Federal Register

Friday,
March 25, 2005

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Congestion, Delay Reduction and Operating Limitations at Chicago O'Hare International Airport; Proposed Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2005–20704; Notice No. 05–03]

RIN 2120–AI51

Congestion and Delay Reduction at Chicago O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing this rule to address persistent flight delays related to over-scheduling at O'Hare International Airport (O'Hare). This proposed rule is intended as an interim measure, because the FAA anticipates that the rule would yield to longer term solutions to traffic congestion at the airport. Such solutions include an application by the City of Chicago that, if approved, would modernize the airport and reduce levels of delay, both in the medium term and long term. For this reason, the proposed rule includes provisions allowing for the limits it imposes to be gradually relaxed and in any event would sunset in 2008.

DATES: Send your comments on or before May 24, 2005.

ADDRESSES: You may send comments (identified by Docket Number FAA–2005–20704) using the following method:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Wharff, Office of Policy and Plans, APO–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3274.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

The High Density Traffic Airports Rule at O'Hare

Until July 2002, the FAA managed congestion and delay at O'Hare by means of the High Density Rule (HDR), which was codified in 14 CFR part 93, subpart K. The FAA's predecessor agency adopted the HDR under its broad authority to ensure the efficient use of the nation's navigable airspace. 49 U.S.C. 40103. The HDR took effect in 1969, and while it originally was a temporary rule, it became permanent in 1973.

The HDR established limits on the number of all take-offs and landings during certain hours at five airports, including O'Hare. In order to operate a flight during the restricted hours, an airline needed a reservation, commonly known as a slot. Slots were initially allocated through scheduling committees, operating under then-authorized antitrust immunity, where all the airlines would agree to the allocation. But after the Airline Deregulation Act in 1978, new entrant airlines formed and the pre-existing, or legacy carriers, sought to expand. This made it increasingly difficult for airlines to reach agreement and the scheduling committees began to deadlock.

In 1984, the FAA amended the HDR to increase the hours in which limitations at O'Hare Airport would apply and to increase the number of take-offs and landings permitted at that airport (49 FR 8237, March 6, 1984). The

next year, a new subpart S was added to part 93 that established allocation procedures for slots including use-or-lose provisions and permission to buy and sell slots in a secondary market (50 FR 52195, December 20, 1985). These procedures replaced the scheduling committees.

Statutory Changes Ending the High Density Rule at O'Hare

In 2000 Congress relaxed the slot rules at the high density airports and phased out the slot rules entirely at three of them including O'Hare. 49 U.S.C. 41715, 41717. With respect to O'Hare, Congress directed that:

(1) Beginning July 1, 2001, the slot control restrictions be limited to the period between 2:45 p.m. and 8:14 p.m.;

(2) Beginning May 1, 2000, exemptions be granted to airlines to provide air service to small airports with 70-seat or smaller aircraft;

(3) 30 slot exemptions be granted to new entrant or limited incumbent air carriers;

(4) After May 1, 2000, slots no longer be required to provide international air service; and

(5) Slot restrictions be lifted entirely after July 1, 2002.

In phasing out the HDR, Congress recognized the possibility that there could be an increase in congestion and delays at the affected airports. Therefore, in the section that phased out the rule, it made clear that ''[n]othing in this section * * * shall be construed * * * as affecting the Federal Aviation Administration's authority for safety and the movement of air traffic.'' 49 U.S.C. 41715(b).

Resurgence of Unacceptable Levels of Congestion

As a result of the 2000 legislation, the slot restrictions of the HDR ceased to exist at O'Hare as of July 1, 2002. While lifting all slot restrictions at O'Hare after July 1, 2002, did not affect air safety, it did eventually lead to a dramatic increase in airline delays, which reverberated throughout the national air transportation system.

Initially, lifting the HDR had a minimal impact on delays due to the lingering effects on airline passenger traffic of the 9/11 terrorist attacks. But by 2003, the two air carriers operating hubs at O'Hare, American Airlines (''American'') and United Airlines (''United'') had added a large number of operations and retimed other flights, resulting in congestion during peak hours of the day. From April 2000 through November 2003, American increased its scheduled operations at O'Hare between the hours of 12 p.m. and 7:59 p.m. by nearly 10.5 percent. Over the same period, United increased its scheduled operations at O'Hare by over 41 percent.

The increases in operations by American and United did not result in a corresponding increase in seat capacity. During the peak period, these two carriers added 375 regional jet operations per day. Overall, American and United added over 600 regional jet operations per day. At the same time as they added regional jet operations, they reduced mainline jet operations. The result was a decrease in seat capacity by each carrier at O'Hare of more than 5.5 percent from April 2000 to November 2003. In November 2003, more than 40 percent of American's and United's O'Hare flights were operated with regional jets, many to large and medium hubs. The significant increases in scheduled operations during this time period resulted in excessive delays and congestion at O'Hare.

By November 2003, O'Hare had the worst on-time performance of any major airport. O'Hare arrivals were on time only 57 percent of the time, well below the FAA goal of 82 percent. Departures were little better. They were on time only 67 percent of the time, well below the average of 85 percent at other major airports. These delays averaged about an hour in duration. Published schedules for February 2004 indicated that the problem would be exacerbated by the addition of even more flights.

Recognizing congestion was again becoming a significant issue, Congress enacted legislation that included a mechanism to help reduce delays and improve the movement of air traffic at congested airports. 49 U.S.C. 41722. That statutory provision authorized the Secretary of Transportation (Secretary) to request that scheduled airlines meet with the FAA to discuss flight reductions at severely congested airports to reduce over-scheduling and flight delays during hours of peak operation, if the FAA determines that it is necessary to convene such a meeting and the Secretary determines that the meeting is necessary to meet a serious transportation need or achieve an important public benefit.

In early 2004, the Secretary of Transportation and the FAA Administrator determined that a schedule reduction meeting was necessary to deal with congestion-related delays at O'Hare. Before such a meeting could be convened, however, United and American each agreed to reduce their scheduled flights voluntarily. Accordingly, the schedule reduction meeting was deferred. Instead, the FAA issued an order implementing the voluntary agreement of the two air carriers, Docket FAA–2004–16944–55; 69 FR 5650 (2004). The FAA order required a 5 percent reduction in the two carriers' scheduled operations. This reduction was to be effective between 1 p.m. and 8 p.m. for six-months, beginning no later than March 4, 2004.

The FAA again reviewed O'Hare's on-time performance in March 2004 in light of the ordered schedule reductions. That review showed that the total delay minutes could have been as much as 30 percent higher without the reductions but that delays still remained more than double the level of a year earlier and represented more than a third of the total delays in the United States.

In light of the continued problems at O'Hare, the FAA again discussed the situation with American and United. As a result, on April 21, 2004, the FAA issued an amendment to the previous order in Docket FAA–2004–16944. This amendment required additional flight reductions. Specifically, beginning no later than June 10, 2004, it required (1) an additional schedule reduction of 2.5 percent of each carrier's total operations in the 1 p.m. through 7:59 p.m. hours including arrival reductions during specific times; (2) a reduction in the number of scheduled arrivals in the 12 p.m. hour; and (3) reductions to continue through October 30, 2004.

Prior to the implementation of the June flight reductions, delays at O'Hare continued. In May, there were a record 14,495 total delays. While the numbers in June and July improved, as the last round of cutbacks by American and United took effect, the FAA determined that the overall trend of delays remained unacceptably high. Meanwhile, some airlines that were not party to the agreement involving American and United continued to add flights, making it unlikely that the hub carriers would extend their voluntary schedule reductions without similar commitments by other carriers. Published schedules for November indicated that during several times of the day scheduled arrivals would approach or exceed the airport's highest possible arrival capacity. Accordingly, in July, the Secretary of Transportation and FAA Administrator determined that the scheduling reduction meeting that had previously been deferred now needed to be held (69 FR 46201, August 2, 2004).

The meeting between DOT and the carriers convened on August 4, 2004, and was followed by meetings between Federal officials and individual airlines. As a result, United and American agreed to reschedule and reduce scheduled

arrivals by about 5 percent during peak hours and other airlines agreed not to increase the number of their scheduled arrivals. New entrants and limited incumbents were permitted to add a small number of scheduled flights. Based on the information provided through the meetings and submissions filed in the docket, the FAA issued a comprehensive order on scheduled arrivals at O'Hare on August 18, 2004, limiting arrivals by domestic carriers to 88 during most hours of the day and implementing the above agreement (August 2004 Order). The Order took effect November 1, 2004, and will expire on April 30, 2005. On February 10, 2005, the FAA issued an order proposing to extend the August 2004 Order's effect through October 2005. The FAA sought the views of interested persons on the advisability of extending the August 2004 Order in Docket FAA–2004–16944.

The FAA is reviewing a proposal by the City of Chicago to reconfigure O'Hare and expand its capacity to accommodate existing and future aviation operating demands. However, such a solution, if approved, would yield modest benefits in the near term (2007) and require many years (2013) to be fully realized. The FAA also considered whether any near-term air traffic procedural changes, airspace redesign, or equipage upgrades could provide sufficient capacity or efficiency gains to meet the level of airport demand experienced in late 2003 and much of 2004. Greater utilization of higher capacity runway configurations, some of which are dependent on weather and other operating conditions, could increase O'Hare's average arrival rate. The FAA will continue to monitor the actual and predicted airport operations to ensure that capacity does not routinely go unused. The FAA is reviewing the possibility that additional aircraft might be able to utilize land and hold short operations under more runway configurations, and if approved, this could provide operational arrival and departure benefits. New category II and category III instrumental landing systems for runways 27L and 27R are expected to be operational during fall 2005 and would increase arrival capacity in adverse weather conditions. The FAA is also considering airspace redesign as part of the Midwest Airspace Capacity Enhancement (MACE) plan, including new routes and sectors in the Chicago, Cleveland, and Indianapolis Air Route Traffic Control Centers, as well as departure and arrival routes in the Chicago airspace area that could increase capacity at O'Hare. Environmental review for these proposed changes is expected to be complete by late 2005. In addition, on January 20, 2005, the FAA implemented reduced vertical separation minima that added six new flight levels between 29,000 and 41,000 feet. The new flight levels increase overall efficiency in the national airspace system. In the future, this may provide alternatives to address the cumulative impact of aircraft departing from O'Hare and other Midwest airports.

The NPRM, as proposed, would allow the FAA to recognize any capacity increases realized before the proposed sunset of the rule by allocating additional arrival authorizations. However, the short-term air traffic control changes will not, in themselves, result in sufficient capacity to meet historic demand. Accordingly, the FAA is now faced with the question of what to do when the August 2004 Order expires. Several courses of action have been considered.

One possibility is to allow the August 2004 Order to expire and to let events run their course without FAA intervention. This would leave no administrative mechanism to prevent each individual airline from increasing its own flights. Air traffic control procedures and traffic management initiatives such as ground delay programs, miles-in-trail restrictions, and aircraft re-routing, would ensure that any additional flights did not affect air safety. The FAA's recent experience with this option is characterized by the congestion-related delays that O'Hare experienced in late 2003. Therefore, the likely outcome of this approach is a renewed, significant increase in total airline flights at O'Hare. Because the cost of the resulting delays is not fully internalized by any individual air carrier, both experience and theory suggest that without any constraint, each carrier would, at least initially, continue adding flights despite an unacceptable level of congestion and delay. It was such a situation that caused the FAA to intervene at O'Hare in early 2004. It has been argued that air carriers could eventually find equilibrium at O'Hare if given enough time. We invite comments on the option of allowing the August 2004 Order to expire and taking no action with respect to air carrier scheduling at O'Hare.

