DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 26151; Amendment No. 93-61]

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

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

ACTION: Final rule.

SUMMARY: This action amends the procedures for allocation of air carrier and commuter operator takeoff and landing slots at O'Hare International Airport, to limit the availability of seasonal international slots at O'Hare Airport for carriers with 100 or more permanent slots. The action responds to a petition by United Airlines to limit the requirement for U.S. carriers to furnish domestic slots for international operations by other carriers. Under the rule adopted, slots generally will be not withdrawn from domestic operators to accommodate international operations by carriers with 100 or more slots at that airport, if the resulting allocation would exceed the schedule operated by each such carrier for the winter 1989–90 season. As a result, each large slot holder at the airport will be required to accommodate new international operations primarily from its own slot base, rather than the domestic slots of other carriers.

DATES: Rule effective January 28, 1991, the rule applies to the allocation of slots for flights that will be operated on or after October 27, 1991.

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

SUPPLEMENTARY INFORMATION:

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) 267–3058. 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, 14 CFR part 93, subpart K, limits the number of operations during certain hours or half hours at four airports: Kennedy International, LaGuardia, O'Hare International, and Washington National. Comprehensive rules for the allocation and transfer of high density airport slots were adopted in December 1985 (14 CFR part 93, subpart S). A "slot" is defined as the authority to conduct one allocated IFR landing or takeoff operation during a specific hour or 30-minute period at one of the high density airports.

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

At O'Hare Airport only, a slot requested for scheduled international service by the dates specified in the rule (May 15 for the following winter season and October 15 for the following summer season) is allocated at or within two hours of the time requested. Domestic slots are withdrawn from U.S. operators to make slots available for the international requests, if those requests would otherwise have exceeded High Density Rule limits in that half hour.

United Airlines Petition

On July 10, 1987, the FAA published in the **Federal Register** a Notice of Petition for Rulemaking filed on behalf of United Air Lines, Inc. (52 FR 26020). The petition requested an amendment to the Federal Aviation Regulations (FAR) to remove the provision in the current rule that requires the FAA to make international slots at O'Hare available even if slots must be withdrawn from domestic carriers currently holding the slots.

Notice No. 90-10

On March 5, 1990, the Department issued Notice of Proposed Rulemaking (NPRM) No. 90–10. In Notice No. 90–10, the Department proposed to limit the ability of carriers holding or operating 100 or more slots at O'Hare airport to obtain slots for international operations by withdrawal of domestic slots from other carriers. Such carriers could obtain slots for international operations under § 93.217 if slots were available at the requested time period, or if allocation of the slots did not exceed the number allocated to that carrier under § 93.217 for the winter 1989–90 season.

Discussion of Comments Received on Notice No. 90–10

In response to Notice No. 90–10, the FAA received comments from three carriers and from others supporting or opposing the proposed rule.

Reason for the Regulation

All commenters addressed the rationale for limiting the availability of seasonal international slots at O'Hare for carriers holding 100 or more slots.

United Airlines stressed that the proposed rule would restore competitive fairness, alleviate substantial harm to domestic passengers, and prevent the transfer of United's slot base to American Airlines. United, however, urged the Department to adopt the rule with several revisions, which are discussed below under separate topics.

American Trans Air stated that the proposed rule appears to be the most viable approach to dealing with carriers' immediate needs for international slots at O'Hare. American Trans Air further noted that the grant of requests for slots for international operations by carriers holding 100 or more slots is inappropriate because such carriers can accommodate their needs from their own slot holdings. Since no carrier holding 100 or more slots at O'Hare is foreign, the inability to displace domestic slots could not trigger bilateral repercussions; therefore, American Trans Air argued, these carriers should not receive the benefit of the special allocation provisions for international flights.

American Airlines commented that the current allocation of international slots at O'Hare is neither disruptive nor unfair to United, and is based on rules that have been used and accepted for several years. American further commented that the proposal contained in Notice No. 90–10 is arbitrary, discriminatory, anticompetitive, and would cripple American's ability to expand internationally at O'Hare and force it to sustain large financial losses.

