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14 CFR Part 93

Part IV

**Department of
Transportation**

Federal Aviation Administration

**14 CFR Part 93
High Density Traffic Airports; Slot
Allocation and Transfer Methods; Final
Rule**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 93****[Docket No. 24105; Amdt. No. 93-52]****High Density Traffic Airports; Slot Allocation and Transfer Methods****AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).**ACTION:** Final rule on reconsideration; request for comments.

SUMMARY: This action amends Subpart S of 14 CFR Part 93, which allocates air carrier and commuter operator slots (i.e., allocated instrument flight rules (IFR) takeoff and landing reservations) at Kennedy International Airport, LaGuardia Airport, O'Hare International Airport, and Washington National Airport and which permits those slots to be transferred for any consideration. This amendment adopts certain modifications to the rules as they pertain to the allocation of slots utilized for international operations. In addition, certain other adjustments are made to the procedural requirements in Subpart S. These changes are made in response to comments received after issuance of Subpart S on December 16, 1985.

DATES: Effective date: June 13, 1986.*Comment date:* July 28, 1986.**ADDRESS:** Comments on this regulation may be mailed in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24105, 800 Independence Avenue, SW., Washington, DC 20591.

or delivered in duplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Edward P. Faberman, Deputy Chief Counsel, AGC-2, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 426-3775.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Even though this action is a final rule, interested persons are invited to comment on the rule by submitting such written data, views, or arguments as they may desire on any portion of the amendment. Comments that provide the

factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Docket No. 24105." The postcard will be date/time stamped and returned to the commenter. Also, any portion of this rule may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

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 Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 426-8058. Communications must identify the amendment number of the document.

Background

The FAA has broad authority under the Federal Aviation Act (FAAct) of 1958, as amended, to regulate and control the use of navigable airspace of the United States. Under Section 307(a) of the FAAct (49 U.S.C. Section 1348(a)), the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of such airspace. Under Section 307(c) of the FAAct (49 U.S.C. Section 1348(c)), the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

Federal Aviation Regulations (FAR) Amendment No. 93-13, effective April 27, 1969 (33 FR 17896, December 3, 1968), designated Kennedy, O'Hare, LaGuardia, Washington National, and Newark Airports as high density airports and prescribed special air traffic rules, known as the "High Density Rule," that apply to operations at those airports. The High Density Rule (FAR Part 93, Subpart K) was made permanent in 1973 (38 FR 29463, October 25, 1973). The rule establishes

limitations (quotas) on the number of Instrument Flight Rule (IFR) reservations per hour that would be accepted at those airports and allocated the hourly reservations among the three classes of users: Air carriers except air taxis, scheduled air taxis (commuter airlines), and all other operators. The hourly quotas are set at the predominant IFR capacity for each airport, as determined by the FAA. The predominant IFR capacity is the airport's capacity under the circumstances and configurations most frequently encountered when weather conditions preclude Visual Flight Rule (VFR) operation.

The entire quota for Newark International Airport was suspended indefinitely, although the report was retained in the rule as a high density airport.

A "slot" is defined as the authority to conduct one allocated IFR landing or takeoff operating during a special hour or 30-minute period at one of the high density airports. Under Subpart K, slots at Kennedy and National Airports are allocated by the hour, and slots at O'Hare and LaGuardia Airports are located by the half-hour. The hours of the day during which slots are required for IFR operations at the high density airports are: 6:45 a.m. to 9:15 p.m. at O'Hare, 3:00 p.m. to 8:00 p.m. at Kennedy, and 6:00 a.m. to 12:00 a.m. at LaGuardia and National Airports. All parties are reminded that in accordance with Subpart K, scheduled operations at a high density airport during the above-specified hours may be conducted only with appropriate IFR reservations.

On December 16, 1985, the Department of Transportation issued a final rule which added a new Subpart S to Part 93 to permit air carrier and commuter operator slots at the high density airports to be transferred for any consideration. In summary form, Subpart S provides as follows:

- Separate slot pools for air carrier, commuter, and other operators are retained. The numbers contained in the High Density Rule were not changed by this amendment.
- Air carriers and commuters found by the FAA to be holding permanent slots which were in use on December 16, 1985 were allocated those slots.
- Beginning on April 1, 1986, any person may purchase, sell, trade, or lease air carrier or commuter slots (except for international and certain essential air service (EAS) slots) in any number at any of the high density airports.
- International and EAS slots are treated specially and transfer of such slots is restricted.

- Each slot is "tagged" with a priority number, assigned by lottery, to determine the order of withdrawal if necessary.
- Slots not used 65 percent of the time in a 2-month period must be returned to the FAA (use-or-lose).
- A lottery procedure is provided for the allocation of newly available slots and slots returned to the FAA or lost under the use-or-lose provision.
- The use-or-lose provision does not apply to slots allocated by lottery until 60 days after allocation (180 days after allocation to a new entrant awaiting a Part 121 or Part 135 certificate, and 90 days after allocation to any other new entrant).
- Slots will be made available for additional EAS operations, as requested and approved by the Office of the Secretary (OST), by taking slots from incumbent operators if not otherwise available.
- Slots will be made available for additional international operations at O'Hare and John F. Kennedy Airports within 2 hours of the time requested by taking slots from incumbent operators if not otherwise available.
- Slots utilized for general aviation operations are not affected by this amendment.
- This amendment did not create property rights in slots.
- Slots may be recalled or eliminated by the agency for operational reasons.

On December 16, 1985, the Department issued an NPRM (Notice 85-25) (50 FR 52199; December 20, 1985) which proposed to withdraw up to 5 percent of the slots used by air carrier and commuter operators to be reallocated to new entrants by a lottery.

On March 6, 1986, the Department issued a Special Federal Aviation Regulation (SFAR) 48 (51 FR 8632; March 12, 1986) which established a special procedure for a one-time withdrawal of slots used by air carriers at three of the high density airports—LaGuardia, O'Hare, and Washington National. Those slots and other slots available at each airport were withdrawn and reallocated (March 25-27) through a special lottery to new entrants and incumbent carriers with less than 8 slots at the airport in question. A second lottery will be held by December 15, 1986, to allocate those slots not allocated under the first lottery and those allocated but not utilized.

In the preambles to the December 16, 1985, rule and to Notice 85-25, the Department solicited comments from interested parties on all aspects of the rule and notice. All parties were advised that any part of the rule might be changed in light of comments received. In order to maximize public input in the process, a public hearing was held on January 21, 1986.

All comments received, as well as statements made at the hearing, were thoroughly reviewed prior to the

issuance of this amendment. Numerous comments were submitted and various adjustments were proposed. In fact, most commenters suggested their own versions of how to adjust the rules. In selecting the adjustments to be made, the Department had to be mindful of statutory and public interest responsibilities including the need to place maximum reliance on competitive market forces, the maintenance of air service to small communities, international air service obligations, the avoidance of immediate disruption of the existing air service patterns at the affected airports, and maximum scheduling flexibility for the air carriers and for the public. The Department believes that this amendment fully reflects those considerations.

Slot Transfer and Allocation Rules Adopted: Overview.

