DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–1999–4971; Notice No. 99–20]

RIN 2120–AG50

High Density Airports; Allocation of Slots

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend the regulations governing takeoff and landing slots and slot allocation procedures at certain High Density Traffic Airports. As a result of the ''Open Transborder'' Agreement between the Government of the United States and Government of Canada, this proposed rule is necessary to codify the provisions of the bilateral agreement and ensure consistency between FAA regulations governing slots and the bilateral agreement.

DATES: Comments must be received on or before February 11, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–4971, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lorelei D. Peter, Airspace and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that may result from adopting the proposals in this notice are also invited. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in triplicate to the above specified address. All communications and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before the closing date for comments and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked ''Comments to Docket No. FAA–1999–4971.'' When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availablity of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future FAA NPRMs should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone 703–321–3339) or the **Federal Register's** electronic bulletin board service (telephone 202–512–1661). Internet users may read the FAA's web page at http://www.faa.gov or the **Federal Register's** web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Background

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

The High Density Traffic Airports Rule, or ''High Density Rule,'' 14 CFR part 93, subpart K, was promulgated in 1968 to reduce delays at five congested airports: JFK International Airport, LaGuardia Airport, O'Hare International Airport, Ronald Reagan National Airport, and Newark International Airport (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, by hour or half hour, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a ''slot'' for each IFR landing or takeoff during a specific 30- or 60-minute period. The restrictions were lifted at Newark in the early 1970's.

On December 16, 1985, the Department of Transportation (Department) promulgated the ''buy/sell'' rule, a comprehensive set of regulations that provide for the allocation and transfer of air carrier and commuter slots (50 FR 52180; December 20, 1985). The two primary features of this rule were, first, that initial allocation would be accomplished by ''grandfathering'' existing slots to the carriers that currently held them, and second, that a relatively unrestricted aftermarket in slots would be permitted. As a result, effective April 1, 1986 slots used for domestic operations could be brought and sold by any party.

The FAA allocates slots designated for international use by U.S. and foreign-flag carriers under procedures different from those that apply to the allocation of slots designated as domestic. Under 14 CFR section 93.217, international slots are allocated at Kennedy and O'Hare twice a year for the summer and winter scheduling seasons.

In promulgating the ''buy/sell'' rule, the Department determined that, as a matter of international aviation policy, the allocation of new slots to international carriers as Kennedy and O'Hare Airports would be made by the FAA based on requests from foreign and U.S. operators conducting international operations (50 FR 52187; December 20, 1985).

O'Hare is unique in that domestic slots are withdrawn to accommodate requests for international operations during each summer and winter season. 14 CFR section 93.217(a)(6) specifically

provides that the FAA must allocate a slot for an international operation at O'Hare upon request. If there is not an available slot within 60 minutes of requested time, a slot would be withdrawn from a domestic carrier to fill that request. At LaGuardia, section 93.217(a)(7) provides that additional slots will be allocated for international operation if required by bilateral agreement. At Kennedy, section 93.217(a)(8) provides that domestic slots will be withdrawn for international operations only if required by international obligations.

At the time of the ''buy/sell'' rule, the Department concluded that since certain slots used for international operations are specially treated within Subpart S, it is important that the Department be aware of which slots are being used for those operations. Therefore, U.S. carriers were required to submit to the FAA in writing, the slots that were used for international operations as of December 16, 1985. These slots were then designated by the FAA as international slots.

International slots may not be bought, sold, leased, or otherwise transferred, except such slots may be traded to another slot holder on a one-for-one-basis at the same airport. Furthermore, if a carrier does not use an international slot for more than a two-week period, the slot must be returned to the FAA. International slots may only be used for international service.

However, FAA regulations permit the use of domestic slots for either international or domestic service. Regardless of the type of service, i.e., domestic or international, the minimum slot usage requirement and withdrawal procedures apply to a slot designated as domestic. FAA regulations governing slots provide for lotteries of domestic slots in certain circumstances. These regulations also permit only U.S. carriers to participate in lotteries for domestic slots. International slots are not allocated by the lottery mechanism.