American does not claim that the current regulation results in a proportional withdrawal from all carriers, but rather asserts that carriers at O'Hare have determined their present position by acting in reliance on the rule in effect since 1985. If United is subject to withdrawal of more slots than American, that is because United has purchased slots with vulnerable withdrawal priority numbers and has

not acted aggressively to structure its slot base to avoid withdrawal, as has American. Also, United holds more air carrier slots at O'Hare than any other carrier. American argues, accordingly, that United does not need protection from market forces, and that it would be discriminatory and anticompetitive for the Department to intervene in the current situation to enable United to avoid the adverse effects of its own actions under a neutral regulation.

The Department does not agree that the current regulatory withdrawal mechanism should be left unchanged without regard to the actual effects of the rule over time. When the current rule was adopted in 1985, it was the Department's expectation that the international slot allocation mechanism would distribute the burden of providing international slots relatively evenly among carriers. Slot withdrawal priority numbers were assigned by random lottery, and withdrawal of slots by those numbers would ordinarily result in a proportionate withdrawal of slots from carriers holding various numbers of slots at O'Hare. American's restructuring of its slot base to eliminate virtually all slots currently vulnerable to withdrawal was not prohibited by the rule; however, it was not a desirable result of the rule's provisions.

Also, potential effects of the original rule have become increasingly apparent as total international operations at O'Hare have increased. In December 1985, when the current rule for O'Hare was adopted, there were approximately 90 international operations by all carriers during slot-restricted hours at the airport. This number remained relatively constant through winter 1988–89. In summer 1989, the number operated increased to 110, and in summer 1990, the number initially requested was 140, of which about 126 were operated. A substantial portion of this increase has been additional international operations by the two largest slot holders, American and United, at the airport. Between 1985 and 1990, United increased from 15 to 20 international operations per day, and American increased from 22 operations to 43, nearly double.

Withdrawal of domestic slots to maintain total operations at High Density Rule limits has increased accordingly. Slots withdrawn since 1986 for international operations are as follows:

Summer 1986: 0
Winter 1986–87: 0
Summer 1987: 8 (American: 0; United: 4)
Winter 1987–88: 0
Summer 1988: 6 (American: 0; United: 15)
Winter 1988–89: 10 (American 1; United: 8)
Summer 1989: 22 (American: 4; United: 15)
Winter 1989–90: 24 (American: 3; United: 19)
Summer 1990: 44 (American: 5; United: 34)

While American states that there has been no dramatic increase in slot withdrawals, the total increase and the increase for United have been significant. American's statement that the proposed rule would substantially interfere with its expansion of international operations at O'Hare indicates that this trend would continue if the rule were not amended.

The current status of American's slot holdings at O'Hare, and the relative invulnerability of its slots to withdrawal for international operations by other carriers, has several ramifications. First, American can target the domestic operations of its largest competitor for withdrawal. Each new American international operation in a time period in which United holds the next vulnerable slot provides a double benefit to American: a cost-free slot for addition of an international operation and the requirement for its competition to cancel a domestic flight. While the Department does not assert that American has acted with anticompetitive intent, the current situation certainly permits such action and provides an incentive for anticompetitive behavior.

Second, American has shifted the burden of its increased international schedule not only to United but to other U.S. carriers with far fewer resources at O'Hare than American or United. American currently holds approximately 529 slots—32% of the 1670 air carrier slots at O'Hare—in addition to approximately 65% of the commuter slots at the airport. The third largest air carrier slot holder, Northwest Airlines, holds 63 air carrier slots. While, as American correctly notes in its comment, relatively few slots have been withdrawn to date from carriers with fewer than 100 slots, the number would increase with the expansion of international operations by American and United.

Both American and United have increased their slot holdings at O'Hare under the current regulations. Since 1985, American has increased its air carrier slot base from 442 to approximately 529 slots. During the same time United has increased its base from 597 to approximately 729 slots. Both carriers operate international flights at O'Hare and have increased their international operations since 1985. American and United together currently hold more than 75 percent of the air carrier slots at O'Hare.

In consideration of the dominant position of these two carriers at O'Hare, the growing international operations by both carriers, and the substantially smaller slot holdings of other U.S. carriers at the airport, the Department considers it reasonable that these carriers use their existing slot bases for new international operations. As the two largest carriers at O'Hare, American and United have the capacity and flexibility to use slots from their own bases for international service.