After considering the issues discussed in comments on the final rule and at the public hearing, the Department of Transportation is amending Subpart S of Part 93 of the Federal Aviation Regulations, 14 CFR Part 93, to adjust the regulatory procedures and rules applicable to the allocation and transfer of high density airport slots. In summary form, the changes made by this amendment are:

- Carriers which held and operated permanent slots used for international service at Kennedy and O'Hare Airports during the previous summer or winter season will be allocated comparable slots for identical time periods for the following summer or winter seasons, respectively. DOT will allocate slots for *additional* international operations at O'Hare within 2 hours of the time requested.
- DOT *may* allocate slots for *additional* international operations at Kennedy based on identified factors.
- A carrier may permanently designate any of its slots in its base at Kennedy Airport as a seasonal slot to be utilized by the carrier only during the designated season and thus to be subject to use-or-lose and the other provisions of Subpart S only during that designated season.
- A provision is added to allow FAA to waive the use-or-lose provision in unusual circumstances outside the control of the airline.

Allocation of slots for EAS operations is not changed by this rule.

This rule is issued without further notice because comments were solicited on the rule issued on December 16, and all issues addressed in this action have been the subject of comment by interested parties.

The following is a summary of this amendment. A more detailed section-by-section description appears later in the amendment.

Summary of the Rule

International Operations

1. December Rule

Under the December final rule, the Department of Transportation determined that existing international operators would be grandfathered slot rights and that, as a matter of international aviation policy, the allocation of additional slots for international operations at Kennedy and O'Hare Airports would be made by the FAA based on requests from foreign and U.S. air carrier and commuter airlines conducting international operations. Under existing § 93.217, slots for these additional international operations would be allocated administratively, upon request to the FAA by an appropriately authorized officer of the carrier. In the event that the number of unallocated slots was insufficient to meet valid requests for international operations, the FAA would be required to withdraw allocated domestic slots to meet the international demand. In providing slots for international operations, the FAA would attempt to meet requests in the hours requested. However, in order to alleviate disruption of domestic operations, the rule provided that slots would be allocated to carriers in a time period within 2 hours of the time requested. That provision was inserted to enable the agency to avoid withdrawing slots from a domestic operator to allow an additional international operation if there were unallocated slots available reasonably close in time to the time requested by the international operator.

Under paragraph (c) of § 93.217, slots would not have to be allocated to a foreign operator on this basis if the Office of the Secretary determined that the country of that operator allocates slots to U.S. operators on a basis more restrictive than that provided by Subpart S. For example, if a foreign country allocates slots at its capacity constrained airports in a manner which limits increased operations by U.S. carriers, operators from that country should not automatically expect to receive slots for increased operations under the rule.

Subpart S established other provisions which apply to international operations. For example, a slot used for such operations cannot be sold or leased but may be traded on a one-for-one basis for another international slot at

the same airport. In addition, while the use-or-lose provisions of §93.227 do not apply to international slots, international operators are required to return unused slots. Also, slots used for international operations are not subject to loss under the withdrawal lotteries.

2. Comments

A number of comments were submitted on many of the provisions applicable to international operations. The issues which generated the largest number of comments were the 2-hour window for allocation, the need for some recognition of the seasonality of international operations, particularly at Kennedy Airport, and the treatment of charter air carriers under the rule.

The International Air Transportation Association (IATA) welcomed the recognition given by the Department to international air service agreements and the decision to exclude international slots from any buy-sell or lottery provision. IATA went on to state, however, that procedural provisions should be changed to reflect more accurately the nature of international air services and the need for compatibility with slot allocation methods in other countries. As to the "2-hour" provision, IATA added:

Many international operators will not be able to accommodate a 2-hour mismatch with slots available at capacity limited airports outside the U.S. Moreover, such an international operator would appear to have no remedy, except to try to trade slots with another operator.

Concerning seasonality, IATA stated:

Thus, international carriers, whose operations during the summer season typically are greater than in the winter season, will have to request additional slots pursuant to § 93.217 for each summer season. Moreover, unless the slots it needs for the next winter season happen to be the same as those used during the summer, it will have to re-request slots for that winter season. The 2-hour rule, unless amended as we suggest, will compound the problem because international carriers will not be assured of getting slots during the same time period from one season to the next equivalent season. The obvious solution to this inequity is to assign slots permanently on an equivalent season basis.

American Airlines, commenting on the "2-hour" rule, stated:

[The international carriers voiced their concerns regarding access to JFK. The focus of their comments seemed to be the fear that DOT's proposal to award international slots within a (+)/(-) 2-hour window would disrupt international air operations completely.

* * * * *
American shares these concerns regarding this four hour window of flexibility. American schedules its aircraft to achieve

maximum, efficient use. If the Department exercises this right, American will either have to cancel flights or arrange its schedule so that certain aircraft are idle for long periods of time.

LOT Polish Airlines stated:

LOT wishes to voice its objections to § 93.217(a)(5) which assures allocation of slots only "within two hours of the time period requested." From the standpoint of international transatlantic operations, this four hour gap . . . can, in practical terms, mean the denial of the requested slot.

Pan Am, commenting on "seasonality" stated:

In sharp contrast to domestic operations, the demand for international transportation peaks markedly in the summer, and falls off sharply during the winter. The affect [sic] of this peaking is an increase in demand for slots in the summer and a corresponding decrease in demand for slots for the winter. . . . Without doubt, carriers serving international operations will require additional slots for the summer—which will create a particularly difficult problem at JFK, given its high percentage of international flights.

Trans World Airlines (TWA) commenting on the 2-hour rule, stated:

[I]nternational carriers would not be certain of obtaining needed JFK slots timed to integrate (1) with domestic connecting schedules, both online and interline, at JFK, or (2) with arrival and departure times obtained abroad through the IATA slot coordination process.

TWA added:

TWA's proposal basically involves the development of a season slot grandfathering process covering both domestic and international operations similar to that employed at IATA slot coordinated airports. This process would enable a carrier to rely on certain arrival and departure times from summer to summer and winter to winter which would integrate with the arrival and departure times currently held by that carrier at the origin and destination international airports.

A number of other commenters, both U.S. and foreign operators, submitted similar comments on international allocations at Kennedy Airport to those quoted above. The general consensus of those commenters is that the "2-hour" window could cause scheduling difficulties and that there should be some recognition of seasonal schedules operated year after year.

3. Final Amendment

(a) *Seasonality*. As previously discussed, the allocation provisions in existing Subpart S were designed to ensure access for international operations at JFK and O'Hare while limiting disruption of domestic operations. The Department, however, recognizes the intricacies of creating

schedules throughout large portions of the world and the need to avoid disrupting established schedules, including those that are operated seasonally. The Department further recognizes the concerns expressed by many of the commenters as to the importance of consistency of the allocation mechanisms utilized throughout the world.

The existing rule might have resulted in some disruption from season to season for international operations, particularly in the summer at Kennedy Airport. It is important for many of these operations, including most transatlantic flights, to be operated in the same hourly period from year to year because of scheduling constraints at the foreign destination. Variation from year to year could also disrupt connecting operations. Although the December 16 rule would have provided access at Kennedy for international operations, the slots might have been in different hours from year to year. To avoid potential seasonal disruptions, the Department has decided to ensure that historically seasonal operations will be allocated slots in the precise time periods as held and operated in the previous year's season. This will resolve most if not all of the concerns raised by international operators about the "2-hour window"

Under this amendment, slots that the FAA determines to have been permanent international slots held by any operator (including charter operators) at Kennedy or O'Hare Airport during the summer of 1985 will be allocated to the same carrier for the summer season of 1986 if that carrier made a request for slots by February 1, 1986, in accordance with Subpart S.

During the week of April 7, 1986, FAA met with operators at Kennedy Airport and determined the allocation of slots for the summer 1986 season at Kennedy. All permanent seasonal slots described in the previous paragraph were included in that allocation. However, as FAA informed carriers during the session, not all the allocations made during the session will be deemed permanent. This pertains particularly to allocations made by FAA to meet the immediate needs of the 1986 summer season for new flights for which slots were not held in the past. FAA will notify carriers of its determinations in this regard in the near future.

