

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 93**

[Docket No.: FAA-2014-1073; Notice No. 14-11]

RIN 2120-AJ89

**Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to replace the Orders limiting scheduled operations at John F. Kennedy International Airport (JFK), limiting scheduled operations at Newark Liberty International Airport (EWR), and limiting scheduled and unscheduled operations at LaGuardia Airport (LGA). The Orders are scheduled to expire when this proposed rule becomes effective but not later than October 29, 2016. This proposal is intended to provide a longer-term and comprehensive approach to slot management at JFK, EWR, and LGA. The FAA proposes to maintain the limits on scheduled and unscheduled operations in place under the Orders, limit unscheduled operations at JFK and EWR, and require use of an allocated slot 80% of the time for the same flight or series of flights to retain historic precedence. The FAA also proposes five alternatives for a secondary market that would allow carriers to buy, sell, lease, and trade slots. The DOT proposes to review certain slot transfer transactions for significant anti-competitive effects and harms to the public interest. Finally, the FAA proposes minor miscellaneous amendments to remove inapplicable references in the High Density Rule.

**DATES:** Send comments on or before April 8, 2015.

**ADDRESSES:** Send comments identified by docket number FAA-2014-1073 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Molly Smith, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3274; email [molly.w.smith@faa.gov](mailto:molly.w.smith@faa.gov); Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-6462; email [susan.pfingstler@faa.gov](mailto:susan.pfingstler@faa.gov); or Peter Irvine, U.S. Department of Transportation, Office of Aviation Analysis, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-3156; email [peter.irvine@dot.gov](mailto:peter.irvine@dot.gov).

For legal questions concerning this action, contact Robert Hawks, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-7143; email [rob.hawks@faa.gov](mailto:rob.hawks@faa.gov); or Cindy Baraban, U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-9159; email [cindy.baraban@dot.gov](mailto:cindy.baraban@dot.gov).

**SUPPLEMENTARY INFORMATION:** See the "Additional Information" section for information on how to comment on this proposal and how the FAA will handle comments received. The "Additional Information" section also contains related information about the docket,

privacy, the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

**Authority for This Rulemaking**

This rulemaking is promulgated under the authority described in Title 49 of the United States Code, Subtitle VII, Part A, Subpart I, Sections 40101, 40103, 40105, and 41712

The Secretary of Transportation (Secretary) is the head of the DOT and has broad oversight of significant FAA decisions.<sup>1</sup> In addition, under 49 U.S.C. 41712, the Secretary has the authority to investigate and prohibit unfair and deceptive practices and unfair methods of competition in air transportation or the sale of air transportation. The Secretary is required to consider several objectives as being in the public interest, including, without limitation, the following: 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; and 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.

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 the FAA deems necessary for safe and efficient utilization. It further directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of navigable airspace. The FAA should ensure efficient use of navigable airspace in a manner that does not effectively shut out potential operators at the airport and in a manner that takes account of competitive market forces. The FAA should take steps to ensure the operational limits imposed and the rules

<sup>1</sup> See 49 U.S.C. 102 and 106.

governing their allocation and transfer do not inefficiently constrain competitive market forces. Competition at an airport benefits the flying public by providing price competition and expanded service. The ability of carriers to initiate or expand service at the airport is hindered, in large part, by the imposition of operations limits. Accordingly, the FAA believes it must strike a balance between (1) promoting competition and permitting access to new entrants and (2) recognizing historical investments in the airport and the need to provide continuity.

These authorities empower the DOT to ensure the efficient utilization of airspace by limiting the number of scheduled and unscheduled aircraft operations at JFK, EWR, and LGA, while balancing between promoting competition and recognizing historical investments in the airport and the need to provide continuity. They also authorize the DOT to review proposed transfers of slots and to limit or prohibit transfers where they present a potential for significant anticompetitive effects or adverse effects on the public interest.

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**I. Executive Summary**

This proposed rule would replace the Orders limiting scheduled operations at JFK and EWR and the Order limiting scheduled and unscheduled operations at LGA. Those Orders remain effective until this proposed rule becomes

effective but not later than October 29, 2016. If adopted, this proposed rule would apply to all scheduled and unscheduled operations every day at JFK and EWR between the hours of 0600 and 2259, local time. This proposed rule would apply to all scheduled and unscheduled operations at LGA Monday through Friday between the hours of 0600 and 2159, local time, and Sunday between the hours of 1200 and 2159, local time. This proposed rule would apply, in large part, the International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG) to administering slots at each airport.

The following tables provide a comparison between requirements under the current Orders and under this proposal. The first table summarizes existing requirements for each airport under the Orders. The second table summarizes this proposal's establishment of an initial slot base based on carrier holdings under the Orders, the slot-controlled periods, hourly and daily limits for scheduled operations, hourly limits for unscheduled operations, and the general processes that would be used to allocate slots or reservations for scheduled and unscheduled flights. It also identifies differences between the five potential alternatives for a secondary market to buy, sell, lease, or otherwise transfer slots between carriers and introduces a review of slot transfer transactions for significant anti-competitive effect.

**CURRENT ORDERS FOR JFK, EWR, AND LGA**

Feature	JFK	EWR	LGA
Slot Base .....	Seasonal slot holdings, as approved by the FAA.	Seasonal slot holdings, as approved by the FAA.	Slot holdings, as approved by the FAA.
Slot (called Operating Authorization under the Orders).	Operational authority to conduct an arrival or departure operation on a particular day of the week during a specific 30-minute period.	Operational authority to conduct an arrival or departure operation on a particular day of the week during a specific 30-minute period.	Operational authority to conduct an arrival or departure operation during a specific 30-minute period.
Slot-controlled hours .....	Daily: 0600 to 2259, Eastern time	Daily: 0600 to 2259, Eastern time	M-F: 0600 to 2159, Eastern time Su: 1200 to 2159, Eastern time.
Hourly slot limits .....	81 per hour or in any 60-minute period.	81 per hour or in any 60-minute period.	71 per hour or in any 60-minute period.
Daily slot limits .....	Not formally set but based on accepted schedules and modeled delay when Orders adopted.		
Hourly unscheduled operations limits.	None .....	None .....	3.
Unscheduled operations reservation system.	None .....	None .....	Reservations available through the Enhanced Computer Voice Reservation System (e-CVRS) 72 hours in advance; reservations for certain public charter operations available through the Slot Administration Office 6 months in advance.
Allocation of slots .....	Adapted from IATA WSG .....	Adapted from IATA WSG .....	Lottery.
Scheduling season .....	IATA WSG .....	IATA WSG .....	Slot usage reporting on bimonthly basis.

CURRENT ORDERS FOR JFK, EWR, AND LGA—Continued

Feature	JFK	EWR	LGA
Use-or-lose .....	Must use allocated slot 80% of the time throughout the previous corresponding season; waiver for highly unusual and unpredictable condition lasting 5 or more consecutive days; waiver for Thanksgiving, the Friday after Thanksgiving, and the period from December 24 through the first Sunday of January.		
Secondary market .....	Privately-negotiated lease and trade that extend no longer than terms of Order; request for FAA approval.		
Logistical slot swaps .....	Permitted.		
Competitive review .....	None.		

PROPOSED REGULATION FOR JFK, EWR, AND LGA

Feature	JFK	EWR	LGA
Slot Base .....	Seasonal slot holdings, as approved by the FAA.		
Slot .....	Operational authority to conduct an arrival or departure operation on a particular day of the week during a specific 30-minute period.		
Slot-controlled hours .....	Daily: 0600 to 2259, Eastern time	Daily: 0600 to 2259, Eastern time	M–F: 0600 to 2159, Eastern time Su: 1200 to 2159, Eastern time.
Hourly slot limits .....	81 per hour or in any 60-minute period and 44 in any 30-minute period.	81 per hour or in any 60-minute period and 44 in any 30-minute period.	71 per hour or in any 60-minute period and 38 in any 30-minute period.
Daily slot limits .....	1205 for hours 0600 to 2159 .....	1205 for hours 0600 to 2159 .....	1136.
Hourly unscheduled operations limits.	2 .....	1 .....	3.
Unscheduled operations reservation system.	Reservations available through the e-CVRS 72 hours in advance; reservations for certain public charter operations available through Slot Administration Office 6 months in advance.		
Allocation of slots .....	Adapted from IATA WSG.		
Scheduling season .....	IATA WSG.		
Use-or-lose .....	Must use allocated slot 80% of the time for the same flight or series of flights throughout the previous corresponding season; waiver for strike; waiver for highly unusual and unpredictable condition lasting 5 or more consecutive days; waiver for slot allocation or acquisition by new entrant carrier.		
Secondary market (Alternative 1) ...	Privately-negotiated buy, sell, lease, and trade without prior public notice; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.		
Secondary market (Alternative 2) ...	FAA publishes a bulletin board notice of buy, sell, lease, and trade; bidding and negotiation between seller and bidders after public notice; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.		
Secondary market (Alternative 3) ...	FAA publishes a bulletin board notice of buy, sell, lease, and trade; negotiations prior to public notice permitted; bidding and negotiation between seller and bidders; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.		
Secondary market (Alternative 4) ...	FAA publishes a bulletin board notice of buy, sell, lease, and trade; bids posted on bulletin board; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.		
Secondary market (Alternative 5) ...	FAA publishes a bulletin board notice of buy, sell, and lease without identifying poster; cash-only bids posted on bulletin board without identifying bidders; seller must accept highest bid; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.		
Logistical slot swaps .....	Permitted.		
Competitive/Public Interest review ..	Performed by DOT based on submitted transaction terms; DOT has 14 days to decide whether to review transaction; DOT approval or non-objection required for FAA approval of transfer.		

The FAA developed this analysis using 2009 data to model the behaviors of carriers based on meeting the minimum requirement of the proposed rule. Under this assumption, carriers would incrementally increase actual operations in year one to meet the new usage requirement, and this new operating level would grow by the FAA’s Terminal Area Forecast (TAF) until it reached the daily limits. The analysis period is the first year because compliance cost is the highest in that year, and if benefits exceed the cost in

the first year, this relationship will continue until passenger demand forces operations up to 100% of the available slots. In the first year, carrier utilization of slots will be at least 80%. Thereafter, increases in operations and slot utilization are a result of an increase in forecasted demand. Assuming the highest cost secondary market alternative (either alternative four or five) is adopted, the total benefits and costs are estimated at \$74,696,596 (\$65,242,900 Present Value at 7%) for benefits and \$53,056,768 (\$46,341,836

Present Value at 7%) for costs. These costs and benefits result from the changed behavior concerning use-or-lose, secondary market, and reporting requirements under this proposal as compared to current behavior under the existing Orders for each airport. Moreover, the FAA believes that this rule would improve utilization of existing slots, possibly increase a carrier’s penalty for retaining slots of limited value and thus result in the return of some slots, and would result in net benefits.

## TOTAL COST AND BENEFITS OF ALTERNATIVES FOUR OR FIVE OF THE PROPOSED RULE

First year	Benefits	Present value (7%)	Costs	Present value (7%)	Net benefits
Regulatory Case .....	\$74,696,596	\$65,242,900	\$53,056,768	\$46,341,836	\$18,901,064

## II. Background

### A. The High Density Rule and AIR-21

To manage airspace congestion, in 1968, the FAA adopted the High Density Rule (HDR), which limited take-offs and landings at JFK, EWR, LGA, Washington National Airport (DCA), and Chicago O'Hare International Airport (ORD).<sup>2</sup> In 1970, the FAA suspended the HDR's application at EWR because airport capacity could meet demand.<sup>3</sup> To operate during the slot-controlled hours, a flight needed a reservation, commonly known as a "slot." The HDR divided the allowable slots by categories of users (*i.e.*, air carriers other than air taxis, scheduled air taxis, and others).<sup>4</sup> These reservations applied to both scheduled and unscheduled (*i.e.*, "Other") operations. While LGA, DCA, and ORD were constrained throughout much of the day, JFK was constrained for only 5 hours from 1500 through 1959, Eastern Time.