U.S.-Canada Bilateral Agreement

On February 24, 1995, the Government of the United States and the Government of Canada entered into a bilateral agreement (Agreement) phasing in an ''Open Transborder'' regime between the two countries. Annex II of the Agreement specifically addresses slots and access to O'Hare, LaGuardia and Ronald Reagan National Airports. After a three year phase-in period, the Agreement provides that, effective February 24, 1998: (1) the Canadian carriers will be able to obtain slots at the High Density Traffic Airports under the same prevailing allocation system as U.S. carriers; (2) the base levels of slots established for Canada will consist of 42 slots at LaGuardia, and 36 slots for the Summer season at O'Hare and 32 slots for the Winter season at O'Hare; (3) Canadian carriers' slot base at LaGuardia and O'Hare (which currently is comprised of international slots), effectively will ''convert'' to domestic slots; (4) all slots acquired by the Canadian carriers, including the determined slot base, as described in (2) above, at LaGuardia and O'Hare, will be subject to the minimum slot usage requirement set forth in section 93.227 and may be withdrawn for failure to meet that requirement; (5) the provision of the bilateral agreement do not permit the determined slot base as LaGuardia and O'Hare to be withdrawn for the purpose of providing a U.S. or foreign air carrier with slots for international operations or to provide slots for new entrant operators; (6) any slots acquired after the transition date that do not form part of the determined slot base may be withdrawn at any time to fulfill operational needs; (7) neither the Government of Canada nor any Canadian carrier may modify the determined slot base at LaGuardia or O'Hare and then have claim to any time slot to restore the base; and (8) slots that are acquired above the determined slot base level and then subsequently disposed of shall not modify the base.

The Agreement also contains several provisions specific to Ronald Reagan National Airport, concerning non-stop service between Canada and the U.S. These provisions will not be addressed since they are unaffected by the contents of this proposal.

The present regulatory framework governing slots and slot allocation procedures does not provide for all the terms of the Agreement as set forth above. In order to ensure that FAA slot regulations are consistent with the terms of the Agreement, the FAA proposes to modify the regulations. This proposal consists of two primary actions: the conversion of certain international slots to domestic, and the establishment of a regulatory base level of slots for the Canadian carriers. In addition, the FAA proposes to amend the regulatory submission deadline for international requests to coincide with the deadline established for the seasonal International Air Transport Association (IATA) Schedule Coordination Conference.

Conversion of International Slot to Domestic Slots

The Open Transborder bilateral agreement has liberalized U.S.-Canadian transborder air transportation. Following the three year phase-in period, U.S. and Canadian carriers have full freedom of entry. The Agreement provides that Canadian carriers will be able to obtain slots in the HDR Airports under the ''same prevailing allocation system'' as U.S. carriers. This effectively requires that the Canadian carriers be treated similarly to domestic carriers. Consequently, effective February 24, 1998, Canadian air carriers and their slots are subject to the allocation provisions and associated options applicable to domestic slots.

U.S. carriers may obtain domestic slots three ways: (1) through the market, by the buying, selling, trading, or leasing of slots; (2) by participation in a slot lottery (in accordance with 14 CFR section 93.225, the FAA may hold a lottery upon determination that there are a sufficient number of slots available); and (3) allocation of slots in low-demand periods. (14 CFR section 92.226 permits, on a first-come, first-served basis, for the allocation of slots available for less than 5 days per week; for less than a full season; or between 6:00 a.m.–6:59 a.m. or 10:00 p.m.–midnight.)

At present, the Canadian carriers hold 36 international slots at O'Hare and 42 international slots at LaGuardia. Since the Agreement permits the Canadian carriers to buy, sell, lease, or trade these slots, the FAA proposes to reclassify the 36 international slots at O'Hare and the 42 international slots at LaGuardia as domestic slots. As a result of this reclassification, all the regulatory requirements of domestic slots, such as the minimum slot usage requirement, would attach to the subject slots. We note that the Agreement already subjects these slots to the minimum slot usage requirement. This reclassification would be consistent with the purpose and intent of the Agreement.

The FAA proposes that U.S. carriers be extended similar treatment. The basis for a number of provisions being codified in the ''buy/sell'' rule was the standing policy that it is desirable to treat U.S. carriers and foreign-flag carriers similarly when conducting identical service. In 1985, at the time that the ''buy/sell'' rule was promulgated, several commenters argued for the exclusion of any international operations from the ''buy/sell'' provisions (50 FR 52187). The Department, favoring equal treatment of U.S. international operators and foreign operators in most respects, concluded that the ''buy/sell'' provisions should apply only to domestic slots and that all international slots will be treated the same, irrespective of whether the holder is a U.S. carrier or foreign-flag carrier.

Thus, in 1985, U.S. carriers were required to identify which slots were used for international service as of December 16, 1985.

The slots identified by U.S. carriers as international in 1985 were predominantly used to service the U.S./Canada market. Certain provisions applicable to international slots were specifically adopted to address concerns by the Canadian carriers about competing with U.S. carriers who had much larger slot basis at the HDR airports than the Canadian operators. For example, an international slot could be traded to another carrier for the purpose of conducting the operation in a different hour or half-hour. Deliberate measures were taken in promulgating the ''buy/sell'' rule to minimize distinctions between U.S. and foreign-flag carriers when engaged in international operations. Under a similar analysis, FAA now believes that the treatment of U.S. carrier international slots at O'Hare and LaGuardia warrants reexamination in light of the Agreement and the consideration afforded Canadian carriers under the terms of the Agreement.