This rule makes a further seasonality change that pertains to air carrier slots that were allocated at Kennedy Airport under Section 93.215 of the December 16 rule. Those slots were allocated on a permanent basis, even though some

carriers used them only seasonally. Comments were filed by carriers at Kennedy Airport pointing out that many of the domestic seasonal operations provide passenger feed to seasonal international operations and, thus, they requested that the Department take some action to allow carriers to hold the slots without a use-or-lose penalty in the season of non-use. Therefore, to avoid undue disruption of these kinds of operations, § 93.215 has been amended to permit any carrier holding a slot (domestic or international) in its permanent base to designate the slot as a winter or summer slot and to utilize the slot in the same season year to year; that is, if a carrier allocated such a slot designates it as a winter slot, the carrier may not use it during the summer and may not transfer it to another carrier for summer use. The carrier would then be subject to the use-or-lose provision only during the designated season. This would allow carriers to utilize slots in the same hours summer after summer. Such a seasonality designation would be permanent, i.e., it cannot be retracted at a later time. This designation may be made in any year on or before the dates provided in the rule. This aspect of the amendment applies only to operations at Kennedy Airport since no commenter identified a similar problem at O'Hare.

Generally, the preceding seasonality provisions will allow carriers which utilize slots in one season to have those slots returned to them for the same season of the following year. Since this should encourage carriers to release slots for periods of time when they will not be using them, it may in turn make it easier to accommodate additional international requests and, in particular, to accommodate charter operations.

It should be noted that under the December 16 rule, domestic slots withdrawn for reallocation to international carriers for summer operations would be returned to the carrier from which they were withdrawn for the winter season. This has not been changed and, together with the seasonality amendments described above, will have the beneficial effect of enhancing the ability of all carriers to plan their operations, since both international and domestic carriers will know which slots they will be able to operate in each season, without having to be concerned about excessive withdrawals.

(b) *Allocation of slots for new international operations.* In view of the increased reliability provided for international operations (i.e., that slots for seasonal operations may be re-obtained in the same hour in

corresponding future seasons), the Department reconsidered whether it was necessary to retain the December 16 provision guaranteeing that all international operations would be allocated slots, even when this would require the withdrawal of slots from domestic operations.

Based upon an analysis of this issue, including comments received, the Department has determined that withdrawal of a slot from an existing operation in order to accommodate a new international operation when other means of access are reasonably available is inconsistent with the prevailing international practice for allocating slots at slot-controlled airports in other countries. It is generally accepted throughout the rest of the world that requests by operators for additional slots, including schedule changes, will be accommodated if there are unutilized slots, but that existing operating rights will not be cancelled.

In this regard, the Department has reviewed the requests for international slots at Kennedy Airport submitted by the carriers pursuant to § 93.217 for slots not in the December 16, 1985, base. U.S. and foreign air carriers submitted far more requests for additional international slots for the summer of 1986 than the Department had anticipated. Granting all those requests in the precise times for which the slots were sought would have required the Department to withdraw a large number of slots from scheduled domestic air carriers pursuant to § 93.223. Such a withdrawal would have been extremely disruptive to domestic air carriers and the travelling public, particularly since a large proportion of the passengers on these domestic flights connect with international flights. Furthermore, if new international flights were freely accommodated at Kennedy Airport, there could be significant problems handling the increased number of passengers in the terminals.

Therefore, in view of the increased scheduling reliability accorded to international operations through the introduction of seasonality, the prospect of significant disruption of domestic operations associated with withdrawing domestic slots for international operations, the prevailing international practices for allocating slots, and customs and immigration capacity at Kennedy Airport, the Department has revised the manner in which it will allocate additional slots for international operations at that airport. The most significant change is that at Kennedy Airport slots will not be withdrawn from existing operations to

meet international requests unless it is necessary to do so in order to meet international obligations. The Department believes that international carriers have other means of access to the New York metropolitan area, including scheduling flights outside the 5-hour high-density period at Kennedy Airport, scheduling flights to Newark Airport (which is not currently limited under the High Density Rule), and making voluntary arrangements (including trades and, where appropriate, slot purchase or lease) to use a high density slot held by another carrier. Furthermore, international operations will be given priority over domestic operations in the allocation of any vacant slots during the high-density period at Kennedy. These procedures will serve to accommodate most international requests. Therefore, only in rare cases does the Department believe it will be necessary to withdraw a slot from a domestic operator in order to permit an additional international operation to be scheduled during the high-density period.

Consistent with international practice, the FAA may find it advisable to meet with international carriers and interested domestic carriers prior to each season. This might be particularly helpful to both the FAA and the carriers to enable schedule changes at Kennedy Airport and to otherwise seek voluntary adjustments that would provide for international slot needs.

These voluntary adjustments and the allocation of vacant slot times will be the primary methods for a carrier to obtain a new slot for a new international operation during the high-density hours at Kennedy Airport. In this regard, carriers have a legitimate need to know what criteria the Department will use to decide to whom the vacant slots will be allocated. The Department will take the following, among other things, into consideration in deciding how to allocate vacant slots among requesting carriers:

- (i) International obligations;
- (ii) Airport terminal capacity, including facilities and personnel of the U.S. Customs Service and the U.S. Immigration and Naturalization Service;
- (iii) The extent and regularity of intended use of a slot; and
- (iv) Any extraordinary scheduling constraints faced by a carrier.

At O'Hare Airport, which is slot controlled throughout the day, a request for an additional international scheduled operation will still be accommodated within 2 hours of the request. In applying this provision, the Department will use the preceding list of

four criteria identified for Kennedy Airport to assign slot times to determine whether a request for a slot for a scheduled international operation will be granted in the half-hour period requested or up to 2 hours different from the request. If vacant slots are available within 2 hours of slot requests made by one or more carriers, the Department will use the aforementioned criteria to allocate slots. If no vacant slots exist within 2 hours of the request, the Department envisions granting a slot in the half-hour period requested.

Thus, at both airports, air carriers conducting scheduled international operations will be given some opportunity for additional guaranteed access to the airports. Furthermore, if carriers wish to obtain slots for international operations during particular hours, they may always do so by trading, leasing, or buying slots from domestic operators.

With the changes in this rulemaking that pertain to international operations, the Department has attempted to provide a slot allocation system for international operations at Kennedy and O'Hare Airports that is fair, workable, and generally consistent with prevailing international practices at foreign slot-controlled airports. However, the Department recognizes that the complex and dynamic nature of international scheduling may give rise to special circumstances which were not anticipated by the rule. In such cases, the affected carrier may file an exemption request with the FAA. The FAA and the Office of the Secretary will review the request and take appropriate action on a timely basis. Exemption requests should be based upon special circumstances. For example, if the Department allocated slots at Kennedy Airport to foreign carriers as a result of granting new route authority, we would consider granting exemptions for U.S. carriers to obtain slots in order to maintain a competitive balance, where suitable slots are not otherwise available.