Under the HDR, air carrier slots were allocated through airline scheduling committees, operating under then-authorized antitrust immunity, and the airlines would agree to the allocation. The FAA's role was limited to determining how many operations air traffic control (ATC) could reasonably handle during congested periods and enforcing operator compliance with the rules. After the Airline Deregulation Act in 1978, new entrant airlines sought access to, and legacy carriers sought expansion at, slot-controlled airports. This increased competition made it more difficult for airlines to reach agreement on slot allocation, and the scheduling committees began to deadlock. The Civil Aeronautics Board or DOT periodically stepped in to resolve the deadlocks. In resolving a 1980 deadlock at DCA, the DOT divested a small percentage of slots from incumbent airlines and reallocated them to a requesting new entrant. The DOT noted that additional reduced fare service was likely to increase competition and thus be consistent with the general pro-competitive policy of the Airline Deregulation Act of 1978.<sup>5</sup>

The U.S. Court of Appeals upheld the DOT's action on review following an airline challenge.<sup>6</sup>

In 1981, the FAA responded to a nationwide shortage of air traffic controllers by reducing the level of air traffic operations and imposing slot controls on the nation's 22 busiest airports.<sup>7</sup> Through that experience, the FAA implemented new allocation and slot management methods. In 1982, the FAA utilized a lottery allocation and imposed a minimum usage requirement for the first time.<sup>8</sup> Also in 1982, the FAA implemented an experimental "Buy/Sell" program, permitting transfers of slots in any number and for any consideration, to provide for "adjustments in slot assignments that may be occasioned by seasonal variation in demand, competitive pressures, or economic decisions of the carriers" and to increase flexibility of the slot allocation system.<sup>9</sup> For the 6 weeks the "Buy/Sell" program was in place, approximately 190 slots were transferred by sale among carriers.<sup>10</sup> Thereafter, the FAA no longer permitted slot sales (though trades continued to be permitted) because the necessity for slots was diminishing as the ATC system was being restored.<sup>11</sup>

The FAA established more permanent allocation procedures for slots under the HDR in 1985 when it adopted the Buy/Sell Rule, which allowed carriers to buy, sell, lease, and trade most slots.<sup>12</sup> In a companion rulemaking to the Buy/

Sell Rule, the FAA provided for the withdrawal of up to five percent of slots at slot-controlled airports through a reverse lottery to provide a pool of slots for new entrants and limited incumbents.<sup>13</sup> The Buy/Sell Rule included use-or-lose provisions and explicitly stated slots were an operating privilege and not the carriers' property.

For the next 15 years the agency relied primarily on the secondary market authorized by the Buy/Sell Rule to address access issues at HDR airports, particularly for domestic operations. However, carriers without a substantial presence at HDR airports increasingly criticized the Buy/Sell Rule because their access to slot-controlled airports was severely limited. Those carriers complained to the FAA that grandfathering 95 percent of slots at slot-controlled airports to incumbent carriers left insufficient capacity available for reallocation. Carriers further criticized the Buy/Sell Rule for failing to foster a robust secondary market and complained about a lack of transparency that permitted private transactions arranged to reduce competition. Some carriers also complained they were unaware of slots potentially available for sale or lease even when they were seeking to initiate or expand service. Finally, a small number of carriers contended they were effectively denied access to the airports because their competitors refused to sell slots or provide meaningful lease terms.

In 1994, Congress began to relax the HDR by authorizing the Secretary, upon making a public interest finding, to grant exemptions from the HDR to enable new entrant carriers<sup>14</sup> to provide air transportation at certain slot-controlled airports, including JFK and LGA.<sup>15</sup> At JFK, the DOT granted 75 slot exemptions to new entrant carrier JetBlue Airways (JetBlue) under this authority in 1999, which were phased in over a 5-year period.<sup>16</sup> The order stated

<sup>13</sup> SFAR 88, 51 FR 8630 (Mar. 12, 1986).

<sup>14</sup> The term "new entrant carrier" was defined as "an air carrier that does not hold a slot at the airport concerned and has never sold or given up a slot at that airport after December 16, 1985, and a limited incumbent carrier." 49 U.S.C. 41714(h)(3).

<sup>15</sup> Pub. L. 103-305 § 206(a)(1) (Jan. 25, 1994) (codified at 49 U.S.C. 41714).

<sup>16</sup> Application of New Air Corporation for Exemption from 14 CFR part 93, subparts K and S

<sup>2</sup> 33 FR 17896 (Dec. 3, 1968) (codified at 14 CFR part 93 subpart K).

<sup>3</sup> 35 FR 16591 (Oct. 24, 1970).

<sup>4</sup> 33 FR 17896 (Dec. 3, 1968).

<sup>5</sup> SFAR 43, 45 FR 72637 (Nov. 3, 1980).

<sup>6</sup> *Northwest Airlines, Inc. v. Goldschmidt*, 645 F.2d 1309 (8th Cir. 1981).

<sup>7</sup> See SFAR 44, 46 FR 39606 (Aug. 4, 1981); SFAR 44-1, 46 FR 44424 (Sept. 4, 1981); SFAR 44-2, 46 FR 48906 (Oct. 5, 1981). Those were then William B. Hartsfield Atlanta International Airport, Boston's Logan International Airport, ORD, Cleveland Hopkins International Airport, then Dallas/Fort Worth Regional Airport, Denver's Stapleton International Airport, Detroit Metropolitan Wayne County Airport, Fort Lauderdale-Hollywood International Airport, then Houston Intercontinental Airport, Kansas City International Airport, JFK, LGA, Las Vegas' McCarran International Airport, Los Angeles International Airport, Miami International Airport, Minneapolis/St. Paul International Airport, EWR, Philadelphia International Airport, Pittsburgh International Airport, San Francisco International Airport, Lambert-St. Louis International Airport, and DCA.

<sup>8</sup> SFAR 44-3, 47 FR 7816 (Feb. 22, 1982).

<sup>9</sup> 47 FR 19989 (May 10, 1982).

<sup>10</sup> 47 FR 29814 (Jul. 8, 1982).

<sup>11</sup> *Id.* at 29815.

<sup>12</sup> 50 FR 52195 (Dec. 20, 1985).

that JetBlue would operate the majority of its flights outside the 5 HDR slot-controlled hours. The Secretary also granted 30 slot exemptions at LGA to new entrant carriers.

On April 5, 2000, Congress enacted the Wendell H. Ford Aviation and Investment Reform Act of the 21st Century (AIR-21).<sup>17</sup> AIR-21 phased out and terminated the HDR at JFK, LGA, and ORD.<sup>18</sup> In phasing out the HDR, AIR-21 directed the Secretary to grant two types of exemptions from the HDR's flight restrictions at LGA and JFK. The first type of exemption was designed to promote more competition at slot-controlled airports and required the Secretary to grant exemptions to a new entrant or limited incumbent, defined as a carrier holding fewer than 20 slots or slot exemptions.<sup>19</sup> The second type of exemption was aimed at improving service to small communities and required the Secretary to grant exemptions to a carrier operating an aircraft with less than 71 seats to small-hub or non-hub airports for an unrestricted number of flights.<sup>20</sup> AIR-21 also preserved the FAA's authority to impose flight restrictions by stating 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."<sup>21</sup>

### B. LaGuardia Airport After AIR-21

LGA, which provides almost exclusively domestic service,<sup>22</sup> consistently has been one of the most congested airports in the nation. Its proximity to midtown Manhattan makes it a desirable airport for many travelers, and airlines attempt to meet that demand by operating many flights to LGA. Physical constraints of the airfield limit the ability to expand capacity.

The slot exemptions mandated by Congress under AIR-21 facilitated access for new entrants and small community service at LGA, but the trade-off for this service was increased airport congestion and delays. By fall

2000, carriers had added over 300 new scheduled flights at LGA and had plans to operate even more, resulting from more than 600 exemption requests. While the number of allowable scheduled operations under the HDR remained constant at 62 per hour, the actual number of scheduled operations rose to over 100 in several hours with the additional AIR-21 slot exemptions. With no new airport infrastructure, overall airport capacity remained the same while the number of aircraft operations and delays soared. Additional operations following AIR-21 resulted in significantly higher delays at LGA than existed before 2000. The average minutes of delay for all arriving flights at LGA increased 144% from 15.52 minutes in March 2000 (the month before AIR-21 was enacted) to 37.86 minutes in September 2000.<sup>23</sup> The increase in delay as a result of AIR-21 was not limited to delays at LGA. Flights that arrived and departed late at LGA affected flights at other airports and in the national airspace system (NAS). By September 2000, flight delays at LGA accounted for 25 percent of the nation's delays, compared to 10 percent for the previous year.<sup>24</sup>

Using its authority under 49 U.S.C. 40103, and pending the development of a long-term solution, the FAA published a Notice of Intent in the **Federal Register** on November 15, 2000, announcing its intent to temporarily limit AIR-21 slot exemptions at LGA and to allocate them via a lottery.<sup>25</sup> The lottery, which was conducted on December 4, 2000, was premised on the imposition of an airfield and airspace capacity management limit of 75 scheduled operations per hour (plus six unscheduled operations primarily used by the general aviation community) beginning January 31, 2001.<sup>26</sup> This limit still allowed a significant increase in operations at the airport above the HDR's regulatory limits, thus serving Congressional objectives while stretching capacity to its practical limits. The number of AIR-21 slot exemptions at LGA was restricted to a total of 159 a day between the hours of 0700 and 2159. As a result of the hourly restrictions, the average number of aircraft delays at LGA fell from 330 per day in October 2000 to 98 per day in April 2001.

Under AIR-21, slots allocated under the HDR at LGA were scheduled to

expire on January 1, 2007. Based on its experience in 2000, the FAA determined that simply lifting the HDR at LGA would result in a significant increase in delays and adversely impact the airspace around New York City and the NAS as a whole.

In August 2006, the FAA published a notice of proposed rulemaking (LGA NPRM) proposing a continuation of the existing cap of 75 scheduled and six unscheduled hourly operations as well as a new method of allocating capacity.<sup>27</sup> In addition to retaining the existing cap, the FAA proposed to impose an average minimum aircraft size requirement for much of the fleet serving the airport. By incentivizing carriers to use larger aircraft, the proposal was designed to maximize passenger throughput consistent with the airport's physical constraints. The FAA also proposed to implement a limit on the duration of slots that would assure 10 percent of the capacity at the airport would be available annually for reallocation by the FAA.

The FAA recognized that it would be unable to complete its rulemaking by January 1, 2007, when the HDR was scheduled to expire. After providing for notice and comment, the agency published an FAA Order Operating Limitations at New York LaGuardia Airport (LGA Order).<sup>28</sup> The LGA Order retained the existing limit of 75 scheduled operations and a reservation system for unscheduled operations that permitted six unscheduled operations per hour. The LGA Order did not distinguish between operations conducted pursuant to HDR slots and AIR-21 slot exemptions; rather, flights conducted pursuant to exemptions were included in the hourly cap without restriction. The slots and exemptions were grandfathered to the then-current holder as "Operating Authorizations." The LGA Order also explicitly linked its duration to the publication of a final rule and noted that no rights to Operating Authorizations allocated under the Order would survive beyond the Order. No one challenged the terms of the LGA Order or the FAA's authority to re-impose caps at the airport following the expiration of the HDR.

In August 2008, the FAA reduced the number of reservations available for unscheduled operations at LGA from six

of 49 U.S.C. 41714(c), Order 99-9-11 (Sep. 16, 1999).

<sup>17</sup> Pub. L. 106-181.

<sup>18</sup> Congress directed the HDR phase-out for JFK and LGA by January 1, 2007. 49 U.S.C. 41715(a)(2). Congress directed the HDR phase-out for ORD by July 1, 2002. 49 U.S.C. 41715(a)(1). AIR-21 did not phase out the HDR at DCA, and it remains the only HDR airport.

<sup>19</sup> AIR-21 also granted authority for this type of exemption at DCA and ORD.

<sup>20</sup> AIR-21 also granted authority for this type of exemption at ORD.

<sup>21</sup> 49 U.S.C. 41715(b).

<sup>22</sup> The Port Authority of New York and New Jersey limits the distance to which commercial flights may operate on a nonstop basis.

<sup>23</sup> FAA Aviation System Performance Metrics (ASPM).

<sup>24</sup> Calculated from the FAA's Air Traffic Operations Network Database (OPSNET).

<sup>25</sup> 65 FR 69126 (Nov. 15, 2000).

<sup>26</sup> 65 FR 75765 (Dec. 4, 2000).

<sup>27</sup> 71 FR 51360 (Aug. 29, 2006).

<sup>28</sup> 71 FR 77854 (Dec. 27, 2006). The LGA Order was amended on November 8, 2007 (72 FR 63224), on August 19, 2008 (73 FR 48428), on January 15, 2009 (74 FR 2646), on October 7, 2009 (74 FR 51653), on April 4, 2011 (76 FR 18616), on May 14, 2013 (78 FR 28278), and on March 27, 2014 (79 FR 17222).

to three.<sup>29</sup> In January 2009, the FAA reduced the limits on scheduled operations to 71 per hour.<sup>30</sup> Although the FAA did not withdraw Operating Authorizations to reach 71 operations, it stated it would retire any returned Operating Authorizations to reach that limit. These two actions were intended to further reduce congestion and delays at LGA.

### *C. John F. Kennedy International Airport After AIR-21*

Until recently, most operations at JFK took place during relatively pronounced arrival and departure banks corresponding to the operating windows of transatlantic flights. The FAA accommodated those banks and achieved maximum efficiency by using either two arrival runways and one departure runway, or two departure runways and one arrival runway. Air traffic controllers have employed that configuration to facilitate the historical transatlantic traffic flows.

Beginning in the spring of 2006, U.S. air carriers serving JFK significantly increased their domestic scheduled operations throughout the day, changing the historical arrival and departure patterns. For example, the traditional transatlantic arrival and departure periods now have significant levels of departing and arriving flights, respectively. While demand is somewhat more balanced, some loss of efficiency associated with a two-arrival or two-departure runway configuration has resulted.