Alternatively, the FAA could extend the August 2004 Order or renegotiate with air carriers for a voluntary schedule over a longer term than the August 2004 Order. As previously noted, the FAA on February 10, 2005, issued an order to show cause, which invites interested parties to comment on the FAA's proposal to extend the August 2004 Order until October 31, 2005. Nevertheless, an extension of the current order may not be desirable for any period longer than is necessary to complete this rulemaking. As the problems faced by air carrier scheduling committees in the 1980s demonstrate, a growing economy will continue to boost passenger demand. In the face of such market pressures, not all carriers may accept the FAA's proposal to extend the August 2004 Order or the issuance of a new order supplanting the August 2004 Order. Additionally, this NPRM raises issues that are not likely to be resolved in the context of a scheduling reduction meeting, including limitations on foreign air carriers and the creation of a blind buy/sell procedure.

The FAA and Office of the Secretary of Transportation (OST) are also considering various administrative and market-based mechanisms that may improve on prior methods of allocating available capacity at an airport where capacity is not able to meet aviation demand. The FAA and OST have contracted with the National Center of Excellence for Aviation Operations Research (NEXTOR) to conduct research on various proposals to implement at LaGuardia airport upon the expiration of the HDR. The market-based mechanisms being researched for LaGuardia airport are among several measures that could be implemented at O'Hare, if capacity improvements are inadequate to achieve delay reduction. However, the research and FAA and OST policy evaluations will not be completed until the latter half of 2005. In addition, while market-based mechanisms are among those being evaluated, they raise many issues, including the most practical implementation of such a regime, the effect of any such program on airfares, consideration of applicable legal requirements, the consistency of such a program with international agreements, the use of any ''surplus'' revenue, as well as the impact on new entrants, small airlines, competition, and service to small communities. An immediate approach is needed to manage the congestion and delays at O'Hare in the interim.

Accordingly, the FAA is proposing a rule to manage congestion and delay at O'Hare until April 6, 2008, by which time one of three possibilities will have presented itself: (1) The first phase of an FAA-approved O'Hare Modernization Plan (OMP) yields enough capacity to obviate the need for government action to address congestion; (2) the first phase of an approved OMP does not yield enough capacity in the medium-term

and continued action is necessary until enough long-term capacity comes on-line; or (3) the OMP is not approved and further action is needed over the medium and long term.

Authority

The FAA has broad authority under 49 U.S.C. 40103 to regulate the use of the navigable airspace of the United States. This section authorizes the FAA to develop plans and policy for the use of navigable airspace and to assign the use that the FAA deems necessary to its safe and efficient utilization. It further directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace. The FAA interprets its broad statutory authority to ensure the efficient use of the navigable airspace to encompass management of the nationwide system of air commerce and air traffic control.

In addition to FAA's authority and responsibilities with respect to the efficient use of airspace, the Secretary of Transportation is required to consider several other objectives as being in the public interest, including: Keeping available a variety of adequate, economic, efficient, and low-priced air services; placing maximum reliance on competitive market forces and on actual and potential competition; avoiding airline industry conditions that would tend to allow at least one air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation; encouraging, developing, and maintaining an air transportation system relying on actual and potential competition; encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry; maintaining a complete and convenient system of scheduled air transportation for small communities; ensuring that consumers in all regions of the United States, including those in small communities and rural and remote areas, have access to affordable, regularly scheduled air service; and acting consistently with obligations of the U.S. Government under international agreements. See 49 U.S.C. 40101(a)(4), (6), (10)–(13) and (16), and 40105(b).

The Proposal

Limit on O'Hare Arrivals During Peak Periods

Under the proposed rule, the FAA would limit the number of scheduled flight arrivals at O'Hare from 7 a.m. and 8:59 p.m. local time Monday through Friday and from noon to 8:59 p.m. on Sunday. Scheduled arrivals would be limited to 88 per hour (and to 50 in any half hour) between 7 a.m. and 7:59 p.m.; [1] however, from 8 p.m. to 8:59 the limit on scheduled arrivals would increase to 98. Arrival times would be assigned according to the procedures described elsewhere in this document. Unscheduled flight arrivals (such as, arrivals by general aviation, the military, and certain charter services) would be restricted to four (4) per hour, under an advance reservation system described in proposed Special Federal Aviation Regulation (SFAR) No. 105 Proposed Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport, published by the FAA on October 20, 2004 (69 FR 61708), which after adoption would be replaced by this proposed rule. Thus, arrivals in total would be limited to 92 per hour during all regulated periods (except for the 8 p.m. to 8:59 p.m. hour).

The proposed hourly arrival limits are based on the analysis originally done as part of the delay-reduction proceedings that resulted in the August 2004 Order, the FAA's confidence in the general reliability of its delay-projection models, and the FAA's actual experience with operations at O'Hare following the implementation of the Order. In establishing a target (as required by 49 U.S.C. 41722) for the delay-reduction proceedings, the FAA examined the airport's operations over 140 weekdays from November 3, 2003, through May 14, 2004, and found that it had accommodated an average of 90 arrivals per hour in all weather conditions, including an average of 86 scheduled and four (4) unscheduled flights, during the peak period of noon through 6:59 p.m. Because demand for access to O'Hare is highest at these hours, the arrival rate experienced over this period would tend to indicate the maximum average capacity of the airport under various weather, runway, and operating conditions. The figure also correlated closely to the reported average airport acceptance rate for this period,[2] suggesting that there was little or no unused capacity during these times.

In the delay-reduction proceedings the Administrator had initially set a rate of 86 scheduled arrivals per hour and 22 arrivals for each rolling 15-minute period as a target for industry agreement; this assumed that the historical average of four additional unscheduled arrivals per hour by general aviation, military, cargo, and charter flights would continue. In ultimately deciding to use a somewhat higher arrival rate of 88 scheduled operations per hour in the Order, the Administrator considered information provided by air carriers during the scheduling reduction discussions. These carriers maintained that such a limitation would result in unused airport capacity under many conditions and that the use of a 15-minute limitation on arrivals was overly restrictive and would unnecessarily hamper the carriers' scheduling flexibility. The participants proposed that the FAA consider allowing a scheduled arrival rate of at least 90 flights per hour and constrain operations by no longer than 30-minute periods. The airlines also requested that the FAA allow more flights toward the end of the service day in order to allow them to complete connections and reposition their fleets for the following day.

After consideration of these arguments and the results forecast by the agency's delay-reduction models, the Administrator decided to use a scheduled arrival rate of approximately 88 flights for the period between 7 a.m. and 7:59 p.m. and 98 arrivals in the 8 p.m. hour (which is the end of the ''service day,'' when the effect of any delays on later operations is most limited). The Administrator also determined that the use of a ''rolling'' constraint over each 30-minute period of no more than 50 arrivals (with the exception of the 8 p.m. hour) would achieve a desirable level of delay reduction. The proposed rule, if adopted, would set similar 30-minute limits as were imposed by the Order but would not establish a regulatory process for a ''rolling'' limit. Recognizing that schedule peaking within a short time period significantly increases delays, the FAA intends to closely monitor scheduling practices, and as at other airports, we will encourage carriers to schedule realistically within O'Hare's capacity.

As was the case with the August 2004 Order, the FAA is now proposing to restrict arrivals only, rather than both arrivals and departures, as had been the case under the High Density Rule. Limiting the cap to only arrivals is simpler and lessens the government's intervention in airline scheduling. The number and timing of arrivals usually

[1] The Order provides for 89 arrivals during certain hours to accommodate planned schedule increases by certain limited incumbent carriers. The proposed rule would permit similar exceptions above 88 arrivals per hour in order to account for existing schedules and foreign air carriers.

[2] The airport acceptance rate or airport arrival rate is the number of arrivals an airport is capable of accepting each hour. The rate changes to reflect the impact of weather or other operating conditions on the arrival capacity.

closely correlates to the number and timing of departures. Moreover, in the FAA's experience, arrival delays tend to be more disruptive to the system and cause delays in later flights since a late-arriving aircraft is not available for an on time departure.

In setting the hourly arrival caps in the Order, and proposing the same caps for use in this rule, the Administrator has also relied on analyses performed at the FAA's request by MITRE Corporation,[3] which ran computer modeling to simulate the effect of hypothetical schedule reductions on the level of flight delays at O'Hare. In the FAA's experience, these models are highly reliable in forecasting the effect of various schedules on airport delays. To assess the impact of potential reductions, the FAA and MITRE selected several different O'Hare schedules for air carriers publishing their flights in the Official Airline Guide (OAG) and analyzed them to simulate the resulting delays in arrival queues. For each scenario, MITRE assumed a total of four (4) unscheduled flights per hour; because the exact times these flights arrive are unknown, they were randomly assigned arrival times during each hour. Because arrival queuing delays also depend on available capacity at ORD (which can change with runway, weather and operating conditions), actual hourly arrival capacity was included for each weekday in the model.

The models predicted that constraints used in the August 2004 Order (that is, an arrival rate of approximately 88 scheduled and four unscheduled operations per hour, together with the 30-minute constraints discussed above) would reduce O'Hare delays by approximately 20 percent from the levels then attributable to schedules in effect at the time of the August 2004 Order. The FAA also simulated the results of a completely unconstrained schedule—using the industry's then-proposed November 2004 schedules—and calculated that delays under the Order would be approximately 43 percent less severe than would be experienced if no action were taken and those November 2004 schedules were allowed to take effect.

Preliminary results of the Order, as reflected in FAA's calculated O'Hare on-time performance statistics for the month of November, 2004, confirm that the arrival limitations adopted in the Order have materially reduced delays and thus support adopting identical limitations in the proposed rule. Although the reduction in delays has somewhat exceeded the FAA's forecast, the Administrator believes that there is insufficient data to support a relaxation of those limits. During this rulemaking proceeding, however, the FAA will continue to review the proposed limitations and, if justified by the models and actual delay statistics, consider whether the limitations should be modified in response to changing conditions at O'Hare. In addition, as described below, the proposed rule provides for the FAA periodically to reevaluate the available capacity at O'Hare and to make adjustments in the arrival limits as warranted.

As proposed, the rule would maintain the limitations on arrivals assignments established in the August 2004 Order. Until a final rule is adopted in this rulemaking, the cumulative delay statistics and modeling results may demonstrate to the Administrator that increasing the number of arrivals above what is proposed in this notice will still allow for acceptable operational performance. If so, the arrival cap on scheduled operations may be raised in a final rule, if adopted.

It is also possible that air traffic procedural changes or other enhancements will result in a limited increase in arrival capacity over the duration of the proposed rule. Therefore, the FAA will periodically reexamine the level of available capacity at O'Hare. Under the proposed rule, every six months, the FAA would review the level and length of delays, operating conditions at the airport and other relevant factors to determine whether more arrivals can be allowed. The FAA estimates for the purposes of this proposal that such a review would, in no event, result in hourly arrivals in excess of O'Hare's current capacity under optimal conditions, which is 100 arrivals per hour.

The FAA also is considering whether the final rule should provide a mechanism through which the level of available capacity would be adjusted based on considerations other than delays and efficiency concerns. Specifically, we seek comment on whether the hourly limits on Arrival Authorizations should be adjustable based on broader public interest concerns as set forth in 49 U.S.C. 40101 (a) (including keeping available low-priced air services, maintaining a system relying on actual and potential competition, and encouraging new entry), and if so, which concerns. Further, we seek comment on whether the process to make such adjustments shall be established in the rule or whether standing exemption authority should be relied upon.

Initial Assignment of Arrival Authorizations

Under the proposal, the FAA would initially assign Arrival Authorizations[4] based on the terms of August 2004 Order, as amended. The FAA would first look to the scheduled arrivals for each affected domestic carrier in effect from November 1, 2004 through November 7, 2004.[5] Thus, if a carrier published a daily scheduled arrival at 1 pm in the first week of November, it would retain that arrival time by receiving the assignment of an Arrival Authorization for that operation. In this manner, the arrivals permitted under the August 2004 Order would be preserved. The FAA would rely on its records to determine when an arrival had been scheduled during the first week of November and which carrier held the appropriate authorization. Each initial Arrival Authorization would be for the corresponding 30-minute period indicated by the FAA's records. In the event that a carrier had not published a scheduled arrival during the first week of November to which it was entitled under the August 2004 Order, the terms of the Order would control.