By classifying international slots held by the Canadian carriers as domestic slots, the Canadian carriers may realize an unfair advantage over U.S. carriers. Canadian carriers may buy, sell, or lease the slots they use for U.S./Canada transborder service, while U.S. carriers that operate international slots cannot buy, sell, or lease the slots for the same transborder service. While the Agreement was clear that Canadian carriers would be subject to the prevailing mechanisms for slot allocation that apply to U.S. carriers, it was silent as to its impact on U.S. carriers. U.S. carriers, subject to the existing international allocation procedures, would continue to treat flights to or from Canada as international flights for slots allocated under section 93.217(1)(a). On the other hand, U.S. carriers may request additional international slots under section 93.217(a)(1) for U.S./Canada service while Canadian carriers could not, since Canadian carriers are now subject to allocation procedures for domestic slots. Canadian carriers may perceive this as an unfair benefit to their U.S. competitors.

The equitable intent of the Agreement was to treat carriers of both countries in the same manner for purposes of slot allocation. Therefore, the FAA proposes similar treatment for certain, identified, international slots held by U.S. carriers at O'Hare and LaGuardia Airports. Specifically, the FAA proposes to reclassify as domestic a total of 35 international slots at O'Hare and 17 international slots at LaGuardia that are held by U.S. carriers. As stated above, the principal reason for designating these slots as international slots in December 1985 was to provide U.S. carriers the same opportunities and protections as foreign-flag carriers, particularly with respect to U.S.-Canada transborder service.

FAA records for O'Hare indicate that in December 1985, American Airlines held 18 international slots, Northwest held two international slots, and United held 15 international slots. Of these 35 slots, 32 were used for U.S./Canada service. Agency records for LaGuardia also indicate that in 1985 American Airlines held 15 international slots and Delta held two slots. The FAA finds significant that the four U.S. carriers directly affected by the proposed redesignation of slots from international to domestic status have continuously used these slots since the adoption of the Department's slot allocation rules in December 1985, and in some cases, conducted this same international service prior to the adoption of the High Density Rule in 1969.

This proposed amendment would redesignate slots identified and held by U.S. carriers as international under 14 CFR section 93.215(d), provided that an equivalent number of slots were held by the carriers as of February 24, 1998, the date of phase-in under the Agreement. This proposal would not affect any other international slots subsequently allocated under section 93.217 after December 1985, i.e., that were not part of a carrier's historic base at the time that the ''buy/sell'' rule was adopted. This proposed ''conversion'' to domestic status would provide affected slot holders with increased scheduling flexibility; as domestic slots, they can be used for U.S./Canada transborder service, any other domestic service, or for international service.

Since the FAA proposes to reclassify certain international slots held by U.S. carriers as domestic, the FAA accordingly finds it necessary to propose an adjustment of the international slot allocation of air carriers holding or operating 100 or more slots at O'Hare. Specifically, 14 CFR Section 93.217(a)(10) provides that the international allocation for air carriers holding and operating 100 or more permanent slots will not exceed the number of international slots allocated to that carrier as of February 23, 1990, unless the allocation could be made without increasing withdrawals. The purpose of this amendment was to limit the ability of the largest U.S. air carriers to force the withdrawal of domestic slots from other U.S. carriers in order to expand international operations. The largest carriers may still increase their international operations at O'Hare above their international allocation of February 23, 1990; however, they must do so by using slots from within their own domestic slot base or from slots otherwise available without withdrawal of a slot. The reclassification of certain international slots to domestic must take into account large carriers that are subject to the above cap on international allocation. Today the only carriers limited by section 93.217(a)(10) are American and United and their affiliated commuter operations under common ownership. Consequently, in reclassifying the 18 international slots held by American and 15 international slots held by United in December 1985, it would be necessary to adjust the February 23, 1990, international allocation for, American and United by the corresponding number. Therefore, the FAA proposes to reduce the February 23, 1990, international base allocation for American and United respectively by 18 and 15 slots.

Establishment of Regulatory Base of Slots for the Canadian Carriers

The terms of the Agreement also provide for an established based level of slots for the Canadian carriers at LaGuardia and O'Hare. At LaGuardia, the base level of slots for the Canadian carriers is 42. At the time the Agreement was signed, the Canadian carriers held 28 slots. In June 1995, the FAA was directed by the Department to allocate 14 new slots to the Canadian carriers. The FAA proposes to increase the quota under 14 CFR Section 93.123 for air carrier operations at LaGuardia to include the 14 new slots, as authorized by the Agreement and in operation since June 1995.