While operations at LGA remained capped throughout 2007, caps on afternoon operations at JFK were lifted on January 1, 2007, when the HDR expired at that airport. Operations at JFK already had begun to increase during the morning hours, but the increase in operations in the afternoon hours soon led to long delays, especially for departing flights during the evening transatlantic departure bank.

During fiscal year 2007, the average daily operations at JFK increased 21 percent over fiscal year 2006. At the same time, on-time performance and other delay metrics declined year over year. The on-time performance at JFK, which is defined as the arrival at the gate within 15 minutes of the scheduled time, declined from 68.5 percent in fiscal year 2006 to 62.19 percent in fiscal year 2007. On-time arrivals during the peak travel months of June, July, and August declined from 63.37 percent in 2006 to 58.89 percent in 2007, while on-time departures declined from 67.49

percent to 59.89 percent during that period. For fiscal year 2007, the average daily arrival delays exceeding 1 hour increased by 87 percent over fiscal year 2006 levels. Additionally, taxi-out delays, which measure the time that aircraft wait prior to departing the runway, increased by 15 percent. Taxi-out delays in the evening departure periods frequently exceeded 1 hour in duration.

In September 2007, the FAA re-designated JFK as a Level 2 Schedules Facilitated Airport<sup>31</sup> for the summer 2008 scheduling season in accordance with the WSG.<sup>32</sup> Under the WSG, carriers must inform the schedules facilitator of projected operations at a Level 2 airport for the next scheduling season. When submitting the required information, the airlines expressed their intent to add new flights at JFK during peak and off-peak hours for summer 2008.

Also in September 2007, the Secretary and the Administrator determined that a delay reduction meeting was necessary to discuss flight reductions with U.S. air carriers to reduce over-scheduling and flight delays at JFK during peak operating hours.<sup>33</sup> On October 22, 2007, the FAA opened a docket for information on the establishment of flight reduction targets at JFK during peak hours.<sup>34</sup> To address increases in demand by U.S. and foreign air carriers and to provide a process for schedule actions, the FAA designated JFK a Level 3 Coordinated Airport.<sup>35</sup>

To address the projected increased demand for summer 2008 and the previous over-scheduling in summer 2007 when the airport lacked scheduling limits, the FAA convened a scheduling reduction meeting on October 23–24, 2007. The FAA's goal was to obtain voluntary schedule reductions from historically operated

<sup>31</sup> An airport is designated an IATA Level 2 Schedules Facilitated Airport when demand is approaching capacity, and a more formal level of cooperation is required to avoid the circumstances of over-capacity. At a Level 2-designated airport, a schedules facilitator seeks the cooperation and voluntary agreement of carriers serving the airport to avoid congestion.

<sup>32</sup> 72 FR 54317 (Sept. 24, 2007).

<sup>33</sup> Under 49 U.S.C. 41722, the Secretary may request a delay reduction meeting if “(1) the Administrator determines that it is necessary to convene such a meeting; and (2) the Secretary determines that the meeting is necessary to meet a serious transportation need or achieve an important public benefit.”

<sup>34</sup> 72 FR 59579 (Oct. 22, 2007).

<sup>35</sup> 72 FR 60710 (Oct. 25, 2007). When demand for an airport exceeds capacity, voluntary cooperation is unlikely to resolve the problem, and short-term capacity enhancements are not available, an airport may be designated as an IATA Level 3 to inform airlines that scheduling increases may be disallowed.

and planned flights. Subsequent in-person and telephonic meetings took place as well. American Airlines, Delta Air Lines, and JetBlue, which together accounted for three-quarters of the total JFK operations, withdrew the schedule increases each had proposed for summer 2008 during the airport's 1500 to 1959 peak hours. They also adjusted the timing of operations throughout the day to smooth out peaks. Other airlines agreed to retime peak operations. Consequently, the FAA was able to offer additional operations during non-peak hours, which increased the daily total of operations while decreasing delays over the previous summer season. As a result of the agreements reached at that meeting and other discussions held with carriers regarding their planned summer 2008 schedules, the FAA issued a temporary Order limiting scheduled operations at JFK to 81 per hour from 0600 to 2259 (JFK Order).<sup>36</sup> That temporary Order allocated slots to carriers operating at the airport based on the number and timing of operations negotiated during the schedule reduction meetings. Because the schedule reductions were voluntary, slot allocations in some hours exceeded 81. The Order permits the FAA to retire slots that exceed the hourly limit if those slots are returned to the FAA until the slot limit is reached. On February 14, 2008, the FAA amended the JFK Order to modify the use-or-lose provisions so that they would correspond to the WSG.<sup>37</sup> The JFK Order temporarily responds to the carriers' desire to schedule operations above the airport's capacity during peak operating hours, relieves the substantial inconvenience to the traveling public caused by excessive congestion-related flight delays at the airport (which rippled through the NAS), reduces the average length of delays, improves carriers' ability to plan operations and network connections, and provides for more efficient use of airspace.

In July 2008, the FAA proposed to limit unscheduled operations at JFK to two hourly reservations from 0600 through 1359, to one hourly reservation from 1400 through 2159, and to two from 2200 through 2259 at JFK.<sup>38</sup> The FAA never adopted that proposed Order, but the unscheduled limits were incorporated in the 2008 Congestion Management Rule for JFK and EWR, which is discussed later.

<sup>36</sup> 73 FR 3519 (Jan. 18, 2008), as amended by 73 FR 8737 (Feb. 14, 2008), 74 FR 51650 (Oct. 7, 2009), 76 FR 18620 (Apr. 4, 2011), 78 FR 28276 (May 14, 2013), and 79 FR 16854 (Mar. 26, 2014).

<sup>37</sup> 73 FR 8737.

<sup>38</sup> 73 FR 41156 (Jul. 17, 2008).

<sup>29</sup> 73 FR 48428 (Aug. 19, 2008).

<sup>30</sup> 74 FR 2646 (Jan. 15, 2009).

#### D. Congestion at Newark Liberty International Airport

EWR has grown to be one of the most delay-prone airports in the country. In 2007, demand during peak hours approached or exceeded the average runway capacity, resulting in significant volume-related delays. These delays were aggravated by weather or other adverse operating conditions.

Comparing fiscal year 2007 to fiscal year 2000, the percent of on-time gate arrivals decreased from 70.66 percent to 61.71 percent, and arrival delays greater than one hour increased, on average, from 54 to 93 per day. EWR's on-time arrival performance of 61.8 percent was the second worst among the 35 busiest airports. Based on "the airport's performance metrics and imbalance between ATC capacity and demand that is expected to continue in the near term," the FAA designated EWR a Level 2 IATA Schedules Facilitated Airport for the summer 2008 scheduling season.<sup>39</sup> The FAA explained that "increased levels of air traffic operations, congestion and delay at [both JFK and EWR] and a tangible decrease in operational performance" warranted this designation.<sup>40</sup> The FAA found the peak morning and afternoon hours were particularly congested, but that capacity otherwise was available for retiming of flights or new operations.

The information provided by carriers for the summer 2008 scheduling season reflected a projected increase in flight schedules, especially during the peak hours. U.S. and foreign carriers had planned about 100 new operations per day at EWR, many during the afternoon and early evening hours. For several consecutive hours, the number of hourly arrivals and departures would have reached between the upper 80s and mid-90s. These operations would have significantly exceeded the airport's average of 83 total operations per hour over the 12-month period ending August 2007. These additional flights would have caused a spike in congestion and delays at EWR and also would have adversely affected other airports in the New York-New Jersey region and the NAS.

In the autumn of 2007, the FAA found it necessary to informally discuss summer 2008 schedules with carriers operating at EWR because it was concerned proposed operations would cause excessive congestion-related delays. Modeling indicated a potential delay increase of almost 50 percent if the scheduled flights were operated as

planned. The FAA asked carriers to consider scheduling flights at times when there was available capacity. However, the FAA realized some carriers intended to proceed with their plans to begin operating their proposed schedules during the busiest hours, regardless of the potential impact on delay. The FAA also believed limiting operations at JFK would create a spillover effect at EWR, thus exacerbating historical and projected delays. To prevent carriers from adding flights to already oversubscribed hours at EWR and from shifting flights from JFK to EWR, the FAA designated EWR as a Level 3 Coordinated Airport effective for summer 2008.<sup>41</sup> After the designation, a series of discussions with the FAA led some carriers to move a few of their historical flights from the most oversubscribed hours. The movement of these flights permitted addition of a few new entrant operations without a net increase in delays.

In May 2008, the FAA placed temporary limits on peak hour operations at EWR to mitigate persistent congestion and delays at the airport (EWR Order).<sup>42</sup> The EWR Order limited scheduled operations during constrained hours to an average of 81 per hour.<sup>43</sup> That temporary Order allocated slots to carriers operating at the airport based on the number and timing of operations negotiated during the schedule discussions. Because the schedule reductions and retimings were voluntary, slot allocations in some hours exceeded 81. The Order permits the FAA to retire slots that exceed the hourly limit if those slots are returned to the FAA until the slot limit is reached. The provisions regarding the use of the WSG for use-or-lose mirrored those in place for JFK. In July 2008, the FAA proposed to limit unscheduled operations at EWR to two hourly reservations from 0600 through 1159, to one hourly reservation from 1200 through 2159, and two from 2200 through 2259.<sup>44</sup> The FAA never adopted that proposed Order, but the unscheduled limits were incorporated in the 2008 Congestion Management Rule for JFK and EWR, which is discussed later.

<sup>39</sup> 72 FR 73418 (Dec. 27, 2007).

<sup>40</sup> 73 FR 29550 (May 21, 2008), as amended by 74 FR 51648 (Oct. 7, 2009), 76 FR 18618 (Apr. 4, 2011), and 78 FR 28280 (May 14, 2013), and 79 FR 16857 (Mar. 26, 2014).

<sup>41</sup> The appendix to the Order included a few operations for summer 2008 above the 81 per hour limit.

<sup>42</sup> 73 FR 41156 (Jul. 17, 2008).

#### E. Exploration of Long-Term Congestion Management

Following the enactment of AIR-21, the FAA and the DOT began investigating a long-term congestion management plan for the New York City area airports. In June 2001, the FAA published a variety of congestion management alternatives for public comment, including the use of auctions, congestion pricing, and administrative alternatives.<sup>45</sup> Additionally, the FAA and the DOT, in conjunction with the National Center of Excellence for Aviation Operations Research (NEXTOR), conducted research initiatives of these alternatives.

The level of interest in a long-term plan increased as the sunset of the HDR neared and following the experience of increased operations at the airports. Nationally, the summer of 2007 was the second worst on record for flight delays. Delays impacted all three New York City area airports and cascaded throughout the NAS. On September 27, 2007, the Secretary announced the formation of the New York Aviation Rulemaking Committee (NYARC) to help the DOT and FAA explore available options for congestion management and how changes to current policy for JFK, EWR, and LGA would affect the airline access and utilization of the airports.

The NYARC was designed to provide opportunity for extensive input by all stakeholders, having members from every major U.S. air carrier, several foreign carriers, associations representing different aviation interests, and the Port Authority of New York and New Jersey (Port Authority). The NYARC submitted a report of its findings and recommendations to the Secretary, dated December 13, 2007.<sup>46</sup>

The increased congestion and associated delays at JFK, EWR, and LGA impact each other and the NAS. The airspace redesign for the New York/New Jersey/Philadelphia metropolitan area, approved in 2007, documents the costs and far-reaching impacts of delays that originate from this area.<sup>47</sup> Implementing

<sup>45</sup> 66 FR 31731 (Jun. 12, 2001).

<sup>46</sup> A copy of the ARC Report may be found at [http://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/media/NY.ARC.Final.Report.20071213.pdf](http://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/NY.ARC.Final.Report.20071213.pdf). The report contained recommendations for operational improvements for the airports and associated airspace; discussed the use of market-based systems to allocate airport capacity at the airports; explored a gate utilization system at LGA proposed by the Port Authority; explored a US Airways proposal to relax the LGA perimeter rule; examined priority air traffic preferences; and considered the adoption of IATA WSG at the airports.

<sup>47</sup> See [http://www.faa.gov/air\\_traffic/nas/redesign/regional\\_guidance/eastern\\_reg/nynjphl\\_redesign/documentation/](http://www.faa.gov/air_traffic/nas/redesign/regional_guidance/eastern_reg/nynjphl_redesign/documentation/).

<sup>39</sup> 72 FR 54317 (Sept. 24, 2007).

<sup>40</sup> *Id.*

airspace redesign will provide increased efficiency and congestion relief by, among other things, opening additional arrival and departure routes in the New York City area, and the FAA has begun that process.

Further, the FAA continues to work with stakeholders to implement short-term initiatives to improve the efficiency of airport operations and air traffic control, particularly during severe weather. Additionally, the FAA has increased the use of a second departure runway at JFK when conditions permit. However, none of these initiatives offer an immediate or complete solution.