The FAA would publish its proposed initial assignment of scheduled Arrival Authorizations 14 days before the effective date of the rule. The FAA Vice President, System Operations Services for the Air Traffic Organization would be the final decision-maker with respect to the initial assignment of scheduled Arrival Authorizations.

By assigning Arrival Authorizations to each carrier in a manner that corresponds with the arrivals actually scheduled by such carrier during the first week of November 2004, the FAA intends to minimize any operational or economic disruption to the airline industry upon implementation of the proposed rule. Assignment of Arrival Authorizations to carriers currently holding them would avoid immediate disruption of air service to the public.

Additionally, the schedules flown during that seven-day period reflect an

[3] MITRE is a not-for-profit corporation working with government clients. It addresses issues of critical national importance, combining systems engineering and information technology to develop innovative solutions. MITRE's work is focused within three Federally Funded Research and Development Centers, one of which performs systems research and development work for the Federal Aviation Administration and other civil aviation authorities.

[4] An Arrival Authorization is the operational authority assigned to an air carrier or foreign air carrier by the FAA to conduct one scheduled IFR arrival operation each week on a specific day of the week during a specific 30-minute period at O'Hare.

[5] We chose the first week of November because that was the first seven-day period during which the August 2004 Order was effective.

agreement reached between each domestic and Canadian air carrier and the FAA as part of the voluntary schedule reduction discussions that occurred in August 2004 under the auspices of section 41722 of Title 49. Each carrier thus would be able to maintain the schedule it put in place when the August 2004 Order was adopted and which it accepted after negotiation. The FAA is concerned that other assignment methods—such as a random lottery of authorizations—would not be consistent with the results of the voluntary discussions.

The proposed assignment method is also consistent with the FAA's handling of similar issues in the past, such as the slot allocation and transfer methods under the High Density Rule, 50 FR 52180, December 20, 1985. Concerns were expressed in the context of that rule that grandfathering existing slot allocations would confer a financial windfall on incumbent carriers and adversely effect new entrants. While acknowledging the benefit to incumbent carriers, the Department believed there, as here, that this effect was necessary in order to minimize disruption of existing service patterns.

Code-Sharing Arrangements

The FAA proposes that, with a limited exception explained below, each Arrival Authorization would be allocated solely to the carrier that actually operated the flight, regardless of any code-sharing agreements. We acknowledge that in other proceedings, the Department has determined whether there is an affiliate relationship by looking to the designator code or other code-sharing arrangement.[6] We are concerned that this approach would artificially restrict the growth opportunities of limited incumbents at O'Hare. Although code-sharing agreements are common in parent-subsidiary type relationships, they are also increasingly present in marketing arrangements between carriers that are essentially independent and largely control their own sales. If the FAA were to deem an affiliate relationship to exist by virtue of code-sharing agreements alone, code-share partners like American and Alaska would become affiliated carriers for purposes of this rule. This would have the effect of denying Alaska the opportunities afforded other limited incumbents not involved in code-sharing agreements.

At the same time, in making our initial Arrival Authorization determinations, the FAA does not intend to assign Arrival Authorizations to a carrier that is essentially operating its service as a contractor for another carrier and does not market its services independently and in its own name. If we were to treat these contract carriers as independent carriers, a carrier with a significant number of incumbent Arrival Authorizations could take advantage of preferences for new entrants and incumbents by entering into affiliate relationships with the sole purpose of increasing their number of Arrival Authorizations. Thus, under the proposal, where the operating carrier conducts the flight solely under the control of another carrier, the carrier controlling the inventory of the flight would receive the assignment.

Treatment of Foreign Carriers

The FAA proposes assigning Arrival Authorizations to foreign carriers based on seasonal usage. (Canadian carriers are treated differently from other foreign carriers under this rule as discussed in detail below.) Because there is more seasonal variation in international service some foreign carriers could be excluded from the initial assignment or be assigned Arrival Authorizations that do not match their scheduled summer operating times if assignments were based only on November 2004 schedules. Accordingly, we propose establishing a seasonal assignment procedure whereby a foreign carrier's initial assignment of Arrival Authorizations would be based on its published schedules for the winter season that began October 2004 and for the summer season that began April 2004. The FAA Vice President, Systems Operations Services for the Air Traffic Organization would be the final decision-maker with respect to the initial assignment of scheduled Arrival Authorizations.

Categories of Operators

Upon the initial assignment, all carriers would fall into one of three following categories: incumbent, limited incumbent or new entrant. A new entrant would be a carrier that does not operate any Arrival Authorizations at O'Hare and, has never held an Arrival Authorization. A limited incumbent carrier would be a carrier that operates eight or fewer Arrival Authorizations at O'Hare and has never sold or given up an Arrival Authorization. All other carriers would be treated as incumbent carriers.

We recognize that canceling limited incumbent status for a carrier that chooses to sell an Arrival Authorization could discourage legitimate business choices. The practical impact, however, is merely the loss of a preference for future Arrival Authorization assignments; the carrier also retains the ability to obtain Arrival Authorizations on the same basis as any other incumbent. We have tentatively determined that the approach toward limited incumbents presented here represents a fair treatment of carriers that are not new entrants but that should be afforded some additional consideration due to their limited presence at the airport. The proposed definition here is consistent with the August 2004 Order.

Treatment of New Entrants/Limited Incumbents and New Capacity

The competing policy considerations that the Administrator weighed in her August 2004 Order confront the agency again today, because demand for access to O'Hare still exceeds capacity.[7] Although the law directs the FAA to manage the safe and efficient use of the navigable airspace,[8] we also look to DOT's mandates, overall Congressional policy,[9] and the public interest for guidance.

Several factors here suggest that it would be appropriate to provide a preference to new entrants and limited incumbents at the airport. First, as we noted above, the Secretary of Transportation considers a number of matters in the public interest when carrying out the Department's functions, including ''placing maximum reliance on competitive market forces and competition.'' [10] Second, the Airline Deregulation Act of 1978, which reduced the regulation of domestic and international air transportation, enunciated pro-competitive policies. When addressing airport access issues, Congress has frequently favored new entrants over incumbents.[11] Congress has added provisions to the statutes governing airport grants and passenger facility charges to encourage airports to adopt policies that will promote competition.[12] Third, past OST and FAA rules and orders relating to flight restrictions at the high density airports

[6] Cf. 49 U.S.C. 41714(k).

[7] Under the order, the two hubbing carriers at the airport were the only carriers that reduced operations and retimed a number of flights. These carriers also represent the largest carrier investment in operations and infrastructure at the airport. However, these carriers correspondingly have added a very large number of flights in the last three years. (During peak hours and from April 2000 to November 2003, American added 56 flights, United added 225 and the net increase of all other carriers at the airport was six.)

[8] 49 U.S.C. 40103(b).

[9] *See, e.g., Delta Air Lines* v. *CAB*, 674 F.2d 1 (D.C. Cir. 1982).

[10] 49 U.S.C. 40101(a)(6).

[11] 49 U.S.C. 41714(c), (h), 41716(b), 41717(c), 41718(b)(1).

[12] 49 U.S.C. 40117(k), 47106(f), and 47107(s).

also took into account the need to promote competition through new entry and expansion by limited incumbents.[13]

Thus, as capacity becomes available during the duration of the rule, the FAA proposes to establish a limited preference for new entrants and limited incumbents. If the capacity grows per hour from 88 up to 90 arrivals, any capacity not needed to accommodate foreign air carriers would be assigned by lottery to new entrants and limited incumbents. If Arrival Authorizations remain, they would be assigned to incumbent carriers on an interim basis until the next lottery, when they would again be made available first to new entrants and limited incumbents.

Once the capacity reaches 90 per hour, the preference for new entrants and limited incumbents would be suspended until these rules terminate. Any new capacity resulting in additional Arrival Authorizations would then be assigned by lottery with no preference based on carrier identity. At that point all carriers would be placed on an equal footing.

Our proposal to continue to favor new entrants and limited incumbents in the lottery process is consistent with the equities of the situation at O'Hare. The two largest airlines have added a very large number of flights in the last three years. While this build-up was lawful, it resulted in congestion at O'Hare, as stated earlier. Even under this proposal, American and United will still operate the vast majority of flights at O'Hare, with a greater percentage of Arrival Authorizations at O'Hare than they had slots under the HDR before its phase-out, and thus the two airlines will have a substantial ability and greater flexibility than rivals to shift flights in response to consumer demand and initiatives taken by competitors. We tentatively believe that this proposal represents a reasonable compromise between promoting competition and recognizing the substantial investments of existing carriers at O'Hare. We invite commenters to discuss whether the limited preference for new entrants and limited incumbents would promote competition (and if so, what form the competitive benefits might take), and whether the service benefits potentially obtainable from the hubbing airlines' networks argue against the preference in the allocation of arrival rights if the FAA determines that the airport's capacity will allow 89 or 90 scheduled hourly arrivals.

Blind Buy/Sell

The proposal does not create property rights in any assignment of Arrival Authorizations. However, the purchase and sale of Arrival Authorizations would be allowed, in order to advance the goals of promoting the most efficient use of the airspace and maximizing reliance on market forces. See for example, paragraphs (6) and (12) of section 40101(a) of Title 49 of the United States Code. Permitting such transactions will promote operating efficiency and minimize the need for on-going government intervention in the assignment and distribution of O'Hare Arrival Authorizations. There would be no further need for the FAA to engage in the lengthy negotiations with airlines, as it had to do throughout 2004. Nor will there be any risk that these negotiations would fail to bear fruit leaving some airlines dissatisfied or all airlines with a serious congestion and delay problem. Each airline will enjoy an equal opportunity to adjust its schedules though the purchase or sale of Arrival Authorizations.

Under the High Density Rule the Department received complaints about the buy/sell process as it was implemented. The rule permitted the buyer and seller to deal directly with each other and therefore the identity of the carriers were known to each other. Various parties complained to the Department that incumbent carriers would refuse to sell to a new entrant or other airline that could pose a competitive threat. Some airlines and other entities have complained that they were not even aware of opportunities to purchase slots.[14]

To prevent airlines from engaging in this sort of collusion or purposely not selling to a particular competitor, sales of Arrival Authorizations under this proposal would be permitted only through a blind market overseen by the FAA. This would ensure that new entrants and all other airlines have an equal opportunity to purchase Arrival Authorizations. The offer to sell an Arrival Authorization would be posted in a manner that would ensure notice to all airlines and give all airlines an equal opportunity to bid without disclosing the identity of the seller. Similarly, the identity of the bidders would not be disclosed until the highest bid is accepted and the transfer of the authorization is made.

The only consideration permitted for transactions in the blind market would be money. Use of real property such as gates, non-monetary assets or other services in lieu of cash would not be permitted. Also, under the proposal, Arrival Authorizations obtained by a carrier in a lottery by virtue of the carrier's status as a new entrant or limited incumbent could not be sold or leased until they had been used for at least twelve months, except that they could be sold or leased within that period to another new entrant or limited incumbent. Such a restriction is consistent with the approach taken by the agency under the HDR, which restricted new entrants and limited incumbents from selling or leasing slots obtained in a lottery for two years thereafter (unless transferred to another new entrant or limited incumbent). Our proposal would help ensure that airlines seeking an allocation of slots actually intend to use the slots they acquire while fulfilling an important policy objective with respect to competition at O'Hare.

An airline seeking to sell an Arrival Authorization would have to provide 30 days' notice to the FAA with the Arrival Authorization number, times, frequencies, and effective date. The FAA would post information about the proposed sale and closing date for bids. Information identifying the seller would not be posted. Offers to buy must be made by the closing date. The FAA would forward the highest bid to the seller without any identification of the proposed buyer. The seller would have three business days to make a decision. If the seller accepts the bid, the FAA would notify the winning bidder and require both airlines to submit the necessary information to transfer the Arrival Authorization. The buyer may not use the Arrival Authorization until the FAA has received written confirmation of the transfer. A record of each sale will be kept on file by the FAA and be made available to the public upon request. Only airlines would be allowed to participate in this market.