At O'Hare, the Agreement provides Canadian carriers with a base level of 36 slots for the Summer season and 32 slots for the Winter season. At the time of the Agreement, the Canadian slot base was comprised of 12 slots held by the Canadian carriers since 1985, and 14 slots held by the Canadian carriers in time periods for which domestic slots usually have been withdrawn. These 14 slots are allocated seasonally under section 93.217 and do not constitute permanent slots. In June 1995, ten slots were allocated to the Canadian carriers. Thus, the above sets forth the present Canadian air carrier slot base, as articulated in the Agreement. The Canadian carriers are now permitted to buy, sell, lease or otherwise trade their

slots. The 14 slots held by Canadian carriers allocated under section 93.217(a)(6), which have resulted from withdrawals of domestic slots, cannot be bought, sold, leased, or otherwise traded. The FAA does not have a regulatory process to withdraw slots from domestic carriers and to permanently allocate the slots to the Canadian carriers. The FAA believes that creating 14 new slots at O'Hare would achieve two desired results. First, it would address the requirements of the Agreement. Second, it would not result in the permanent withdrawal of domestic slots to the benefit of foreign-flag carriers. At the time that the Agreement was negotiated, a permanent withdrawal of domestic slots was not contemplated. Therefore, the FAA proposes to increase the quota under 14 CFR Section 93.123 for air carrier slots at O'Hare to allow the Canadian carriers to continue to operate as envisioned by the negotiated Agreement without withdrawing domestic slots from U.S. carriers. The 14 new slots, plus the 10 slots allocated in June 1995 in addition to the 12 slots previously held by Canadian carriers, would constitute the agreed upon slot base at O'Hare.

A section by section analysis describing the proposed amendments is as follows:

Section 93.123 High Density Traffic Airports

The FAA proposes to amend section 93.123 by adding a footnote that specifically allocates to the Canadian carriers 14 slots at LaGuardia and 24 slots at O'Hare, in accordance with the Agreement between the U.S. and Canada of February 24, 1995. The FAA proposes this amendment in the manner of a footnote rather than as an amendment to the hourly totals at LaGuardia and O'Hare for two reasons. First, these slots did not exist for allocation prior to the negotiations for the bilateral agreement between the U.S. and Canada, i.e., these slots did not represent any unused capacity at either airport. Second, the special allocation of these slots was a component of the complete negotiated Agreement and constitutes the established base for Canadian carriers. Therefore, not only were these slots not available for any of FAA's specified allocation procedures as set forth in sections 93.217, 93.219 or 93.225 of Subpart S, but the FAA did not have discretion to allocate these slots to any other requesting carrier.

Section 93.217 Allocation of Slots for International Operations and Applicable Limitations

The FAA proposes amending section 93.217(a) to exclude from this section, the allocation of international slots at HDR airports for transborder service operations solely between that airport and Canada. This proposal would not affect the allocation of international slots to foreign-flag carriers for continuation flights originating/terminating outside the U.S.

Additionally, section 93.217(a) (5), (6) and (8) require that requests for international slot allocations must be submitted to the FAA Slot Administration office by May 15 of each year for operations to commence during the following Winter season and by October 15 for operations to commence during the following Summer season. With the exception of the U.S. slot controlled airports, all other capacity scheduled international airports generally follow the IATA guidelines in allocating international slots. The IATA guidelines for submission of each carrier's seasonal request for slots are published by IATA and generally fall within seven days of the FAA deadline articulated in section 93.217 above. For carriers requesting international slots, the use of two separate deadlines, one for U.S. airports and another for all other airports, causes confusion and has resulted in carriers unintentionally submitting late requests for O'Hare and Kennedy. Therefore, the FAA proposes to amend the deadline for seasonal requests to coincide with the date of submission for IATA. While the IATA deadlines remain in October for the Summer season and May for the Winter season, the particular date changes every year. The FAA proposes to announce the submission deadline for international requests at Kennedy and O'Hare in the **Federal Register** no later than 90 days in advance of the scheduled IATA deadline. The FAA believes that coordinating submission deadlines would reduce the administrative burden for affected U.S. carriers and foreign-flag carriers, as well as for the FAA.

Lastly, paragraph (a)(10) of this section would amend the international allocation of the largest carriers at O'Hare by reducing their international slot base to reflect the proposed reclassification of certain international slots to domestic slots.

Section 93.218 Reclassification of Certain International Slots to Domestic Slots and Special Provisions for Slots Held by Canadian Carriers.

The FAA proposes a new section 93.218 that provides for the reclassification as domestic slots the number of slots identified by U.S carriers for international operations in December 1985. This number is not to exceed the number of equivalent slots held as of February 24, 1998. In addition, this section would change the reclassification of the slots comprising the Canadian slots base from international status to domestic status. The properties and characteristics associated with domestic slots, such as the minumum slot usage requirement, would attach to all the slots in the slot base upon the reclassification as domestic.