#### F. Congestion Management Rules of 2008

With the three temporary Orders limiting operations in place, the FAA determined to pursue a long-term solution for limiting operations and allocating slots for all three airports. After evaluating comments to the LGA NPRM and input from the NYARC, the FAA decided not to adopt its earlier proposal to require upgauging aircraft size and to reallocate 10 percent of the existing capacity each year. Instead, the FAA published a supplemental notice of proposed rulemaking (LGA SNPRM) in April 2008.<sup>48</sup> The LGA SNPRM proposed to allocate the majority of slots to historical operators. The agency also proposed to develop a robust market and encourage competition by withdrawing some slots and auctioning them during the first 5 years of the rule. The LGA SNPRM would have allocated any new or returned capacity via

auctions. Finally, the FAA proposed to sunset the rule in 10 years.

In conjunction with the LGA SNPRM, the FAA published an NPRM for JFK and EWR that sought to provide a longer-term solution and address a number of congestion-related issues (JFK/EWR NPRM).<sup>49</sup> Similar to the LGA SNPRM, the FAA proposed to continue the hourly limits on flight operations at JFK and EWR, and to allocate the majority of slots at each airport to the historical operators. Similar to the proposal in the LGA SNPRM, the agency proposed to develop a robust market and induce competition by annually auctioning a limited number of slots during the first 5 years of the rule. Given the significant international presence at both airports, the JFK/EWR NPRM proposed to use WSG procedures instead of auctions to allocate new or returned capacity. Additionally, the JFK/EWR NPRM contained provisions for adoption of the WSG for use-or-lose, historic precedence, unscheduled operations, and slot withdrawal for operational needs. The FAA proposed to sunset the rule in 10 years.

The FAA issued a final rule for JFK and EWR, which was consistent with the JFK/EWR NPRM, in October 2008 with a published effective date of December 9, 2008.<sup>50</sup> The FAA issued a final rule for LGA, which was consistent with the LGA SNPRM, in October 2008 with an effective date of December 9, 2008.<sup>51</sup> Multiple parties challenged these final rules under the

Administrative Procedure Act, and the U.S. Court of Appeals for the District of Columbia Circuit stayed their effectiveness pending litigation.<sup>52</sup> The FAA rescinded both final rules on October 9, 2009.<sup>53</sup>

#### G. Current Slot Management at LGA, JFK, and EWR

Currently, the JFK and EWR Orders remain in effect, limiting scheduled operations to 81 per hour at each airport, until this proposed rule becomes effective.<sup>54</sup> The LGA Order remains in effect, limiting scheduled operations to 71 per hour and unscheduled operations to three per hour, until this proposed rule becomes effective.<sup>55</sup> The following tables show a comparison of allocated slots and average actual operations for each airport for August 2012.<sup>56</sup>

<sup>52</sup> 74 FR 52132 (Oct. 9, 2009) (JFK and EWR); 74 FR 52134 (Oct. 9, 2009) (LGA).

<sup>53</sup> 74 FR 52132 (Oct. 9, 2009) (JFK and EWR); 74 FR 52134 (Oct. 9, 2009) (LGA). The FAA rescinded the rules because of the uncertainty caused by an Omnibus Appropriations Act provision prohibiting the agency from conducting slot auctions and the possible impact of the significantly changed economic circumstances on the slot auction program. *Id.*; see also Division I, section 115 of the Omnibus Appropriations Act of 2009, Pub. L. 111-8, 123 Stat. 115 (Feb. 17, 2009).

<sup>54</sup> 79 FR 16854 (Mar. 26, 2014) (JFK); 79 FR 16857 (Mar. 26, 2014) (EWR).

<sup>55</sup> 79 FR 17222 (Mar. 27, 2014).

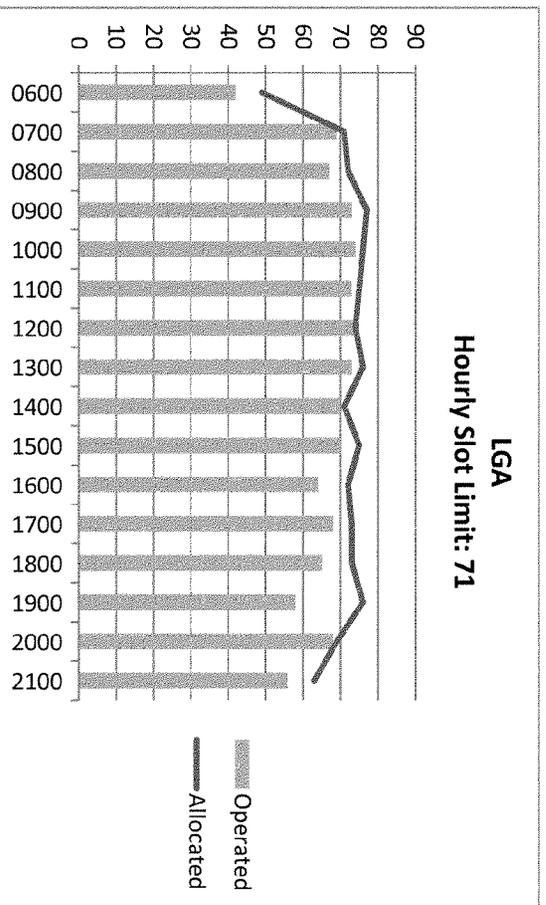
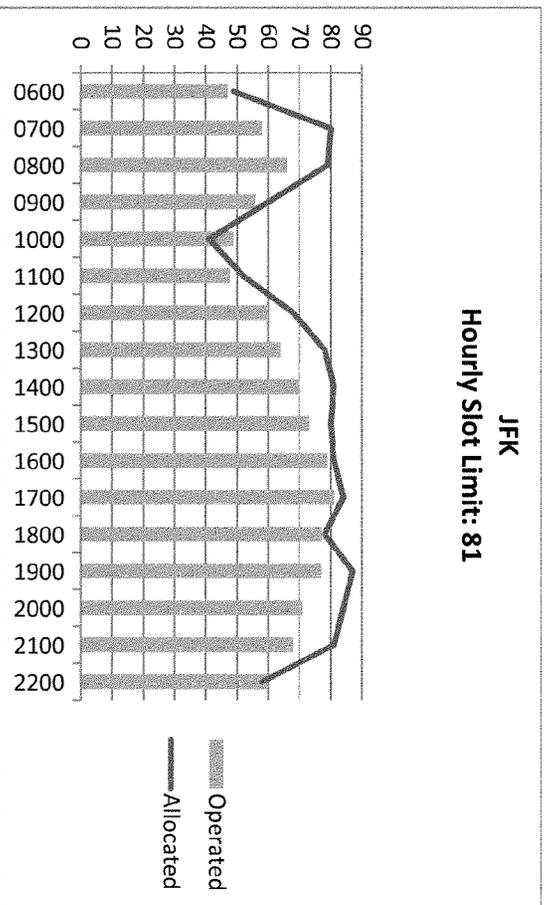
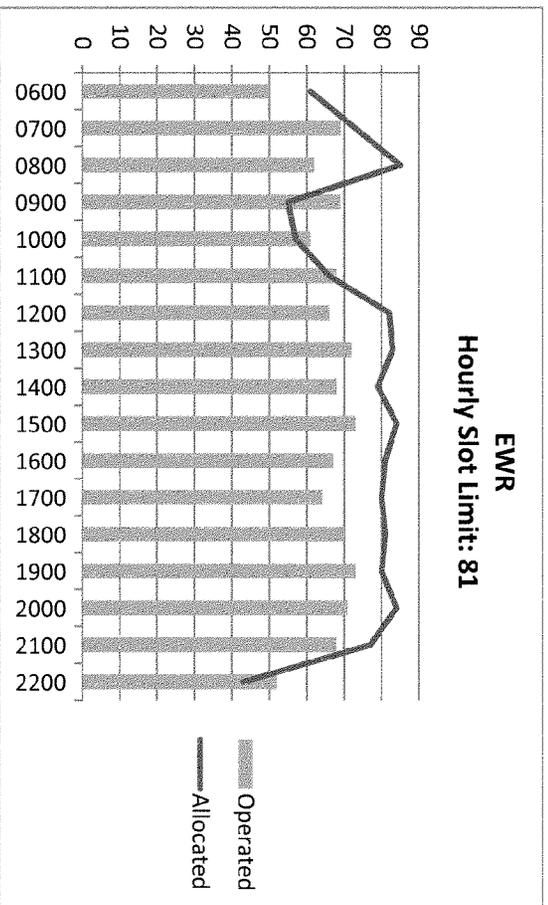
<sup>56</sup> Allocated slots represent slot allocations for Thursdays during August 2012 as reflected in slot records maintained by the FAA's Slot Administration Office. For actual operations, an average was calculated from Aviation System Performance Metrics (ASPM) data for each Thursday during August 2012. The ASPM data used for this comparison reflects runway arrival or departure time and may vary from a flight's scheduled arrival or departure (slot) time due to taxi time or other operational reasons.

<sup>48</sup> 73 FR 29626 (May 21, 2008).

<sup>49</sup> 73 FR 60544 (Oct. 10, 2008), amended by 73 FR 66516 (Nov. 10, 2008).

<sup>51</sup> 73 FR at 60574 (Oct. 10, 2008), amended by 73 FR 66517 (Nov. 10, 2008).

<sup>48</sup> 73 FR 20846 (Apr. 17, 2008).



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JFK and EWR currently have similar demand profiles, with an early morning peak followed by lower demand in the mid-morning. Demand then approaches the average runway capacity in the early afternoon and typically continues until about 2200. LGA, on the other hand, has consistently high demand at or above the average runway capacity throughout the entire day.

To determine the scheduling limits and associated delay mitigation goals under the Orders, the FAA modeled congestion and delays for each airport.<sup>57</sup> To determine the average adjusted capacity for an airport, the FAA considered the airport's capacity to be the higher value of either the aircraft throughput at the airport in a given hour or the number of arrivals and departures that ATC personnel identified as achievable in that hour. As a result, the FAA accepted the higher number when the airport's performance exceeded expectations, as well as when the airport's potential capacity exceeded demand. This measurement reflects the airport's demonstrated and potential performance over time under actual meteorological and operational conditions. The FAA reviewed weekday operations over a two-year period to capture the variables in daily ATC operations. Delay and congestion modeling used by the FAA assumes that all flights operate as scheduled. Average unscheduled demand is randomized within the hour. These assumptions ensure the modeling reflects full utilization of the airport under various limits and allows the modeled queuing delay to be measured consistently as the scheduling limits are varied against demand. The model calculates arrival delay and departure delay relative to schedule, mean delay, and delay greater than 0, 15, 60 and 120 minutes. The model shows delay by time of day to ensure consideration of peak period delays.

When developing the scheduled and unscheduled limits (of 71 and 3, respectively) for LGA, modeling showed a reduction in the scheduled limit from

<sup>57</sup> This modeling used an aircraft queuing model produced for the FAA by the MITRE Corporation's Center for Advanced Aviation System Development (CAASD). When determining airport capacity, delay targets, and slot limits, the FAA relies on modeled delay data because it establishes the peak of congestion and delays. Modeled delay and actual delay may differ because a variety of things occur on the day of operation that a model cannot consider (such as not scheduled or cancelled operations). Actual delay statistics for airports are published by the Office of the Assistant Secretary for Research and Technology Bureau of Transportation Statistics and can be found at [http://www.rita.dot.gov/bts/data\\_and\\_statistics/by\\_mode/airline\\_and\\_airports/index.html](http://www.rita.dot.gov/bts/data_and_statistics/by_mode/airline_and_airports/index.html).

75 to 71 could generate a 41% decrease in mean delays. As discussed earlier, the FAA established a limit of 75 in December 2000 to reduce delays associated with new flights operating under AIR-21 slot exemptions.<sup>58</sup> Subsequently the FAA reduced the hourly scheduled limit from 75 to 71 to provide an opportunity for delay reduction at LGA from voluntary returns or slots failing to meet the minimum usage rules.<sup>59</sup> The FAA did not withdraw operating authority to achieve the lower limit, but reserved the authority to retire returned slots exceeding the limit.

When developing the scheduled limits for JFK, operational analysis showed that the average adjusted capacity was steadily increasing over time.<sup>60</sup> Additionally, a procedural change in early 2007 allowed departures on Runway 31L beginning at Taxiway KK, thereby providing increased runway capacity and reduced departure delays. Modeling for JFK used the higher adjusted airport capacity numbers since early 2007, rather than over the two-year historical period initially reviewed to capture that increased capacity. The FAA conducted discussions with carriers to seek voluntary agreement to retime flights at JFK from the busiest hours to less congested times when they could be accommodated with a lower delay impact. The FAA also restricted carriers from adding flights in the peak periods. The FAA's goal was to reduce the peak evening departure delays from the summer 2007 average of about 80 minutes.<sup>61</sup> The limit of 81 scheduled operations per hour in the JFK Order reflected that goal and permitted a

<sup>58</sup> These hourly limits were adopted in the LGA Order.

