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Part V

**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. 25758; Amdt. No. 93-56]

High Density Traffic Airports Slot Allocation and Transfer Methods

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

ACTION: Final rule.

SUMMARY: This action makes several technical amendments to the regulations pertaining to the allocation and transfer of 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. First, the rule adopted provides that slots generally will not be withdrawn from carriers holding eight or fewer slots if the holding carrier itself operates the slots. The addition of an operating requirement to the existing rule prevents small incumbent carriers from using their protected status to protect slots actually used by larger incumbent carriers. The rule adopted also changes the maximum passenger seating capacity authorized for operations in "scheduled commuter" slots from "less than 56" seats to "less than 75" seats in order to allow more economical and advances aircraft to be used in providing service to small communities. Finally, this action changes the definition of "summer season" and "winter season" to conform to the current legal definition of Daylight Savings Time and Local Standard Time.

EFFECTIVE DATE: September 21, 1989.

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

SUPPLEMENTARY INFORMATION:

Availability of 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) 267-8058. Communications must identify the amendment number of the document.

Background

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

Notice of Proposed Rulemaking 88-18

On December 16, 1988, the Department of Transportation issued Notice of Proposed Rulemaking 88-18 (53 FR 51826, December 22, 1988; corrected 54 FR 831 and 54 FR 3079). In that notice, the Department denied the petition of America West Airlines to withdraw slots from incumbent carriers at National and LaGuardia Airports and reallocate those slots to new entrants and smaller incumbent carriers.

Second, the Department proposed for discussion six issues relating to the effect of the slot restrictions on competition and market entry, as required by section 149 of Pub. L. 100-457.

Finally, the Notice proposed two specific amendments to the current slot rules. The first proposal was that slots will not be withdrawn from a carrier with eight or fewer slots, except for failure to use the slots, if the carrier itself uses the slots held. This proposal was intended to prevent the current practice by which large carriers transfer vulnerable slots (i.e., slots with a low withdrawal priority number) to carriers holding fewer than eight slots, and lease the slots back for operation. The second amendment proposed in the Notice was to increase the slot-use requirements for carriers holding a substantial number of slots in certain hours or half-hours to further reduce the retention of unused slots.

DOT has under consideration additional or alternate measures for slot allocation to new entrant and limited incumbent carriers and alternate requirements for slot use. It is anticipated that many of the issues raised in Notice 88-18 could require further rulemaking at the proposal stage and, therefore, are not addressed in this final rule.

Discussion of Comments

Twenty-six comments were received in response to Notice 88-18, including

supplemental comments filed by Air Wisconsin, the Regional Airline Association, and the City of Chicago Department of Aviation.

Separate Air Carrier and Commuter Slot Categories

Section 93.123(c) of the Federal Aviation Regulations (14 CFR part 93, subpart K) establishes the maximum passenger seating capacity, for the purposes of § 93.123(a), as 56 seats or more for "air carriers," and less than 56 seats for "scheduled commuters."

Notice 88-18. Of those commenters addressing the underlying issue of the distinction between commuter and air carrier slots, Pan Am, Pan Am Express, the Regional Airline Association, and several other carriers stated that the practice of carrier slots being operated by commuters is necessary to maintain scheduling flexibility. American, Pan Am, Pan Am Express, and the Regional Airline Association also stated that scheduling flexibility could be increased by eliminating this distinction altogether. While USAir/Piedmont argued that the elimination of the distinction would threaten service to small markets, American suggested that removing this distinction would enhance such service. Air Wisconsin noted that a flat prohibition on the use of commuter aircraft in air carrier slots would unfairly penalize carriers that operate both types of aircraft as a single entity.

Pan Am, Pan Am Express, and the Regional Airline Association, and several of its individual members further noted that the types of aircraft which can use commuter slots should be expanded in response to the needs of smaller communities where traffic has increased significantly. These commenters argued that the 56-seat limit contained in the definitions of "air carrier" and "scheduled commuter operator" under § 93.123(c) is based on the types of aircraft that were available at the time of the adoption of the High Density Rule in 1969. Since that time, new aircraft have been developed which have more than 60 seats, but are still properly considered "commuter" aircraft for the purposes of § 93.123(c) due to their limited range and cruise speed.