Effect on Historical Service

American states that the amendment proposed will force the cancellation of international flights already approved by the FAA, and interfere with "historical" rights to operations approved in prior seasons. The rule will not affect any schedule prior to winter 1991–92. The slot request for that season is not due for submission to the FAA until May 15, 1991. It is correct that the amendment may result in the denial of future slot requests for flights first operated during summer 1990, winter 1990–91, and summer 1991, and which would be approved in the future under existing rules. However, those flights represent only a portion of American's and United's international operations, and other flights previously operated will not be affected. Also, for U.S. airports, this "historical" right to previously operated flight times arises only under the regulatory provisions of FAR § 93.217, and the relevant provisions of that section are amended by the rule adopted. While American's comment is partially correct, it does not present a reason not to adopt the proposed rule.

Effective Date of Final Rule

Both American Trans Air and United Airlines urged the Department to adopt the proposed amendment as a final rule without delay. United urged the Department to adopt the amendment before May 15, 1990, the deadline for the submission of requests to operate during the following winter season.

The Department is aware that carriers have requested and, in most cases, received final allocations of slots for the summer 1991 season. Accordingly, the rule will take effect on January 28, 1991 and will first apply to the winter 1991–92 season beginning October 27, 1991. The deadline for filing slot requests with the FAA for the winter 1991–92 season is May 15, 1991. This lead time avoids

impact on schedules already requested and should minimize the need for short-term planning adjustments.

Baseline for Future Allocations

In Notice No. 90-10, the Department proposed that the slots allocated to and used by United and American for the winter 1989-90 season would serve as a baseline for the number of operations by these carriers that would be granted in the future even if withdrawal were required. Requests by United or American above the winter 1989-90 level would be granted only if slots were available at the half hours requested.

United Airlines recommended the adoption of the winter 1985-86 season, the schedule in effect when the slot rule was first adopted, as the baseline for future slot allocations. American Airlines and several other commenters, arguing that the adoption of a winter 1989-90 baseline would be inconsistent with international practice and would require cancellation of service already in effect, recommended the adoption of the summer 1990 season as a baseline for future allocations. American increased its international slot holdings by approximately 10 operations from winter 1989-1990 to summer 1990, and adoption of summer 1990 as the baseline would permit operation of all of the new flights in future summer seasons without cancellation of domestic flights.

The Department considers the level of operations by American and United during the winter 1989-90 season, as proposed in Notice No. 90-10, to be an appropriate baseline level. A rollback of withdrawals to the 1985 level requested by United would unnecessarily disrupt existing international operations and would retroactively undo the legitimate operation of the regulations in effect from 1985 to the issuance of Notice No. 90-10. Conversely, the winter 1989-90 season represents all of American's longstanding international operations and many of its newer operations, but does not include the 10-slot increase for summer 1990 and the additional 11-slot increase requested and allocated for summer 1991. Because American increased its schedule from summer 1989 to winter 1989-90, use of the winter 1989-90 baseline will permit American some increase over its summer schedules operated prior to 1990.

As United noted in its comments, the proposed rule refers only to the "total" number of operations in each carrier's winter 1989-90 schedule. Theoretically, this could allow each carrier to request its operations in any time period, or even all of the operations in a single time period. In order to retain the substance of the proposal and to permit some variation from the schedule operated in winter 1989-90, while limiting the potential for abuse, the final rule as adopted limits the total number of slots that will be withdrawn in any time period (for a carrier holding or operating 100 or more slots) to the number of slots operated by that carrier during winter 1989-90. The rule limits the number of operations in any particular half hour to the number allocated to and scheduled by that carrier during winter 1989-90, plus two slots. (The number in other half hours would need to be reduced accordingly). The determination of the half-hour and daily totals scheduled during winter 1989-90 will be based on the carrier flights scheduled on Friday, February 23, 1990, which the FAA has determined is representative of the operations scheduled during the peak part of the season. Finally, in the amendment adopted, available slots may be allocated without regard to the number operated by the carrier in winter 1989-90, to permit the affected carriers to expand their international operations without impact on domestic flights if unused slots or additional capacity become available.

Competitive Effect of Amendment on U.S. Carriers Operating International Service at O'Hare

Both American Airlines and United Airlines commented that the proposed rule would permit foreign carriers to expand operations at O'Hare using slots withdrawn from American and United, thus shifting the international competitive balance in favor of foreign carriers. Both carriers also noted that, at slot-restricted foreign airports, slots are not withdrawn from domestic operators to meet international requests.