Although sales under the blind buy-sell would be allowed as described above, the proposed rule does not currently provide for leasing and sub-leasing of these authorizations.

[13] *See, e.g.*, 14 CFR 93.225 (lottery of available slots); High Density Airports: Notice of Extension of the Lottery Allocation and Notice of Lottery for Limited Slot Exemptions at LaGuardia Airport 66 FR 41294 (Aug. 7, 2001) (expanding the scope of new entrants eligible to participate in the lottery to those that did not participate in the Dec. 4, 2000, including those that had not applied for the AIR–21 slot exemptions by Dec. 4, 2000); High Density Airports, 67 FR 65826 (Oct. 28, 2002) (adopting the new entrant preference procedure for reallocating withdrawn or returned lottery slot exemptions at LaGuardia). In *Northwest Airlines* v. *Goldschmidt*, the court agreed that an allocation of slots to carriers that increased low-fare service would be consistent with the pro-competitive policy established by the Airline Deregulation Act of 1978. (645 F.2d 1309 (8th Cir. 1980)).

[14] The DOT has docketed three petitions on this subject in recent years. Dockets OST–2004–18586, OST–2002–13650, and FAA–2001–9156. The petitions are available for review on the DOT's Web site.

However, the FAA is considering allowing carriers to lease (and sublease) Arrival Authorizations, because leasing would provide carriers greater flexibility and promote the more efficient use of Arrival Authorizations. Leasing would allow carriers to adjust their schedules based on changing seasonal or market conditions, and it would make it easier for carriers to enter new markets and determine whether market conditions justified the purchase of Arrival Authorizations.

However, as explained above, we would require a blind market for the sale of any Arrival Authorization in order to prevent collusion and efforts by an Arrival Authorization holder to sell Arrival Authorizations to its weakest competitor rather than the carrier that could use the Arrival Authorizations most efficiently and profitably. A rule allowing the lease of Arrival Authorizations must similarly include conditions that would prevent collusion and deny the lessor carrier the ability to choose which competitor could lease its Arrival Authorizations. The FAA therefore believes that leases and subleases, if allowed, should be negotiated only through a process emulating the proposed blind market for the sale of Arrival Authorizations. A lessor thus would give the FAA notice of its intent to lease Arrival Authorizations, the FAA would invite other carriers to bid for the lease, no consideration other than cash could be offered by the lessee, the lease would not restrict the lessee's ability to use the Arrival Authorizations, and the lessor would determine at most the length of the lease (alternatively the rule could set a minimum length for all leases of Arrival Authorizations). The FAA invites comments on the potential impact of a rule allowing leases and subleases.

One-for-One Trades

In addition, the proposed rule would permit the one-for-one exchange of Arrival Authorizations between airlines so long as no additional consideration was provided. Under the proposal, these exchanges must be publicly disclosed and could take place outside of the blind market because many of these arrangements are for operational reasons and could be accomplished only through multi-carrier trades. Such exchanges would be an effective way to deal with variations in seasonal demand and airline business strategies. The authorizations could not be used until written confirmation of the transaction is received from the FAA.

Canadian Carriers

In 1995, the U.S. and Canadian governments entered into a bilateral agreement that phased in elements of an open trans border aviation regime between the two countries. At the time that the U.S. and Canada adopted the bilateral agreement, the HDR was still in effect at O'Hare. Annex II of the agreement specifically addressed access to O'Hare.

Annex II provided Canadian air carriers with a base level of 36 O'Hare arrival and departure slots during the summer season and 32 arrival and departure slots during the winter season. Under the agreement, the U.S. could not withdraw slots from a Canadian air carrier for reallocation to another air carrier for international operations or for reallocation to a new entrant air carrier if withdrawing the slot would reduce the Canadian air carriers below the base level. Nevertheless, all O'Hare slots operated by Canadian air carriers were subject to the minimum slot usage requirement in the HDR that governed the operations of U.S. air carriers.

Annex II also allowed Canadian air carriers to obtain slots at O'Hare under the same allocation system as U.S. air carriers. However, the FAA could withdraw any slots obtained by Canadian air carriers above the base level at any time for the FAA's operational need.

As a result of the 1995 bilateral agreement, the O'Hare slots of Canadian air carriers, which previously consisted of international slots, in effect converted to domestic slots. The bilateral agreement would likewise apply to the assignments of Arrival Authorizations at O'Hare under this proposed rule. Accordingly, the FAA proposes to treat Canadian air carriers identically to U.S. air carriers in this proposal, except that arrivals initially assigned to Canadian carriers will not be subject to withdrawal to accommodate other foreign carriers or new entrants.

Foreign Carriers

We propose to apply the rule described in this notice to foreign carriers in order to ensure a single regulatory framework governs all scheduled operations at O'Hare. While the August 2004 Order did not limit the number of foreign carrier flights (foreign air carriers could not participate in the scheduling-reduction discussions under 49 U.S.C. 41722), the Order did include these operations in determining the hourly limit of 88 arrivals per hour. The August 2004 Order also stated that the FAA planned to list O'Hare as a Schedules Facilitated Airport, Level 2, under the International Air Transport Association (IATA) guidelines. The FAA has made that designation for the summer 2005 scheduling season and foreign carriers were requested to submit their proposed schedules to the FAA in advance for review. The rule, as proposed, would mean that O'Hare is a Fully Coordinated Airport, Level 3, under IATA guidelines and the FAA would list it accordingly. The FAA would generally follow the IATA Worldwide Scheduling Guidelines to the extent they do not conflict with adopted rules and procedures.

The proposal would treat foreign carriers somewhat differently from U.S. and Canadian carriers because foreign airline services to the United States (and U.S. airline services to foreign countries) are subject to intergovernmental air services agreements imposing obligations on the United States and the foreign government. In addition, there are differences in the manner in which U.S. airlines and foreign airlines typically operate at O'Hare.

Each international air services agreement typically obligates the United States and the foreign government party to ensure that the flag carriers of each party have a fair and equal opportunity to compete in the market. The United States thus has some obligation to provide access to O'Hare for foreign airlines. U.S. carriers similarly need adequate access to slot-controlled airports overseas. Any rule governing Arrival Authorizations at O'Hare must allow the United States to comply with its obligations under international agreements and preserve reciprocal treatment on access to Arrival Authorizations and slots. Furthermore, as we stated in the August 2004 Order imposing temporary limits on O'Hare operations agreed upon by U.S. airlines, most foreign airlines operate only a few flights at O'Hare. Only three of the 22 non-Canadian foreign airlines serving O'Hare as of August 19, 2004, operated three or more daily roundtrips. Airlines serving a number of important international markets cannot, moreover, schedule flights throughout the day. Instead, operational and market demands require carriers to schedule their flights during a relatively small part of the day (the afternoon and evening for arriving transatlantic flights, for example). Foreign airlines are also more likely to operate seasonal services. Most of the U.S. airlines serving O'Hare, especially the two hubbing airlines, would hold a significant number of Arrival Authorizations and so would have some ability to shift flights

between domestic and foreign routes. In contrast, each foreign airline has been limited to serving its international routes and in any event would have few Arrival Authorizations.

With respect to the initial assignment of Arrival Authorizations, foreign airlines would be treated in a similar fashion to their domestic counterparts. However, in recognition of the greater seasonality in international operations, each foreign airline would be assigned Arrival Authorizations for the winter traffic season based on its published schedules for the winter season that began October 2004 and for the summer season that began April 2004. Moreover, foreign carriers, except Canadian carriers, would not be allowed to sell any of the Arrival Authorizations initially assigned to them. Also, these Arrival Authorizations would not be subject to any of the proposed minimum usage provisions described below. Nonetheless, an authorization initially assigned to a foreign airline would have to be returned to the FAA if not used during any fifteen-day period.

There are two options being considered with respect to the treatment of foreign carriers in the context of providing additional access to O'Hare beyond initial assignments or for new entry.

Under the first option (the administrative option), the FAA would accommodate requests by foreign carriers for new or additional access administratively. The FAA would provide these Arrival Authorizations out of any unused Arrival Authorizations that FAA may have or an Arrival Authorization may be withdrawn from a U.S. airline. Foreign air carriers would not be able to buy, sell or lease Arrival Authorizations or to participate in any lottery; however, they could participate in one-for-one trades as described above.

Under the second option (the elective option), to obtain Arrival Authorizations above their initial assignments, if any, foreign carriers could elect to request an Arrival Authorization administratively, as described above, or to be treated as U.S. and Canadian carriers are treated. In other words, a foreign carrier could decide that it would rather obtain arrivals for new entry or additional access through a lottery or blind market. With respect to arrivals obtained through those means, a carrier would be subjected to the same rules as U.S. and Canadian carriers, although foreign carriers would still not be able to buy, sell or lease their initial assignments

A foreign carrier pursuing the opportunity to be treated as U.S. and Canadian carriers under the elective option would not be allowed at a later point to seek access to Arrival Authorizations from the FAA as described in the administrative option. Similarly, any carrier that obtains an arrival reservation as described in the first option could not later decide that it wanted to be treated the same as U.S. and Canadian carriers. The election to be treated one way or the other would be made the first time a foreign carrier sought an Arrival Authorization above its initial assignment after the rule goes into effect.

These options should provide a transparent mechanism for foreign airlines to exercise the right to serve Chicago provided for in our bilateral air services agreements. Under any of these approaches, of course, the Department of Transportation would reserve the right to take action with respect to any foreign air carrier whose homeland was not providing to U.S. air carriers equivalent rights of access to its airports, as determined by the Secretary of Transportation.

We seek comments on the relative merits of these two options.

Minimum Usage Requirements

The FAA is considering whether the proposed rule should include a minimum usage requirement for Arrival Authorizations held by U.S. or Canadian air carriers and if so, what requirement to put in place. (As proposed, the rule would not impose any such requirement on foreign air carriers but would also limit the transferability of Arrival Authorizations held by them.) The FAA requests comments on the relative merits of (1) not imposing any minimum usage requirement, (2) requiring that each authorization be used at least 90 percent of the time (or be withdrawn), or (3) periodically requiring that least utilized Arrival Authorizations be withdrawn.

One alternative is not to impose any minimum usage requirement. Under this alternative, each air carrier would be free to use, or not use, its authorizations as it sees fit. Allowing each air carrier to determine the most efficient use of its Arrival Authorizations is arguably consistent with a free marketplace and would remove any incentive that may otherwise exist for airlines to operate flights solely to preserve their allotment of authorizations from the FAA. Because unnecessary flight operations only serve to worsen the problem of congestion at O'Hare, a use-or-lose scheme could undermine the effectiveness of the proposed rule. At the same time, however, in the absence of a minimum use requirement, air carriers who hold the largest positions at O'Hare and hence the most authorizations could hoard existing authorizations to increase the value of their holdings or simply to deprive competitors of greater access to the airport.

The second alternative is to adopt a ''use-or-lose'' provision that would require air carriers to utilize each authorization they hold at least 90 percent of the time over a two-month reporting period. Any Arrival Authorization used less frequently would be withdrawn after notice to the holder; we anticipate, however, that each carrier receiving such notice would first sell the affected authorizations on the secondary market. Under this alternative, the 90 percent usage requirement would apply only during the restricted hours (that is, Saturdays and Sunday mornings, as well as other non-regulated hours would be excluded from the usage requirement). The Thanksgiving, Christmas, and New Year's holiday periods would also be excluded. The use or lose requirement would also be waived initially for newly acquired authorizations, during a strike, or in other circumstances as determined by the FAA. In order to implement this provision, a periodic reporting requirement would be imposed.