Air Wisconsin petition for exemption. In addition to the request for comments on the distinction between air carrier and commuter slots in Notice 88-18, the FAA received separate petitions from British Aerospace and Air Wisconsin, which were published in the *Federal Register* on April 12, 1988 (53 FR 12092) and March 31, 1989 (54 FR 13344), respectively. The petitioners requested the FAA to authorize the use of aircraft

having 60 and 64 seats, respectively, or less in "scheduled commuter" slots in order to allow more economical and advanced aircraft to be used in providing service to smaller communities. Air Wisconsin noted that traffic on the routes which serve these communities routinely exceeds the capacity of 50-seat aircraft.

The British Aerospace petition was denied on August 15, 1988, because British Aerospace, as an aircraft manufacturer, was found to be not eligible for an exemption from an operating rule and because the FAA considered the issue to be more appropriate for resolution by general rulemaking. However, the FAA did not take issue with the substantive justification raised in the British Aerospace petition.

Numerous comments were received in support of the Air Wisconsin petition, including several congressional responses, and comments filed by airport authorities, municipalities, chambers of commerce, and state transportation departments. With the exception of Pan Am Express, none of the carrier commenters were specifically opposed to the petition. Most, however, shared Pan Am Express's view that the FAA should treat the Air Wisconsin petition as a petition for rulemaking and amend part 93, subpart K of the Federal Aviation Regulations.

Therefore, in view of the comments requesting that larger aircraft be permitted to use commuter slots, and in consideration of the fact that such a higher seat limit (in conjunction with a limitation to propeller-driven aircraft) has no significant effect on the regional airline industry and the service to small communities provided by that industry, the FAA is amending § 93.123(c) of subpart K of the Federal Aviation Regulations to change the maximum passenger seating capacity authorized for operations in "scheduled commuter" slots from "less than 56 [seats]" to "less than 75 [seats]," with a limitation to reciprocating and turboprop aircraft. The 75-seat limit will allow for anticipated seating configurations of all aircraft in this category. The limitation to propeller-driven aircraft provides a clear distinction between commuter aircraft and the turbojet aircraft used for longer routes and higher volume markets.

Although the 75-seat maximum passenger seating capacity that is being adopted in this final rule was not expressly proposed in Notice 88-18, the Notice requested comments on the use of air carrier slots using commuter aircraft, and the agency sought and received public comment on the issue by

publication of the Air Wisconsin petition in the *Federal Register*. This amendment represents final agency action on the Air Wisconsin petition for exemption and Air Wisconsin's request for rulemaking filed in its supplemental comments on Notice 88-18.

Withdrawal of Slots From Carriers Holding 8 or Fewer Slots

Section 93.223(f) of the Federal Aviation Regulations (14 CFR part 93, subpart S) currently provides that slots will not be withdrawn from an air carrier or commuter operator holding eight or fewer slots at an airport (not counting international slots). Notice 88-18 proposed to add a use requirement to this provision so that the exception from withdrawal would only apply to slots used by the holding carrier, and would clarify that the protection does not apply to withdrawal for nonuse under § 93.227(a)(1). The use requirement would prohibit the current practice by larger carriers of transferring vulnerable slots (i.e., slots with a low withdrawal priority number) to a carrier with fewer than eight slots, then leasing the slot back for operation.

Although the Regional Carrier Slotholders stated that the practice by which carriers in effect "hide" their most vulnerable slots as described above is not widespread, several commenters expressed dissatisfaction over this practice. America West argued that this practice is inconsistent with the use-or-lose provisions of the Buy/Sell Rule. The FAA notes that there was little specific opposition to the proposal which would prohibit the withdrawal of slots from carriers holding and using fewer than eight slots. The Airport Operators Council International, USAir, Piedmont, Midwest Express, and United all specifically noted their lack of objection and/or support of this proposal.

