DEPARTMENT OF TRANSPORTATION

14 CFR Part 93

[Docket No. FAA 2005–20704; Amendment No. 93–86]

RIN 2120–AI87

Amending the Congestion and Delay Reduction at Chicago O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule with Request for Comment.

SUMMARY: The FAA published a final rule on August 29, 2006, (71 FR 51382), to address persistent flight delays from overscheduling at O'Hare International Airport (O'Hare). This amendment revises section 93.25, ''Initial assignment of Arrival Authorizations to U.S. and Canadian air carriers for domestic and U.S./Canada transborder service,'' to direct the FAA to assign each U.S. and Canadian conducting scheduled service at O'Hare by January 27, 2007, Arrival Authorizations based on their permanent holdings as of the 7-day period of October 22 through October 28, 2006, as evidenced by the FAA's records. While the FAA is making this rule effective without notice and comment, the FAA invites the public to comment on the amendment. The FAA will consider the comments to see whether the rule should be further modified.

DATES: Effective October 29, 2006.

Comment Date: Comments must be received on or before December 12, 2006.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA is adopting this final rule without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), provide that to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, we invite interested persons to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. We also invite comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment. Please include the regulatory docket or amendment number and send two copies to the address above. We will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted 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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

The FAA will consider all comments received on or before the closing date for comments. We will consider late comments to the extent practicable. We may amend this final rule in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2005–20704.'' The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

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 FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; 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 sending 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.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBRFA on the Internet at our site, *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Justification for Final Rule Without Prior Notice

Based on the circumstances described herein, the FAA believes immediate regulatory action is warranted. Section 553 of the Administrative Procedures Act (APA) permits an agency to forego notice and comment rulemaking when ''the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary or contrary to the public interest.'' The FAA finds that the use of notice and public procedures for this rule is impracticable and contrary to the public interest.

The FAA determined that it was to the public interest to modify the August 18, 2004 Order (the Order) that regulated scheduled arrivals at O'Hare International Airport in order for carriers to modify their schedules for competitive or operational reasons through various market mechanisms prior to the effective date of the August 29, 2006, final rule. The FAA modified the Order after issuing a show-cause order that gave the public an opportunity to comment on its proposed modification, 71 FR 56213 (September 26, 2006), and considered the responses to its show-cause order when it determined to adopt the proposed modification. Modification of the Order requires us to also amend the final rule in order to recognize changes in holder and operator status of scheduled arrivals that may occur during the duration of the Order, which affect the assignment of Arrival Authorizations on October 29, 2006, the effective date of the rule. The changes in the rule are necessary to make the Order's modification effective.

We are inviting comments on this rule and may modify the rule in response to those comments.

Justification for an Effective Date Less Than 30 Days

Likewise, the FAA has determined that the effective date for this final rule should coincide with the effective date of the August 29, 2006 final rule. Ordinarily agencies are required to provide an effective date of at lest 30 days after publication of a rule in the **Federal Register**. An agency need not adhere to this requirement if it demonstrates that a shorter time frame is in the public interest. Since this final rule has a direct impact on allocations that will be made on the first day of the

August 29, 2006 final rule, the FAA has determined that it is in the public interest for the effective dates of both rules to be the same.

Background

The FAA issued an order limiting capacity at Chicago O'Hare International Airport on August 18, 2004. That Order resulted from the August 4, 2004, scheduling reduction meeting. The Order limited arrivals by domestic carriers to 88 during most hours of the day. The Order was set originally set to expire in April 2005 but was extended three times to ensure that overscheduling would not occur between the original expiration of the order and the effective date of the rule. The Order will expire on October 28, 2006, and the August 29, 2006 final rule will take effect on October 29, 2006 (71 FR 51382).

Previously, under the Order, carriers were not allowed to make any permanent transfers or trades of their scheduled arrivals. The FAA, however, recently reconsidered this position and issued a modification to the Order and eliminated the prohibition on trading or transferring (buying, selling, or leasing) scheduled arrivals for consideration for the remaining duration of the Order. Because the Order allows permanent trades and transfers of arrivals, § 93.25 must be amended so that when the FAA assigns Arrival Authorizations under the rule, we recognize changes in scheduled arrival holdings that may have been made through October 28, 2006.

Under § 93.25, Arrival Authorizations for O'Hare are assigned (1) based on published scheduled service during the 7-day period of November 1 through 7, 2004 or (2) if the carrier did not publish a scheduled service during the 7-day period of November 1 through 7, 2004, the scheduled service the carrier is entitled to publish under the August 2004 Order, as long as the carrier is conducting scheduled service at O'Hare on the effective date of the final rule. The following is an example of how this initial allocation provision does not clearly accommodate transfers that could be made during the remaining duration of the Order: A carrier sells a scheduled arrival in October 2006 pursuant to modified paragraph 6 of the Order. While it is the seller that published the scheduled arrival during the 7-day period of November 1 through 7, 2004, it is the purchaser of the scheduled arrival who holds the authorizations during the final period of the Order and at the effective date of the Final Rule. Applying § 93.25 as it currently exists could lead us to assign the Arrival Authorization to the seller in accordance with paragraph (a), and to the purchaser in accordance with paragraph (b).

