the operational efficiency and safety of the air traffic system and will monitor the effects of the use of larger aircraft in certain commuter slots. The agency will evaluate operation under the rule and make a determination as to whether changes in this rule would be detrimental or advantageous to the air traffic system.

As to the effect that the rule would have on service to smaller communities, the development of objective criteria would be difficult, because with the exception of service to points eligible for an EAS determination, there is no objective Federal standard for air service to a community. In general, the Department will attempt to identify any increase or decrease in the quantity or quality of flights and the number of communities served by commuter flights from O'Hare.

Allocation of Operations under the Rule Among the Carriers Holding Commuter Slots at O'Hare.

In Notice 91–13, the FAA proposed to allocate the limited number of commuter slots each half hour that could be used with aircraft up to 110 seats on a first-come first-served basis. The date used for comparing competing requests was the actual start date rather than the date of request, to preclude one carrier from tying up all of the most favorable times by making an early request. Great Lakes Aviation did not comment on this part of the proposal. American and Air Wisconsin, the two other carriers holding commuter slots at O'Hare, both objected to the proposed allocation mechanism because of the potential adverse effect on competition.

American first argued for applying the 30- and 60-minute limitations to each carrier rather than all carriers, in effect doubling or tripling the potential number of additional jet operations in peak hours and nullifying the purpose of the allocation procedure altogether. For reasons discussed under "30/60-minute limitation," the FAA has not accepted this request. American objected to a first-come first-served allocation procedure based on starting date; American's jet operations will be phased in over time, while Air Wisconsin already has small jets and can start operations under the rule almost immediately. Air Wisconsin also objected to the first-come first-served procedure. As an alternative, Air Wisconsin recommended a procedure by which the carrier that had used the lowest percentage of its eligible commuter slots would have first pick of the next slot time, to maintain a continuing proportionality among competing carriers.

The FAA does not agree with American that the number of operations under the temporary program should simply be increased to resolve allocation issues, for the reasons discussed in Notice 91–13. The FAA agrees with both commenters on the inherent difficulties of a first-come first-served procedure for this purpose, and agrees with Air Wisconsin that a competitive environment is best maintained by a proportional allocation (i.e., proportional to the total number of commuter slots held by each carrier). The FAA does not find the complex procedure recommended by Air Wisconsin to be feasible, however.

Accordingly, the FAA has adopted a simple lottery procedure for the allocation of the commuter slot times eligible for use with airacraft up to 110 seats. Within 21 days of the date of issuance of this rule, the FAA will hold a special lottery among the three carriers holding commuter slots at O'Hare Airport. In accordance with the general lottery procedures in 14 CFR 93.225, the order of selection will be determined by random draw. Each participant will select two slots per turn in the order determined by the draw, until all eligible slot times are selected. The times selected may be traded among the participants after the lottery, upon confirmation by the FAA Slot Administration Office in accordance with 14 CFR 93.221. Notice to ATC and approval of operation in the times selected would still be required.

The procedure adopted accepts the relaxation of High Density Rule restrictions requested by American Airlines, and makes the benefits of the lesser restrictions available to all eligible carriers in proportion to their slot holdings. The FAA acknowledges that the result may not permit American to operate all of the additional jet operations it has requested. However, a change in the operating limitations applicable to commuter slots must apply equally to all holders of commuter slots. As holder of 65 percent of commuter slots at O'Hare, American is still the primary beneficiary of the change.

Air Wisconsin also requested that a "use-or-lose" requirement be applied to the commuter slot times eligible for use with commuter aircraft. The FAA has not incorporated a minimum use requirement for operation by 56–110 seat aircraft in the commuter slots selected. The program is voluntary, and there is no need from the standpoint of either air service or efficient operation of O'Hare Airport to ensure that all eligible slots are used by jet aircraft within a certain time. The minimum slot use requirement of 14 CFR 93.227(a) continues to apply to all commuter slots.

Applicability to Other Airports

The Port Authority of New York and New Jersey, Continental Airlines, and USAir requested that the proposed rule be extended to other high density traffic airports in addition to O'Hare, specifically LaGuardia Airport in New York. The rule adopted essentially grants a longstanding request by USAir to permit the use of 63- and 68-seat turbojets in commuter slots, albeit only at O'Hare Airport. USAir does not hold commuter slots at O'Hare. The application of the rule adopted to any airport other than O'Hare would be outside the scope of Notice 91–13, and could not be adopted without further notice and request for comments on that specific subject. While the FAA has not made a decision not to consider extension of the rule to other airports, a change in the commuter/jet aircraft mix would have different effects at each of the other high density airports, and the FAA will not take such action without further rulemaking.

