

1111

# Title 14—AERONAUTICS AND SPACE

## Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 9113; Amdt. 93-13]

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

#### High Density Traffic Airports

The purpose of these amendments is to designate John F. Kennedy, La Guardia, Newark, O'Hare, and Washington National Airports as high density traffic airports and to prescribe special rules that apply to operations at those airports.

Under Notice 68-20 (33 F.R. 12580) the FAA proposed amendments to Part 93 that would prescribe the following rules:

1. Designate John F. Kennedy, La Guardia, Newark, O'Hare, and Washington National Airports as high density traffic airports with a limitation of 80, 60, 60, 135, and 60 IFR reservations per hour, respectively.
2. Allocate those hourly IFR reservations to three classes of users—
  - (a) Scheduled air carriers (United States and foreign) except air taxis;
  - (b) Scheduled air taxis; and
  - (c) All other aircraft operators.

3. Require each aircraft operating under an allocated IFR reservation to have—

- (a) A capability of maintaining an air speed of not less than 150 knots while under control jurisdiction of the approach control/ATC facility;
- (b) An operable coded radar beacon transponder having at least a Mode A/3 64 code capability replying to Mode A/3 interrogation with the Code specified by ATC; and
- (c) A minimum flight crew of two pilots.

The notice also contained three exceptions to the requirement for an IFR reservation and the maximum number of IFR operations allocated for a particular airport. The first exception permitted an IFR operation at a designated high density airport when the aircraft could be accommodated without adverse effect on the allocated operations for the airport concerned. The second permitted VFR operations at a particular airport when the aircraft could be accommodated without adverse effect on the allocated operations for the airport concerned and the ceiling at that airport was at least 1,000 feet and the reported ground visibility was at least 3 miles.

A VFR operation conducted under that exception would not be required to comply with the foregoing aircraft and pilot requirements. The third exception permitted either IFR or VFR operations under a letter of agreement if the aircraft were operated without interference to any other aircraft operation. Under this exception, STOL, VTOL, helicopter and similar operations would be authorized at a particular airport and the aircraft and pilot requirements would not be applicable.

Written comments in response to NPRM 68-20 were received from most segments of the aviation industry as well as a number of public officials and other interested persons. There was substantial opposition to certain of the proposals made in the notice. The objections stated in the comments to the notice and at a public hearing held in connection therewith on September 25 and 26, and October 3, 1968, were generally based on one or more of the following assertions:

1. The regulation is unnecessary and does not solve the problem.
2. The air carriers cause congestion by overscheduling.
3. Congestion is caused by the lack of controllers.
4. The pilot and aircraft equipment requirements are unreasonable.
5. The maximum hourly IFR reservations for operations at the designated high density traffic airports are too low.
6. The regulation terminates the long-established policy of first-come-first-served.
7. The regulation discriminates against certain classes of users.
8. Regulations forcing foreign carriers to schedule service into airports designated in bilateral agreements at times which are commercially or operationally disadvantageous would violate obligations contained in international agreements.
9. If the regulation is adopted, it should be for a temporary period and rescinded if it is found unnecessary.
10. The proposal is not a proper exercise of the Administrator's authority under the Federal Aviation Act.
11. The unusual congestion and delay of last July and August were the result of a controller "slowdown" at a time of peak seasonal travel.

Associations representing the air carriers, airport operators, and airline pilots favored the proposed rule with some reservations. The reservations most commonly expressed were:

1. The rule should be considered to be only a temporary solution.
2. The allocation of flights should be increased.

3. The effort to obtain permanent solutions to congestion by adding and improving facilities could be expedited.

Many citizen groups and others representative of the public viewpoint, such as the leading newspapers in the cities directly concerned, stressed the need for Federal action.

In regard to some of the comments, it appears important to correct any misunderstanding in regard to the purpose of NPRM 68-20. The proposals contained in that notice were intended to provide relief from excessive delays at certain major terminals. They were not, as some persons concluded, intended to correct a safety problem.

In response to the many comments received, it should be pointed out that the FAA has not relied exclusively on the prospects of the proposed rule to relieve the air congestion problem. Several actions have been taken which have helped the congestion problem to some extent, and other actions will be taken as rapidly as possible. Some of these actions were listed in the preamble to the NPRM, and others were suggested by commentators to the notice.

The FAA has changed its procedures to assign "intersection takeoffs" where adequate runway is available beyond the "intersection" for the type aircraft concerned. Another change, the elimination of detailed taxi instructions to regular users of the airport, saves valuable radio communications time. To reduce controller workload, a third measure will place greater reliance on pilots to obtain information concerning the runway in use, altimeter setting, wind direction and velocity, etc., without verification by the controllers. These changes are in themselves minor, but cumulatively contribute to efficiency and expedition without derogating safety.