Under the High Density Rule the FAA imposed a minimum usage requirement of 80 percent; the standard was criticized as too lax. Adopting a 90 percent use-or-lose requirement would ensure that a scarce public resource, arrival times at O'Hare, is exploited to the greatest possible extent. Requiring a utilization rate of 90 percent over a 2-month period also makes it more difficult for carriers holding authorizations to allocate cancellations among their base of holdings. In comments concerning the High Density Rule, the staff of the Bureau of Economics of the Federal Trade Commission (FTC) submitted a comprehensive analysis showing that most airlines slot usage met or exceeded the proposed 90 percent minimum for weekday slots in any event. Nevertheless, the FAA invites comments on whether a 90 percent threshold is so high that it may cause airlines to lose authorizations due to unforeseen scheduling conflicts that they could have used productively at a lower threshold.[15]

The third alternative is to periodically identify the least utilized Arrival Authorizations and require that they be

[15] The proposed use-or-lose requirement would include similar waivers that existed under the HDR's use-or-lose rule that would provide exceptions for exigencies such as bad weather or mechanical problems.

withdrawn for reassignment. Under this option, Arrival Authorizations ranking in the bottom one (1) percent in frequency of usage would be identified by the FAA, and each holder would be given notice that the authorizations would be withdrawn by a certain date. This option would provide a strong incentive to use this scarce resource to the maximum extent possible but would leave airlines unsure as to how much use is required in order to avoid losing the authorization. Since, the airlines generally would not have access to the usage statistics of their competitors, this option could leave authorization holders uncertain as to how much use is required in order to avoid losing the authorization.

The FAA is considering two methods for reassigning authorizations withdrawn as a result of usage requirements described above. Under either method the agency would consider foreign carrier needs before making a reassignment. Under the first method, the FAA would conduct a lottery, consisting of two rounds. In the first round, only new entrants and limited incumbents would be permitted to participate. In the second round any remaining Arrival Authorizations would be assigned by lottery to incumbent carriers at O'Hare.

Under the second method, carriers losing Arrival Authorizations would be required to sell them in the FAA's blind market. A carrier would be notified that it has failed to meet the usage requirement 45 days before the Arrival Authorization is to be withdrawn. It would then be posted for sale in the blind auction; however, new entrant and limited incumbent carriers would have preference in purchasing these withdrawn Arrival Authorizations. Incumbent carriers would have the chance to buy any Arrival Authorizations that were not purchased by new entrant or limited incumbent carriers, except that a carrier could not bid on an Arrival Authorization that had been withdrawn from it. Proceeds of a sale would go to the airline that lost the authorization and any unsold authorizations would be returned to the airline that lost them.

The FAA requests comments on the relative merits of these two reassignment methodologies for withdrawn Arrival Authorizations.

Reversion of Arrival Authorizations

As discussed above, Arrival Authorizations are not property rights but are temporary operating privileges. As such, they remain subject to FAA control. We propose allowing them to be bought and sold, subject to FAA restrictions, in order to promote their most efficient use. However, they may be withdrawn at any time to fulfill operational needs such as accommodating new entry by foreign carriers or to eliminate Arrival Authorizations due to reduced capacity. Arrival Authorizations would be withdrawn in accordance with the priority number originally assigned to each individual Arrival Authorization. A limited incumbent carrier would be protected from reversion of Arrival Authorizations. If the FAA determines that capacity must be reduced for a specified period of time, for example if a runway were temporarily closed, Arrival Authorizations would be withdrawn. Once the capacity is resumed, the withdrawn Arrival Authorizations would be returned to the carriers from which they were withdrawn.

The proposal also provides that all of the Arrival Authorizations held by any carrier would revert to the FAA if that carrier ceases all operations at O'Hare for any reason other than a strike or labor dispute.

The FAA proposes that for 12 months following a new entrant and limited incumbent lottery, an Arrival Authorization acquired by a new entrant or limited incumbent would be withdrawn by the FAA upon the sale, merger, or acquisition of more than 50 percent ownership or control of the carrier using the Arrival Authorization or one acquired by trade of that Arrival Authorization, if the resulting total of Arrival Authorizations assigned to the surviving entity would exceed eight.

Sunset Date

Although arrival caps are being proposed in this rule, imposing caps on the use of airport capacity does not meet aviation demand; rather, such caps artificially limit operations during certain hours to achieve the benefit of delay reduction. The FAA's preferred approach to reducing delay and congestion is to increase airport infrastructure so that capacity meets demand. Because a timely increase to airport capacity is not always feasible, alternative measures may be necessary to address congestion that adversely affects the efficiency of the national airspace system.

In light of the adverse impact that significant congestion-related delays at O'Hare have on airlines and passengers using that airport, and the collateral effect of such delays on the national airspace system, the FAA proposes in this notice to cap by regulation the number of arrivals at O'Hare during peak hours. The proposed rule includes a sunset date of April 6, 2008. If additional O'Hare capacity that is sufficient to abate the airport's significant delays does not become available within the period of this rule, the FAA may consider other congestion management techniques, such as market-based mechanisms. We would consider replacing this rule with such an alternative if doing so would be practical and otherwise comport with applicable policies and legal requirements.

The FAA proposed an April 2008 sunset date for a number of reasons. As previously noted, the City of Chicago has produced an O'Hare Modernization Program that the City of Chicago represents will adequately increase airport capacity and reduce levels of delay. A final FAA decision on the City's application is expected in September 2005. The first phase of the O'Hare Modernization Program, if approved, is expected to come on line in 2007. In addition, work is ongoing to improve the Instrument Landing Systems for runways 27L and 27R, which will improve their performance in adverse weather conditions. The proposed April 2008 sunset date for the FAA's proposed rule would address the present conditions at O'Hare until the benefits of any interim capacity enhancements are realized.

If the FAA does not approve the City of Chicago's O'Hare Modernization Program in 2005, the FAA would need to devise an alternative mechanism for limiting congestion and delay at O'Hare. Some of the market-based mechanisms under consideration require legislation and/or regulatory changes before they could be put into practice. An April 2008 sunset date for this proposed rule would provide the FAA with the time to develop and an alternate mechanism for use at O'Hare.

Despite the FAA's proposed sunset of this rule in April 2008, it is possible that an earlier sunset provision could be appropriate. If an alternative method to allocate capacity were identified, it might be possible to implement that method prior to 2008. It is also possible that changes in the airline industry could obviate the need for a congestion management rule at O'Hare before April 2008. In such an event, an earlier sunset would cause the FAA to revisit sooner the need to manage congestion at O'Hare. The FAA is specifically soliciting comments on whether this proposed rule should sunset before April 2008.

Small Community Air Service

In ''grandfathering'' the air carriers' existing schedules, the proposed rule

would enable airlines to continue operating all existing air service to small communities. Although the rule could provide for the withdrawal of Arrival Authorizations from air carriers in order to augment service to small communities, it does not do so. Nevertheless, the impact of this proposed rule on the quality of service to small communities will be monitored. If the quality of service to small communities is adversely affected, remedial action may be taken.

General Aviation and Other Unscheduled Operations

On October 20, 2004, the FAA published in the **Federal Register** proposed Special Federal Aviation Regulation No. 105 to address unscheduled operations at O'Hare (69 FR 61708). The proposal provided for a minimum of four arrivals per hour for unscheduled operators, including general aviation, military, cargo, and certain charter operations. The comment period for this proposal closed on November 1, 2004. The FAA intends to issue a final rule with respect to these operations. This final SFAR would subsequently be incorporated into this rule so that all operational limits on aircraft arrivals at O'Hare are in the same subpart.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Congestion and Delay Reduction at Chicago O'Hare International Airport.

Summary: The purpose of this rulemaking project is to adopt operational limits on the number of scheduled peak hour operations at O'Hare International Airport as an interim measure to manage congestion and delays. The rule would grant carriers at O'Hare the right to utilize the Arrival Authorizations until the rule sunsets on April 6, 2008. For the purpose of ensuring operational efficiency, the rule would permit one-for-one trades amongst the carriers, but the sale and lease of Arrival Authorizations would be conducted in a blind secondary market. In addition, the proposed rule incorporates provisions to modify the hourly operational limits if capacity at O'Hare expands.

Use of: Under this proposal, air carriers would be permitted to buy, sell and lease Arrival Authorizations in the blind secondary market. An airline seeking to sell an Arrival Authorization would have to provide 30 days' notice to the FAA with the Arrival Authorization number, times, frequencies, and effective date. The FAA will post information about the proposed sale and closing date for bids. Air carriers that participate in the blind market transaction would be required to submit their bid to the FAA. The only consideration permitted for transactions in the blind market would be money. Use of real property such as gates, non-monetary assets or other services in lieu of cash would not be permitted.

The proposed rule also permits the FAA to hold lotteries to allocate Arrival Authorizations to new entrants and existing air carriers at O'Hare. The FAA would publish a notice in the **Federal Register** announcing the lottery dates and any special procedures for the lotteries. Any air carrier, or foreign air carrier seeking to participate in any lottery must notify the FAA in writing, and such notification must be received by the FAA 15 days prior to the lottery date. The carrier must also disclose in its notification whether it has Common Ownership, as defined in this proposal, with any other carrier and, if so, identify such carrier.

Should a minimum usage requirement be adopted in this proposed rule, every scheduled U.S. air carrier and Canadian air carrier holding Arrival Authorizations would have to forward in writing to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1 and every 2 months thereafter. The report shall identify the aircraft identifier and flight number for which the Arrival Authorization was used and the scheduled arrival time. The report shall identify any Common Ownership or control of, by, or with any other carrier. A senior official of the carrier shall sign the report.

Respondents (including number of): The respondents to this proposed information requirement are operators of scheduled service at O'Hare, as well as any new entrant airline that intends to operate at O'Hare. FAA analysis indicates there may be as many as 50 operators participating in the blind secondary market transactions.

Frequency: The FAA anticipates conducting blind secondary market transactions whenever appropriate, depending upon whether any carriers indicate a desire to sell their Arrival Authorizations. The FAA would conduct lottery allocations as needed to allocate Arrival Authorizations as they become available. Under a Minimum Usage Requirement, U.S. and Canadian air carriers would be required to submit usage reports (as described above) every two months.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden as follows:

The FAA blind market is expected to operate at least twice a year, depending upon the desire of carriers' to sell Arrival Authorizations. For purposes of estimating the time burden of participation in the blind market, we assumed transactions would be conducted electronically. Since participants in the blind market could submit bids using an Internet web interface using electronic information technology, FAA does not expect the submission of bids to require new capital equipment. FAA would conduct lotteries as necessary to allocate available capacity. Similar to the blind market, lotteries could be conducted electronically. FAA analysis indicates there may be as many as 50 operators participating in each lottery and bi-annual blind market.

A proposed Minimum Usage reporting requirement would require U.S. and Canadian air carriers to submit reports on usage of their Arrival Authorizations every two months. If a minimum usage requirement is adopted, there are currently 12 domestic and Canadian air carriers that would be subject to the reporting requirement. Each reporting air carrier would be required to submit 6 annual reports; resulting in less than 20 reports over the term of the proposed rule.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of providing required information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by May 24, 2005, and should direct them to the address listed in the **ADDRESSES** section of this

document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, And Unfunded Mandates Assessment

This section of the regulatory analysis provides a summary of the preliminary regulatory evaluation results, the initial regulatory flexibility determination, the trade impact assessment and the unfunded mandates impact assessment.

Introduction

Changes to Federal regulations must undergo several regulatory impact analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 4 §§ 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this proposed rule (1) has benefits that justify its costs, is a major, economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would not adversely affect international trade; and (4) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, set forth in this document, are summarized below.

Total Costs and Benefits of This Rulemaking

• FAA estimates that this proposed rule would result in a 42 percent reduction in delay at O'Hare, generating present value *benefits* of $741 million relative to November 2003 delays.

• The total cost of this proposed rule includes air carrier costs associated with a loss in schedule flexibility and reduction in flights, passenger inconvenience as a result of fewer choices and potentially higher fares, and direct administrative costs of $1.13 million.

Who is Potentially Affected by This Rulemaking

• Operators of scheduled flights at O'Hare.

• Commercial airlines (incumbents—more than 8 arrivals; limited incumbents—8 or fewer arrivals; new entrants—do not yet operate at O'Hare; foreign operators).