(c) *International slot trades.* Carriers with international operations at LaGuardia Airport commented that the December rule made little or no provision for them to make schedule changes. Under the December 16 rule, a slot used for international operations could be traded for another slot, but only on a one-for-one basis for another international slot at the same airport. At LaGuardia, this type of trade was the only opportunity provided for international operators to adjust schedules, and it was extremely limited because there are only a few

international operations at LaGuardia. In order to provide greater flexibility to adjust schedules, the Department will enlarge the opportunity for trading by revising the rule to permit an international slot held by a carrier to be traded to another carrier for a slot (domestic or international) on a one-for-one basis for the same airport. This applies to all three airports with international operations (LaGuardia, Kennedy, and O'Hare Airports) and will make it easier for carriers to make changes in their international schedules, at any time during the year and without requiring government intervention. These trades must occur between two separate airlines (as opposed to an airline trading within its own base or with an airline under common ownership as defined in § 93.213(c)). Further, the trades must be for slots in a different hour or half-hour period (depending on the requirements for that airport). The result of the trade or series of trades of international slots must be to obtain slots in different hours. If not, the trades will be denied. Without such a restriction, a U.S. carrier holding international slots could, virtually at will, interchange international and domestic slots so as to protect them indefinitely from withdrawal under the slot withdrawal procedures of § 93.223. On March 31, 1986, American Airlines filed a petition for exemption seeking approval of the trade of an international slot for a domestic slot at LaGuardia. On April 15, 1986, Air Canada filed an answer in which it requested that all carriers operating at LaGuardia be permitted to trade an international slot for a domestic slot. These petitions are effectively granted by the adoption of this amendment.

(d) *International charter operations.* A number of international charter operators submitted comments asking the Department to reconsider a number of the provisions contained in the rule, while others suggested new provisions that should be added. Almost all commenters stated concerns that the rule did not grandfather slots to charter operators as is provided for international scheduled operators. In fact, the December 16 rule did grandfather "permanent" charter operations on the same basis as scheduled operations.

This is not changed by these amendments, except that the grandfathering of slots for international operations is extended to cover seasonality, and, again, charter operations are covered on the same basis as scheduled operations. That is, the changes incorporated in this rule

will grandfather on a seasonal basis those permanent slots that were held and operated by charter operators on a seasonal basis in 1985 at Kennedy and O'Hare Airports (as well as in future years), as evidenced by scheduling committee and FAA records.

Many charter operators also were concerned about their ability to obtain slots for additional operations, i.e., in addition to grandfathered operations. Under existing rules, the only provisions made for such additional charter operations has been that reservations could be made for vacant slots within 48 hours of use. Many charter operators, however, were concerned that this provision would not be a reliable basis for scheduling charters, including notifying passengers of the hour and day of a flight and making arrangements with tour operators before the planned operation.

Accordingly, this rule change includes a new provision for administrative allocation of certain types of vacant slots that will allow charter operators to make reservations weeks or months in advance of use of the slot. In some cases, the new provision will allow charter operators to receive slots for multiple-day periods for the entire season. This new provision is described in detail later. In order to aid the FAA in processing slot requests for charter operations, requests for slots should be submitted as early as an operator anticipates the need for the slot, but no earlier than one season in advance.

Several charter operators also expressed concern that the December rule's restriction on the transfer of international slots would prevent a charter operator from making a slot available to another operator when the charter operator could not operate because of, for example, a last-minute equipment failure. It is common for contracts between a charter operator (i.e., the direct air carrier) and a tour operator (i.e., an indirect air carrier) to require the charter operator to find a back-up carrier to operate the flight in such circumstances. The Department has determined that under such circumstances, when there is a contractual obligation, it will permit the use of an international slot by a different carrier than the one to which the slot was allocated in order for the charter flight to operate. The agency reserves the right to request additional information from operators prior to or following the substitution of another carrier in order to ensure the proper utilization of international slots in substitute service situations.

The Department believes that the above provisions for charter operations are adequate to meet most charter needs. Although the grandfathering of slots applies equally to charter and scheduled operations, the provisions established herein for the allocation of new operations applies only to scheduled operations. The Department believes that complete parity between charter and scheduled operations is not required. Charter operations can utilize slots at varying hours throughout a season, can often be accommodated during off-peak hours, and can be accommodated at alternate airports. On the basis of previous provisions for charter operations in the U.S., this approach is reasonably calculated to accommodate the majority of, if not all, charter operations. Moreover, this approach is consistent with prevailing practices of other nations and would preserve charter operators' ability to obtain access to high density airports.

As mentioned above, in deciding the number of slots to be withdrawn from domestic operations, the Department also has to be cognizant of the effect on domestic operations by such withdrawals. Without some limitation, the domestic air transportation system could be seriously restricted. Such a result would not be in the public interest. Therefore, this amendment continues the limitation in the December amendment. As a result, charter and scheduled operators are treated identically for most purposes; however, slots withdrawn from incumbent domestic scheduled carriers will only be allocated to international scheduled operators. (As previously stated, as a result of the seasonality provision, we anticipate there will be very few such withdrawals.)

(e) *International all-cargo operations.* On February 24, Flying Tiger Line, Inc., petitioned for an exemption so that the U.S. segments of its intercontinental cargo flights would be deemed international flights for purposes of Subpart S. Existing § 93.217(a)(1) defines U.S. flight segments of foreign carriers as international flights, but flights of U.S. carriers are considered international under Subpart S only if the takeoff or landing is at a foreign point. Flying Tiger requested relief from this policy on the basis of unique characteristics of all-cargo service, and the unfair competitive position in which the rule placed Flying Tiger in relation to foreign cargo operators. The Department finds that some measure of relief is warranted and that this relief can be afforded to all U.S. flag cargo operators by rule rather than exemption.

Accordingly, the Department is adding a new § 93.227(k) to provide that the Chief Counsel of the FAA may waive the slot use-or-lose provisions of § 93.227(a) for a slot used for a U.S. flight segment of an intercontinental all-cargo flight. The carrier must request the waiver in writing and must return the slot to the FAA during the periods when it will not be used.

(f) *Use-or-lose provisions.* A number of commenters requested changes to the use-or-lose provisions of § 93.227. Several commenters, including the Regional Airline Association (RAA), requested that the 65 percent use requirement be modified to reflect the fact that many carriers schedule slots only 5 days out of 7, or 71 percent of the time. Relatively few cancellations of scheduled flights, therefore, would result in the loss of slots which were being substantially used as scheduled. The FAA has interpreted § 93.224 of Subpart S, Return of Slots, to permit the permanent return of slots for days of the week in which the holding carrier does not intend to schedule a flight. A carrier intending to operate a flight 5 days a week, therefore, may return the slot to FAA for the other 2 days. The carrier's slot use will be measured against the 5-day total, which substantially reduces the number of flights which must be operated to maintain the 65 percent use rate. This practice resolves the problem raised in the comments, and amendment of the rule to address the problem is not required.

Several commenters requested a longer period in which to calculate the slot use percentage. Section 93.227 of the rule provides that slots must be used 65 percent of the time in a 2-month period. The primary alternate periods requested were 13 weeks and 6 months, the latter being the period specified in the commuter scheduling committee agreements. The Department does not agree that sufficient reason exists to warrant adoption of a period longer than 2 months.

Both air carrier and commuter representatives requested that the rule provide for certain reasonable exceptions to the use-or-lose requirements, to allow for situations in which a carrier would lose a slot due to circumstances beyond its control. Examples offered were other government regulations, airport construction, partial closure of an airport, unusual weather, involuntary grounding of aircraft, and air traffic delays. The Department agrees that it would be unfair for a carrier to lose a slot for non-use when it had scheduled the slot but was prevented from using it

65 percent of the time by unforeseen circumstances totally beyond the control of the carrier. Accordingly, § 93.227 is also amended to permit the FAA to waive the use-or-lose provisions in the event of highly unusual and unpredictable conditions which are beyond the control of the slot-holder and which exist for a substantial period of time. A duration of 15 percent of the reporting period, or 9 days, is specified on the basis that it is a reasonable definition of "substantial period of time" for this purpose. Authority to waive the use-or-lose provisions is delegated to the Chief Counsel of the FAA. The rule does not provide a list of every circumstance which would warrant the waiver, because of the difficulty in anticipating all the kinds of situations which might arise. However, protracted severe weather and grounding of an aircraft type are mentioned as examples.