The Department believes that if vacant slots are not available to accommodate international services by foreign airlines and U.S. airlines with fewer than 100 permanent slots at Chicago, it must continue to withdraw slots to meet U.S. international obligations and ensure a competitive presence for small U.S. airlines. U.S. air services agreements give foreign airlines access to the point Chicago, and they must be able to exercise that authority. Moreover, if U.S. airlines retain the ability to increase international service from Chicago, their foreign counterparts that have Chicago authority must also have that opportunity. Given the capacity constraints and the lack of an alternative airport, it is only through the slot withdrawal process that access can be made available to foreign airlines. The Department recognizes that U.S. airlines do not have the same degree of certainty that they will receive an acceptably timed slot at a foreign airport as foreign airlines do at O'Hare. Therefore, as discussed below, the rule is also being amended to provide that slots will be allocated within one hour of the requested time to address the problem raised by American that foreign airports are meeting the reciprocity standard at its outer limits.

Even if domestic slots are not withdrawn at foreign airports, U.S. airlines are expected to receive the slots necessary to sustain an effective competitive presence in foreign markets. Pursuant to § 93.217(d), the Office of the Secretary of Transportation retains the right not to apply the provisions of § 93.217 to a foreign operator whose country provides slots to U.S. carrier and commuter operators on a basis that is more restrictive than that provided by U.S. slot allocation rules. The situation in foreign markets is being carefully monitored by the Office of the Secretary, and if the ability of U.S. operators to compete effectively in foreign markets is compromised, that provision may be invoked.

Effect of the Proposed Rule on Domestic Service

United urged the Department to consider additional modifications to § 93.217 to eliminate the on-going harm of withdrawals of slots from domestic service at O'Hare. United noted that Notice No. 90-10 did not propose any changes in the slot-request mechanism for foreign flag or U.S. carriers holding or operating fewer than 100 permanent slots. American commented that the proposed rule would force it to cancel domestic flights to provide a slot for each of its future international expansions, and foreign carriers could continue to expand and take slots from American.

For reasons set forth in the NPRM, the Department continues to believe that withdrawal of domestic slots to accommodate requests for international operations is necessary to honor bilateral commitments for service to the point Chicago. Accordingly, United's request to restrict the ability of carriers holding fewer than 100 slots to obtain international slots at O'Hare is not being adopted. The Department will, however, continue to monitor the impacts on competition, the relative position of the U.S. airline industry in international air transportation, and the relative balance of domestic and international service at O'Hare to determine whether further refinements are needed.

American argues primarily for continuation of the status quo—unrestricted withdrawal of domestic slots for international operations—to avoid the necessity of choosing between domestic and international service in utilizing each of its slots. Several other commenters opposed Notice 90–10 because of the potential for cancellation of planned or existing domestic service. Two specific points named in comments were Stewart International Airport in Newburgh, New York, and Eagle County Airport near Vail, Colorado, both of which receive or have been promised service by American Airlines.

American is correct that the rule adopted will require it to cancel domestic operations to operate additional international flights from O'Hare, unless another slot is available for the international operation in the half hour requested or American can obtain a replacement slot by purchase or lease for the domestic flight. However, the existing rule has the same effect on other carriers and service, for the benefit of American's international schedule. Each additional international operation by American that requires withdrawal of a domestic slot will require the cancellation of the domestic flight that would have been operated with that slot. Therefore, the proposed rule has no significant effect on the total number of domestic flights operated or cancelled, but only on the determination of which carriers are required to cancel them.

Airport Capacity

Most commenters urged that airport capacity be expanded at O'Hare. The FAA has completed or has in progress a number of measures to increase the efficiency of air traffic operations in the Chicago area, including upgrading of radar and computer equipment, increased controller staffing, reorganization of air traffic sectors and arrival and departure routes, and the improvement and refinement of ATC's traffic flow management capability. The Department is also supporting an additional airport for the Chicago area. However, the airspace in the Chicago area and, for the time being, the number and configuration of runways at O'Hare, are finite resources that cannot be expanded. Moreover, some of the measures planned to improve the efficiency of operations will not necessarily increase capacity. As a result, the addition of substantial numbers and air carrier operations at O'Hare is not currently feasible without unacceptable operational impacts. O'Hare Airport now experiences one of the highest percentages of operating delays of any airport in the U.S.; the FAA will not accept the degradation of air service to the public and the additional impacts on ATC resources that a substantial increase in air carrier operations at O'Hare would entail, until an increase in system capacity can be attained.