This section also proposes to codify the established base of slots to Canadian carriers as set forth in the Agreement. The established base of slots would consist of 42 slots at LaGuardia, 36 slots at O'Hare for the Summer season, and 32 slots at O'Hare for the Winter season.

In addition, in accordance with the Agreement, the FAA proposes that any disposal of slots comprising the defined established base, that would result in a decrease of that base would be considered a permanent modification to the slot base.

Section 93.223 Slot Withdrawal

The FAA proposes to amend this section by adding a new paragraph that would prevent, as specified by the terms of the Agreement, slots that comprise the established Canadian slot base, as defined in the new section 93.218, from being withdrawn to fulfill requests for international operations or for new entrants.

Section 93.225 Lottery of Available Slots

Lastly, the FAA proposes to amend this section to include participation by Canadian carriers in the allocation of slots by lottery. Historically, the participation in slot lotteries was reserved for domestic carriers. However, since Canadian carriers are now subject to the same prevailing allocation methods that apply to U.S. carriers, an extension of this provision would be necessary to provide the same allocation procedures for carriers of both countries.

Related Petitions

On May 27, 1998, the FAA granted a limited exemption to Northwest Airlines, Inc., permitting the air carrier to use two international slots at O'Hare

for domestic service. The FAA found that the public interest supported this limited exemption and recognized Northwest Airlines' considerable long-term use of the two slots and the fact that its ''use'' of the slots, at a minimum, has been equivalent to the usage required for domestic service.

Additionally, by petition dated April 29, 1998, American Airlines petitioned to redesignate 15 international slots at LaGuardia as domestic slots.

The Proposal

In order to ensure that FAA regulations governing slots and slot allocation procedures are consistent with the terms of the Agreement, the FAA proposes to amend the following provisions of Subparts K and S:

The FAA proposes to: (1) codify, in a footnote to the hourly slot totals in subpart K, the 14 slots at LaGuardia and 24 slots at O'Hare that were allocated to the Canadian carriers in June 1995; (2) exclude from the allocation of international slots at HDR airports transborder service operations solely between that airport and Canada; (3) set forth the provisions that apply to slots used for transborder service between the U.S. and Canada and codify the established base level of slots allocated to Canadian carriers; (4) reclassify certain international slots as domestic slots; (5) reduce the international allocation for air carriers that hold and operate more than 100 permanent slots at O'Hare by the number of international slots reclassified as domestic slots; (6) permit Canadian carriers to participate in any lotteries of domestic slots; and (7) amend the regulatory deadline for submitting requests for international allocation to coincide with the published IATA deadline.

The Summer 1999 scheduling season begins on April 4, 1999. The FAA understands from industry practices that air carriers need approximately 60 days advance notice to set schedules for aircraft crews and to publish scheduled airline information. In order for all air carriers that may be affected by the changes proposed in this NPRM to be able to determine their slot base with respect to international and domestic slots prior to this season, the FAA finds that a 30-day comment period is justified. A 30-day comment period for this NPRM will provide commenters with adequate time to file comments and will enable the FAA to promulgate the final rule so that it can be in effect for slot allocation for the 1999 Summer scheduling season.

Environmental Review

The FAA has concluded that this proposed rule does not trigger the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., or other environmental laws. As explained below, the action is a non-discretionary one mandated by the bilateral agreement entered into by the United States and Canada on February 24, 1995.

In accordance with the bilateral agreement, part one of this proposed regulation reclassifies slots held by Canadian carrier at LaGuardia and O'Hare airports. The Canadian carriers' slots would be converted from international to a modified form of domestic slots. Under the arrangement mandated by the Agreement and codified in this proposed regulation, the slots held by the Canadian carriers would resemble domestic slots in that (1) they can be bought, sold, or traded on the open market, and (2) they are subject to the bi-monthly ''use-or-lose'' requirement. Unlike other domestic slots, however, the slots held by the Canadian carriers would not be subject to seasonal withdrawal for international use pursuant to 14 CFR section 93.217 or for new entrants. To provent disparate treatment between U.S. carriers and Canadian carriers, the proposed regulations would also reclassify certain, identified international slots held by U.S. carriers as domestic slots.

Part two of this proposed regulation would establish base levels of permanent slots for the Canadian carriers at LaGuardia and O'Hare. The bilateral agreement directs that the Canadian carriers receive 42 permanent slots at LaGuardia. Currently, the Canadian carriers are using 42 slots at LaGuardia so no additional allocation of slots is necessary. This Agreement also directs that the Canadian carriers receive 36 Summer slots and 32 Winter slots at O'Hare. Currently, the Canadian carriers hold 22 permanent slots at O'Hare. The Canadian carriers also are allocated 14 seasonal slots for the summer and 10 seasonal slots for the winter under 14 CFR section 93.217 in time periods for which domestic slots are withdrawn. To complete the base level of slots at O'Hare, the proposed regulation provides that an additional 14 slots in the summer and 10 slots in the winter be allocated permanently to the Canadian carriers. Because the Canadian carriers are receiving these allocations as permanent, the proposed regulation also provides that they would no longer be eligible to receive international slots under 14 CFR section 93.217.