<sup>59</sup> In early 2009, the FAA sought voluntary schedule reductions from carriers to reduce LGA delays. American Airlines voluntarily returned 13 Operating Authorizations in February 2009.

<sup>60</sup> The FAA reviewed JFK's hourly operations over a 2-year period, from July 2005 through July 2007. Over the entire period, the average adjusted capacity was 77 hourly operations. During the first year, from July 2005 through June 2006, the airport had an average adjusted capacity of 74 hourly operations. Over the final 6 months of the period (February 2007 through July 2007), the average adjusted capacity increased to 81 hourly operations. Changes in capacity can result from a number of factors, and it often is difficult to determine the specific cause of the capacity change. These factors can include changes in runway configurations, taxiway configurations, ground movement procedures, airspace procedures, and the interplay of regional demand. The FAA strives to increase efficiency of operations at all airports with a specific focus on safely and efficiently meeting the daily operational demand.

<sup>61</sup> Schedules initially submitted by carriers for summer 2008 would have increased the evening departure delays to more than 120 minutes per flight.

margin for unscheduled operations.<sup>62</sup> As a result, modeled peak departure delays decreased to about 50 minutes, or by 30 minutes per flight when compared to summer 2007. As part of the schedule discussions for JFK, the FAA accepted some flights that exceeded the scheduling limits but reserved the authority to retire returned slots exceeding the limits and work with carriers to continue to further depeak their schedules.

When developing the scheduled limits for EWR, modeling showed an average adjusted capacity of 83 total operations per hour with high sustained delays throughout the day. Additionally, the FAA modeled the proposed 2008 schedules and projected an even higher level of congestion and delays from those proposed schedules with EWR already one of the most delay-prone airports in the system. The FAA established a goal of no increase in delays at EWR while permitting additional operations to the extent practicable. The limit of 81 scheduled operations per hour reflected that goal and permitted a margin for unscheduled operations.<sup>63</sup> Although the FAA accepted some flights above the hourly limits, it reserved the authority to retire returned slots exceeding the limits and work with carriers to depeak their schedules.

The FAA has continued to monitor the three New York City area airports since the Orders were put in place to determine whether the limits continue to be appropriate. Actual performance in summer 2008 through 2012 was compared to the modeled projections to ensure that the model results were consistent with actual experience. Adjusted airport capacity information for 2008 through 2012 was updated. This information includes hourly arrival and departure rates based on runway configuration, demand, operating conditions, and actual hourly runway operations. Peak summer unscheduled demand for each hour between 0600 and 2259, Eastern time, was reviewed for 2008 through 2011.

Performance at JFK and EWR has improved in each year when compared to summer 2007. In some cases, actual operations were below allocated slot levels, and this contributed to delay reduction. However, as discussed later in this proposal, underutilization of

<sup>62</sup> The Order also adopted an Appendix that contained the actual schedules then existing at the airport. In some hours, scheduled operations exceeded the limit of 81 scheduled operations.

<sup>63</sup> The Order also adopted an Appendix that contained the actual schedules then existing at the airport. In some hours, scheduled operations exceeded the limit of 81 scheduled operations.

slots at a carrier's discretion also has potential competitive and service consequences that must be considered along with delay mitigation goals. The 2012 analyses indicated that daily unscheduled flights have decreased slightly compared to 2008 while peak morning and afternoon demand are similar to 2007. The adjusted airport capacity analysis indicated modest changes at EWR and JFK, but the FAA is not proposing to change the current scheduling limits. The FAA will continue to monitor whether changes in adjusted airport capacity are long-term trends that warrant adjustment of the scheduling limits at one or more airports.

During summer 2010, one of the main runways at JFK was closed or partially closed so a valid comparison to earlier periods is not practical. Carriers voluntarily reduced scheduled operations, and the FAA waived the usage requirements to mitigate delay impacts from the construction and reduced airport capacity. The FAA used non-preferred runway configurations and waived slot usage requirements to facilitate temporary carrier schedule reductions to mitigate delays. In addition, the Port Authority has adopted an automated departure queuing program at JFK to manage when aircraft are released from the gate. This program reduces taxi-out delays for aircraft waiting to depart. Many of these procedural changes, including the departure queuing program, have been permanently implemented.

As stated earlier, delay modeling for EWR and JFK analyzed the effects of both scheduled and unscheduled operations. Although not adopted, the FAA had proposed limits on unscheduled operations at the airports, while accommodating existing scheduled operations without creating high levels of congestion and delays. For 2007, unscheduled operations at the two airports averaged two per hour with several hours exceeding that average. The FAA had proposed limits for each airport of one and two operations per hour depending on the time of day. For summer 2010, actual operations were down at JFK and EWR to an hourly average of roughly one unscheduled operation. Unscheduled operations averaged just less than two per hour at both airports during the afternoon hours.

The current Orders limit a carrier's ability to transfer a slot (either by trade, lease, or sale) beyond the duration of the Orders. The Orders were intended as a short-term measure to allow time for development of a long-term, comprehensive rule that included a

secondary market mechanism. The transfer mechanisms in place under the Orders differ significantly from those permitted under the HDR, currently in place only at DCA, which allow slots to be bought, sold, leased, or otherwise transferred for any duration and to any person.

The following tables show the approximate percentage of slots held at each airport by carriers holding more than one percent of total slots.<sup>64</sup> Since 2008, numerous carriers have obtained slots at EWR, JFK, and LGA through either FAA allocations or slot transactions with incumbent airlines.<sup>65</sup> At EWR, new carriers include: Austrian Airlines, Avianca Airlines, Cathay Pacific Airways, Icelandair, Iceland Express Airlines, La Compagnie, Southwest Airlines, Virgin America, and Vision Airlines. At JFK, new carriers include: Arik Air, Brussels Airlines, Fly Jamaica Airways, Hawaiian Airlines, Hellenic Imperial Airways, Interjet, LAN Peru, Nippon Cargo Airlines, Nordic Global Airlines, Norwegian Air Shuttle, Qatar Airways, Transaero Airlines, Virgin America, WestJet, and XL Airways France. At LGA, new carriers include: Southwest Airlines, Virgin America, and WestJet.

**EWR**

	Percent
United Airlines .....	73
American Airlines .....	7
Delta Air Lines .....	5
JetBlue .....	2
FedEx .....	2
Air Canada .....	2
Porter Airlines .....	2
Southwest Airlines .....	1

**JFK**

	Percent
Delta Air Lines .....	31
JetBlue .....	26
American Airlines .....	17
United Airlines .....	4
British Airways .....	2
Virgin America .....	2

**LGA**

	Percent
Delta Air Lines .....	45
American Airlines .....	29

<sup>64</sup> This information is current as of August 2014 as reflected in slot records maintained by the FAA's Slot Administration Office.

<sup>65</sup> This information is current as of August 2014 as reflected in slot records maintained by the FAA's Slot Administration Office. Not all indicated carriers may be currently operating at the airports.

**LGA—Continued**

	Percent
United Airlines .....	8
Southwest Airlines .....	5
Air Canada .....	4
JetBlue .....	3
Spirit Airlines .....	2
WestJet .....	1
Republic Airline .....	1
Virgin America .....	12

**III. Discussion of the Proposal**

Because of the combination of high demand and limited ability to increase capacity at JFK, EWR, and LGA, the FAA must address a dilemma: How can the agency manage delays while promoting access to carriers wishing to operate at the airport, thus encouraging competition? This proposed rule attempts to address that dilemma.

Ongoing implementation of the New York/New Jersey/Philadelphia Metropolitan Area Airspace Redesign project and Next Generation Air Transportation System (NextGen) technologies are expected to increase the efficiency and reliability of the airspace structure and ATC system and reduce delays within the next 10 years. Although the FAA continues to develop and implement these improvements, which it believes over time will reduce congestion and delays at the New York City area airports, it does not anticipate these airspace improvements will provide significant benefits at JFK, EWR, and LGA in the immediate future. Letting the Orders expire without replacing them with a more permanent solution likely would result in a growth in operations and consequently high levels of congestion and delays, as was experienced following AIR-21.

Rather than take repeated and piecemeal approaches to manage slots and efficient use of airspace at JFK, EWR, and LGA, the FAA believes a longer-term and comprehensive rule is prudent. The FAA's longstanding preference for addressing capacity limitations is to expand airport infrastructure, increase airport throughput, and improve airspace and airport surface efficiency. The FAA currently is implementing ways to utilize the airspace in the New York City area more efficiently and to decrease delays, but there are physical limitations to expanding these airports in the foreseeable future. This proposed rule would complement planned airspace and airport capacity improvements by encouraging more efficient use of existing capacity.

This proposed rule would treat all three New York City area airports

similarly. To achieve the goal of delay management, it would limit scheduled and unscheduled operations. To achieve the goals of promoting market access and competition, it would permit transfer of slots between carriers in a secondary market that encourages transparency. Proposed changes to the usage requirement also could improve competition and market access at the airports by increasing the number of scheduled operations that are actually operated. Under the current Orders, some slots are allocated but not scheduled and operated. The FAA believes it is necessary to address allocation and distribution of slots at JFK, EWR, and LGA in a coordinated manner because traffic at each of these airports affect each other and the NAS as a whole. The airports are located close to each other and consistently have been among the most delay-prone airports. This proposal presents five different alternatives the FAA is considering for how slot transfers would operate in a secondary market, and these alternatives are discussed in detail later in the preamble. The FAA intends that any final rule would become effective at the beginning of a scheduling season to facilitate the transition from the Orders to a final rule.

Currently, hourly scheduled operations are limited under the Orders to 81 at JFK, 81 at EWR, and 71 at LGA, and hourly unscheduled operations at LGA are limited to three under the LGA Order. This proposal, if adopted, would replace those Orders. It would adopt the current limits on operations, limit hourly unscheduled operations to two at JFK and one at EWR, and establish daily limits on scheduled operations at all three airports.

For seasonal allocations of available slots, the FAA proposes to substantially follow the WSG at each airport. The WSG generally provides a consistent, transparent, and fair method of slot allocation. This proposed rule specifically addresses the WSG processes being applied. For WSG processes not specifically addressed in this proposal or for future changes to the WSG, the FAA would consider whether they are consistent with this proposed rule or other U.S. statutes or regulations. The current allocation mechanisms at JFK and EWR generally are consistent with the WSG. The FAA proposes to extend this allocation approach to LGA, even though it is an overwhelmingly domestic airport, because these international guidelines are widely understood by carriers. One allocation mechanism for all airports also maintains consistency and reduces the

opportunity for confusion on how slot management applies at an individual airport. The allocation mechanism is discussed later and any significant deviations from the WSG are noted.

The FAA also proposes to retain the 80 percent usage requirement, which is consistent with the WSG, at each of the airports. The usage requirement would be applied to slots on an individual day-of-week basis over the entire season at each of the airports, similar to the method currently used at JFK and EWR. However, the FAA proposes a change in the way the utilization rules were applied under the Orders and under the HDR. The FAA proposes a specific flight or series of flights be identified for each requested slot throughout the entire season. Because each slot has a corresponding series of flights, a flight associated with one slot in the same 30-minute slot time period could not be used to help another slot meet the minimum usage rules.

#### *A. Hourly and Daily Slot Limits*

Based on modeling of airport capacity and demand at each of the airports, the FAA has determined that limits should apply throughout most of the day. As discussed in the Background section, operational demand is steady and approaches airport capacity throughout the day. The FAA proposes to retain the slot-controlled hours as they exist under the Orders. Accordingly, the FAA proposes the following slot-controlled hours: for JFK, daily from 0600 through 2259; for EWR, daily from 0600 through 2259; and for LGA, Monday through Friday from 0600 through 2159 and Sunday from 1200 through 2159. All times are expressed in Eastern time, which is the local time for all three airports. The FAA would use the 24-hour clock because carriers currently submit schedules using that international standard in local time or Coordinated Universal Time (UTC).

Although not proposed, the FAA is considering changing the slot-controlled hours to daily from 0600 to 2259 for LGA to maintain consistency across all airports. The FAA believes a consistent approach across the three airports would reduce confusion for carriers as to when slots are required for an operation and reduce the carriers' burden when submitting slot requests. If the FAA changed the slot-controlled hours at LGA, it would have to allocate slots in those new hours. The FAA tentatively is considering allocating daily slots to each carrier for the summer and winter scheduling seasons that correspond to the maximum number of flights that actually were operated by the carrier in that hour from

the last Sunday in March 2014 through the first Saturday in September 2014. Carriers would be afforded an opportunity to return unneeded slots to the FAA. Any modifications to allocations in those hours due to operational changes between the publication of the NPRM and effective date of any final rule would be handled on an individual basis and could be temporarily allocated until a permanent (historic precedence) allocation is made for the subsequent corresponding season. The FAA requests comments, including specific benefits and drawbacks, on whether it should adopt a common definition of "slot-controlled hours" across the three airports.