Alternative Proposals

American Airlines and United Airlines both suggested alternative amendment to the slot allocation rules. American first suggested that the rule use a baseline of summer 1990 rather than winter 1989–90, to permit continuation of the approximately 10 international operations added by American for the current summer without cancellation of domestic flights in future summer seasons. For the reasons discussed above under "*Baseline for future allocations,*" the Department has adopted the winter 1989–90 baseline as proposed in Notice 90–10.

American further proposed that the amendment provide that:

(1) No slots would be withdrawn for international operations by *any* U.S. carrier above its summer 1990 baseline schedule;

(2) A U.S. carrier could use any domestic slot in its base to provide international operations, including commuter slots;

(3) Slots would be granted for operations by a foreign carrier within 30 minutes of the time required, on the condition that U.S. carriers receive similar treatment in the home country of that carrier, and

(4) Any slots allocated to foreign carriers be created as additional slots at O'Hare by the FAA.

The current procedure for allocating slots for international operations at O'Hare affords identical treatment to the requests of U.S. and foreign carriers. The amendment adopted changes this provision only with respect to the carriers holding the greatest number of slots at the airport. U.S. carriers other than American and United have only a fraction of the slots held by those two carriers, and the Department believes that such carriers should not be required to rely on their own slot bases for international operations.

Nor would the ability to use commuter slots be a general solution, in that American and Air Wisconsin are the only carriers holding both commuter and air carrier slots. Also, the Department is currently reviewing the relative proportion of slots allocated to the various operator categories at the high density airports for adverse effects on operational and community service, but that review is not complete. Accordingly, the Department sees no basis for any change in the provisions of the rule affecting carriers with fewer than 100 slots at O'Hare, and does not agree that slots allocated for commuter operations represent capacity available for international operations. For reasons discussed above under "*Airport Capacity,*" the Department does not accept American's proposal to provide slots for international operations by simply permitting more operations at O'Hare.

American correctly observes that while § 93.217(a)(6) provides only for allocation of slots "within 2 hours of the time period requested," the FAA ordinarily grants the request *at* the time period requested. As a result, foreign carriers (and U.S. flag carriers) can generally rely on the allocation of a requested slot at O'Hare at the time requested. American asserts that coordinators of foreign slot-controlled airports, in providing reciprocal handling of slot requests by U.S. carriers, tend to disregard the actual practice, however, and cite the 2-hour provision of the rule itself. Foreign governments have utilized the current two-hour provision to the detriment of U.S. carriers serving those countries, by offering slots exactly two hours away from the time period requested. As a remedy, American requests that the rule be amended to provide for allocation within 30 minutes of the time requested. The existing 2-hour provision was adopted to permit an unallocated slot to be used to satisfy an international request, if such a slot were available within 2 hours before or after the exact time requested. As American observes, the provision has rarely been necessary. This is because a slot is either available at the time requested, or because there are no slots available within 2 hours of the time requested. The Department continues to believe that some authority should be retained to allocate an available slot reasonably close to the time requested. Accordingly, the Department is amending the provision to provide that a slot will be allocated at the time requested unless a slot is available within on hour of the requested time, in which case the unallocated slot will be used to satisfy the request.

While United supports the proposal, it requests a modification to the rule proposed to bring it closer to the procedure in effect for slot allocation at Kennedy Airport. United requests that no slots be withdrawn for international operations between the hours of 1315 through 2044, the 7½ peak hours for

European operations at O'Hare; slots would be allocated during these hours only if available. Slots would be granted on demand at other restricted hours (0645 through 1314 hours and 2045 through 2114 hours) as under the existing rule. United further requests that unused general aviation slots—10 air traffic reservations allocated each hour for operations other than air carriers or commuters—be allocated for international air carrier operations instead. As previously stated, the general issue of the relative allocations to the three slot categories are under review. However, general aviation operations are not operationally equivalent to air carrier operations, from the standpoint of either air traffic control or airport airside operations. Accordingly, the Department does not agree that the use of general aviation reservations is a practical alternative to the rule adopted.

