

See correction

[Docket No. 9974; Amdt. 93-19]

**PART 93—SPECIAL AIR TRAFFIC RULES
AND AIRPORT TRAFFIC PATTERNS****High Density Traffic Airports**

The purpose of these amendments to Part 93 of the Federal Aviation Regulations is to continue in effect special air traffic rules for high density traffic airports which would otherwise expire on October 25, 1970, and to provide the conditions under which the allocation provisions of the rule for IFR and VFR operation may be changed. This amendment also exempts helicopters from the applicability of the rule.

These amendments were proposed in Notice 70-34 and published in the FEDERAL REGISTER on August 22, 1970 (35 F.R. 13463).

Twenty-six public comments were received in response to the notice. Only two commentators gave unqualified endorsement to the proposed amendments. One major industry representative reluctantly supported the proposal since, in its view, sufficient improvement in the system has not yet been made so as to permit additional capacity without subjecting the traveling public to excessive delays.

The remaining commentators, from the General Aviation segment of the airspace community, opposed the proposed extension of the rule. The objections from this group can be catalogued as falling into four types:

1. The rule is discriminatory;
2. The reservations system is burdensome only to General Aviation users;
3. The entire problem is caused solely by the scheduled airlines;
4. The rule denies free use of facilities for which the users are taxed.

These objections are the same as those already considered and answered when the rule was extended on December 22, 1969. (Docket No. 9974; Amdt. 93-19). In view of this, further discourse to answer these particular objections appears unnecessary.

Since the inception of this rule, the FAA has carried on a continuous review, carefully evaluating all data to the end that reasonable and positive action may be taken by it to remove any unnecessary limitation from the rule if such may be accomplished without a resultant significant inefficiency to the use of the airspace. A brief historical review of the rule will produce the vivid recollection that during July and August 1968, the traffic at certain key airports had reached such a degree of congestion that a national air transportation crisis was imminent.

In order to provide immediate relief, the FAA, acting under the authority of the Federal Aviation Act of 1958, by rule designated five airports as High Density Traffic Airports and then imposed a reservation system together with other limitations that airport users were required to follow as a condition to use these airports. The system was equitable, since all types and classes of aircraft operators were free to use any of these airports on a first-come, first-served basis so long as the operations did not exceed the quota specified.

The basic rule, issued on November 27, 1968, was made effective on April 27, 1969. Between this 5-month period the air carriers and the scheduled air taxi operators, acting in concert through Scheduling Committees, were able to scale down their scheduled operations so as to satisfy the quota allocations provided for in the rule.

This rule was in operation for only 4 months before it was extended to terminate on October 25, 1970 (Docket No. 9974; Amdt. 93-19). Because of the shortness of time available to gauge the proper effect of the rule, the FAA was unable at that time to make any positive judgment that the rule was responsible for either the decrease in aircraft operations or the decrease in percentage of delays that took place at the five key airports. It was the FAA view, however, that since there had not been any substantial increase in system capability, or major change in air traffic procedure, that these improved delay situations were directly related to the effect of the rule.

The FAA is presently in possession of statistical information that has been gathered and catalogued over a 2-year period. Because of the length of time covered by this study, the FAA believes that it now has a sufficient experience basis to take certain positive actions concerning the operation of the present rule. A statistical comparison between fiscal years 1969 and 1970 indicates the following: At JFK the total annual operations decreased from 447,911 to 413,289. The percent of total operations delayed decreased from 12.1 to 6.6. The same type of picture was found to exist at the other high density airports. Again, using the same base, fiscal 1969 and fiscal 1970, the figures at La Guardia Airport indicate a decrease in operations from 344,767 to 332,828 and a percent decrease in delays from 5.5 to 3.9. Washington National and Chicago O'Hare Airports follow the same pattern and present the same kind of picture. The situation at Newark Airport

differs from the other airports in certain respects. Although the percentage of operations delayed declined from 2.4 to 1.9 in the last 12 months, the total operation declined by 11.5 percent in the last 12 months, as compared to total operations in fiscal year 1969. Also, the slots available were not utilized to the same extent as the slots available at the other four airports. For example, of the 1,080 total slots available daily, only 679 were used on the average day in the last 12 months. Similar nonutilization was experienced in the air taxi and the other slots; of 360 slots available daily, only 161 were used on the average day in the last 12 months. Finally, and of equal significance is the fact that although the quota permits 60 operations per hour at Newark, in fiscal year 1970 the peak hour operations averaged only 42. This shows a distinct pattern of nonutilization of the available slots; in short, the quota exceeds the demand by a significant percentage.

As a general summary of the situation, the FAA has concluded from its statistical information that subsequent to June 1, 1969, the percentage of aircraft delays at the five high density airports decreased substantially. This was accompanied by modest declines in operations. All five airports showed a reduction in average daily operations and a reduction in traffic delays. The Airport Reservation Office of the FAA has been able to approve or provide an acceptable alternative reservation for virtually all requests during the 16 months of operation.