The FAA proposes to limit scheduled operations to no more than 81 per hour (or any 60-minute period) at JFK, 81 per hour at EWR, and 71 per hour at LGA. The FAA also proposes to assign slots specifically as an arrival or departure in 30-minute windows, a practice already in place under the Orders, to manage peaking of operations within the hour. These proposed schedule limits would be 44 in any 30-minute period at JFK, 44 in any 30-minute period at EWR, and 38 in any 30-minute period at LGA. While the FAA does not propose to change the limits from those currently in effect, it may change them in the future. Enhanced capacity or delay reduction resulting from technological advances or procedural changes (e.g., NextGen or wake turbulence recategorization) may result in future increases in slot limits at the airports. The FAA will continue to review each airport's capacity and operations before each scheduling season when determining whether to change slot limits.

The FAA acknowledges that allocated slots exceed these schedule limits in several hours at each airport, but the FAA does not propose to withdraw any allocated slots. As applies under the Orders, the FAA would reserve authority to retire any returned slots until allocations in an hour no longer exceed the limits. The FAA would continue to work with carriers and encourage retiming of operations to depeak individual time periods, as necessary to mitigate congestion and delays.

The nature of operations at JFK, and to a lesser extent at EWR, is such that demand has historically been less in mid-morning and very early afternoon. Therefore, many of those lower demand hours have allocations below the hourly limits of 81. These low demand hours currently provide a recovery period that reduces delays and prevents them from continuing into the peak afternoon

hours. The FAA has determined that allowing allocations in these hours to grow to the limit would result in higher and sustained delays throughout the entire day because total operations would exceed the airport's actual capacity. To mitigate increasing delays while preserving historic allocations, the FAA proposes a daily slot limit. This daily limit would apply to the slot-controlled hours at LGA and from hours 0600 to 2159 at JFK and EWR. The FAA believes applying the daily limit to the 2200 hour at JFK and EWR is unnecessary because operations in that hour contribute little to cumulative daily delays. The daily limit would not affect operations outside of those hours. A daily limit would provide flexibility to carriers scheduling flights because the FAA could approve new flights or retime existing flights to less congested hours while preventing a build-up of the schedule across the day that would result in significant increases in delays.

The FAA acknowledges the benefits of a daily limit at LGA are not as significant as at JFK and EWR because allocations in most hours at LGA currently are at or above the hourly limit. A daily LGA limit would limit additional allocations in hours that may be below 71 scheduled operations, now or in the future, providing modest delay-management benefits. Nevertheless, the FAA proposes a daily limit at LGA for consistency purposes and to ensure the operational impacts of additional flights are considered.

The FAA considered actual allocations accepted in 2008 and what was currently operating at each airport to determine this daily limit. These 2008 allocations, and subsequent slot allocation decisions made with respect to the Orders, establish the upper bound of allocations at the airport to meet the established delay goals. The FAA proposes a daily slot limit of 1,205 at both JFK and EWR and 1,136 at LGA. This proposed limit would not result in any withdrawal of slots. Based on current allocations at JFK, there would be roughly 20 slots in low demand hours available for allocation. At EWR or LGA, there would be no slots available for allocation. Additionally, like the hourly limit at LGA, actual allocations currently exceed the LGA daily limit. Because slot allocation and usage are dynamic, this number of available slots is likely to change prior to the FAA issuing a final rule.

#### *B. Allocation of Slots*

The FAA proposes to grandfather all existing slot allocations made under the Orders for both the summer and winter scheduling seasons. This grandfathering

recognizes that carriers have made investment, marketing, operating, and business decisions based on the assignment of Operating Authorizations under the Orders and the expectation that those slots would continue to be available in future seasons subject to the usage and other general Order provisions. On the proposed rule's effective date, at JFK and EWR, the FAA would assign, according to its records, each carrier all slots for the summer scheduling season that had been approved for the previous summer scheduling season as amended through the slot allocation process. Similarly, the FAA would assign, according to its records, each carrier all slots for the winter scheduling season that had been approved for the previous winter season as amended through the slot allocation process. At LGA, for the hours of 0600 through 2159 or 1200 through 2159 on Sunday, the FAA would assign each carrier all slots held as of the effective date for both the summer and winter scheduling seasons and for each day-of-week.

Temporary, one season-only, and other contingent allocations would not automatically receive historic precedence at the same times. For all other slots allocated under this transitional mechanism, carriers would have historic precedence, provided all other proposed conditions are met, for the subsequent corresponding scheduling season. The FAA tentatively has determined this is the most efficient method of transitioning from the temporary Orders to a more permanent regime. These allocated slots, however, would be subject to reversion to the FAA under the proposal's minimum usage requirements and could be withdrawn for operational reasons.

When making decisions regarding the allocation of available slots, the FAA would seek to allocate in a manner that ensures efficient use of a scarce resource and maximizes the benefits to both airport users and the traveling public. Except as indicated in the following discussion, the proposed allocation priorities mirror current WSG priorities. The FAA believes the WSG approach is well-understood and is an internationally-recognized system of slot allocation at airports. These allocation procedures would apply to JFK, EWR, and LGA. A WSG-like allocation process already applies under the JFK and EWR Orders because those airports have a significant international presence, and the WSG is commonly applied to international slot-controlled airports and understood by carriers with international service. Although a WSG procedure previously has not applied to

LGA, the FAA proposes to do so to maintain consistency between the airports. A common approach to allocating slots reduces the administrative burden of multiple procedures for both the FAA and carriers. A common approach also reduces confusion with respect to the rules for each airport. The FAA understands that carriers with only domestic service would have some adjustment to the new rules at LGA, but most of these carriers already operate at JFK or EWR (and would have familiarity with the WSG at those airports). The FAA does not anticipate changing the allocation and usage mechanisms at LGA would be overly burdensome.

Like the WSG, the FAA proposes to afford priority treatment for slot requests by new entrants. The FAA proposes to define a "new entrant" as a U.S. or foreign air carrier that holds or operates fewer than 20 slots on any day of the week, in any combination during the slot-controlled hours, at the respective airport. That number would include any slots that had been returned to FAA after the slot return deadline, or that had been revoked by the FAA for insufficient use, during the two corresponding scheduling seasons immediately preceding the scheduling season for which a slot allocation is being conducted. A carrier would not be eligible for slot allocation as a new entrant if it had returned slots to the FAA after the slot return deadline, or had slots revoked by the FAA for insufficient use, during the two corresponding scheduling seasons immediately preceding the scheduling season for which a slot allocation is being conducted.

The proposed "new entrant" definition differs from the definition contemplated under the WSG, which sets a threshold of five slots, because the lower threshold would provide little opportunity for a new entrant to establish its operations before losing new entrant status and thereafter being able to expand in those markets only through slots obtained in the secondary market. With up to 20 slots, a carrier would have sufficient flexibility to establish a competitive presence at a large metropolitan airport such as LGA, JFK, or EWR, giving the carrier not only a basic foothold but also a critical mass of frequencies that would allow it to compete effectively. The FAA also proposes the definition be applicable at each airport, thus establishing a uniform definition that is easily understood by all stakeholders.

For purposes of slot allocation, the FAA historically has treated U.S. air carriers conducting operations solely

under another carrier's marketing control with unified inventory control as a single carrier. Also, U.S. carriers having more than 50 percent common ownership have been treated as a single carrier for slot allocation purposes; however, individual foreign carriers, regardless of their ownership, have been treated as separate carriers. Under international obligations, Canadian carriers are treated the same as U.S. carriers for slot purposes at U.S. high-density airports. The FAA does not propose to change this approach.

Prior to the start of the scheduling season, and according to the schedule published by IATA, the FAA would publish a notice in the **Federal Register** announcing the deadline for submitting schedule requests for the upcoming season. Prior to announcing the submission deadline, the FAA would conduct an informal airport capacity review for each airport, which is consistent with its historical practice at JFK and EWR and with the WSG. The FAA also would provide each carrier with a listing of its historic slots. The method for calculating historic precedence is discussed in more detail later in this document. By the deadline stated in the **Federal Register** notice, each carrier would submit its proposed requests for each airport noting which requests are in addition to, or changes from, the previous corresponding season. If a carrier wishes to make a change from an historic slot, it should submit a request to retain that slot and indicate that it also is requesting the change to avoid losing the historic slot if the FAA could not confirm the change. Based on the FAA experience with carriers' slot trading when developing domestic schedules, the FAA believes that many carriers would not be ready to submit their schedules for LGA according to the IATA schedule, which requires slot request decisions several months before the start of the scheduling season. The FAA requests comment on whether the FAA should set a later submission deadline for LGA and what any later deadline should be.

The FAA is not proposing a particular format for the submission of schedule requests because it wants to avoid an unnecessary burden, especially for carriers that operate a large number of slots at the airports, and wants to maximize carrier flexibility. However, each slot request would be required to indicate the effective dates of the request, proposed days of operation, proposed time of operation (indicated as either UTC or local time), whether the operation is an arrival or departure, flight number, and aircraft type.

Although not required under this proposal, the FAA would accept schedule submissions in IATA Standard Schedules Information Manual (SSIM) format or another similar format.

The FAA would accommodate these requests by allocating available slots according to the priorities set forth in proposed § 93.41. First, the FAA would confirm any requests for historic slots, including those that have adjustments within the same 30-minute period or other minor changes that do not affect operations, prior to the IATA Slot Conference. The FAA then would split the remaining available slots into two pools: One pool for new entrants as defined in proposed § 93.36 and another pool for all carrier requests. The FAA acknowledges this method of establishing two pools prior to accommodating retimings differs from the WSG, but the FAA believes that it provides new entrants with a better opportunity to access desirable slot times. The FAA would allocate any available slots according to these priorities until there were no available slots remaining in each pool.

Within each pool, the FAA first would accommodate carrier requests to retime slots for operational reasons. The FAA recognizes that a carrier may request a retiming of a slot in a particular time period that the FAA cannot accommodate, and the FAA may offer a slot in a different time period. The carrier may then trade the slot with another carrier to conduct its desired operation or may operate in the allocated time period. A carrier in this situation that makes a request for a retiming to its desired slot time for a subsequent corresponding season will receive priority treatment within the set of requests for retimings. The FAA would use the carrier's previous requests and slot transfer records to make this determination of priority.

After addressing requests for retimings within each pool, the FAA then would accommodate requests by carriers to extend an allocated seasonal slot to year-round service. Consistent with the WSG, the FAA gives priority to requests for year-round service because that service most efficiently uses the scarce resource of available slots.

Finally, the FAA would accommodate any remaining requests. The FAA would consider the extent and regularity of the intended slot use by giving priority to intended year-round service and greater weight to requests for daily service. The FAA would consider the effective period of operation by giving greater weight to intended use throughout the entire season. The FAA also would consider schedule constraints of the

carriers requesting slots, especially if the carrier is operating to or from another slot-controlled airport. Finally, the FAA would consider the overall operational impacts of schedule requests, including the distribution of flights and mix of arrivals and departures. This holistic approach allows the FAA to best manage airport and airspace congestion.

Because the FAA expects that requests for slots would exceed the number of slots available in most seasons, the FAA proposes to include some tie-breaker factors to aid in allocation decision-making. Although the FAA does not intend these factors to be determinative, it could consider airport facilities constraints (such as constraints on gates, terminals, aircraft parking, customs and immigration, and curfews) and impacts to competition and markets served when weighing which request to accommodate.

### *C. Usage Requirement*

The FAA proposes to retain the current 80% usage requirement for historic precedence, but the methodology for calculating usage would change. The proposed calculation method would be used to determine historic precedence only for slots allocated for summer and winter scheduling seasons after this proposed rule becomes effective. Determining historic precedence for the first summer and winter scheduling seasons after this proposed rule becomes effective would use the calculation method under the rules in effect when the slots were allocated and operated.

The 80% usage requirement provides a reasonable allowance for planned and unplanned cancellations. The usage calculation would be applied on an individual day-of-week basis. This method currently is used for JFK and EWR slots, and using this method for LGA slots would ensure consistency among the airports and afford carriers greater flexibility for slot allocations.

A carrier must use the allocated slot at least 80% of the time for the same flight or series of flights throughout the period for which it is allocated during the scheduling season. The same series of flights would be at least five flights at approximately the same time on the same day-of-week, generally with the same flight number, generally serving the same market, and distributed regularly in the same season (for example, a 1035 JFK-LAX flight on every Monday of the summer season). This definition of same series of flights allows the FAA to see the intent to operate a series of flights but is not intended to preclude a carrier from

changing the flight number, origin/destination, or flight time (within the same 30-minute slot time period) during the scheduling season. The requirement to identify markets served with a particular slot is not intended to restrict a carrier's service in a particular market; it is simply a tool to assist the FAA in tracking the use of a specific slot. The FAA recognizes tying a slot to a series of flights for usage calculation is a departure from how it has historically applied usage rules. This change, however, is consistent with the WSG in that a carrier should hold only slots it plans to operate. This change is intended to address actions by some carriers that report a series of flights in different slots on various days during the reporting period to record usage on multiple slots with a single flight. Although those actions are not prohibited by the current Orders, they artificially allow carriers to meet the minimum usage rules without scheduling a flight for each slot.