The Rule Adopted

In consideration of the above, the Department is amending § 93.217 to limit the withdrawal and allocation of international slots provided to carriers holding or operating 100 or more permanent slots at O'Hare International Airport—currently American Airlines and United Airlines. Such carriers will be allocated a requested international slot if a slot is available, but a domestic slot will be withdrawn from another carrier for that purpose only if the allocation would not result in a total allocation exceeding the slots allocated for the winter 1989–90 season.

The rule will apply to commuter operators as well as air carriers; however, there are no international operations at O'Hare using commuter slots at this time, and no commuter slots have been requested or withdrawn for commuter operations since the adoption of the current allocation rules in 1985.

In the interest of improving the position of U.S. air carrier requesting slots at foreign airports, the amendment also provides that a slot allocated to a carrier holding or operating less than 100 slots will be allocated at the time period requested unless a slot is available within one hour of the time requested, in which case the available slot will be allocated.

The rule adopted will have no effect on carriers with fewer than 100 slots at O'Hare, and will, for the foreseeable future, have no practical effect on commuter operators holding 100 or more commuter slots. This amendment will have two general effects on air carriers with 100 or more slots. First, the two largest carriers at O'Hare will be required to furnish slots for new international service from their own domestic slot bases. Alternatively, these carriers, of course, will have the option of buying slots to accommodate their new international operations. They may also elect to provide single-plane, one-stop service to communities that receive nonstop service instead of abandoning service to those communities altogether.

Second, carriers with 100 or more slots will continue to be subject to withdrawal of their slots to accommodate international operations requested by other carriers. This is the current rule, and the fact that the two largest carriers hold more than 75% of all air carrier slots at O'Hare necessitates that these carriers continue to be subject to withdrawal along with other carriers at the airport. However, withdrawals from the two largest carriers will be reduced somewhat from current levels by the fact that these carriers will not be furnishing slots for each other's international operations.

The Department notes that since the issuance of Notice 90–10, slots for international operations have been requested for winter 1990–91 and summer 1991. This rule will not alter those allocations. Accordingly, the FAA will withdraw sufficient slots, in accordance with existing regulations, to accommodate operations for winter 1990–91 and summer 1991. However, the rule will preclude allocation of some of those slots in future seasons, to the extent the winter 1990–91 and summer 1991 allocations exceed the number of slots allocated for the winter 1989–90 season used as a baseline.

Regulatory Evaluation

In Notice No. 90–10, the Department concluded that any economic differences attributable to changes in service resulting from this amendment would be minimal and that, since slots would neither be created nor withdrawn, the net societal impact of this amendment would be effectively zero. None of the commenters on the proposed rule directly addressed the regulatory evaluation or presented any information that warrants a different conclusion.

This final rule will not significantly alter the current operations environment for air carriers at O'Hare Airport. This rule affects only two carriers, United and American, at O'Hare Airport. The rule, which (after the summer 1991 season) eliminates the withdrawal and reallocation of slots above the winter 1989–90 level for international operations for the two largest carriers at O'Hare, imposes a cost on those carriers, but that cost is offset, at least in part, by each carrier not having to furnish slots to its largest competitor for that purpose.

While placing no dollar value on the effects of this amendment, American argued that its adoption will "force it to sustain large financial losses." United, in its comments, estimated that its net loss under the existing rule is an initial ten million dollars with a recurring loss of forty-one million dollars in annual revenues. United also estimated that these losses would increase under the current rule. These comments support the view that the principal effect of this amendment is a transfer of costs and benefits among carriers and, perhaps, among communities served by those carriers.

American and United are the two carriers affected by the rule. They are by far the most dominant carriers at O'Hare Airport, holding 32 percent and 44 percent, respectively, of the air carrier slots. This rule, which is expected to have a net effect of fewer than 30 slots on the distribution between American and United (who requested a total of 22 slots for winter 1990–91 above the winter 1989–90 level), will not measurably affect competition. Regarding any impact on domestic service, some communities served by United would have experienced a decrease in service in the absence of this amendment. Some (presumably different) set of communities served by American could experience a decrease in service under this amendment. Given a fixed number of slots, an increase in international service will result in a decrease in domestic service that will be felt in the communities served by some carriers' domestic systems. This outcome would occur under either the amendment as proposed in Notice No. 90–10 or under the amendment as adopted in this final rule.