In consideration of the need to protect carriers with limited slot holdings while maintaining opportunities for market entry, and in the interest of preventing carriers from circumventing the withdrawal provisions of the slot transfer and allocation rules, the FAA is amending § 93.223(f) to provide that slots shall not be withdrawn from an air carrier or commuter operator holding and using fewer than eight slots, excluding withdrawal under § 93.217(a)(1).

Summer/Winter Season Dates

As part of this action, the FAA is correcting a reference to seasonal designations which currently correspond to an obsolete definition of the Daylight Savings Time period. Section 93.217 of

the Federal Aviation Regulations (14 CFR part 93, subpart S) establishes procedures for the allocation of slots to U.S. and foreign air carriers for international operations at the High Density Airports. The procedures apply primarily at Kennedy International and O'Hare International Airports.

At Kennedy and O'Hare Airports, international slots are allocated in accordance with seasonal designations, as defined in § 93.213, with specific slot operations being designated as either summer or winter slots. The seasonal allocations correspond to the beginning and ending of the Daylight Savings and Local Standard Time periods.

The date on which Local Standard Time changes to Daylight Savings Time in the spring was changed by Congress on July 8, 1986 (Pub. L. 99-359, 100 Stat. 764). Previously, Daylight Savings Time extended from the fourth Sunday in April to the fourth Sunday in October, while the Local Standard Time period extended from the fourth Sunday in October to the fourth Sunday in April. The Daylight Savings Time period now extends from the first Sunday in April to the fourth Sunday in October while the Local Standard Time period extends from the fourth Sunday in October to the first Sunday in April.

The purpose of this amendment, therefore, is simply to amend the seasonal time designations in the rule to reflect the current changeover date (i.e., from Local Standard Time to Daylight Savings Time) of the first Sunday in April. The change is adopted without prior notice and comment because it represents a minor technical amendment on which there would be little interest in commenting. Accordingly, I find that notice and public comment under 5 U.S.C. 553(b) is unnecessary.

The Rule Adopted

For the reasons discussed above, the FAA is amending the regulations governing transfer and allocation of slots at high density traffic airports to do the following:

1. Increase the maximum passenger seating capacity authorized under § 93.123(c) for operations in "scheduled commuter" slots from "less than 56 [seats]" to "less than 75 [seats]," with a limitation to reciprocating and turboprop aircraft.
2. Provide that slots shall not be withdrawn from an air carrier or commuter operator holding fewer than eight slots if that carrier is itself operating the slots, excluding withdrawal under § 93.217(a)(1).
3. Change the time designations in the rule for the summer and winter

scheduling seasons to reflect the current changeover date from Local Standard Time to Daylight Savings Time.

Regulatory Evaluation

The changes contained in this rulemaking with respect to the maximum passenger seating capacity authorized for operations using commuter slots will have no effect on the actual operations of carriers currently using aircraft having fewer than 56 seats in these slots. With the adoption of this final rule, these carriers will have the operational flexibility to respond to traffic increases, market considerations, and other related factors by replacing and/or supplementing their fleets with aircraft having slightly higher maximum passenger seating capacities.

With respect to the changes adopted in the withdrawal provisions of FAR § 93.227(a), the FAA will not withdraw any slot that is held and operated by a carrier holding eight or fewer slots. It is unlikely that slots would be withdrawn from carriers holding fewer than eight slots and not operating those slots. Rather, those carriers would simply terminate the sale and leaseback arrangements currently in effect. The potential cost to these carriers, therefore, is only the speculative loss of lease income from slots the carrier did not intend to use.

Finally, the changes in the definition of "summer season" and "winter season" to conform to the legal definition of Daylight Savings Time and Local Standard Time will affect only scheduling requests for international operations by U.S. and foreign air carriers at Kennedy and O'Hare Airports. Actual operations are similarly unaffected by this change in designation. Air carriers will not experience any benefit or cost as a result of this rule, except for a minor administrative benefit in submitting flight schedule requests based on the actual time change time between Standard Time and Daylight Savings Time.