(g) *Lottery Procedures.* Some commenters questioned the size of the set-aside for new entrants in the reallocation lottery. The Department has reconsidered the provision in § 93.225(h) of the rule permitting new entrant carriers a set-aside of 15 percent of available slots in the first round of the lottery. Upon consideration of the number of allocated slots at each airport and of the small number of slots likely to be returned or lost, the Department believes that a 15 percent set-aside will be insufficient to provide a viable slot base for a carrier initiating service. While a larger set-aside will not guarantee that a new entrant will obtain all the slots it needs, it will promote a better opportunity for more new carriers. Accordingly, the Department is amending Section 93.225(h) to specify a set-aside of 25 percent of available slots for new entrants.

Several commenters requested that the procedures for distribution of unused slots by lottery under § 93.225 be amended or clarified. The Regional Carriers Scheduling Committee (RCSC) requested a provision prohibiting a new entrant from participating in a lottery for distribution of slots which that new entrant had received in a previous lottery and failed to use. The Department agrees that some penalty is appropriate since carriers needing the slots are being denied their use in such circumstances. However, a permanent ban on participation in Subpart S lotteries is too harsh a penalty. Under § 93.225(e), a ban on participation as a new entrant will apply only to the next lottery.

RCSC also requested clarification that, if new entrant participants do not select

all of the 15 percent of slots set aside for new entrants in any lottery, all remaining slots in the set-aside pool be distributed to incumbents. As previously mentioned the set-aside has been changed to 25 percent of available slots. With the larger set-aside, it is even more likely that some of the slots set aside would not be selected by new entrants. The Department agrees that these unselected slots should be available to incumbent carriers participating in the lottery, and a change based on this comment is being adopted.

ATA commented that carriers which do not operate aircraft with 56 or more seats should not participate in lotteries for air carrier slots. The Department adopted a provision to that effect in SFAR 48 for the initial lottery held on March 27, and has interpreted the existing provisions of § 93.225 to limit participation in air carrier lotteries to carriers capable of operating air carrier aircraft within the meaning of Part 93, § 93.123(c). Accordingly, this issue has been resolved without amending the rule. This does not change the right of carriers once they have slots to use smaller aircraft in accordance with § 93.221.

(h) *Transfer of slots.* In adopting SFAR 48, the Department considered the limitation on transferability of slots newly acquired in a lottery to trades on a one-for-one basis at the same airport. In the SFAR, transfer of slots obtained in the special lottery is restricted, but a slot may be traded for more than one slot as well as for one slot. This change permits a carrier to increase its slot base by trading a valuable slot obtained in a lottery for two or more slots of less value, if it chooses. The Department believes this policy should apply in all slot lotteries, and Section 93.221(a)(5) is amended to incorporate this change.

(i) *Common ownership.* In recent months there have been several mergers or acquisitions of carriers holding slots at high density airports. In several cases these carriers have elected to continue operating as separate entities. For purposes of Subpart S, commonly owned or controlled carriers are considered a single entity under § 93.213(c). As a result, these carriers could transfer slots among themselves without reporting the transfers to the FAA, which would make the agency's administration of the slot base more difficult. Accordingly, the Department is requiring, in a revised § 93.221(d), that carriers commonly owned or controlled within the meaning of § 93.213(c) report intra-company transfers to the FAA.

(j) *Trading restriction.* The restriction on slot transfers to trades on a one-for-one basis, set forth in the original

§ 93.221(d), is removed from the rule. The restriction expired of its own terms on April 1, 1986.

(k) *Administration allocation of available slots.* Several commenters, including ATA, requested that some mechanism be established to provide for the allocation of available slots in the intervening time between lotteries. The Department does not contemplate lotteries more frequently than twice each year, in consideration of the relatively small number of slots which will be available and the expense of conducting a lottery. ATA argues that slots should not go unused for up to 6 months while waiting for a lottery.

The Department agrees in part. The Department believes that prime slots should be retained for distribution on a permanent basis by lottery to ensure that all eligible carriers have an equal chance to obtain them in random procedure. However, there are certain hours at LaGuardia and National Airports in which all slots are not allocated simply because of low demand. These hours are 6:00 to 7:00 a.m. and 10:00 p.m. to 12:00 a.m. Also, a number of partial-week slots, such as for Saturday and Sunday only, have been returned to the FAA at each of the airports as have slots for short periods of time (e.g., 2 weeks) by international operators. Because demand for these types of slots is low, there is no reason to reserve these slots for distribution in a procedure designed for allocation of few valuable slots among many interested carriers.

A related need arises for administrative allocation of slots at Kennedy and O'Hare Airports, to accommodate short-term requests for international scheduled and charter flights. As discussed earlier in this preamble, international operators are required to notify FAA if an international slot will be used for a certain period of time or every day of the week. The existing rule requires such notification but does not specify the procedure for reallocating temporarily returned slots. Designating a procedure for short-term reallocation of available slots for international operations, including charters, provides the mechanism requested by many commenters for flexibility and responsiveness to requests for international slots.

For the above reasons, the Department is adding a new § 93.226 to provide for administrative allocation of off-hour slots at LaGuardia and National Airports and slots available for fewer than 5 days a week and slots available for short periods of time at any of the four airports.

(l) *Withdrawal of slots.* A number of comments were received on various aspects of the withdrawal regulations set forth in § 93.223. The Department does not consider that any basic change in withdrawal procedures is necessary. However, the Department does believe that it would be beneficial to revise one technical aspect of the rule protecting carriers holding eight or fewer slots. Section 93.223(f) of the December 16 rule provided that slots obtained by initial allocation on December 16, 1985, or by lottery will not be withdrawn from a carrier holding eight or fewer non-international slots at that airport. Therefore, under the existing rule, slots acquired by purchase or trade would not be protected from withdrawal. The Department agrees that this could unfairly penalize new entrants and incumbent carriers with a small number of slots which acquire slots through purchases or trades. Accordingly, the Department is amending paragraph (f) to extend the protection from withdrawal to all slots held by a carrier with eight or fewer non-international slots. It is not the Department's intent to permit carriers with less than eight slots to enter into lease arrangements (for example, sale and leaseback) for the purpose of protecting another carrier's slots from withdrawal. If the Department observes any such abuse of the provisions intended for the benefit of carriers with a small number of slots, the Department will take further appropriate action.

(m) *Reporting requirements.* RCSC and other commenters requested that the Department delete the requirement for the reporting of each flight as an arrival or departure in the slot use reports under § 93.227(i), at airports at which there is no restriction on arrivals and departures. This information is useful to air traffic but not essential at airports at which arrival and departures are not restricted. However, voluntary arrival and departure restrictions may be applied on a seasonal basis only, making it impractical to impose and rescind this reporting requirement by rulemaking. Accordingly, the Department believes the requirement should be retained for all high density airports. If there is a burden in a particular case, relief will be afforded by a waiver from the FAA.

The slot use reporting requirement in § 93.227(i) is amended to add a requirement for carriers to identify any common control or ownership relationships with other carriers as defined in § 93.213(c). The Department has no other consistent source of this information, which is necessary for

administration of the rule. The Department is also adding a requirement to report the equipment used in operating each slot held. This information is necessary to monitor proper use of commuter and air carrier slots by appropriate aircraft. Most carriers are now reporting this information and the Department anticipates that the additional reporting burden will be minimal.