Limitation to Stage 3 Aircraft

American Airlines, the City of Chicago Department of Aviation, and other commenters requested that the operation of aircraft with 56 to 110 seats in commuter slots be limited to Stage 3 aircraft, which meet more stringent noise standards on takeoff and landing than Stage 2 aircraft. American Airlines' petition requested limitation to Stage 3 aircraft, but the FAA did not include this restriction in its proposed rule because recent legislation provides for a nationwide transition to an all-Stage 3 fleet by 1999. While the FAA supports the use of quieter aircraft, there is no reason to impose special environmental restrictions on the particular aircraft used in operations under this rule. Accordingly, the FAA has not included a Stage 3 restriction in the rule adopted.

Pilot Contracts

Two organizations representing pilots of commuter aircraft commented that the shift from turboprop to jet aircraft operations would adversely affect their member pilots. The concern is that if larger aircraft can be used in a commuter slot, there would be fewer commuter flights using the smaller aircraft and, therefore, less demand for pilots qualified to fly the smaller commuter aircraft. The FAA recognizes that an employing carrier's decision to substitute one type of aircraft for another may affect the crewmembers trained on one aircraft and not the other. The agency believes that the issue is most appropriately resolved through the collective bargaining process between employers and representative organizations, and should not affect the decision to amend airport operating restrictions.

Environmental Review

This rule, as adopted, will not increase the number of total aircraft operations at O'Hare, but will permit the use of larger aircraft (56 to 110 seats) in up to 25% of the commuter slots at O'Hare. The use of 25% of the commuter slots for larger aircraft will mean that no more than 108 of the 435 commuter slots may be used by turbojet aircraft instead of turboprop aircraft. (While the rule permits any aircraft with 56 to 110 passenger seats to be used in commuter slots, the FAA presumes that carriers will choose to operate turbojets.)

The total number of daily turbojet operations at O'Hare is 1,670. Therefore, it all 108 available commuter slots are used by turbojet aircraft, there will be an additional approximate 6% of turbojet activity at the airport during slot-restricted hours. The only potentially significant environmental concern in the O'Hare area that could result from the implementation of this rule would be the possible increase in noise as a result of the 6% increase in the number of turbojet activity.

The FAA performed a noise analysis of the increase in turbojet activity that would be a result of this rule. Using the Area Equivalent Method computer model, the agency determined that the use of up to 25% of the commuter slots for turbojet operations would result in a 0.2% increase in the size of the Day Night Average Sound Level 65 dB contour at O'Hare. Pursuant to FAA Order 1050.1D, if the result of the Area Equivalent Method computer model shows less than a 17% increase, the agency may conclude that there would be no significant impact on a noise sensitive area and that no further analysis is required.

Accordingly, the FAA finds that permitting the use of larger aircraft in 25% of the commuter slots at O'Hare is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1969 (NEPA) and that it 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 Rule Adopted

In consideration of the above, the FAA is amending FAR part 93, subpart K and supart 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 fewer 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 maximum number of commuter slots that can be operated with aircraft with 56 to 110 passenger seats is limited to 25 percent of the total number of commuter slots held by each slot holder at O'Hare. Second, the number of commuter slots that can be used for operation of aircraft with 56 to 110 passenger seats is 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 is 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 are limited to two per half hour. Full utilization of the authority, with this limitation on half-hour and consecutive half-hour operations, permits 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 applies are:

1015 through 1244
1715 through 1944

The limitations per half hour and consecutive half hours on the number of 56- to 110-seat aircraft operations in commuter slots would be published in an appendix to part 93. A decision by ATC to amend these limits will be published in advance of the effective date of the change, in the **Federal Register**, as an amendment to the part 93 appendix. Allocation of the eligible slot times to the carriers holding commuter slots at O'Hare will be accomplished by special lottery.

Third, for each slot time obtained in the lottery, a carrier is required to notify ATC 60 days in advance of the planned operation of the commuter slot with a 56- to 110-seat aircraft. ATC has 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 will be issued more than 45 calendar days before the planned start date stated in the notice. 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. A new request can be filed.

Fourth, the FAA is requiring 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 is limiting the effective period of the amendment to 2 years, in order to evaluate the impact on airport operations and on ATC resources and workload. The rule can be extended by the Administrator upon publication of a notice of extension in the **Federal Register**.