Based on the foregoing, the FAA believes that the aircraft operators now using the five high density traffic airports have levelled their schedules or tailored their operations so that the demand is at acceptable level in terms of the capacity at each airport. If the FAA had complete assurance that the situation would remain as it is, there would be no need for any type of restraining rule for these airports. However, the FAA is aware of the variables that could occur which could have an immediate, if not a crippling, effect upon the efficient use of the airspace. Accordingly, the rule is still necessary and the FAA intends to extend it for one year. On the other hand, if the present air traffic picture at these airports is maintained and it is believed with a reasonable degree of certainty that it will continue to be maintained, the Administrator may, at his discretion, suspend the requirement that persons operating aircraft, either VFR or IFR, into a designated high density traffic airport must obtain an arrival or departure reservation, or file an IFR or VFR flight plan. As already stated, the traffic picture at the Newark Airport differs from the other four airports in that the demand remains well below the capacity. This condition has persisted for the last 12 months. The Administrator is reasonably certain that the suspension of this requirement at the Newark Airport is justified at this time. Therefore, the hourly quotas and the requirements for obtaining a reservation at Newark will be suspended indefinitely.

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The Administrator's discretion under the Federal Aviation Act of 1958 is broad enough to permit him to implement any remedy which has a real and substantial relation to the goal of effecting the efficient utilization of airspace so long as the action taken is not unreasonable, arbitrary or capricious. Therefore, while he may exercise this authority to lessen the burden on the public by suspending a requirement in this rule, he may also terminate such a suspension if in his judgment congestion at the five key airports is causing a significant inefficiency in the use of the airspace with resultant public inconvenience. In view of this, the rule has been drafted not only to include authority for the Administrator to suspend the quotas and reservations at a particular airport but also to take immediate action to restore these provisions in order to alleviate an inefficient airspace utilization.

Because this rule is being extended, there is still the need for scheduling committees to maintain published schedules to meet the requirements of the rule. It is also the view of the FAA that even though the Administrator should temporarily suspend the quota requirement at any or all of the five designated high density traffic airports, a schedule conforming to the allocations under § 93.123 should be kept in readiness by the scheduling committees in the event the Administrator deems it necessary to immediately take action.

The FAA believes that since helicopters have had minimal, if any, effect upon the operation of this rule that helicopters should be excluded from the applicability of this rule.

Interested persons have been afforded an opportunity to participate in the making of these amendments. Due consideration has been given to all matters presented. In other respects, for the reasons stated in the preamble to the notice, the rule is adopted as prescribed herein.

In consideration of the foregoing, Part 93 of the Federal Aviation Regulations is amended as follows, effective October 25, 1970:

1. By revising § 93.121 to read as follows:

§ 93.121 Applicability.

This subpart designates high density traffic airports and prescribes the aircraft equipment and air traffic rules for operating aircraft, other than helicopters, to or from those airports.

2. By adding the following new section preceding § 93.131:

§ 93.130 Suspension of allocations.

The Administrator may suspend the effectiveness of any allocation prescribed in § 93.123(b) and the reservation requirements prescribed in § 93.125 (a) and (b) if he finds such action to be consistent with the efficient use of the airspace. Such suspension may be terminated whenever the Administrator determines that such action is necessary for the efficient use of the airspace.

3. Section 93.131 is revised to read as follows:

§ 93.131 Termination date.

The provisions of §§ 93.121-93.131 and 93.133 of this subpart terminate October 25, 1971.

4. By adding the following new section after § 93.131:

§ 93.133 Exceptions.

Except as provided in § 93.130, the provisions of §§ 93.123(b) and 93.125 (a) and (b) do not apply to the Newark Airport, Newark, N.J.

(Secs. 103, 307 (a), (b), (c), 313(a), 601, Federal Aviation Act of 1958, 49 U.S.C. 1303, 1348 (a), (b), (c), 1354(a), 1421; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); sec. 1.4(b), Part 1 of the Regulations of the Office of the Secretary, 49 U.S.C. 1.4(b))

Issued in Washington, D.C., on October 23, 1970.

J. H. SHAFFER,
Administrator.

[F.R. Doc. 70-14453; Filed, Oct. 23, 1970;
10:05 a.m.]

[Docket No. 9974; Amdt. No. ~~93-21~~]

**PART 93—SPECIAL AIR TRAFFIC
RULES AND AIRPORT TRAFFIC
PATTERNS**

High Density Traffic Airports

On October 24, 1970, F.R. Doc. No. 70-14453 was published in the FEDERAL REGISTER. This document, in part, referred to § 93.123(b) in items numbered 2 and 4. These references are in error. Corrective action is taken herein.

Since these amendments are minor and editorial in nature, notice and public procedure thereon are unnecessary and good cause exists for making these amendments effective on less than 30 days notice.

In consideration of the foregoing, F.R. Doc. 70-14453 is amended, effective upon publication in the FEDERAL REGISTER, as herein after set forth.

In items numbered 2 and 4 "§ 93.123 (b)" is deleted and "§ 93.123" is substituted therefor.

(Secs. 103, 307 (a), (b), (c), 313 (a), and 601 of the Federal Aviation Act of 1958, 49 U.S.C. 1303, 1348 (a), (b), (c), 1354 (a), and 1421; sec. 6(c) of the Department of Transportation Act, 49 U.S.C. 1655(c); and sec. 1.4(b), Part 1 of the Regulations of the Office of the Secretary, 49 U.S.C. 1.4(b))

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J. H. SHAFFER,
Administrator.

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