

14 CFR Part 93

[Docket No. 27834; Amdt. No. 93-71]

High Density Airports; Slot Use and Loss Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Federal Aviation Regulations pertaining to the slot use and loss provisions for air carrier and commuter operator slots (i.e., instrument flight rules (IFR) takeoff and landing reservations) at John F. Kennedy International Airport (JFK), LaGuardia Airport, O'Hare International Airport (O'Hare), and Washington National Airport. This action codifies the agency's historical practice of treating as used any slot held but not actually operated on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January. The amendment will permit carriers and commuters to choose which flights to operate at any of the High Density Rule airports during certain days of the winter holiday season without jeopardizing the status of the slots under the "use or lose" requirement.

EFFECTIVE DATE: November 15, 1994.

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 number (202) 267-3491.

SUPPLEMENTARY INFORMATION:**Availability of Document**

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

Background

The High Density Traffic Airport Rule or "High Density Rule," 14 CFR in part 93, subpart K, was promulgated in 1969 to reduce delays at five congested

airports: JFK, LaGuardia, O'Hare, Washington National, and Newark International (33 FR 17896; December 3, 1968). The regulation limits the number of IFR operations at each airport, by hour or half hour, during certain hours of the day. It provides for the allocation to carriers of operational authority, or a "slot", for each IFR landing or takeoff during a specific 30- or 60-minute period. The restrictions were lifted at Newark in the early 1970's.

On July 28, 1994, the FAA published a Notice of Proposed Rulemaking proposing to exempt certain holidays from being included in the bimonthly calculations for slot use (59 FR 38508). Traditionally, air carriers and commuters reduce their scheduled operations on the following holidays: Thanksgiving Day, the Friday following Thanksgiving Day, Christmas Day, and New Year's Day. Since December 1986, commuter slot operators have been allowed to discontinue temporarily the use of slots for Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January of the new year. This policy was extended to air carrier operators for the 1993 holiday season.

Discussion of Comments

The comment period closed on September 26, 1994, with six comments filed. Comments were filed by two associations, three air carriers, and the Port Authority of New York and New Jersey (PONYNJ).

The Regional Airline Association (RAA), USAir Shuttle, and the PONYNJ fully support the amendment as proposed. The Airline Transport Association (ATA) supported the proposal, but recommended a modification. ATA requested that the time period for waiving the "use-or-lose" provisions be extended from the proposed date of January 2 to the first Saturday in January. ATA supported its recommendation by stating that certain travel patterns at holidays relate more directly to weekends than they do to specific calendar dates, particularly return travel dates. ATA stated that if January 2 falls on a Thursday, typically travelers will seek to incorporate the adjoining weekend period into their holiday vacation schedules. ATA argued that as a result of the above, travel demand on the Friday and Saturday will continue to "reflect dramatically reduced" levels. ATA contended that without extending the waiver period through the first weekend in January, the problem of forced inefficient operations will continue to exist 5 years out of every 7 years. USAir and

American Airlines supported the proposed amendment with the incorporation of ATA's modification.

ATA, USAir, and American Airlines also raised several other issues, such as adoption of a 5-day (Monday-Friday) 80 percent "use-or-lose" rule, and the return of weekend slots to air carriers that had previously returned the weekend slots to the FAA because of the 80% "use-or-lose" requirement. These issues are beyond the scope of this rulemaking and are more appropriately addressed in Docket No. 27664, which includes a comprehensive review of the HDR. We have included a copy of ATA's, USAir's, and American Airline's comments in that Docket for further consideration.

The FAA finds persuasive ATA's argument to extend to the first Saturday in January the period for which the "use-or-lose" requirement is waived. The FAA agrees that the potential for travelers to include the adjoining weekend into holiday travel plans is great, and this potential increases the closer the holiday falls to the weekend. Therefore, the FAA has modified the original proposal to extend the affected time period from December 24 through the first Saturday in January.

The FAA has determined that this amendment will not result in any additional flights or capacity at the four High Density Traffic Airports. This amendment is in the public interest because it will permit air carrier and commuter operators to choose which flights to operate during the winter holiday season without jeopardizing the status of the slots under the "use or lose" requirement.

Good Cause Justification for Effective Date Less Than 30 Days After Publication

This amendment is being adopted less than 30 days after publication because delay could have a significant economic impact on airlines without increasing the level of safety. In this case, the regulation affects flights on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January. Therefore, the FAA finds that good cause exists under § 553(d)(3) of the Administrative Procedure Act for the regulation to be effective in less than 30 days.

Regulatory Evaluation

The FAA has determined that this rulemaking is not a "significant regulatory action" as defined by Executive Order 12866 (Regulatory Planning and Review). The costs and benefits associated with this

amendment to part 93 of the Federal Aviation Regulations (FAR) are shown below.

Benefits

This amendment will permit air carrier and commuter operators to not operate certain flights at any of the High Density Rule airports during certain days of the winter holiday season but to still count those flights toward their slot usage requirement. The benefits will be primarily cost savings to the airlines.

Costs

This rule will not result in any added costs to the affected air carriers. The FAA specifically requested comments on the issue that fewer landings at the airports affected by this rulemaking could result in reduced airport revenues derived from landing fees. No comments were received concerning this issue.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities. The FAA estimates that no small entity would incur incremental compliance costs. Therefore, the FAA has determined a regulatory flexibility analysis is not necessary.

International Trade Impact Assessment

The amendment will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the amendment will neither impose costs on aircraft operators nor on U.S. or foreign aircraft manufacturers.

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 regulation will not have federalism implications warranting the preparation of a Federalism Assessment.

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 has approved the information collection provisions of subpart S through August 31, 1995. OMB Approval Number 2120-0524 has been assigned to subpart S.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not significant under Executive Order 12286. 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 Flexibility Act. This regulation is not considered a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation of the regulation, including a final Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT.

List of Subjects in 14 CFR part 93

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

The Amendment

Accordingly, pursuant to the authority delegated to me the FAA amends part 93 of the Federal Aviation Regulations (14 CFR part 93) as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

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

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

2. In § 93.227, paragraph (a) is revised and a new paragraph (l) is added to read as follows:

§ 93.227 Slot use and loss.

(a) Except as provided in paragraphs (b), (c), (d), (g), and (l) of this section, any slot not utilized 80 percent of the time over a 2-month period shall be recalled by the FAA

(l) The FAA will treat as used any slot held by a carrier at a High Density Traffic Airport on Thanksgiving Day, the Friday following Thanksgiving Day,

and the period from December 24 through the first Saturday in January.

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Issued in Washington, DC on November 9, 1994.

David R. Hinson,
Administrator.

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