The most significant future action to reduce airborne congestion and delay will be taken by placing new and revised "flow control" procedures into effect. These procedures contemplate that aircraft destined for the high density traffic airports named in the rule will be held on the ground at points of origin whenever estimated airborne delays at the destination airport reach a stated time which is now proposed to be one hour. Consequently, with this system, there should not be more than one hour's backlog of airborne traffic at those airports. However, ground delays at airports of origin could be several hours if weather conditions, runway blockage, or other hindrances reduce capacity at the destination airport. While this is not a solution to the congestion problem, ground delays

ADVANCE COPY

(As published in

33 FR 17896 on December 3, 1968)

AT

Part Binder  
11/27/68

are generally preferable to airborne delays and congestion.

In addition to efforts to increase capacity, certain actions have been taken by some airport operators which will tend to alleviate congestion by reducing demand. On August 1, 1968, the Port of New York Authority imposed new and higher fee schedules at Kennedy, La Guardia, and Newark for the express purpose of shifting general aviation traffic away from peak hours. In the 3 months since the imposition of the fee, general aviation operations at the three New York airports have declined by more than 25 percent. While other factors may account for a part of the decline, much is undoubtedly attributable to the fee increase. Since the New York fee schedule is the subject of pending litigation, the longrun effect of the action is uncertain. On September 11, 1968, the FAA imposed an increased minimum charge for landing at Washington National (33 F.R. 12833). It is too early to assess the effect of the fee charge at Washington National.

Even with these combined actions, it is obvious that congestion will again reach serious proportions unless additional restraints are placed on aircraft demand for the use of airport facilities. There are no short-term solutions to this problem that offer any substantial relief. For the 12-month periods ending October 1966, 1967, and 1968, air carrier operations at the three New York airports increased from 618,297 to 670,179 to 715,846. There are now being delivered more than one jet per day to the scheduled airlines and 20 aircraft per day to all other categories of users. If operational constraints are not imposed, the growth in aircraft operations will exceed any short-term growth in airport capacity, and obviously, will compound the congestion problems.

Longrun solutions are dependent upon the modernization and expansion of the airways system and airport development. Legislation is required to provide a sound financial framework within which these programs could move forward.

In the meantime, the public interest in efficient, convenient, and economical air transportation requires more effective use of airport and airspace capacity. The authority of the FAA to regulate aircraft operations to reduce congestion is clear. The plenary authority conferred by the Federal Aviation Act to regulate the flight of aircraft to assure the safe and efficient utilization of the navigable airspace is well established by practice and judicial decision. As indicated in Notice 68-20, it is anticipated that, subject to the approval of the Civil Aeronautics Board, the air carriers can arrive voluntarily at decisions to reduce schedules so as not to exceed the total allocation established by this rule in the interest of efficient airspace utilization. Discussions among the airlines are proceeding pursuant to a CAB order, and this rule as presently drawn contemplates that an agreement will be in force on the effective date of the rule, April 27, 1969.

The rule adopted herein differs in several aspects from the rule proposed in Notice 68-20. The final rule designates Kennedy, La Guardia, Newark, Washington National, and O'Hare Airports as high density traffic airports; adopts the hourly allocations for these airports as set forth in the notice; allocates all reservations at Kennedy International Airport to certificated air carriers during the hour of 5 p.m. to 8 p.m.; and requires an operable coded radar beacon transponder for all IFR operations. However, the requirements relating to aircraft speed capability and two pilots have not been incorporated in the final rule. Further, the supplemental air carriers have been included in the same category as the scheduled air carriers.

This rule grants a greater priority to certificated air carriers, who provide common carriage service, in accordance with the policy of recognizing the national interest in maintaining a public mass air transportation system, offering service on equal terms to all who would travel. For the traveler today, there is frequently no feasible alternative mode of travel. The concept of "first come-first served" remains as the fundamental policy governing the use of airspace so long as capacity is adequate to meet the demands of all users without unreasonable delay or inconvenience. When capacity limitations compel a choice, however, the public service offered by the common carrier must be preferred. This policy is fully consistent with the Federal Aviation Act's provisions relating to the certification of common carriers by the Civil Aeronautics Board, wherein the Board finds that the service provided is required by the public convenience and necessity.

The notice proposed allocating to the certificated carriers all of the reservations at Kennedy International during the hours of 5 p.m. to 8 p.m. In their comments, the Air Transport Association requested all reservations during the hours 4 p.m. to 9 p.m. at Kennedy, La Guardia, Newark, and O'Hare Airports. This action does not appear warranted in view of the present service patterns at those airports. This view was shared by the Port of New York Authority which endorsed the allocations proposed in the rule. Accordingly, no change is being made.