Regulatory Flexibility Analysis

As discussed above under Regulatory Evaluation, the impact on all operators will be minimal, and there will be no disproportionate impact on smaller operators. Accordingly, the FAA has determined that the rule will not, if promulgated, have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

For the reasons set forth above, the FAA has determined that this amendment (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Further, I certify that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This amendment provides for no changes to the required reporting of information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget previously has approved the information collection provision of subpart S. OMB Approval Number 2120-0524 has been assigned to subpart S.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of Federalism Assessment.

List of Subjects in 14 CFR Part 93

Aviation safety, Air traffic control.

Adoption of the Amendment

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

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

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

Authority: 49 U.S.C. 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 § 93.123, paragraph (c) is revised to read as follows:

§ 93.123 High density traffic airports.

* * * * *

(c) For purpose of this subpart—

(1) The number of operations allocated to "air carriers except commuters," under paragraph (a) of this section and § 93.127, refers to the number of operations conducted by air carriers with turbojet aircraft or any aircraft having a certificated maximum passenger seating capacity of 75 or more or, if used for cargo service in air transportation, with aircraft having a maximum payload capacity of 18,000 pounds or more.

(2) The number of operations allocated to "scheduled commuters," as used in paragraph (a) of this section and § 93.124, refers to the number of operations conducted by air carriers with turboprop or reciprocating engine aircraft having a certificated maximum passenger seating capacity of less than 75 or, if used for cargo service in air transportation, with aircraft having a maximum payload capacity of less than 18,000 pounds.

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

§ 93.213 Definitions and general provisions.

(a) * * *

(3) *Summer season* means the period of time from the first 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 first Sunday in April.

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4. In § 93.223, paragraph (c)(3) is added to read as follows:

§ 93.223 Slot withdrawal.

* * * * *

(c) * * *

(3) Except as provided in § 93.227(a), the FAA shall not withdraw any slot held and operated by an air carrier or commuter operator at an airport if that air carrier or commuter operator holds eight or fewer slots at that airport (excluding slots used for operations described in § 93.217(a)(1)).

* * * * *

Issued in Washington, DC, on August 15, 1989.

Samuel K. Skinner,
Secretary, Department of Transportation.
[FR Doc. 89-19726 Filed 8-17-89; 1:46 pm]

BILLING CODE 4910-13-M

Airports Slot Allocation and Transfer Methods; Docket No. 25758 (54 FR 34904).

The amendment number, given as No. 93-56, should be changed to No. 93-57.

Editorial errors in the regulatory text of Amendment No. 93-57, page 34906, third column, are corrected by making the following changes:

§ 93.123 [Corrected]

1. In the fourth line of the first full sentence under § 93.123(c)(1), remove "and § 93.127".

2. In the third and fourth lines of the first sentence under § 93.123(c)(2), remove "and § 93.124".

§ 93.213 [Corrected]

3. In the third line under § 93.213(a)(3), and in the second line under § 93.213(a)(4), change "fourth" to "last".

Issued in Washington, DC, on September 5, 1989.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 89-21138 Filed 9-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 93

[Docket No. 25758; Amdt. No. 93-57]

High Density Traffic Airports Slot Allocation and Transfer Methods

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

ACTION: Final rule; correction.

SUMMARY: This action corrects editorial errors which appeared in a final rule, published on August 22, 1989 (54 FR 34904), amending the High Density Traffic Airports Rule and slot allocation and transfer regulations.

FOR FURTHER INFORMATION CONTACT: David L. Bennett at (202) 267-3491.

SUPPLEMENTARY INFORMATION: On August 22, 1989, the Department of Transportation published a final rule which made several technical amendments to Subparts K and S of Part 93 of the Federal Aviation Regulations (14 CFR Part 93); High Density Traffic