Another, more pointed example of how the language in § 93.25 could impede transactions of the Order, as amended, is that of a new entrant carrier that receives, purchases or leases Arrival Authorizations under the Order, but does not actually commence scheduled service at O'Hare prior to the effective date of the final rule. The current initial assignment provision under § 93.25(b) requires a carrier to conduct scheduled service at O'Hare on the effective date of the rule (*i.e.*, October 29) in order to receive its assignment of Arrival Authorizations. It, however, is not reasonable to expect a new entrant carrier who could obtain scheduled arrivals under the Order as late as October 28 to be prepared to conduct operations by October 29. The FAA has determined that January 27, 2007, is an appropriate date, because it recognized in the August 29, 2006 Final Rule that it could reasonably take up to 90 days to actually conduct operations after acquiring an Arrival Authorization.

Because of modifications to the Order and the ability of carriers to change the holder and operator status of scheduled arrivals prior to the effective date of the rule, the FAA also must clarify that in applying the definitions of ''new entrant,'' ''limited incumbent'' and ''incumbent,'' the FAA will look to any authorizations held or operated by an air carrier during the duration of the Order. Thus, for example, if a carrier were to hold ten scheduled arrivals on October 1, 2006 but then sold or transferred 4 of those arrivals to another carrier on October 15, 2006, the FAA will view that carrier has an incumbent because, at one time, the carrier held more than 8 authorizations to arrive at O'Hare.

Paperwork Reduction Act

There are no new requirements for information collection associated with this amendment.

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 determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both he costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this proposal indicates that its economic impact is minimal. Since its costs and benefits do not make it a ''significant regulatory action'' as defined in the Order, we have not prepared a ''regulatory impact analysis.'' Similarly, we have not prepared a ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory and Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to 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. section 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 also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 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 rule (1) has benefits which do justify its costs, is not a ''significant regulatory action'' as defined in the Executive Order and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a

substantial number of small entities; (3) reduces barriers to international trade; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601–612, directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a ''significant economic impact on a substantial number of small entities'' as defined in the Act. If we find that the action will have a significant impact, we must do a ''regulatory flexibility analysis.''

This final rule directs the FAA to assign each U.S. and Canadian conducting scheduled service at O'Hare by January 27, 2007, Arrival Authorizations based on their permanent holdings as of the 7-day period of October 22 through October 28, 2006, as evidenced by the FAA's records. Its economic impact is minimal. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or 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 has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, 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 a $100 million or more expenditure (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 $128.1 million in lieu of $100 million.

This final 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 final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA Pub. L. 94–163), as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 93

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

The Amendment

■ In consideration of the above, the Federal Aviation Administration amends chapter l of Title 14, Code of Federal Regulations as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC

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

Authority: 49 U.S.C. 106(g), 40101, 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, and 46301.

■ 2. Amend § 93.25 to revise the last sentence in paragraph (a) and by revising paragraph (b) to read as follows:

§ 93.25 Initial assignment of Arrival Authorizations to U.S. and Canadian air carriers for domestic and U.S./Canada transborder service

(a) * * * A carrier's total assignment under this paragraph shall be reduced accordingly by (i) any international Arrival Authorizations assigned under § 93.29 (a), and (ii) if the carrier transferred or traded for consideration any arrival authorizations to another carrier under the October 2006 order amending the August 18, 2004 order and the transferee carrier meets the conditions of paragraph (b) of this section, the number of such traded or transferred authorizations.

(b) The FAA shall assign an Arrival Authorization to each U.S. and Canadian air carrier that did not publish a scheduled domestic or U.S./Canada transborder arrival during the period of time referenced in paragraph (a) of this section for arrivals for which the carrier:

(1) Was entitled to under the August 18, 2004, ''Order Limiting Scheduled Operations at O'Hare International Airport,'' as amended, and is conducting scheduled service at O'Hare as of the effective date of this rule; or

(2) Has initiated scheduled service or received FAA approval of a trade or transfer under the August 18, 2004, ''Order Limiting Scheduled Operations at O'Hare International Airport,'' as amended, as long as operations conducted under the Arrival Authorization begin no later than January 27, 2007.

* * * * *

Issued in Washington, DC, on October 6, 2006.

Marion C. Blakey,

Administrator.

[FR Doc. 06–8651 Filed 10–10–06; 11:49 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1300

[Docket No. DEA–288F]

RIN 1117–AB02

Technical Correction of Two Anabolic Steroid Names

AGENCY: Drug Enforcement Administration (DEA), U.S. Department of Justice.

ACTION: Final rule.