Kennedy Airport is the major international gateway to the United States, served by 12 domestic scheduled air carriers, 4 U.S. international air carriers, 18 foreign flag air carriers, and numerous U.S. supplemental air carriers. Because of distance and time differentials, most international service tends to be very sensitive to disruptions of scheduled departure and arrival times. Current scheduling practices reflect this. For example, in July 1968, two-thirds of all international passenger flights at Kennedy were scheduled to arrive or depart in the eight hours between 3 p.m. and 11 p.m. Under the allocations being imposed, some of these flights may have to be rescheduled or eliminated, even with the allocation of all reservations between the hours of

5 p.m. to 8 p.m. International departures fall off abruptly after 10 p.m. and, clearly, it would not be in the public interest, considering the resultant noise disturbance, to encourage scheduling of more flights at later hours. With the allocation of all reservations to certificated air carriers during the hours of 5 p.m. to 8 p.m., undue disruptions to international operations are not anticipated.

The inclusion of the supplemental air carriers in the same category as scheduled air carriers for the purpose of hourly allocations is based upon the argument offered in the supplemental carriers' comments. They contended that there is no significant distinction between the service they provide and the non-scheduled services provided by scheduled carriers, which must be accommodated within the total allocated to scheduled carriers. Because the supplemental carrier operations are an extremely small percentage of the total air carrier operations, no increase in the air carrier share of total allocations is warranted. In placing the supplemental air carriers in the same classification with the scheduled carriers, it is anticipated that they will participate with the scheduled air carriers in the establishment of voluntary scheduling agreements for the high density traffic airports involved in this rule. All allocations in the category "Other" will now be available exclusively to general aviation.

Users of the airports concerned recommended an increase in the maximum number of the hourly allocations contained in the proposed rule. On the other hand, persons primarily concerned with the noise resulting from the aircraft operations in the vicinity of the airports concerned urged that the number of the allocations should be decreased. Neither of these recommendations was adopted. As stated in NPRM 68-20, the number of allocations specified are in excess of the capacities of the airports to handle IFR traffic in IFR conditions with minimum delays and they were selected with the realization that under IFR weather conditions delays will occur. Permitting some delay appears preferable to restricting the total operations to the actual IFR minimum delay capacity resulting in unused capacity when the weather is above IFR conditions. If experience indicates that the allocations are too high or too low, adjustments will be made. The exceptions contained in the proposed rule permitting operations in excess of the allocations under prescribed conditions have also been retained in the final rule.

The allocation of reservations to the air carriers at Washington National Airport will be on a basis different from the other airports due to the historical development of the restrictions at Washington National. For the past few years, the carriers at National have voluntarily restricted schedules to 40 scheduled operations per hour, plus extra sections, and plus nonscheduled operations. This level of operations, varying between 40 and 50 per hour, has not created undue congestion in the air, on the runways

or in the terminal. Rather than prescribe a new number of air carrier allocated reservations on a basis consistent with the other airports, only for the purpose of confirming the status quo at National, it was decided to leave the allocation stand as it is presently defined. Section 93.123 of the rule has been amended to reflect this interpretation.

The efficacy of the requirements that each IFR aircraft operating to or from a high density traffic airport must have a minimum flight crew of two pilots and be capable of maintaining an airspeed of not less than 150 knots was universally challenged by general aviation users. The final rule reflects the conclusion that these requirements would not substantially affect the safe and efficient utilization of the airspace in the vicinity of the high density traffic airports and that, at the present time, any benefits would appear to be outweighed by the burden imposed on the users. The last sentence of § 93.129(b) has been deleted to conform with the omission of the speed and pilot requirements. For the purpose of clarification the word "reported" has been added following the word "ceiling" in § 93.129(b) of this rule.

The words "without adverse effect on the operations allocated for the airport" appearing in the proposed paragraphs (a) and (b) of § 93.129 have been understood by some people to imply that safety is the standard for additional operations. This was not intended. The rule as adopted uses the term "without significant additional delay to the operations" as the standard for additional operations under that section.

Finally, § 93.123 has been amended to reserve to ATC authority to grant exceptions to the hourly number of allocated IFR reservations. This authority is necessary to accommodate any emergencies which may arise due to weather, fuel, or other factors.

April 27, 1969, which is a normal date for airline schedule changes, has been established as the effective date of the rule to allow the scheduled air carriers time to make necessary operational adjustments. While the rule will not be "temporary" as many commentators

urged, it will be kept under continuing review and modified as circumstances require or permit.

In consideration of the foregoing, Part 93 of the Federal Aviation Regulations is amended, effective April 27, 1969, as follows:

1. Section 93.1 is amended by adding a new paragraph (e) to read as follows:

§ 93.1 Applicability.