Section-by-Section Analysis of the Amendments

Section 93.213 Definitions and General Provisions.

Section 93.213 sets forth definitions to be applied in Subpart S. This amendment adds definitions for the terms "summer season" and "winter season." They are defined as follows:

Summer season—the period of time from the fourth Sunday in April until the fourth Sunday in October.

Winter season—the period of time from the fourth Sunday in October until the fourth Sunday in April.

These terms are applicable at Kennedy and O'Hare Airports and are generally consistent with international scheduling practices.

Section 93.215 Initial Allocation of Slots.

A new paragraph (c) is added to this section which allows a carrier at Kennedy Airport to designate any slot (including domestic slots) as a seasonal slot (either a summer season slot or a winter season slot). Those terms are defined in § 93.213. In order to designate a slot as a seasonal slot, a carrier holding the slot must notify the FAA (at the address specified in § 93.225(e)), in writing, by May 15 for the 1986 summer season and future winter seasons, and by October 15 for future summer seasons. Thus, a carrier may convert one or more of its slots to seasonal slots. Once a slot is declared to be a seasonal slot by the carrier, the carrier permanently loses use of that slot during the other season. This would allow a carrier to have domestic slots every summer and not have to worry about the use-or-lose provisions during the winter season. Of course, the use-or-lose provision does apply during the season in which the slot is being utilized.

Section 93.217 Allocation of slots for international operations.

Section 93.217 sets forth the method of allocation for international operations at the high density airports. The provisions have been changed from the December 16 rule, although some aspects of this section remain the same. Paragraph

(a)(1) has been changed to clarify that allocation of slots for new international operations is limited to scheduled operations. International charter operations may continue to hold slots that were in their historic base but will not be allocated additional slots under this paragraph. Paragraph (a)(2) has been changed to allow a carrier to trade an international slot in one hour or half-hour for a domestic slot held by a different carrier in a different hour or half-hour. A carrier cannot trade with itself and cannot trade for another slot within the same hour or half-hour. The phrase added at the end of that paragraph, "for the purpose of conducting such an operation in a different hour or half-hour," allows the FAA to deny a trade if it resulted practically in a trade of slots within the same hour or half-hour.

Paragraphs (a)(5) to (9) set forth new methods for allocation of slots for international operations. Paragraph (5) is the grandfathering section for seasonal international operations at Kennedy and O'Hare Airports. Under this paragraph, a carrier which held a permanent summer season slot and used it to conduct an international operation in the summer season of 1985 is entitled to the same slot in the following year for the identical timeframe in which the slot was utilized, if the carrier requested the slot by February 1, 1986. The following is an example of how this provision would function:

Carrier A held and operated a 1700 departure at Kennedy Airport in the summer of 1985 which it utilized for an international operation. The slot was utilized every Monday and Thursday from June 1, 1985, to September 15, 1985. If Carrier A submitted a request, in writing, by February 1, 1986, for that slot for the summer season of 1986, it will be allocated that slot for every Monday and Thursday from June 1, 1986, to September 15, 1986. If Carrier A operates the slot during 1986 for the specified period and if it requests it again for use during the summer of 1987, it will be allocated the same slot for the comparable period of 1987.

If Carrier B held a slot every Sunday and Monday from June 1, 1985 to October 1, 1986, but only utilized the slot from July 1, 1986, to October 1, 1986, then it would only be eligible to be allocated that slot, under paragraph (5) from July 1, 1987, to October 1, 1987. The carrier could request additional slots or a change in the hour operated at Kennedy Airport under paragraph (8).

Each carrier requesting that it be grandfathered slots from season-to-season must submit its entire seasonal schedule to the FAA (domestic and international slots) noting any requested changes from the previous year. This will ensure that all submittals are similar and make it easier for the FAA to differentiate requests for additional

slots from requests for a change in slot times or requests for return of seasonal slots.

Paragraph (6) basically leaves unchanged the "2-hour" rule (as it existed in old paragraph (a)(5)) for allocation of slots for new international scheduled passenger operations at O'Hare Airport. Those requests must be submitted in writing by the dates listed in the paragraph and will be allocated within 2 hours of the time requested.

Paragraph (7) emphasizes that slots at LaGuardia Airport will only be allocated for international operations if required by specific bilateral agreement and, when allocated, slots will be made available within the hour requested. This is similar to the language which appeared in old paragraph (a)(1).

Paragraph (8) sets forth the mechanism by which slots for additional or changed operations (moved from one hour to another) will be allocated for scheduled passenger operations at Kennedy Airport. If a request is submitted (in accordance with the notification requirements of the paragraph) and a slot is available, the slot will be allocated. If a slot is not available in the hour requested, a slot will be withdrawn from a domestic operation for allocation if the Office of the Secretary determines that such an allocation is required by international obligations. The Department expects that this provision will be used rarely. It must be emphasized that allocations under § 93.217(a)(8) will be made only to international scheduled operations. Since slots will be withdrawn only from scheduled operations, allocations will be made only to this type of operation.

Paragraph (9) sets forth the criteria which will be utilized to determine which of several requesting carriers will get a vacant slot at Kennedy Airport (in accordance with paragraph (8)), and which carrier will be allocated a vacant slot in a half-hour different from that requested at O'Hare Airport in accordance with paragraph (6). Consideration of international obligations and U.S. and international aviation interests have been the basis emphasized for promulgation of the December 16 provisions relating to international slots and continues to be the primary obligation of the Department in this area. Recognition of the number of vacant slots available is necessary to ensure that U.S. domestic operations are not affected in such a manner as to disrupt existing operations, including flights that connect with international flights. Finally, there has to be some recognition of the general ability of the airport terminal to

handle additional international operations before slots are allocated for such operations. For example, there would be no purpose in withdrawing slots from domestic service to provide additional international operations at Kennedy Airport during the peak hours if in fact Federal inspection agency facilities could not accommodate them then.

Paragraph (b) is unchanged from Subpart S as originally adopted.

Paragraph (c) contains the procedure to be followed if a carrier is offered a slot in an hour or half-hour other than one requested. For example, at O'Hare, a carrier may be offered a 1700 slot although an 1800 slot is requested. If offered the 1700 slot, the carrier would have 14 days to accept it and must repeat the certification statement required by § 93.221(e).

Paragraphs (d) and (e) are unchanged from the December 16 rule, except that paragraph (d) was formerly designated as paragraph (c).

Section 93.221 Transfer of slots.

In Section 93.221(a)(5), the restriction on trades of slots obtained in a lottery is changed from limiting trades to a one-for-one basis to permit trades of one for one or more slots for each slot subject to the restriction. This change provides additional opportunities for carriers obtaining slots without increasing the incentive for speculation in lottery slots.

Section 93.221(d), which restricted transfer prior to April 1, 1986, to trades on a one-for-one basis at the same airport, is removed. The restriction expired by its own terms on April 1. A new paragraph (d) is added to require that commonly owned or controlled carriers report intra-company transfers to the FAA. This provision is needed for the FAA to track slot usage.

Section 93.223 Slot withdrawal.

Section 93.223(f), as initially adopted, provides that slots acquired through grandfathering under § 93.215 or by lottery will not be withdrawn from a carrier with eight or fewer non-international slots at an airport. This paragraph is amended to extend the protection from withdrawal to slots acquired in trade or by purchase.

Section 93.225 Lottery of available slots.