Two commuters (one wholly owned by American) hold more than 100 slots at O'Hare Airport, but will not be affected because currently there are no withdrawals of commuter slots for international operations.

The implication of the preceding discussion is that the societal costs of this rule are zero. The benefits, while not measurable in dollar amounts, flow from the elimination of the potential incentive for anticompetitive behavior which the Department believes is inherent in the current rule. Moreover, there is a small but real competitive benefit from eliminating the requirement for carriers holding relatively few slots to provide slots for the international operating needs of these two large carriers. That benefit will increase in the

future as international operations by these two carriers at O'Hare increase.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities." With regard to the impact of this amendment, it is important to recognize that the domestic slots at issue are not tied to any particular service. Thus, the reduction of service to any particular communities is not a direct consequence of this amendment, but, rather, the consequence of the fact that the number of air carrier slots at O'Hare is fixed—a circumstance not affected by this amendment.

Any withdrawal of particular slots from domestic service for use in international operations would be the result of decisions by the carriers as to which domestic service reductions are likely to have the least effect on profitability. While service to small communities may be affected, the reductions may also occur on routes serving larger communities where competition is more intense and profitability more limited. This rule does not affect those considerations, rather, it changes the identity of the carriers that will be making the decisions. Therefore, there is no indication that this rule will disproportionately affect small communities.

As a result of the foregoing considerations, that only two locations are explicitly mentioned as likely to be negatively impacted, and that commuter carriers are not affected by the adoption of this rule, the Department has determined that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act of 1980.

International Trade Impact Analysis

This rule will not influence or affect the sale of foreign products or services domestically or the sale of U.S. products or services in foreign countries. Therefore, the Department certifies that this rule will not eliminate existing barriers or create additional barriers to the sale of foreign aviation products or services in the U.S. The Department also certifies that the rule will not eliminate existing barriers or create additional barriers to the sale of U.S. aviation products and services in foreign countries.

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 Department 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 Department of Transportation 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, 1324, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. App. 106 (Revised Pub. L. 97–449, January 12, 1983).

§ 93.217 [Amended]

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

§ 93.217 [Amended]

3. In § 93.217, paragraph (a)(6) is amended by removing the first word, "Additional", and substituting "Except as provided in paragraph (a)(10) of this section, additional"; and by removing the last sentence, "These slots will be allocated within 2 hours of the time period requested.", and substituting "These slots will be allocated at the time requested unless a slot is available within one hour of the requested time, in which case the unallocated slot will be used to satisfy the request."

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

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

(a) * * *

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

(i) Allocation of the slot does not result in a total allocation to that carrier under this section that exceeds the number of slots allocated to and scheduled by that carrier under this section on February 23, 1990, and does not exceed by more than 2 the number of slots allocated to an scheduled by that carrier during any half hour of that day, or

(ii) Notwithstanding the number of slots allocated under paragraph (a)(10)(i) of this section, a slot is available for allocation without withdrawal of a permanent slot from any carrier.

Issued in Washington, DC on December 19, 1990.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 90–30160 Filed 12–20–90; 4:05 pm]

BILLING CODE 4910–13–M

SFAR 53-2

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. 25767; Special Federal Aviation Regulation (SFAR) No. 53-2]

Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

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

ACTION: Final rule; extension of expiration date.

SUMMARY: This action continues for an additional 36 months the effectiveness of warning areas established in airspace subject to FAA jurisdiction in order to reflect presidential action extending the territorial sea of the United States, for international purposes, from 3 to 12 nautical miles from the coast of the United States. The warning areas were established in the same location as nonregulatory warning areas previously designated over international waters. The Department of Defense (DOD) conducts hazardous military flight activities in these areas. The areas had been established for a period of 2 years to permit the FAA to consider the need for rulemaking action to meet military training needs in this airspace. This action continues the effectiveness of these areas while airspace analyses and rulemaking efforts are ongoing.

DATES: *Effective Date:* December 27, 1990.

Expiration Date: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Air Traffic Rules and Regulations, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8783.

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-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

Presidential Proclamation No. 5928, signed on December 27, 1988, extended the sovereignty of the United States government, for international purposes, from 3 to 12 nautical miles from the coast of the United States (including its territories). By final rule issued on that same date, the FAA amended parts 71 and 91 of the Federal Aviation Regulations to extend controlled airspace and the applicability of general flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States (54 FR 264; January 4, 1989).