No NEPA or other environmental analysis is required because the proposed action is ministerial in nature. The FAA has no choice about how to accomplish the international mandate, which reclassifies international slots held by Canadian carriers as domestic slots and to provide additional slots at O'Hare. While the FAA retains complete authority to withdraw slots for operational needs in accordance with 14 CFR section 93.223, the existing allocation mechanisms do not provide a means for the FAA to allocate the slots to the Canadian carriers. 14 CFR section 93.225 provides that if slots are available, the slots will be distributed by random lottery with new entrant and limited incumbent carriers receiving priority. In addition, fulfilling the Agreement obligation by allocating slots under 14 CFR section 93.217 is not feasible since these slots are allocated seasonally. Furthermore, even if allocating slots under 14 CFR section 93.217 were feasible, slot withdrawals by the FAA are legislatively capped at the level of slots withdrawn as of October 31, 1993. 49 U.S.C. 41714(b)(2). Thus, lacking a mechanism for withdrawing the slots from the existing slot holders and re-directing them to the Canadian carriers, the FAA has no choice but to comply with the bilateral agreement by creating 14 additional slots at O'Hare. NEPA requires agencies to take environmental concerns into consideration when making decisions where a range of alternatives is available. However, under these circumstances, where no choice is involved, an action is ministerial and no NEPA analysis is required.

The FAA's position that this action is ministerial finds support in the NEPA-implementing regulations promulgated by the Department of State, 22 CFR part 161. Among the actions which the State Department exempts from NEPA analysis are:

> Mandatory actions required under any treaty or international agreement to which the United States Government is a party, or required by the decisions of international organizations or authorities in which the United States is a member or participant, except when the United States has substantial discretion over implementation of such requirements.

By comparison, the allocation of slots to the Canadian carriers is an example of an action that would likely be exempt under the State Department regulations. The FAA is required by the Agreement to allot permanent slots to the Canadian carriers, and the agency has no discretion but to create additional slots.

Given the international agreement, the FAA adopts the position espoused by the State Department regulations and concludes that the allocation of slots to Canadian carriers, as required by the bilateral agreement, does not trigger NEPA compliance.

Regulatory Evaluation Summary

Both the executive and legislative branches of government recognize that economic considerations are an important factor in establishing regulations. Executive Order 12866, signed by President Clinton on September 30, 1993, requires Federal agencies to assess both the costs and benefits of proposed regulations. Recognizing that some costs and benefits are difficult to quantify, agencies are to propose or adopt regulations only upon a reasoned determination that the benefits of each regulation justify its costs. In addition, the Regulatory Flexibility Act of 1980 requires Federal agencies to determine whether or not proposed regulations are expected to have a significant economic impact on a substantial number of small entities, and, if so, to examine the feasibility of regulatory alternatives to minimize the economic burden on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of proposed regulations on international trade.

This section summarizes the FAA's economic and trade analyses, findings, and determinations in response to these requirements. The complete economic and trade analyses are contained in the docket.

The FAA allocates international and domestic slots without charge to carriers at HDR airports. Allocated slots do not represent a property right, but represent an operating privilege subject to absolute FAA control. As such, the FAA does not place any economic value on the slots it allocates at HDR airports. However, slots do have economic value to air carriers, because they provide access to the HDR airport, and with access to the airport comes the opportunity to earn revenue.

A market has been created for those domestic slots that air carriers control at the HDR airports. Since domestic slots can be bought, sold, traded, or leased, these slots have a monetized value. International slots also provide an opportunity to earn revenue. However, because they cannot be bought, sold, leased, bartered, or used as collateral, no market exists for them at HDR airports.

Although the total number of slots (international plus domestic) would not increase for any of the U.S. carriers, the number of domestic slots for affected carriers would increase. The proposed rule would generate benefits for those air carriers holding historic slots identified for international use under 14 CFR 93.215(d) because those international slots would be converted to domestic slots. Operators benefit because of the enhanced flexibility they receive to manage their scheduling at HDR airports. The slots that have been converted from international to domestic can be scheduled in Canada-USA transborder service, they can be scheduled in other domestic service, or they can be scheduled for any international service. Operators also receive an expanded economic value because the market has placed a value on domestic slots if the operator decides to buy, sell, lease, barter, or collateralize slots. Therefore, the FAA believes that the proposed rule would benefit operators not only because domestic slots present a greater measure of potential earning power than do international slots, but also because domestic slots offer operators a better opportunity to manage their assets.