Section 93.225(e) is amended by adding an additional limitation to the requirements for participation in a slot lottery as a new entrant. The added language precludes carriers that have obtained slots in the previous lottery and failed to operate them from participating in the next lottery as a new

entrant. (The carrier could, however, participate in the lottery with the status of an incumbent.) A penalty of this sort is needed to discourage carriers from seeking slots in a lottery that they are not likely to use, to the detriment of carriers ready, willing and able to use those slots.

In paragraph (h) of § 93.225, the 15 percent set-aside for new entrant carriers in slot lotteries is changed to 25 percent. In consideration of the number of slots expected to be available in the lottery pools, a 25 percent guarantee is needed as a more meaningful new entrant preference.

Section 93.226 Allocation of slots in low-demand periods.

A new section, § 93.226, is added to the rule to provide for the administrative allocation by the FAA of off-hour slots and partial-week slots when appropriate.

Section 93.226(a) provides that the FAA will allocate available slots, upon request, for the following time periods:

- (1) Any hour for which a slot is available less than 5 days per week.
- (2) Any time period for which a slot is available less than a full season.
- (3) For LaGuardia and Washington National Airports, slots in the following hours:

- (i) 6:00 a.m.—6:59 a.m.
- (ii) 10:00 p.m.—midnight.

Section 93.226(b) limits allocations under this new section to operators already having the economic and operating authority to make immediate use of the slots. Slots will be made available under this paragraph for international operations and domestic operations, including cargo and charter operations as well as scheduled passenger operations.

Section 93.226(c) provides the procedure for requesting allocations under § 93.226. Section 93.226(d) permits FAA to suspend allocation of available slots under this section upon a determination that the remaining slots should be allocated by lottery. This provision will preserve slots for distribution by lottery when it becomes apparent that demand is increasing to the point where a random allocation procedure is inappropriate.

Section 93.226(e) makes it clear that slots may be allocated under this section on a seasonal basis or for limited periods of time (e.g., a week or a month).

Section 93.227 Slot use and loss.

Section 93.227(i) is amended by adding a requirement for carriers which are affected by the common ownership and control provisions of § 93.213(c) to

report any such relationship in their slot use reports. Also added to this paragraph is a requirement to report the equipment used in operating each slot.

New § 93.227(j) is added to permit the FAA Chief Counsel to waive the 65-percent use-or-lose requirement of § 93.227(a), if one condition or a series of conditions beyond the carrier's control prevented use of the slot for a period of 9 days or more (15 percent of the 2-month reporting period). This provision permits the retention of slots where operation of the minimum use requirements would be manifestly unfair. The request for such a waiver should be submitted with the carrier's use-or-lose report and must be signed by the person submitting the report.

A new paragraph (k) is added to provide that the Chief Counsel of the FAA may grant a waiver from the § 93.227 use-or-lose requirements for a U.S. operation which is a continuation segment of an intercontinental all-cargo flight. The slot must be returned to FAA when not used.

Regulatory Evaluation

Regulatory Flexibility Act Determination

The changes contained in this rulemaking affect primarily international air carrier operations.

As discussed above, this rule should result in minimal benefits or costs to U.S. carriers, with two limited exceptions. First, carriers obtaining slots in a lottery under § 93.225 will benefit to the extent of the value of the slots obtained. Some slots, particularly air carrier slots in prime hours, may have a substantial value. However, few such slots are expected to be available for allocation by lottery. Also, a relatively large number of carriers will be eligible for participation in each lottery. Therefore, the likelihood of any single carrier obtaining more than two high-value slots is small, and the percentage of carriers which will obtain a substantial benefit in any particular lottery will be small.

Second, international charter operators may experience a slight increase in difficulty in obtaining a slot in a desired hour, although the procedures adopted herein are similar to past scheduling practices as well as international practices. As a result, these carriers may incur some degree of cost associated with rescheduling of flights or operating in non-optimum hours for their respective types of operations. However, it is the Department's intent to accommodate international charter flights when

possible, consistent with the requirements of scheduled operations, and the proportionate number of carriers affected to any substantial degree is expected to be very small.

Small operators will not be disproportionately affected in any discernible way by this rule. Accordingly, the Department has determined that the rule will not, if enacted, have a significant economic impact on a substantial number of small entities.

For the reasons set forth above, the Department has determined that this amendment (1) is not a major rule under Executive Order 12291; (2) is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and 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. A copy of the regulatory evaluation prepared for this action can be obtained from the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

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 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 or create additional barriers to the sale of U.S. aviation products and services in foreign countries.

Paperwork Reduction Act

This amendment provides for relatively minor changes to the required reporting of certain 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 provision of Subpart S. OMB Approval Number 2120-0524 has been assigned to Subpart S.

Effective Date

This rule contains a number of provisions which provide benefits to both carriers and the FAA in providing for the immediate distribution of slots, in resolving uncertainty in the scheduling of international operations, and in streamlining procedures for administration of Subpart S. Accordingly, I find that good cause

exists for making this amendment effective upon publication.

List of Subjects in 14 CFR, Part 93

Aviation safety, Air traffic control.

Adoption of the Amendment

For the reasons set out above, Part 93 of the Federal Aviation Regulations (14 CFR Part 93) is amended as follows:

PART 93—[AMENDED]

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

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a) 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106 (Revised Pub. L. 97-449, January 12, 1983).

2. In § 93.213, paragraphs (a)(3) and (a)(4) are added to read as follows:

§ 93.213 Definitions and general provisions.

(a) For purposes of this subpart—

(3) "Summer season" means the period of time from the fourth Sunday in April until the fourth Sunday in October.

(4) "Winter season" means the period of time from the fourth Sunday in October until the fourth Sunday in April.

3. In § 93.215, by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and by adding new paragraph (c) to read as follows:

§ 93.215 Initial allocation of slots.

(c) A carrier may permanently designate a slot it holds at Kennedy International Airport as a seasonal slot, to be held by the carrier only during the corresponding season in future years, if it notifies the FAA (at the address specified in § 93.225(e)), in writing, the preceding winter seasons or by October 15 of the preceding year for summer seasons.

4. By revising § 93.217 to read as follows:

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

(a) Any air carrier or commuter operator having the authority to conduct international operations shall be provided slots for those operations subject to the following conditions and the other provisions of this section:

(1) The slot may be used only for a flight segment in which either the takeoff or landing is at a foreign point or, for foreign operators, the flight segment is a continuation of a flight that begins or ends at a foreign point. Slots may be obtained and used under this section only for operations at Kennedy

and O'Hare airports unless otherwise required by bilateral agreement and only for scheduled service unless the requesting carrier qualifies for the slot on the basis of historic seasonal operations, under § 93.217(a)(5).

(2) Slots used for an operation described in paragraph (a)(1) of this section may not be bought, sold, leased, or otherwise transferred, except that such a slot may be traded to another slot-holder on a one-for-one basis for a slot at the same airport in a different hour or half-hour period if the trade is for the purpose of conducting such an operation in a different hour or half-hour period.

(3) Slots used for operations described in paragraph (a)(1) of this section must be returned to the FAA if the slot will not be used for such operations for more than a 2-week period.

(4) Each air carrier or commuter operator having a slot that is used for operations described in paragraph (a)(1) of this section but is not used every day of the week shall notify the office specified in § 93.221(a)(1) in writing of those days on which the slots will not be used.