• All communities, including small communities with air service to O'Hare.

• Passengers of scheduled flights to O'Hare.

• Chicago, Department of Aviation—municipality of O'Hare.

Key Assumptions

Principal Key Assumptions

• Baseline Flight Operations and Delay—OAG Schedule November 20, 2003 (1,454 daily arrival flights).

• Constrained Flight Operations and Delay—OAG Schedule—November 18, 2004 (1,430 gross daily arrival flights/ 1387 net daily flights adjusted for 3 percent cancellation rate); constrained to 88 scheduled arrivals per hour plus 4 unscheduled arrivals per hour.

• Daily Flight Completion Factor: 97 percent Daily Flight Cancellation Factor: 3 percent.

• Unscheduled arrivals are constrained to 4 arrivals per hour.

• No lost revenue due to cancelled flights—All passengers are rebooked or rerouted to their destination.

• Delay improvement over the baseline schedule is 12 minutes per flight (17,887 total minutes per day)—equivalent to a 42 percent improvement in delay—This delay improvement estimate was derived from MITRE's Queuing Delay Model, which measures delays of 1-minute or more against the OAG flight schedule.

• Annual estimates are adjusted to reflect the 1.5 days per week when the limits are not in effect (all day Saturday and until noon on Sunday).

Other Important Assumptions

• Discount Rate—7 percent.

• Period of Analysis—November 1, 2005 through April 6, 2008.

• Assumes 2005 Current Year Dollars.

• Rule Sunsets April 6, 2008.

• Operator Delay Cost Savings.

• Aircraft average variable costs per block hour—$1,935 per hour.

• Passenger Delay Cost Savings.

• Passenger Value of Time—$28.60 per hour.

Alternatives We Have Considered

• FAA considered four major alternatives to manage congestion and delays at O'Hare.

• Alternative #1—Let the August 18, 2004 order expire on April 30, 2005. Based on history, operators would likely continue to expand operations, further worsening airport delays.

• Alternative #2—Extend the August 18, 2004 order by issuing a show cause order as a bridge between the August 18th order and the proposals of this rulemaking action. It is difficult to obtain voluntary agreement and the operators would be unable to extend operations beyond the 88 arrivals per hour set by the order.

• Alternative #3—Implement a market-based solution such as an auction or congestion pricing. The FAA is exploring the feasibility of these solutions under a research project for LaGuardia airport. The results are not expected until later in 2005.

• Alternative #4—Implement this proposed rule, which would provide an interim solution.

• FAA is seeking comment on three options concerning minimum usage of Arrival Authorizations. The three options are:

• Option 1—No minimum usage requirements.

• Option 2–90 percent minimum usage required over a two-month period.

• Option 3—Bottom 1 percent utilized Arrival Authorizations over a six-month period could be withdrawn and reassigned through the blind market or lottery.

• FAA is seeking comments on two options concerning how foreign carriers might gain access to O'Hare, beyond the initial assignment of Arrival Authorizations. These two options are as follows:

• Administrative option—FAA could assign Arrival Authorizations out of any unused Arrival Authorizations or withdrawal an authorization from a U.S. carrier.

• Elective Option—Foreign carriers can elect to be treated the same as U.S. and Canadian operators and participate in assignment through lottery and blind market to gain additional access to O'Hare.

Benefits of This Rulemaking

• The primary benefits of this rule are derived from airline delay cost savings and passenger delay cost savings. Table 1 shows the annual benefits in present value dollars, which reflect the proration for the 5.5 days per week the operational caps are in effect, and the flight completion factor of 97 percent. The total benefits in present value dollars are $741 million.

TABLE 1.—TOTAL ANNUAL BENEFITS OF THE ORD NPRM

[present value dollars]

	Airline delay cost savings	Passenger delay cost savings	Total benefits
2005	$28,265,932	$28,316,101	$56,582,032
2006	154,726,729	156,263,982	310,990,711
2007	144,604,420	148,069,608	292,674,028
2008	39,789,877	41,304,825	81,094,702
Total:	367,386,958	373,954,516	741,341,474

• The major factors used to develop an estimate of annual airline delay cost savings are presented in Table 2 below. Given the total delay improvement of 17,887 minutes, and the average variable costs per block hour $1,935, airlines would save more than $367 million dollars (present value dollars), cumulatively over the life of the proposed rule.

TABLE 2.—AIRLINE DELAY COST SAVING

	Total daily arrivals	Average total delay (minutes) per day	Average total delay (hours) per day	Average variable operating costs per hour	Annual airline delay cost savings (nominal dollars)	Present value airline delay cost savings
2005	1,387	17,887	298	$1,935	$28,265,932	$28,265,932
2006	1,387	17,887	298	1,935	165,557,600	154,726,729
2007	1,387	17,887	298	1,935	165,557,600	144,604,420
2008	1,387	17,887	298	1,935	48,744,311	39,789,877
Total	.....	.....	.....	.....	408,125,443	367,386,958

• Table 3 below gives a breakdown of the factors used to compute the passenger delay benefits of this proposed rule. The right-hand column of the table contains the annual dollar amounts of the benefits. To estimate benefit, the hours of delay improvement are prorated for the days of the year the flight limits are in effect. The total passenger delay costs savings are $374 million in present value dollars.

TABLE 3.—PASSENGER DELAY COST SAVINGS

	Total daily arrivals	Average seats	Load factor	Passengers per flight	Passengers per day	Passengers' average delay per arrival	Annual delay hours	Passenger value of time	Annual passenger delay cost savings (nominal dollars)	Present value of passenger delay cost savings
2005	1387	103.9	0.701	73	101,028	12	990,073	$28.60	$28,316,101	$28,316,101
2006	1387	104.3	0.704	73	101,851	12	5,846,240	28.60	167,202,461	156,263,982
2007	1387	105.3	0.707	74	103,266	12	5,927,444	28.60	169,524,894	148,069,608
2008	1387	106.3	0.705	75	104,689	12	1,675,018	28.60	50,600,187	41,304,825
Total:	.....	.....	.....	.....	.....	.....	.....	.....	415,643,643	373,954,516

• The FAA expects additional benefits from the use of the blind market and lottery mechanisms. These provisions would allow airlines to efficiently allocate Arrival Authorizations to where they are valued the most. In making their scheduling choices, the market mechanism proposed in this rule should allow

airlines to more efficiently allocate resources in an effort to avoid higher than average delay costs or to serve passengers that have a higher than average value of their time, therefore improving the overall efficiency of the national airspace and leading to greater benefits than those estimated in this analysis using average cost. This provision also minimizes the need for on-going government intervention in the allocation and distribution of O'Hare Arrival Authorizations and ensures that new entrants and all other airlines have an equal opportunity to purchase authorizations.

• Additional delay cost savings are derived from national airspace system-wide delay improvements, which result from the delay improvements at O'Hare, as well as delay improvements from reduced departure delays at other airports impacted by delay from O'Hare. We have not included these delay benefits in the quantitative analysis.

Costs of This Rulemaking

• The total cost of this proposed rule includes air carrier costs associated with a loss in schedule flexibility and reduction in flights, passenger inconvenience as a result of fewer choices and possibly higher fares, and direct administrative costs.

• The direct administrative costs of this proposed rule cover the blind market costs incurred by buyers and sellers of the Arrivals Authorizations, the public costs of developing and managing the blind market, and other administrative and compliance costs.

• The direct administrative costs of this proposed rule are an estimated $1.134 million in present value dollars, as shown in the last column of Table 4. The largest costs are the E-Bid administration costs of $194,184, which covers FAA's costs for the semi-annual blind market operations, and the other administration costs of $601,894, which covers the costs for operating the lottery, and general compliance and reporting requirements of the rule.

• The costs associated with a loss in air carrier schedule flexibility and reduction in the number of flights are difficult to quantify. However, the FAA believes this impact is minimal since passenger demand could likely be accommodated through alternative routings and access to Chicago. We invite comments on this impact.

• FAA acknowledges that the proposed rule would limit arrivals at O'Hare and thus could reduce the number of airline operations below the number that would be operated if no cap were imposed on O'Hare arrivals. This effect has the possibility of limiting competition and allowing carriers to raise fares; however, FAA believes the impact on competition would not be significant given the competitive market pressures internal and external to O'Hare, and the short duration of this proposed rule.

TABLE 4.—PRESENT VALUE OF ANNUAL ADMINISTRATIVE COSTS

	FAA E-bid development costs	E-bid system operating costs	FAA E-bid admin costs	Other admin costs	Reporting costs	Total costs
2005	$150,000	$8,333	$53,578	$44,649	$28,760	$285,320
2006	.....	46,729	50,073	250,366	21,156	368,324
2007	.....	43,672	46,797	233,987	19,772	344,228
2008	.....	13,605	43,736	72,893	6,789	137,023
Total:	150,000	112,339	194,184	601,895	76,477	1,134,895

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation''. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

While there would be more than just a few small entities affected by this proposed rule, the FAA determined that it would not impose a significant economic impact on small entities. The FAA considered the economic impact on scheduled operators and small communities.

The proposed rule affects all scheduled operators at O'Hare, more than just a few of which are small entities (where ''small entities'' are firms with 1,500 or fewer employees). The arrivals of all carriers currently providing service at O'Hare would be grandfathered, thereby minimizing the impact on their schedules. For their given schedules, this proposed rule would lower their fuel burn costs substantially by reducing the delays experienced prior to the August 2004 order.

As capacity becomes available during the duration of the rule, the FAA proposes to establish a limited preference for new entrants and limited incumbents, many of which are likely to be small entities. If the capacity grows per hour from 88 to 89 or 90 arrivals, any capacity not needed to accommodate foreign carriers would be assigned by lottery to new entrants and limited incumbents. Therefore, this proposal favors small entity operators.

In ''grandfathering'' the air carriers'' existing schedules, the proposed rule would enable airlines to continue operating all existing air service to airports of communities with populations less than 50,000. Consequently, we do not expect this proposed rule to negatively impact airports in small communities.

Therefore, the FAA Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA is proposing to apply the rule to foreign operators to create a rule governing all scheduled and non-scheduled operations at O'Hare.

The FAA has assessed the potential effect of this proposed rule and determined that it would not adversely affect any trade-sensitive activity as discussed below. Thus, this proposed rule would not create unnecessary obstacles to the foreign commerce of the United States.

Under this proposed rule, foreign operators would be given an initial assignment of Arrival Authorizations based on past usage. Further, they may have some discretion in terms of gaining additional access to O'Hare beyond being accommodated administratively. One option for foreign carriers would include permitting the foreign carriers to be treated the same as U.S. operators in the allocation of additional arrivals at O'Hare and should provide a transparent mechanism for foreign airlines to exercise the right to serve O'Hare provided for in our bilateral air service agreements.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect 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, and therefore would not have federalism implications.

Environmental Analysis

This NPRM is subject to an environmental review under the National Environmental Policy Act (NEPA) as described in FAA Order 1050.1E, Environmental Impacts: Policies and Procedures. It has been determined that the NPRM falls within a group of actions that the FAA has found, based on past experience with similar actions, do not normally require an Environmental Assessment (EA) or Environmental Impact Statement (EIS) because they do not individually or cumulatively have a significant effect on the human environment. This NPRM falls under Categorical Exclusion 312F. Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment). The NPRM proposes an interim solution to manage the immediate problem of congestion and delay at O'Hare by limiting the number of flight arrivals during certain hours. It has been determined that no extraordinary circumstances exist that may cause a significant impact and therefore no further environmental review is required.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 93

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

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to add subpart B to part 93 of chapter I of title 14, Code of Federal Regulations, as follows:

1. The authority citation for this amendment continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

PART 93—[AMENDED]

2. Subpart B is added to read as follows:

Subpart B—Congestion and Delay Reduction at Chicago O'Hare International Airport

Sec.

Subpart B—Congestion and Delay Reduction at Chicago O'Hare International Airport

§ 93.21 Applicability.