The FAA has found that the practice of spreading individual flights over a set of slots to achieve 80% usage potentially underutilizes slots because the full allocation of slots is not being scheduled and operated. Theoretically, operating four flights 100% of the time could meet the 80% usage requirement for five slots, which could result in non-utilization of 20% of the allocated slots (thereby limiting market access). While the FAA acknowledges scheduling realities make underutilization to this extent impractical, the FAA has observed some underutilization behavior at JFK, EWR, and LGA. The FAA believes this behavior could adversely affect the opportunities for new entrants to begin service at a particular airport or could reduce the choices available to consumers.

This proposal would better ensure that the scarce resource of slots is used optimally. The FAA acknowledges that requiring carriers to operate their full allocation of slots could increase the number of operations. However, any increase in delays over current levels should remain within the accepted delay levels that were modeled at the time the current Orders, and corresponding hourly slot limits, were implemented. This model assumed full slot usage. It is likely that any increase in flights also would increase the number of flight choices available to consumers. The FAA believes another result of the changed usage calculation could be that a carrier that operates fewer flights than its slot holdings could dispose of the excess slots on the secondary market. The exchange of these slots could increase competition at

the airport and provide consumer benefits, especially if the slots were acquired by a new entrant. Although the FAA believes it unlikely, especially in the peak demand hours, a carrier with excess slots could return those slots to the FAA, and they could be retired in hours exceeding the slot limits (providing delay-reduction benefits) or could be allocated to other carriers (providing consumer and economic benefits).

The FAA requests comment on whether the proposed usage rate is appropriate. Additionally, in theory, it is possible that usage requirements may encourage carriers to fly smaller-than-optimal aircraft or to fly less-than-full aircraft. The FAA requests comment on how the proposed usage requirement might impact utilization of slots. Please provide data supporting the comments.

The FAA would have discretion to waive the usage requirements when a carrier ceases operation at an airport due to a strike. The FAA also would retain discretion to waive the usage requirements in the event of a highly unusual and unpredictable condition beyond the carrier's control and affecting operations for 5 or more consecutive days. These exceptions allow carriers and the FAA flexibility to adapt to unusual and unexpected cancellations in contrast to the usual localized weather and mechanical cancellations the 80-percent usage rule permits. These usage waivers are similar to those under the WSG, and they previously have been successfully applied at U.S. slot-controlled airports. In certain circumstances, the FAA also could waive the usage requirements for a period up to 180 days for a new entrant acquiring slots at an airport either through FAA allocation or the secondary market.

Under the HDR and the Orders limiting operations, slots held by a carrier were treated as used on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday of January. Under those rules, a carrier was allocated slots for the entire season rather than according to the schedule submitted by the carrier. Under this proposed rule, a carrier may give back a slot to the FAA for short periods of time (e.g., the week between Christmas and New Year's Day) when the slot would not be scheduled. These periods of time are not included in the usage calculation. The carrier also would not receive historic precedence for the periods of time when the slot is given back to the FAA. However, because of the anticipated limited duration of these returns, the FAA believes it is unlikely

the carrier would be prohibited from scheduling during that period in the subsequent corresponding season. Accordingly, the FAA proposes to eliminate general waivers for holiday periods. The FAA requests comment on whether the elimination of these general waivers would create a hardship on carriers that the FAA has not considered. Comments should be supported by specific data demonstrating a hardship.

To aid in the usage calculation, the FAA proposes to require carriers to submit an interim and final usage report to the FAA, as is required under the JFK and EWR Orders. The interim report would be due by September 1 for the summer scheduling season and February 1 for the winter scheduling season. The final report would be due no later than 30 days after the end of the respective scheduling season. The interim and final reports should detail slot usage for each day of the respective scheduling season and report the following information for each slot held: The slot number, airport code, time, and arrival or departure designation; the operating carrier; the date and scheduled time of the actual operation, the flight number, origin and destination, and aircraft type identifier; and whether the flight was actually conducted. These reporting requirements are similar to those under the HDR and Orders. In addition to analyzing slot usage reports, the FAA would monitor slot usage throughout the scheduling season.

#### *D. Transfer of Slots*

When the FAA adopted the Buy/Sell Rule, it recognized slots have value in the secondary market. The FAA believes the development of a robust secondary market ultimately is the best way to maximize competition. Over the years, the FAA has received complaints that carriers were unaware of possible opportunities to buy or lease slots, that incumbent carriers were colluding to constrain new entrant carriers' market access to an airport, and that there was uncertainty about the value of slots. The DOT and FAA believe increased transparency in the secondary market would address these concerns as well as allow interested parties to better understand the nature of slot transactions. For these reasons, the FAA proposes a secondary market and offers five alternatives for proposed § 93.45. The FAA requests comments on each of these alternatives and assumptions associated with these alternatives. The most helpful comments would include a weighing of the benefits and drawbacks of how each alternative

addresses transparency of the market, efficiency of the transfer process, and carrier flexibility in transferring slots to meet operational or business goals.

Under the first alternative, the FAA would permit a carrier to buy, sell, or lease a slot to another carrier or to trade a slot with another carrier for a slot at any U.S. or foreign slot-controlled airport. This alternative is similar to what was permitted under the Buy/Sell Rule and would permit privately-negotiated transactions between carriers. The FAA believes this alternative creates the least administrative burden on carriers, but it does not address previously-voiced concerns about lack of knowledge of opportunities to acquire slots. Transparency benefits would be realized largely through the transaction approval process, which is discussed later.

Under the second alternative, a carrier seeking to sell, lease, or trade a slot with another carrier would be required to follow a formal process to negotiate the terms of the transaction. This alternative would require a public notice on an FAA-managed bulletin board system. The carrier would have to submit a notice to the FAA that it intended to engage in a slot transaction, and the notice would include the carrier's intended terms. These terms would include the slots available for transfer (slot time and slot number), the type of transfer intended (trade, sale, lease), the proposed duration of a lease if applicable, and the intended effective date. The FAA requests comments on any additional information that the transferring carrier should provide.

The carrier would make its request to the FAA at least 4 months in advance of its intended effective date. The FAA would post a notice of the offer to transfer and relevant details on the FAA Web site. The FAA would post that notice at least 3 weeks in advance of the opening date for bidding, and the notice would state the opening and closing dates for bidding and the contact information for submitting bids. The bidding period would last 2 weeks unless the transferring carrier requested a longer period of time. Carriers (and other interested parties) would be able to register to receive automatic notices when a new posting is published on the FAA bulletin board. The transferring carrier would not be permitted to negotiate terms prior to the start of the bidding period. The FAA intends all bids would be submitted directly to the transferring carrier. The transferring carrier could conduct negotiations during the bidding period to clarify and refine the bid. The transferring carrier, however, would be able to consider and

negotiate only bids submitted during the bidding period, but that carrier could request an extension of the bidding period. Once the bidding period closes, the transferring carrier could select its preferred offer and negotiate the final terms of the transaction.

The proposed rule would allow the transferring carrier flexibility in determining the best offer. The FAA would not require the carrier to select the highest-dollar offer because a carrier could place a higher value on non-cash assets and on the overall impact of the proposed transaction on its operations.

The FAA requests comments on the timeframes being proposed. Is a 4-month advance notice to the FAA enough time to complete the proposed process for completing a transfer transaction? Is this advance notice period too long to be practical in light of operational necessity? Does a 3-week public notice provide sufficient time for a carrier to obtain necessary approvals to bid on a slot? With a system where bids are submitted directly to the transferring carrier for review and further negotiation, would a 1-week bidding period be sufficient?

The third alternative is similar to the second alternative, except that carriers would be permitted to privately negotiate tentative terms of a transaction before publishing its intent to transfer slots on the bulletin board. Carriers could approach any prospective transferor or transferee to evaluate the market or assess how to package the slots for transfer. Those tentative terms would be submitted to the FAA and posted on the bulletin board, and other carriers would be permitted to submit counter-offers. The transferring carrier could then select its preferred offer and privately negotiate the final transaction terms. Like the second alternative, the transferring carrier would be able to consider only counter-offer bids submitted during the bidding period. Under this alternative, a carrier would be able to submit a notice of intent to engage in a slot transaction, as under Alternative 2, without prior private negotiation.

The fourth alternative attempts to encourage the greatest transparency by requiring bidders to post their bids on the bulletin board during the bidding period. A carrier would submit a notice to the FAA that it intended to engage in a slot transaction, and the bidding time frames would be the same as under the second alternative. Bidding carriers would post their bids, and any counterbids, on the bulletin board. Therefore, negotiations in the form of iterative bids would be available to all registered interested parties. Because

this alternative may require posting of proprietary or confidential business information, a bidding carrier would have the option of posting a summary bid with more detailed information submitted directly to the transferring carrier. The FAA requests comment on whether the option for submitting both a publicly-available summary bid and private detailed bid adequately ensures protection of proprietary or confidential business information. What level of detail for the publicly-available summary bid is adequate to inform other potential bidders of the transaction value?

The fifth alternative is similar to the fourth alternative, but the identities of the offering carrier and bidders would not be revealed. Bids under this alternative would be cash only because non-monetary assets could reveal the identity of the parties. Under this alternative, the offering carrier would be required to accept the highest bid posted. This alternative would mitigate the possibility of any collusion between carriers (e.g., by a carrier signaling the precise value of its bid to the selling carrier). It would also ensure that the winning carrier is the carrier that places the greatest economic value on the slots, leading to more efficient use of slots. The FAA requests comment on whether a blind bidding process would facilitate a more robust secondary market.

Under the bulletin board alternatives, the FAA anticipates the transferring carrier would structure its notice in a way that permits a transaction involving multiple slots in any desirable combination. For example, the transferring carrier could require multiple slots be transferred as a set or it would consider bids for smaller groupings of slots. The FAA intends to allow maximum flexibility for transferring slots provided prospective bidders have adequate information on which to act. The FAA expects that if the material terms of the transaction change during or after the bidding period, the transferring carrier would repost the notice of intent to transfer for a new bidding period. The FAA requests comment on whether it should implement additional procedures for a subsequent bidding period that included shorter notice and bidding time frames. Does allowing the transferring carrier to craft a notice in a way to allow transfer of multiple combinations of slots ensure both that the transferring carrier would have sufficient flexibility in transferring the slots, and that bidding carriers would have an adequate opportunity to acquire the slots?

Under alternatives one through four, transactions could include both cash and non-cash consideration, and the transactions via the bulletin board would not have to be blind. A carrier also would need to know the identity of a bidder offering non-cash assets to accurately value those assets. The FAA requests comment on whether non-cash bids promote competition by enlarging the pool of potential bidders, which could result in more bidders and more valuable bids.

Do the bulletin board processes adequately accommodate complex transactions involving consideration other than cash? Do the bulletin board processes adequately accommodate transactions that are initiated by the transferee? The FAA also is willing to consider additional proposals for, and comments on, alternative secondary market mechanisms. These additional proposals should encourage the efficient transfer and use of slots in a transparent environment that permits meaningful opportunities for all carriers to participate.

Under each of these alternatives, the transferee would not be able to use the slot until the FAA approved the transaction.<sup>66</sup> Each party to the negotiated transaction would submit a request for approval to the FAA along with the final terms of the transaction including the names of all parties, the consideration offered by each party, the effective date of the transfer, and, if appropriate, the length of the lease. This information would be publicly available to provide the market with information to better value slots as well as provide information to the DOT for determining any anti-competitive effect of the transaction, which is discussed later in more detail. The FAA believes this knowledge would help establish a more robust secondary market and reduce the likelihood of collusive or anti-competitive behavior.

The FAA acknowledges submitting detailed terms of a transaction could in rare circumstances involve legitimate proprietary or confidential business information. A carrier may request confidential treatment of the request for approval while it is under review. The FAA's general practice has been to not make this type of information public until after approval is granted, consistent with the Freedom of Information Act. In addition to confidential treatment while the request is under review, the FAA requests

comment on whether it should develop a process for confidential treatment of certain information after the transaction is approved. If so, under what limited circumstances should this confidential treatment be granted to ensure a transparent secondary market? The FAA also requests comment on whether the transaction terms should not be made publicly available for a period of time after the transaction is approved. If so, what is a reasonable period of time?