(5) At Kennedy and O'Hare Airports, a slot shall be allocated, upon request, for seasonal international operations, including charter operations, if the Chief Counsel of the FAA determines that the slot had been permanently allocated to and used by the requesting carrier in the same hour and for the same time period during the corresponding season of the preceding year. Requests for such slots must be submitted to the office specified in § 93.221(a)(1) by May 15 for operations to be conducted during the following winter season and by October 15 for the following summer season. For operations during the 1986 summer season, requests under this paragraph must have been submitted to the FAA on or before February 1, 1986. Each carrier requesting a slot under this paragraph must submit its entire international schedule at the relevant airport for the particular season, noting which requests are in addition to or changes from the previous year.

(6) Additional slots shall be allocated at O'Hare Airport for international scheduled air carrier and commuter operations (beyond those slots allocated under § 93.215 and § 93.217(a)(5)) if a request is submitted to the office specified in § 93.221(a)(1) by May 15 for operations to commence during the following winter season and by October 15 for operations to commence during the following summer season. These slots will be allocated within 2 hours of the time period requested.

(7) If required by bilateral agreement, additional slots shall be allocated at LaGuardia Airport for international scheduled passenger operations within the hour requested.

(8) To the extent vacant slots are available, additional slots during the high-density hours shall be allocated at Kennedy Airport for new international scheduled air carrier and commuter operations (beyond those operations for which slots have been allocated under §§ 93.215 and 93.217(a)(5)), if a request is submitted to the office specified in § 93.221(a)(1) by May 15 for operations to commence during the following winter season and by October 15 for operations to commence during the following summer season. In addition, slots may be withdrawn from domestic operations for operations at Kennedy Airport under this paragraph if required by international obligations.

(9) In determining the hour in which a slot request under §§ 93.217(a)(6) and 93.217(a)(8) will be granted, the following will be taken into consideration, among other things:

- (i) The availability of vacant slot times;
- (ii) International obligations;
- (iii) Airport terminal capacity, including facilities and personnel of the U.S. Customs Service and the U.S. Immigration and Naturalization Service;
- (iv) The extent and regularity of intended use of a slot; and
- (v) Schedule constraints of carriers requesting slots.

(b) If a slot allocated under § 93.215 was scheduled for an operation described in paragraph (a)(1) of this section on December 16, 1985, its use shall be subject to the requirements of paragraphs (a)(1) through (a)(4) of this section. The requirements also apply to slots used for international operations at LaGuardia Airport.

(c) If a slot is offered to a carrier in other than the hour requested, the carrier shall have 14 days after the date of the offer to accept the newly offered slot. Acceptance must be in writing and sent to the office specified in § 93.221(a)(1) and must repeat the certified statements required by paragraph (e) of this section.

(d) The Office of the Secretary of Transportation reserves the right not to apply the provisions of this section, concerning the allocation of slots, to any foreign air carrier or commuter operator of a country that provides slots to U.S. air carriers and commuter operators on a basis more restrictive than provided by this subpart. Decisions not to apply the provisions of this section will be made by the Office of the Secretary of Transportation.

(e) Each request for slots under this section shall state the airport, days of the week and time of the day of the desired slots and the period of time the slots are to be used. Each request shall identify whether the slot is requested under paragraph (a)(5), (6), or (8) and identify any changes from the previous year if requested under both paragraphs. The request must be accompanied by a certified statement signed by an officer of the operator indicating that the operator has or has contracted for aircraft capable of being utilized in using the slots requested and that the operator has bona fide plans to use the requested slots for operations described in paragraph (a).

5. By amending paragraph (a)(5) of § 93.221 to remove "on a one-for-one basis" wherever it appears and substitute "for one or more than one slot".

6. By revising paragraph (d) of § 93.221 to read as follows:

§ 93.221 Transfer of slots.

(d) Air carriers and commuter operators considered to be a single operator under the provisions of § 93.213(c) of this Subpart but operating under separate names shall report transfers of slots between them.

7. By revising paragraph (f) of § 93.223 to read as follows:

§ 93.223 Slot withdrawal.

(f) Notwithstanding other provisions in this section, the FAA shall not withdraw slots from any carrier or commuter operator holding eight or fewer slots at that airport (excluding slots used for operations described in § 93.217(a)(1)).

8. Section 93.225 is amended by revising paragraphs (e) and (h) to read as follows:

§ 93.225 Lottery of available slots.

(e) Each U.S. air carrier or commuter operator, as appropriate, operating at the airport shall be included in the lottery. Any U.S. carrier which (i) is not operating at the airport and (ii) has not failed to operate slots obtained in the previous lottery, but wishing to initiate service at the airport, shall be included in the lottery if that operator notifies, in writing, the Office of the Chief Counsel, Docket Section, AGC-204, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. The notification must be in duplicate and must be received 15 days prior to the lottery

date. The notification must also include a statement as to whether there is any common ownership or control of, by, or with any other carrier as defined in § 93.213(c).

(h) During the first selection sequence, 25 percent of the slots available but no less than two slots shall be reserved for selection by new entrant carriers. If new entrant carriers do not select all of the slots set aside for new entrant carriers in a lottery, incumbent carriers may select the remaining slots.

9. By adding a new § 93.226 to read as follows:

§ 93.226 Allocation of slots in low-demand periods.

(a) If there are available slots in the following time periods and there are no pending requests for international or EAS operations at these times, FAA will allocate slots upon request on a first-come, first-served basis, as set forth in this section:

- (1) Any period for which a slot is available less than 5 days per week.
- (2) Any time period for which a slot is available for less than a full season.
- (3) For LaGuardia and Washington National Airports:
 - (i) 6:00 a.m.—6:59 a.m.
 - (ii) 10:00 p.m.—midnight.
- (b) Slots will be allocated only to operators with the economic and operating authority and aircraft required to use the slots.

(c) Requests for allocations under this section shall be submitted in writing to the address listed in § 93.221(a)(1) and shall identify the request as made under § 93.226.

(d) The FAA may deny requests made under this section after a determination that all remaining slots in a particular category should be distributed by lottery.

(e) Slots may be allocated on a seasonal or temporary basis under this provision.

10. By revising § 93.227(i) and adding new paragraphs (j) and (k) to read as follows:

§ 93.227 Slot use and loss.

(i) Every air carrier and commuter operator or other person holding a slot at a high density airport shall, within 14 days after the last day of the 2-month period beginning January 1, 1986, and every 2 months thereafter, forward, in writing, to the address identified in § 93.221(a)(1), a list of all slots held by the air carrier, commuter operator or

other person along with a listing of which air carrier or commuter operator actually operated the slot for each day of the 2-month period. The report shall identify the flight number for which the slot was used and the equipment used, and shall identify the flight as an arrival or departure. The report shall identify any common ownership or control of, by, or with any other carrier as defined in § 93.213(c) of this Subpart. The report shall be signed by a senior official of the air carrier or commuter operator. If the slot is held by an "other person," the

report must be signed by an official representative.

(j) The Chief Counsel of the FAA may waive the requirements of paragraph (a) of this section in the event of a highly unusual and unpredictable condition which is beyond the control of the slot-holder and which exists for a period of 9 or more days. Examples of conditions which could justify waiver under this paragraph are weather conditions which result in the restricted operation of an airport for an extended period of time or the grounding of an aircraft type.

(k) The Chief Counsel of the FAA may, upon request, grant a waiver from the requirements of paragraph (a) of this section for a slot used for the domestic segment of an intercontinental all-cargo flight. To qualify for a waiver, a carrier must operate the slot a substantial percentage of the time and must return the slot to the FAA in advance for the time periods it will not be used.

Issued in Washington, DC, on June 10, 1986.

Elizabeth Hanford Dole,
Secretary of Transportation.

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