(a) This subpart prescribes the air traffic rules for the arrival of aircraft, other than helicopters, at Chicago's O'Hare International Airport (O'Hare).

(b) [Reserved]

(c) This subpart also prescribes procedures for the assignment, transfer, sale and withdrawal of Arrival Authorizations issued by the FAA for scheduled operations by air carriers, foreign air carriers and other operators at O'Hare.

(d) The provisions of this subpart apply to O'Hare during the hours of 7 a.m. through 8:59 p.m. central time, Monday through Friday, and 12 p.m. through 8:59 p.m. Central Time on Sunday. No person shall operate any scheduled arrival IFR arrival into O'Hare during such hours without first obtaining an Arrival Authorization.

(e) No Arrival Authorization issued or assigned under this subpart shall constitute the property of any person regardless of any purchase, sale, or transfer thereof or any contract or agreement entered into by any person concerning an Arrival Reservation or Arrival Authorization.

(f) Carriers that have Common Ownership shall be considered to be a single air carrier or foreign air carrier for purposes of this rule.

§ 93.22 Definitions.

Arrival Authorization is the operational authority assigned to an air carrier or foreign air carrier by the FAA to conduct one scheduled IFR arrival operation each week on a specific day of the week during a specific 30-minute period at O'Hare.

Arrival Reservation is the operational authority to conduct one unscheduled IFR arrival on a specific day of week during a specific 30-minute period at O'Hare.

Common Ownership with respect to two or more air carriers or foreign air carriers means having in common at least 50 percent beneficial ownership or effective control by the same entity or entities.

Incumbent means any air carrier or foreign air carrier that is not a New Entrant or Limited Incumbent.

Limited Incumbent means any air carrier or foreign air carrier that has received 8 or fewer Arrival Authorizations from the FAA, none of which it has sold or otherwise transferred, other than one-for-one transfers permitted in this part. Any limited incumbent that sells or otherwise transfers an Arrival Authorization shall thereafter be treated as an Incumbent for purposes of this rule.

New Entrant means any air carrier and foreign air carrier that does not operate any Arrival Authorizations at O'Hare and has never held an Arrival Authorization.

Preferred Lottery means a lottery conducted by the FAA to assign Arrival Authorizations, with initial preference for new entrants and limited incumbents.

Scheduled Arrival is the arrival segment of any operation regularly conducted by a carrier between O'Hare and another point regularly served by that carrier.

Summer Scheduling Season is the period of time from the first Sunday in April until the last Sunday in October.

Winter Scheduling Season is the period of time from the last Sunday in October until the first Sunday in April.

§ 93.23 Arrival Authorizations.

(a) Except as otherwise established by the FAA Vice President, System Operations Services under § 93.33 of this subpart, the number of Arrival Authorizations shall be limited to:

(1) 88 per hour between the hours of 7 a.m. and 7:59 p.m. Monday through Friday and 12 p.m. and 7:59 p.m. Sunday, and

(i) Not to exceed 50 during each half-hour beginning at 7 a.m. and ending at 7:59 p.m.

(ii) Not to exceed 88 within any two consecutive 30-minute periods.

(2) 98 between 8 p.m. and 8:59 p.m. Monday through Friday, and Sunday, not to exceed 67 between 8 p.m. and 8:30 p.m.

(b) An Arrival Authorization is not a property right but rather a temporary operating privilege subject to absolute FAA control. Only certificated air carriers and foreign air carriers may hold Arrival Authorizations. Arrival Authorizations may not be used as collateral, pledged, assigned, transferred or hypothecated to another person, except as provided in the §§ 93.27 and 93.28 of this subpart.

(c) On January 1, 2006, and on each six-month anniversary thereafter, the FAA shall conduct a review of existing capacity at O'Hare, to determine whether to increase the number of Arrival Authorizations or Arrival Reservations. The FAA will consider the following factors:

(1) The number of delays;

(2) The length of delays;

(3) Weather conditions;

(4) On-time arrivals, and

(5) Other factors relating to the efficient management of the national air space system.

(d) The Administrator may increase the number of Arrival Authorizations based on the review conducted in paragraph (c) of this section.

§ 93.24 [Reserved]

§ 93.25 Initial assignment of Arrival Authorizations to U.S. and Canadian air carriers.

(a) The FAA shall assign to each U.S. and Canadian air carrier that published a scheduled arrival for any day during the 7-day period of November 1 through 7, 2004, as evidenced by the FAA's records, a corresponding Arrival Authorization for each scheduled arrival.

(b) If a U.S. or Canadian air carrier did not publish a scheduled arrival during the period of time referenced in paragraph (a) of this section, but was entitled to do so under the August 18, 2004, ''Order Limiting Scheduled Operations at O'Hare International Airport'' a corresponding Arrival Authorization shall be assigned for that arrival.

(c) Arrival Authorizations will be assigned to the carrier that actually operated the flight regardless of any codeshare or marketing arrangement unless such carrier did not market the flight under its own code and the inventory of the flight was, by contract, under the control of another air carrier. If inventory of the flight was under the control of another air carrier, the FAA shall assign the Arrival Authorization to that air carrier.

(d) The FAA Vice President, System Operations Services, shall be the final decision-maker for determinations under this section.

§ 93.26 Withdrawal and reversion of Arrival Authorizations.

(a) The FAA may withdraw or temporarily suspend Arrival Authorizations at any time to fulfill operational needs, such as to accommodate arrivals by foreign air carriers, or due to reduced airport capacity.

(b) An air carrier's Arrival Authorizations revert automatically to the FAA 30 days after the air carrier has ceased all operations at O'Hare for any reasons other than a strike or labor dispute.

(c) Any Arrival Authorization that is temporarily withdrawn under paragraph (a) will, if reassigned, be reassigned to the carrier from which it was withdrawn, provided that the carrier continues to conduct scheduled operations at O'Hare.

(d) The FAA shall not withdraw any Arrival Authorizations if the result would be to reduce an air carrier's total number of Arrival Authorizations below eight.

(e) Except as otherwise provided in paragraph (b) of this section, Arrival Authorizations will be withdrawn in accordance with the priority list established under § 93.32(a) of this subpart.

(f) Except as otherwise provided in paragraph (b) of this section, the FAA will notify the affected air carrier before withdrawing any Arrival Authorization and specify the date by which operations under the authorizations must cease. Except as otherwise required by operational needs, the FAA will provide at least 45 days' notice.

(g) If a New Entrant or Limited Incumbent carrier is assigned an Arrival Authorization in a Preferred Lottery conducted under § 93.30 of this subpart and within 12 months thereafter enters into a definitive agreement providing for the sale, merger, or acquisition by another person of more than 50 percent ownership or control of the carrier, the Arrival Authorizations assigned in the lottery shall revert to the FAA to the extent that the total number of Arrival Authorizations assigned to the surviving entity would exceed eight.

(h) No Arrival Authorizations may be withdrawn from a Canadian carrier to accommodate arrivals by other foreign air carriers or New Entrants if such withdrawal would reduce the number of Arrival Authorizations held by that Canadian carrier below the number assigned that carrier under § 93.25.

§ 93.27 Sale of Arrival Authorizations.

(a) No carrier may sell its Arrival Authorizations at O'Hare other than in accordance with the procedures in this section and in the manner prescribed by the Administrator.

(b) Only monetary consideration may be provided in any transaction conducted under this section.

(c) New Entrants and Limited Incumbents may not sell any Arrival Authorizations assigned through a Preferred Lottery within 12 months of such assignment, except to another new entrant or limited incumbent.

(d) A carrier seeking to sell an Arrival Authorization must provide the following information in writing to the FAA at least 30 days before the planned sale date:

(1) Arrival Authorization number and time,

(2) Frequencies available; and

(3) Planned effective date of transfer.

(e) The FAA will post a notice of the available Arrival Authorization and specific information concerning the transaction on the FAA Web site (insert address). The notice will provide a closing date and time by which bids must be received. Information identifying the carrier providing the Arrival Authorization for sale will not be posted or released by the FAA.

(f) The FAA must receive all bids by the closing date and time, and no extensions of time will be granted. Late bids will not be considered. All bids will be held confidential, with each bidder certifying in a form acceptable to the FAA that its bid has not been disclosed to any person not its agent.

(g) The FAA will forward the highest bid to the selling air carrier without identifying the bidder. The selling air carrier will have up to three business days to accept or reject the bid. The selling air carrier must notify the FAA of its acceptance no later than 5 p.m. eastern time on the third business day.

(h) Upon acceptance, the FAA will notify the winning carrier and request that the buyer and the seller submit to the FAA the written information (Arrival Authorization number, frequencies and effective date of transfer) required to transfer the Arrival Authorization.

(i) Written evidence of each carrier's consent to the transfer must be provided to the FAA in a form acceptable to the FAA, and each carrier must certify that only monetary consideration will be exchanged.

(j) The recipient carrier of the transfer may not use the Arrival Authorization until the conditions in paragraph (i) of this section have been met and FAA has approved the transfer.

(k) The FAA will keep a record of all bids received and of each Arrival Authorization transfer, including the identity of both air carriers' and the winning bid price, all of which will be made available to the public upon request.

§ 93.28 One-for-one trade of Arrival Authorizations.

(a) Any air carrier or foreign air carrier may exchange an Arrival Authorization it has been assigned with another carrier on a one-for-one basis for the purpose of conducting that operation in a different half-hour time period.

(b) Written evidence of each carrier's consent to the transfer must be provided to the FAA.

(c) The recipient of the transfer may not use the Arrival Authorization until written confirmation has been received from the FAA.

(d) A record of each Arrival Authorization exchange will be kept on file by the FAA and made available to the public upon request.

(e) Carriers participating in a one-for-one transfer must certify in a form acceptable to the Administrator that no other consideration will be or has been provided for the exchange.

§ 93.29 Foreign air carriers.

(a) This section applies to all foreign air carriers other than Canadian air carriers. The Department of Transportation reserves the right to withhold the assignment of any Arrival Authorization to any foreign air carrier of a country that does not provide equivalent rights of access to its airports for U.S. air carriers, as determined by the Secretary of Transportation.

(b) The FAA shall initially assign Arrival Authorizations to foreign air carriers for winter and summer scheduling seasons as follows:

(1) Winter Scheduling Season. The FAA shall assign to each foreign air carrier that published a scheduled arrival during the Winter Scheduling Season that began October 2004, as evidenced by the FAA's records, a corresponding Arrival Authorization for each arrival.

(2) Summer Scheduling Season. The FAA shall assign to each foreign air carrier that published a scheduled arrival during the Summer Scheduling Season that began April 2004, as evidenced by the FAA's records, a corresponding Arrival Authorization for each arrival.

(3) Arrival Authorizations will be assigned to the carrier that actually operated the flight regardless of any codeshare or marketing arrangement unless such carrier did not market the flight under its own code and the inventory of the flight was, by contract, under the control of another carrier. If inventory of the flight was under the control of another carrier, the FAA shall assign the Arrival Authorization to that carrier.

(4) The FAA Vice President, System Operations Services shall be the final decision-maker for determinations under this subsection.

[Option 1—Administrative Option]

(c) A foreign air carrier may request new or additional Arrival Authorizations for a Summer Scheduling Season or a Winter Scheduling Season pursuant to this section. Such requests shall be made at a time and in a manner prescribed by the Administrator. If the request is granted, the FAA shall withdraw Arrival Authorizations from air carriers under § 93.26 of this subpart if an Authorization Arrival is not otherwise available within one hour of the requested time.

(d) Each request for Arrival Authorizations under this section shall specify the days of the week and time of day of the preferred Arrival Authorization and the length of time the Arrival Authorizations are to be used. The request must be accompanied by a certified statement by an officer of the foreign air carrier stating that it possesses or has contracted for possession of an aircraft capable of being utilized in the Arrival Authorizations requested and that it has *bona fide* plans to use the requested Arrival Authorizations for operation. The FAA Vice President, System Operations Services shall be the final decision-maker for determinations under this subsection.