There is no compliance cost associated with the proposed rule. The proposed rule would not impose any additional equipment, training, administrative, or other cost to the aviation industry. However, the FAA solicits comments regarding the extent and plausibility of the adverse impacts on operators that feel they would be impacted from implementation of the proposed rule. All commenters are asked to provide detailed cost information on the nature of their impact and over what time period.

The NPRM would not place any additional requirements on the aviation industry. Therefore, there is no compliance costs associated with the proposed rule. Qualitative benefits from the proposed rule would come from converting certain identified international slots to domestic slots, thereby affording operators greater flexibility, because the converted slots can be used for transborder service, any other domestic service, or for other international service. Domestic slots have greater economic value than international slots, because domestic slots can be bought, sold, leased, bartered, or used as collateral. Due to the advantages domestic slots offer over international slots, operators have an enhanced opportunity to manage their assets in such a way as to maximize their income. Therefore, the FAA has determined that the proposed rule is cost beneficial.

Initial Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The Act requires that whenever an agency publishes a general notice of proposed rulemaking, an initial regulatory flexibility analysis identifying the economic impact on small entities, and considering alternatives that may lessen those impacts must be conducted if the proposed rule would have a significant economic impact on a substantial number of small entities.

This proposed rule will impact entities regulated by part 93. The FAA has determined that the proposed amendments to part 93, Subparts K and S, if promulgated, would affect only two Canadian carriers and four major U.S. carriers and, the proposed amendments would not have a significant impact on these major air carrier costs. Therefore, the FAA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. However, the FAA solicits comments from operators that feel they would be negatively impacted from implementation of the proposed rule.

International Trade Impact Statement

This proposal could positively affect the sale of Canadian aviation services in the United States, but it could also positively affect the sale of United States aviation services in Canada. However, this proposed rule is not expected to impose a competitive advantage or disadvantage to either U.S. air carriers doing business in Canada or Canadian air carriers doing business in the United States. This assessment is based on the fact that this proposed rule would not impose additional costs on either U.S. or Canadian air carriers.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process

to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted an explanation of the proposed burden associated with this NPRM to the Office of Management and Budget (OMB) for its review. Under the provisions of this NPRM, Canadian carriers or commuter operators would need to report to the FAA certain aspects of their operations at high density requirement (HDR) airports. Specifically, FAA regulation requires notification of (1) requests for confirmation of transferred slots; (2) requests to be included in a lottery for available slots; (3) usage for slots on a bi-monthly basis; and (4) requests for short-term use of off peak hour slots. Prior to this NPRM, Canadian carriers and commuter operators were not required to submit this information for international slots, nor were they able to participate in the allocation procedures that apply to U.S. carriers. The total reporting burden associated with this NPRM is 54 hours. The affected public would be Canadian carriers or commuter operators. The requirement would be mandatory. Once this NPRM becomes a final rule, the burden associated with it would be added to the current information collection package, High Density Traffic Airports; Slot Allocation and Transfer Methods, OMB approval number 2120–0524.

Federalism Implications

The regulations proposed herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 93

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

The Proposed Amendment

For the reasons set forth above, the Federal Aviation Administration proposes to amend 14 CFR part 93 as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

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

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

2. § 93.123 is amended by adding a new footnote 5 in the headings in columns 2 and 4 and revising the heading in column 5 of the chart in paragraph (a) to read as follows:

§ 93.123 High density traffic airports.

(a) * * *

IFR OPERATIONS PER HOUR—AIRPORT

Class of user	LaGuardia [4 5]	Newark	O'Hare [2 3 5]	Ronald Reagan National [1]
*	*	*	*	*	*	*

[1] Washington National Airport operations are subject to modifications per Section 93.124.

[2] The hour period in effect at O'Hare begins at 6:45 a.m. and continues in 30-minute increments until 9:15 p.m.

[3] Operations at O'Hare International Airport shall not—

(a) Except as provided in paragraph (c) of the note, exceed 62 for air carriers and 13 for commuters and 5 for ''other'' during any 30-minute period beginning at 6:45 a.m. and continuing every 30 minutes thereafter.

(b) Except as provided in paragraph (c) of the note, exceed more than 120 for air carriers, 25 for commuters and 10 for ''other'' in any two consecutive 30-minute periods.

(c) For the hours beginning as 6:45 a.m., 7:45 a.m., 11:45 a.m., 7:45 p.m. and 8:45 p.m., the hourly limitations shall be 105 for air carriers, 40 for commuters and 10 for ''other,'' and the 30-minute limitations shall be 55 for air carriers, 20 for commuters and 5 for ''other.'' For the hour beginning at 3:45 p.m., the hourly limitations shall be 115 for air carriers, 30 for commuters and 10 for ''others'', and the 30-minute limitations shall be 60 for air carriers, 15 for commuters and 5 for ''other.''