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 rule is voluntary and does not impose any additional costs on part 121 or part 135 operators. This rule allows part 121 and part 135 operators to use some of their commuter slots (up to 25 percent) at O'Hare Airport for operations involving airplanes having up to 110 passenger seats. A maximum of 108 operations per day using airplanes with up to 110 seats would be permitted using commuter slots. The number of commuter slots that could be used for these operations will also be limited to ten in any 60-minute period with not more than six during any 30-minute period, and to two per 30-minute period in certain peak hours.

As a result of the above limitations on the use of larger airplanes in commuter slots, the FAA believes that the rule will 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 will be significantly affected. However, the potential exists for some additional delays in ground operations at O'Hare and enroute operations in the Greak Lakes Region as a result of the additional jet operations permitted under the rule.

This regulation will have no effect on the safety of either air or ground operations. ATC retains the ability to deny additional large airplane operations at O'Hare Airport and to maintain normal separation between aircraft.

In this evaluation, the FAA assumes that service to small airports will not be terminated or reduced as a result of this proposal. The rule will 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. As Pan Am Express noted in its comments, the FAA has no factual basis for assuming that service to some small communities will not be reduced, although American Airlines represented in its comments that such service would not be affected. Because the rule is voluntary, the FAA has no certain knowledge that the holders of commuter slots at O'Hare Airport will or will not move operations at O'Hare from some markets to others, or that commuter slots will be used for jet service to the communities named in American's petition. Accordingly, it is possible that costs will be experienced by smaller communities that lose existing commuter flights, because the slots for those flights are transferred to other markets that can support jet service. The possibility of this occurrence and the costs associated with it are speculative, however, and have not been considered in the evaluation.

Benefits

The rule reduces some of the current restrictions on the use of commuter slots at O'Hare Airport under the High Density Rule, and permits carriers holding commuter slots additional flexibility in the use of those slots. To the extent the rule is used to upgrade service from turboprops to turbojets in the same market, the rule will benefit passengers in that market. Passengers on long commuter flights will be able to fly in larger and faster turbojet airplanes which will save them some time. However, for most commuter flights, which are short, turbojets will not provide any significant time savings. On a long commuter flight, the FAA estimates that about 20 minutes could be saved by using turbojet airplanes instead of turboprop airplanes. The FAA estimates that approximately 50 passengers will be on each turbojet commuter flight. The estimated passenger time saved is, therefore, 16.7 passenger-hours per commuter flight. The FAA estimates the value of passenger time is $34 per hour. Allowing turbojet airplanes with up to 110 seats to be used on long commuter flights will save an average of $568 in passenger time for each long commuter flight.

Benefit Cost Comparison

The FAA finds that there are no significant costs to this regulation. However, there are measurable benefits. As a result, the FAA has determined that the regulation is 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 "small entity" as a small 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 scheduled 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 rule will 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 adopted 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 amendment will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed under Regulatory Evaluation, the FAA has determined that this 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). 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

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

Adoption of the Amendment

Accordingly, the Federal Aviation Administration 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. 1302, 1303, 1348, 1354(a), 1421(a), and 1424, The Metropolitan Washington Airport Act of 1986, title VI of Pub. L. 99–500; 49 U.S.C. 106 (Revised Pub. L. 97–449, January 12, 1983).

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) The total number of operations by aircraft described in paragraph (e)(1) of this section that may be conducted in commuter slots in any half hour (beginning at 0645) or in any two consecutive half hours may not exceed the number indicated in appendix B to this part. The slot times at which such operations may be conducted by each holder of commuter slots at O'Hare Airport will be determined by a lottery conducted in accordance with the general procedures described in § 93.225 of this part to the extent they apply.

(4) An air carrier or commuter operator planning to operate an aircraft described in paragraph (e)(1) of this section 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.

(5) 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 to this part for any half hour or two consecutive half hours upon a determination that a greater number would have an adverse effect on airport delays.

(6) An operation may not be conducted under paragraph (e)(1) of this section unless a gate is available for that operation without planned waiting time.

(7) 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.

(8) The effectiveness of this paragraph (e) shall expire September 20, 1993 unless otherwise extended by the Administrator before the date of the termination. Notice of the Administrator's decision will be published in the **Federal Register**.

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 August 14, 1991.

James B. Busey,

Administrator.

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