When the airspace was considered to be over international waters, military aircraft were not prohibited from conducting hazardous training activities within this area. Warning areas were designated in this airspace to provide notice to nonparticipating pilots of the location of hazardous military training operations. However, nonparticipating pilots were not restricted from operating in these areas.

Upon the extension of part 91 operating rules to this airspace, the Department of Defense (DOD) would have been prohibited from hazardous flight activities without an exemption from the regulations or the designation of an airspace category for that purpose. Warning areas established in international airspace, under FAA internal procedures, do not in themselves authorize hazardous activities. An exemption would permit the continuation of military operations but would not in itself adequately inform the general flying public of the existence of these activities. An interruption of military operations normally conducted in warning areas would have an adverse impact on national defense. Accordingly, the FAA established regulatory warning areas to permit the continuation of existing military training activities in the same areas where those activities were and are still being conducted (SFAR 53, 54 FR 260, January 4, 1989).

The warning areas established by SFAR 53 are unique airspace designations intended solely to allow the continuation of military training activity and to permit nonparticipating aircraft to fly through such areas. Controlled flights are not affected by SFAR 53 or this extension, as such flights will continue to be routed around the active warning areas.

Warning area designations and descriptions are not contained in the Code of Federal Regulations (CFR). For **Federal Register** citations affecting the warning areas, see the List of CFR Sections Affected in the Finding Aids section of 14 CFR part 73.

The Office of the Secretary of Defense has advised the FAA that it is continuing to assess the impact upon military training operations of the expansion of territorial airspace and the applicable flight rules and will be preparing a consolidated assessment of the overall impact on military operations. The DOD has completed a survey of individual command training and operational requirements for the airspace between 3 and 12 nautical miles off the coast of the United States. The DOD is considering these impacts to determine those areas which should be converted to another form of regulatory or nonregulatory special use airspace. Preliminary results indicate that, in a number of areas, there will be a continuing need for special use airspace to provide connectivity for hazardous operations such as DOD and NASA missile launches, and to encompass existing range resources located between 3 and 12 nautical miles offshore.

Due to the magnitude of operational difficulties associated with this issue, development of a proposed airspace configuration for the affected airspace is incomplete. Additional time beyond the current expiration date of SFAR 53-1 (December 27, 1990) is needed to complete these actions.

The FAA agrees that a further extension of the SFAR is warranted to allow completion of the airspace realignment/redesignation proposal and to conduct any additional rulemaking action which may be necessary to redesignate portions of the affected airspace.

This action is intended solely to prevent interruption of ongoing military training activity and to warn nonparticipating aircraft of possible hazardous activities while permitting the aircraft to fly through such areas while final airspace design, coordination and processing actions are completed.

Regulatory Evaluation

This SFAR does not alter the provision of air traffic control (ATC) services, nor does it have an impact on ATC system users. This special rule merely allows military training activity to continue without interruption, while permitting nonparticipating pilots to fly through such areas. Accordingly because the costs of the rule adopted are so minimal, further regulatory evaluation has not been prepared.

SFAR 53-2

Federalism Implications

The amendment set forth herein will 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 does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this action is not a "major rule" under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Act. This regulation is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 73

Aviation safety, Special use airspace.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 48 U.S.C. 106(g) (Revised Pub. L. No. 97-449, January 12, 1983); 14 CFR 11.69; Proc. 5928.

2. By revising paragraphs 1 and 2 of Special Federal Aviation Regulation No. 53 to read as follows:

Special Federal Aviation Regulation No. 53—Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

1. *Applicability.* This rule establishes warning areas in the same location as nonregulatory warning areas previously designated over international waters. This special regulation does not affect the validity of any nonregulatory warning area which is designated over international waters beyond 12 nautical miles from the coast of the United States. This special regulation expires on December 27, 1993.

2. *Definition-Warning area.* A warning area established under this special rule is airspace of defined dimensions, extending from 3 to 12 nautical miles from the coast of the United States, that contains activity which may be hazardous to nonparticipating aircraft. The purpose of such warning areas is to warn nonparticipating pilots of the potential danger. Part 91 is applicable within the airspace designated under this special rule.

* * * * *

Issued in Washington, DC, on December 20, 1990.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-30368 Filed 12-26-90; 8:45 am]

BILLING CODE 4910-13-M