(e) Arrival Authorizations assigned under this section cannot be bought or sold under § 93.27, but may be traded on a one-for-one basis under § 93.28 of this subsection.

(f) Arrival Authorizations assigned under this section are not subject to minimum usage requirements under § 93.31 of this subpart but will revert to the FAA if not used for 15 consecutive days.

[Option 2—Elective Option]

(c) After the date of the initial assignments in subsection (b) of this section, a foreign air carrier may request new or additional Arrival Authorizations for a Summer Scheduling Season or a Winter Scheduling Season. Such requests shall be made at a time and in a manner prescribed by the Administrator. A foreign air carrier seeking new or additional Arrival Authorizations must elect to receive additional Arrival Authorizations under the assignment procedures of either paragraph(c)(1) or (c)(2) of this section:

(1) If a foreign air carrier requests a new or additional Arrival Authorization and an Arrival Authorization is not available within one hour of the requested time, and if the request is granted, an Arrival Authorization shall be withdrawn from an air carrier under § 93.26 of this subpart to accommodate the request if an Arrival Authorization is not otherwise available;

(i) Arrival Authorizations assigned under subsections (b) or (c)(1) cannot be bought or sold under § 93.27, but may be traded on a one-for-one basis under § 93.28 of this subpart, to meet the carriers' operational needs

(ii) Arrival Authorizations assigned under subsections (b) or (c)(1) are not subject to usage requirements under § 93.31 of this subpart but will revert to the FAA if not used for 15 consecutive days.

(2) Foreign air carriers seeking new or additional Arrival Authorizations may participate in any lotteries or transactions permitted under § 93.27 and shall be eligible to receive additional assignments of Arrival Authorizations under § 93.33 of this subpart.

(3) A foreign air carrier making an election between §§ 93.29(c)(1) and 93.29(c)(2) above must notify the FAA Slot Administration Office in writing of its election before first requesting Arrival Assignments in addition to those assigned in subsection (b) of this section.

§ 93.30 Lottery provisions.

(a) Whenever the FAA has determined that sufficient Arrival Authorizations have become available for reassignment, they will be assigned in accordance with this section.

(b) Any lottery of Arrival Authorizations that revert under § 93.26(b), or are withdrawn under § 93.31, shall be conducted as a Preferred Lottery as described in paragraph (i) of this section.

(c) Any lottery of Arrival Authorizations that become available as the result of an increase in the hourly limits under § 93.23(a) of this part from 88 Arrival Authorizations to 89 or 90 shall be conducted as a Preferred Lottery as described in paragraph (i) of this section. Arrival Authorizations remaining after all New Entrants and Limited Incumbents have been accommodated may be assigned to any other air carrier participating in the lottery on an interim basis until the next lottery, when such Arrival Authorizations would again be available on a preferred basis to New Entrants and Limited Incumbents.

(d) Any lottery of Arrival Authorizations that become available as the result of an increase above 90 in the hourly limits under § 93.33(b) of this subpart shall be open to all carriers otherwise eligible to participate in the lottery.

(e) The FAA will publish a notice in the **Federal Register** announcing the lottery dates and any special procedures for the lotteries.

(f) Any air carrier, or foreign air carrier seeking to participate in any lottery must notify the FAA in writing, and such notification must be received by the FAA 15 days prior to the lottery date. The carrier must also disclose in its notification whether it has Common Ownership with any other carrier and, if so, identify such carrier.

(g) Except as otherwise provided in paragraph (h) of this section, a random lottery shall be held to determine the order in which participating carriers shall select an Arrival Authorization.

(h) In any Preferred Lottery, each New Entrant and Limited Incumbent will have the opportunity to select Arrival Authorizations, if available, until it holds a total of eight Arrival Authorizations. Arrival Authorizations remaining after all New Entrants and Limited Incumbents have been accommodated may be assigned to any other carrier participating in the lottery.

(i) At the lottery, each carrier must make its selection within 5 minutes after being called or it shall lose its turn. If capacity still remains after each carrier has had an opportunity to select Arrival Authorizations, the assignment sequence will be repeated in the same order. A carrier may select one Arrival Authorization during each sequence, except that New Entrants may select two Arrival Authorizations, if available, in the first sequence.

(j) To select Arrival Authorizations during a lottery session, a carrier must have appropriate economic authority for scheduled passenger service under Title 49 of the U.S.C. and must hold FAA operating authority under parts 121, 129 (if appropriate) or 135 of this chapter.

§ 93.31 Minimum usage requirement.

[Option 1—90 Percent Usage]

[Sub-option A—Withdrawal]

(a) Except as provided in paragraphs (b) and (c) of this section, any Arrival Authorizations not used at least 90 percent of the time over a two-month period shall be withdrawn by the FAA upon 45 days' notice to the affected carrier by the FAA Slot Administration Office and held for reassignment by the FAA.

(b) Paragraph (a) of this section does not apply to Arrival Authorizations obtained under § 93.30 during:

(1) The first 90 days after they are allotted to a New Entrant; or

(2) The first 60 days after they are allotted to a Limited Incumbent or Incumbent carrier.

(c) Paragraph (a) of this section does not apply to Arrival Authorizations of an air carrier forced by a strike to cease operations using those Arrival Authorizations.

(d) Every air carrier and Canadian air carrier holding Arrival Authorizations shall forward in writing to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1 and every 2 months thereafter. The report shall identify the flight number for which the Arrival Authorization was used and the equipment used. The report shall identify any Common Ownership or control of, by, or with any other carrier. A senior official of the carrier shall sign the report.

(e) The Administrator 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 carrier and which exists for a period of 9 or more days. Examples of conditions which could justify waiver under this paragraph are weather conditions that result in the restricted operation of an airport for an extended period of time or the grounding of any aircraft type.

(f) The FAA will treat as used any Arrival Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday in January.

[Sub-option B—Sale]

(a) Except as provided in paragraphs (b) and (c) of this section, any Arrival Authorizations not used at least 90 percent of the time over a 2-month

period shall be posted for sale, upon 45 days' notice to the affected carrier by the FAA Slot Administration Office, under § 93.27 of this subpart, except that each New Entrant and Limited Incumbent will have the opportunity to bid on Arrival Authorizations until it holds a total of eight Arrival Authorizations. Arrival Authorizations remaining after all New Entrants and Limited Incumbents have had an opportunity to bid may be auctioned to any other carriers otherwise eligible to bid.

(b) Paragraph (a) of this section does not apply to Arrival Authorizations obtained under § 93.30 of this subpart during:

(1) The first 90 days after they are allotted to a New Entrant; or

(2) The first 60 days after they are allotted to a Limited Incumbent or Incumbent carrier.

(c) Paragraph (a) of this section does not apply to Arrival Authorizations of a carrier forced by a strike to suspend the operations that use those Arrival Authorizations.

(d) Every air carrier and Canadian air carrier holding Arrival Authorizations shall forward in writing to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1 and every 2 months thereafter. The report shall identify the flight number for which the Arrival Authorization was used and the equipment used. The report shall identify any Common Ownership or control of, by, or with any other carrier. A senior official of the carrier shall sign the report.

(e) The Administrator 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 carrier 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 any aircraft type.

(f) The FAA will treat as used any Arrival Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday in January.

(g) The affected carrier may not bid on any Arrival Authorization required to be posted for auction under this section and must accept the highest bid notwithstanding § 93.27(g) of this subpart. In the event no carrier offers to purchase an Arrival Authorization required to be posted for auction, the Arrival Authorization may continue to be used by the affected carrier.

[Option 2—Minimum Usage]

[Sub-option A—Withdrawal]

(a) Except as provided in paragraphs (b) and (c) of this section, over a six-month period, Arrival Authorizations ranking in the bottom one percent in their frequency of usage will be withdrawn upon 45 days' notice by the FAA Slot Administration Office to the affected carrier and held for reassignment by the FAA.

(b) Paragraph (a) of this section does not apply to Arrival Authorization obtained under § 93.30 during:

(1) The first 90 days after they are allotted to a New Entrant; or

(2) The first 60 days after they are allotted to a Limited Incumbent or Incumbent carrier.

(c) Paragraph (a) of this section does not apply to Arrival Authorizations of a carrier forced by a strike to suspend the operations that use those Arrival Authorizations.

(d) Every air carrier and Canadian air carrier holding Arrival Authorizations shall forward in writing, to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 6-month reporting period within 14 days after the last day of the 6-month reporting period beginning January 1, 2006. The report shall identify the aircraft identifier and flight number for which the Arrival Authorization was used and the scheduled arrival time. A senior official of the carrier shall sign the report.

(e) The Administrator 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 carrier 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 any aircraft type.

(f) The FAA will treat as used any Arrival Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday in January.

[Sub-option B—Sale]

(a) Except as provided in paragraphs (b) and (c) of this section, over a six-month period, Arrival Authorizations ranking in the bottom one percent in their frequency of usage shall be posted for sale, upon 45 days' notice by the FAA Slot Administration Office to the affected carrier, under § 93.27 of this subpart, except that each New Entrant and Limited Incumbent will have the opportunity to bid on Arrival Authorizations until it holds a total of eight Arrival Authorizations. Arrival Authorizations remaining after all New Entrants and Limited Incumbents have had an opportunity to bid may be auctioned to any other carriers otherwise eligible to bid.

(b) Paragraph (a) of this section does not apply to Arrival Authorizations obtained under § 93.30 of this subpart during:

(1) The first 90 days after they are allotted to a New Entrant; or

(2) The first 60 days after they are allotted to a Limited Incumbent or Incumbent carrier.

(c) Paragraph (a) of this section does not apply to Arrival Authorizations of an air carrier forced by a strike to cease operations using those Arrival Authorizations.

(d) Every air carrier and Canadian air carrier holding Arrival Authorizations shall forward in writing to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1, 2006 and every 2 months thereafter. The report shall identify the aircraft identifier and flight number for which the Arrival Authorization was used and the scheduled arrival time. A senior official of the carrier shall sign the report.

(e) The FAA will treat as used any Arrival Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday in January.

(f) The affected carrier may not bid on any Arrival Authorization required to be placed up for auction under this section and must accept the highest bid notwithstanding § 93.27(g) of this subpart. In the event no air carriers offer to purchase an Arrival Authorization required to be placed up for auction, the Arrival Authorization may continue to be used by the affected carrier.

§ 93.32 Administrative provisions.

(a) The FAA will assign, by random lottery, withdrawal priority numbers for the recall priority of Arrival Authorizations at O'Hare. The lowest

numbered Arrival Authorization will be the last withdrawn. Newly created Arrival Authorizations will be assigned a priority withdrawal number and that number will be higher than any other Arrival Authorization withdrawal number previously assigned. Each Arrival Authorization will be assigned a designation consisting of the applicable withdrawal priority number, and the 30-minute time period for the Arrival Authorization. The designation will also indicate, as appropriate, if the Arrival Authorization is daily or for certain days of the week only; and is a summer or winter Arrival Authorization.

(b) Whenever Arrival Authorizations must be withdrawn, they will be withdrawn in accordance with the priority list established under paragraph (a) of this section.

(c) Whenever an Arrival Authorization is to be returned under this subpart, or is voluntarily returned by an air carrier, the air carrier must notify the FAA Slot Administration Office in writing.

§ 93.33 New capacity.

(a) If the hourly limit on Arrival Authorizations as specified in § 93.23(a) of this subpart increases to 89 or 90 per hour, new Arrival Authorizations will be assigned by lottery under § 93.30(c) of this subpart.

(b) If the hourly limit on Arrival Authorizations as specified in § 93.23(a) of this subpart should be increased to more than 90 per hour, new Arrival Authorizations will be assigned by lottery under § 93.30(d) of this subpart.

§ 93.34 Sunset provision.

This subpart terminates on April 6, 2008.

Issued in Washington, DC, on March 18, 2005.

Sharon L. Pinkerton,

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[FR Doc. 05–5882 Filed 3–22–05; 10:04 am]

BILLING CODE 4910–13–P