[4] Operations at LaGuardia Airport shall not—

(a) Exceed 26 for air carriers, 7 for commuters and 3 for ''other'' during any 30-minute period.

(b) Exceed 48 for air carriers, 14 for commuters, and 6 for ''other'' in any two consecutive 30-minute period.

[5] Pursuant to bilateral agreement, 14 slots at LaGuardia and 24 slots at O'Hare are allocated to the Canadian carriers. These slots are excluded from the hourly and daily quotas set forth in this section.

3. Section 93.217 is amended by revising paragraphs (a) introductory text, (a)(5), (a)(6), (a)(8) and (a)(10)(i) to read as follows:

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

(a) Any air carrier or commuter operator having the authority to conduct international operations shall be provided slots for those operations, excluding transborder service solely between HDR airports and Canada, subject to the following conditions and the other provisions of this section:

* * * * *

(5) Except as provided in paragraph (a)(10) of this section, at Kennedy and O'Hare Airports, a slot shall be allocated, upon request, for seasonal international operations, including charter operations, if the Chief Counsel of the FAA determines that the slot had been permanently allocated to and used by the requesting carrier in the same hour and for the same time period during the corresponding season of the preceding year. Requests for such slots must be submitted to the office specified in § 93.221(a)(1), *in accordance with the terms published in the* **Federal Register** *for each season.* For operations during the 1986 summer season, request under

this paragraph must have been submitted to the FAA on or before February 1, 1986. Each carrier requesting a slot under this paragraph must submit its entire international schedule at the relevant airport for the particular season, noting which requests are in addition to or changes from the previous year.

(6) Except as provided in paragraph (a)(10) of this section, additional slots shall be allocated at O'Hare Airport for international scheduled air carrier and commuter operations (beyond those slots allocated under § 93.215 and § 93.217(a)(5)) if a request is submitted to the office specified in § 93.221(a)(1) *and filed in accordance with the terms published in the* **Federal Register** for each season. These slots will be allocated at the time requested unless a slot is available within one hour of the requested time, in which case the unallocated slots will be used to satisfy the request.

* * * * *

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

* * * * *

(10) * * *

(i) Allocation of the slot does not result in a total allocation to that carrier under this section that exceeds the number of slots allocated to and scheduled by that carrier under this section on February 23, 1990, *and as reduced by the number of slots reclassified under § 93.218,* and does not exceed by more than 2 the number of slots allocated to and scheduled by that carrier during any half hour of that day, or

* * * * *

3. A new § 93.218 is added to read as follows:

§ 93.218 Slots for transborder service to and from Canada.

(a) Except as otherwise provided in this subpart, effective February 24, 1998, international slots identified by U.S. carriers for international operations in December 1985 and the equivalent number of international slots held as of February 24, 1998, will be domestic slots. The Chief Counsel of the FAA shall be the final decisionmaker for these determinations.

(b) Canadian carriers shall have a guaranteed base level of slots of 42 slots at LaGuardia, 36 slots at O'Hare for the Summer season, and 32 slots at O'Hare in the Winter season.

(c) Any modification to the slot base by the Government of Canada or the Canadian carriers that results in a decrease of the guaranteed base in paragraph (b) of this section shall permanently modify the base number of slots.

4. § 93.223 is amended by adding a new paragraph (c)(4) to read as follows:

§ 93.223 Slot withdrawal.

* * * * *

(c) * * *

(4) No slot comprising the guaranteed base of slots, as defined in § 93.318(b), shall be withdrawn for use for international operations or for new entrants.

* * * * *

5. § 93.225 is amended by revising paragraph (e) to read as follows:

§ 93.225 Lottery of available slots.

* * * * *

(e) Participation in a lottery is open to each U.S. air carrier or commuter operator operating at the airport and providing scheduled passenger service at the airport, *as well as where provided for by bilateral agreement.* Any U.S. carrier that is not operating scheduled service at the airport and has not failed to operate slots obtained in the previous lottery, or slots traded for those obtained by lottery, but wishes to initiate scheduled passenger service at the airport, shall be included in the lottery if that operator notifies, in writing, the Slot Administration Office, AGC–230, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The notification must be received 15 days prior to the lottery date and state whether there is any common ownership or control of, by, or with any other air carrier or commuter operator as defined in § 93.213(c). New entrant and limited incumbent carriers will be permitted to complete their selections before participation by other incumbent carriers is initiated.

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Issued in Washington, DC, on January 6, 1998.

James W. Whitlow,

Deputy Chief Counsel.

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