(e) Subpart K of this part designates high density traffic airports and prescribes air traffic rules and other requirements for operating aircraft to or from those airports.

2. A new Subpart K is added to read as follows:

Subpart K—High Density Traffic Airports

- 93.121 Applicability.
- 93.123 High density traffic airports.
- 93.125 Arrival or departure reservation and flight plan.
- 93.127 Aircraft requirements.
- 93.129 Additional operations.

**AUTHORITY:** The provisions of this Subpart K issued under secs. 103, 307 (a), (b), and (c), 313(a), 601, Federal Aviation Act of 1958; 49 U.S.C. 1303, 1348 (a), (b), and (c), 1354(a), 1421; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1665(c); § 1.4 (b), Part 1, Regulations of the Office of the Secretary; 49 CFR 1.4(b).

Subpart K—High Density Traffic Airports

§ 93.121 Applicability.

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

§ 93.123 High density traffic airports.

(a) Each of the following airports is designated as a high density traffic airport and, except as provided in § 93.129 and paragraph (b) of this section, or unless otherwise authorized by ATC, is limited to the hourly number of allocated IFR operations (takeoffs and landings) that may be reserved for the specified classes of users for that airport:

IFR OPERATIONS PER HOUR

Class of user	John F. Kennedy Airport	La Guardia Airport	Newark Airport	O'Hare Airport	Washington National Airport
Air carriers except air taxis.....	70	48	40	115	40
Scheduled air taxis.....	5	6	10	10	8
Other.....	5	6	10	10	12

(b) The allocations of reservations under paragraph (a) of this section among the several classes of users do not apply from 12 midnight to 6 a.m. local time, but the total hourly limitation remains applicable. The allocations of reservations under paragraph (a) of this section at John F. Kennedy Airport do not apply from 5 p.m. to 8 p.m. local time. During those hours, the total 80 reservations are allocated to air carriers except air taxis. In the case of Washington National Airport only, the allocation of

40 reservations under paragraph (a) of this section does not include extra sections of scheduled air carrier flights, charter, or other nonscheduled flights of scheduled or supplemental air carriers which may be conducted without regard to the limitation of 40 reservations. Any reservation under paragraph (a) of this section allocated to, but not taken by, scheduled or supplemental air carrier operations is available for a scheduled air taxi operation. Any reservation under paragraph (a) of this section allocated

to, but not taken by, an air carrier (scheduled or supplemental) or scheduled air taxi operation is available for other operations.

§ 93.125 Arrival or departure reservation and flight plan.

Unless otherwise authorized by ATC in a letter of agreement under § 93.129 (c), no person may operate an aircraft to or from an airport designated as a high density traffic airport unless—

- (a) He has received for that operation an arrival or departure reservation from ATC; and
- (b) He has filed an IFR or VFR flight plan for that operation.

§ 93.127 Aircraft requirements.

Unless otherwise authorized by ATC in a letter of agreement under § 93.129(c), no person may operate an aircraft IFR to or from a high density traffic airport unless the aircraft is equipped with an operable coded radar beacon transponder having at least a Mode A/3 64 code capability, replying to Mode A/3 interrogation with the code specified by ATC.

§ 93.129 Additional operations.

(a) *IFR.* The operator of an aircraft may take off or land the aircraft under IFR at a designated high density traffic airport without regard to the maximum number of operations allocated for that airport if he obtains a departure or arrival reservation, as appropriate, from ATC. The reservation is granted by ATC whenever the aircraft may be accommodated without significant additional delay to the operations allocated for the airport for which the reservation is requested.

(b) *VFR.* The operator of an aircraft may take off or land the aircraft under VFR at a designated high density traffic airport if he obtains a departure or arrival reservation, as appropriate, from ATC. The reservation is granted by ATC whenever the aircraft may be accommodated without significant additional delay to the operations allocated for the airport for which the reservation is requested and the ceiling reported at the airport is at least 1,000 feet and the ground visibility reported at the airport is at least 3 miles.

(c) *Operations under letters of agreement.* The operator of an aircraft may takeoff or land the aircraft under either IFR or VFR at a designated high density traffic airport if he operates the aircraft without interference to any other aircraft operation and the operation is under the terms of a letter of agreement with the airport management and the appropriate ATC facility. An operation conducted under this paragraph (c) is not required to comply with the aircraft equipment requirements of § 93.127 except to the extent specified in the applicable letter of agreement.

Issued in Washington, D.C., on November 27, 1968.

D. D. THOMAS,  
Acting Administrator.

[F.R. Doc. 68-14405; Filed, Dec. 2, 1968; 8:46 a.m.]

DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
Washington, D.C. 20590  
Official Business

POSTAGE AND FEES PAID  
FEDERAL AVIATION ADMINISTRATION