Under alternatives two, three, four, and five, the FAA proposes some limited exceptions to using the bulletin board system. The FAA proposes these exceptions because it believes they would facilitate transfers made for operational reasons, or as part of a transaction that does not raise concerns about a transparent secondary market. A carrier may trade a slot on a one-for-one basis with another carrier without submitting a bulletin board notice, but no consideration or promise of consideration may be offered for these trades. A carrier also may lease a slot to another carrier for a period of time no longer than two scheduling seasons. The FAA would review a series of short-term leases to determine whether a carrier is effectively engaging in a longer-term transaction. For example, a one-season transfer that is executed for multiple seasons would be construed as a longer-term transfer. In this situation, the FAA may disapprove the transaction. Carriers would have the option of posting a notice on the bulletin board and negotiating a new transaction. Trades among carriers with unified marketing control are permitted without using the bulletin board, thus effectively allowing those carriers to treat slots as one inventory because these transactions do not have the characteristics of a normal arms-length transaction. Finally, slot transfers that take place as a result of a carrier merger or acquisition would not be subject to the bulletin board requirements. These transactions are subject to Federal agency review under antitrust and other authorities. While the bulletin board process would be suitable for purposes of transparency and competitive opportunity for standalone slot transactions, the proposed process is not designed for slot transfers that result from a carrier merger or acquisition.

Under these alternatives, it may be necessary for the DOT to conduct a public interest or competitive review of a transaction for anti-competitive effect, which is discussed later in this document. The FAA would not approve any transaction until it had received an approval or non-objection from the Secretary or the initial 14-day review

period had elapsed. To be clear, the FAA would monitor compliance with any required bid procedures.

The FAA requests comments on whether variations to the five alternatives presented would better achieve the stated goals of the rulemaking, including creating a vibrant secondary market. For example, under each alternative, the FAA would post the final terms of the transaction. Please comment on whether the availability of this information facilitates transactions in the secondary market.

While the FAA seeks comment on the proposed secondary market alternatives noted above, the FAA also is open to other mechanisms to more efficiently allocate slots in the secondary market. For this reason, the FAA requests comments regarding lessons learned from the use of secondary markets in other regulated industries (such as market for pollution permits, CAFE credits, or wireless spectrum). This information may assist the FAA in designing a more robust, flexible, and efficient secondary market for slots. Additionally, the FAA requests comments regarding lessons learned from historical secondary market mechanisms implemented by the FAA (such as the HDR or 2006 Chicago O'Hare final rule).

The FAA acknowledges that many carriers have engaged in short-term trades and leases at JFK, EWR, and LGA that extend until the termination date of the Orders. Carriers may intend these transactions be permanent rather than temporary, if permitted by FAA rules. In many cases a permanent transaction has operational or competition-enhancing benefits, but the Orders prohibit a transaction lasting beyond their effective dates. To facilitate the transition of these transactions from the Orders to this proposed rule, the FAA proposes to waive any bulletin board requirements, if adopted, for 90 days after the effective date of the final rule to allow carriers to negotiate and execute these transfers. These transactions still would be subject to the FAA approval process and DOT review.

Under the Orders, carriers must transfer slots among various carriers operating on behalf of the marketing carrier. Some of these carriers are commonly owned while others are contracted service providers. Because the carriers operate under their own DOT and FAA operating authorities and communicate with ATC using their discrete call signs, the FAA has a valid interest in ensuring that carriers operating at a slot-controlled airport have the proper slot authorizations. The FAA proposes a simplified process in

<sup>66</sup> Because the DOT would be able to review the terms of the transaction under this proposal, the FAA would strictly enforce the prohibition against using transferred slots prior to approval of the transfer transaction.

§ 93.46 for managing the slot holdings of carriers with unified inventory and marketing control. The FAA believes this process would reduce the administrative burden on both the FAA and on carriers and their regional partners. The marketing and operating carriers would provide advance information to the FAA including the planned airport(s), the flight number ranges that would be used for marketing and ATC purposes, statements by the carriers as to which carrier would be responsible for ensuring that a slot is available, and reporting after the fact which carrier(s) operated the slots. Only flights meeting the proposed criteria would be permitted an exception to the advance transfer requirements. Carriers would retain the option to transfer slots to carriers under their marketing control. The FAA requests comments on whether this simplified process would reduce the administrative burden.

#### *E. Oversight of Competitive and Public Interest Issues*

Over the course of the last several years, the DOT has heard many airlines, communities, and airports express concerns that incumbent slot holders have acted to limit competitors' access to slots. Arguments have been made that incumbent carriers have chosen not to transact with low-cost carriers or new entrants, preferring instead to deal with other incumbent carriers that hold a large portfolio of slots in order to preserve a competitive position in the market and forestall more rigorous competition. Similarly, there have been complaints that incumbent slot holders transfer slots for short periods to avoid losing slots under the application of the usage requirement. Consequently, some have sought more rigorous oversight and transparency of slot transactions.

This section describes the DOT's proposal to draw upon existing authority to review certain slot transactions at the New York City area airports that may raise potential competitive or public interest issues. First, this section will explain the DOT's authorities that allow for review of standalone transactions.<sup>67</sup> In addition,

<sup>67</sup> A standalone slot transaction is a slot transfer by one carrier to another carrier (whether by sale, purchase, lease, or trade), akin to monetizing a slot. The Delta/US Airways slot swap described below would be an example of a standalone slot transaction, for purposes of this NPRM. A standalone slot transaction would occur independently of any slot transfers that would result from a carrier merger or acquisition, defined as a transaction that combines the ownership/operation/control of two (or possibly more) carriers into a single entity. The term "carrier merger or acquisition" is drawn from the statutory provision governing transfers of HDR slot exemptions,

this section will provide a summary of how DOT has previously exercised these authorities. Next, this section will set forth the DOT's proposal for reviewing standalone slot transactions for competition and public interest impacts. Finally, this section will explain the DOT's proposed processes for engaging with the public regarding tentative determinations and protecting confidential information submitted in the course of such reviews. Through this proposal, the DOT would establish a more consistent, transparent, and predictable procedure for all stakeholders.

#### 1. Legal Authorities for Reviewing Standalone Slot Transactions

The DOT's authority to review slot transfers resulting from standalone slot transactions derives from several statutory provisions. The DOT has authority under 49 U.S.C. 41712 to prohibit airline conduct comparable to antitrust violations. Section 41712 authorizes the DOT to prohibit conduct that it determines is an "unfair method of competition."<sup>68</sup> Although the DOT has not, in the past, relied on Section 41712 to take enforcement action in the context of airline slot transactions, the DOT nonetheless will consider exercising this enforcement authority as appropriate.

In addition, the DOT is directed by statute, under 49 U.S.C. 40101(a), to carry out the pro-competitive aspects of the Airline Deregulation Act, in the course of carrying out the agency's duties and responsibilities. These pro-competitive objectives include maintaining the availability of 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

prohibiting their purchase, sale, lease, or other transfers, but permitting such transfers "through an air carrier merger or acquisition." See 49 U.S.C. 41714(j). Slot divestitures undertaken in response to a DOJ investigation of an airline merger or acquisition under the Hart Scott Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, would not be considered standalone slot transactions, and thus, would be exempt from the secondary marketplace alternatives proposed in this rule, unless otherwise directed by DOJ.

<sup>68</sup> See 49 U.S.C. 41712, authorizing the DOT to investigate and prohibit any unfair or deceptive practice or an unfair method of competition of an air carrier, foreign air carrier, or ticket agent.

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.<sup>69</sup>

Furthermore, the DOT also is directed by statute, under 49 U.S.C. 40101(a), to consider certain factors as being in the public interest, in the course of carrying out the agency's duties and responsibilities. Many of these public interest considerations are enumerated in the statute, while others are left to the Secretary's discretion.<sup>70</sup> Enumerated considerations include, among others, maintaining and enhancing service to small communities and encouraging transportation through secondary or satellite airports.<sup>71</sup>

#### 2. Historical Application of Authorities

Recently, the DOT/FAA has had occasion to apply the Section 40101(a) pro-competitive policy considerations in responding to joint requests of two carriers with large slot holdings to waive, under 49 U.S.C. 40109,<sup>72</sup> the prohibition on purchasing LGA slots.<sup>73</sup> In that proceeding, Delta Air Lines and US Airways sought to exchange slot interests at LGA and DCA. The DOT evaluated the competitive impact of the transaction because of its unique scope and scale: the transaction would have dramatically enhanced the respective market positions of Delta at LGA and US Airways at DCA. The combination of an increased concentration of slot holdings at both airports, an increase in the number of monopoly or dominant markets in which increased pricing power could be exercised, and the potential for use of the transferred slot interests in an anti-competitive manner, led the DOT to seek remedy of the potential anti-competitive effects by requiring a divestiture of slot interest at LGA and DCA.<sup>74</sup>

<sup>69</sup> See 49 U.S.C. 40101(a)(9), (10), (12), (13), and (16).

<sup>70</sup> See 49 U.S.C. 40101(a), which directs the Secretary to consider identified matters, "among others," as being in the public interest.

<sup>71</sup> 49 U.S.C. 40101(a)(8), (11), (16).

<sup>72</sup> Section 40109(b) authorizes the FAA to grant an exemption from Section 40103(b)(1), the FAA's authority over use of navigable airspace, "when the Administrator decides the exemption is in the public interest."

<sup>73</sup> See Notice of a Petition for Waiver of the Terms of the Order Limited Scheduled Operations at LaGuardia Airport, 75 FR 7306 (Feb. 18, 2010); Notice on Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport, 75 FR 26322 (May 11, 2010); Petition for Waiver of the Terms of the Order Limited Scheduled Operations at LaGuardia Airport, 76 FR 63702 (Oct. 13, 2011).

<sup>74</sup> 75 FR at 26324 (May 11, 2010); 76 FR 63702 (Oct. 13, 2011). In reaching these conclusions, the DOT calculated each airline's share of slots and

In the course of that process, the Department of Justice (DOJ) and the DOT informally agreed that the DOT would have primary responsibility to consider the carriers' waiver request and DOJ would consider the carriers' Hart-Scott-Rodino Act (HSR) notification and report.<sup>75</sup> Under that arrangement, the DOT obtained waivers from the parties to the transaction and thereby gained access to the documents submitted to DOJ pursuant to the HSR process. Using the documents and its expertise in the airline industry, the DOT assisted DOJ in that agency's analysis of the transaction. DOJ also participated in the DOT's independent determination of the joint waiver request by submitting comments, as a party, to the DOT docket. In its 2010 grant of waiver with conditions, the DOT explained that its analysis was complementary to that of DOJ. Rather than attempting to enforce antitrust laws, the DOT explained that it was invoking its authority to protect the traveling public by fostering competition in the context of the requested waiver. Further, the DOT clarified that DOJ's authority under Section 7 of the Clayton Act to reject anticompetitive transactions "did not remove the DOT's responsibility to carry out its programs consistently with the public interest criteria" under the pro-competitive considerations in Section 40101.<sup>76</sup> DOJ's submissions and analyses of the effects of the requested waiver on the availability of slots, competition between US Airways and Delta, low-cost carrier competition, fares, and mitigations of the anticompetitive effects were helpful to the DOT's decision-making process.

### 3. Review of Standalone Slot Transactions for Competitive and/or Public Interest Factors

With respect to standalone slot transactions between or among carriers, the DOT proposes to conduct reviews for purposes of evaluating the effects of the transaction based on competitive, or other public interest, factors. For purposes of the DOT's review based on competitive factors, the DOT proposes to limit its review to circumstances where the standalone slot transaction

has the potential to substantially reduce competition or create unreasonable concentration. For purposes of the DOT's review based on public interest factors, the review may examine the adverse effects of the slot transfers on service to small communities, the traveling public, or other statutory public interest objectives.<sup>77</sup> The DOT, however, would not review, on either competitive or public interest factors, certain routine types of actions involving small numbers of slots or a lease of slots to new entrants or limited incumbents, as explained further below.

The FAA would forward each request for a standalone slot transaction approval and the final terms of the transaction, required under proposed § 93.45, to the Office of the Secretary. The DOT would determine, within 14 days of receiving the request for approval, whether it needed to request and evaluate additional information for either competitive or public interest concerns, or both. As part of the Secretary's determination of those slot transactions for which additional review is necessary, the Secretary would specifically identify the additional information required. If the DOT requests additional information, the FAA would not approve the transaction, and any slots involved could not be operated by the transferee until the DOT notifies the parties and the FAA of its approval or non-objection. If the Secretary did not notify the parties and the FAA within 14 days of the DOT's receipt of the request for approval, the FAA could approve the transaction.

The DOT would review the additional information as expeditiously as possible. The DOT's review process would be facilitated by the parties' timely information responses provided in a readable and workable format. For standalone slot transactions reviewed due to competition concerns, because the competitive factors would take antitrust law standards and policies into consideration, the DOT intends to coordinate and cooperate with DOJ to avoid unnecessary duplication of effort and burden by agencies and the parties concerned. If, after reviewing the additional information, the DOT determines the slot transaction raises no concerns, the Secretary would notify the parties and the FAA that the transaction may proceed. If the transaction raises concerns, the DOT would notify the parties of its concerns, propose remedies or other actions, and set appropriate procedures and timelines for review.

For standalone slot transactions that raise competitive issues, the DOT would coordinate and consult with DOJ throughout the review process, to minimize the burden on the affected parties and to utilize Government resources efficiently. With respect to standalone slot transactions, the DOT would conduct a separate review under 49 U.S.C. 40101, and may consider using its Section 41712 enforcement authority, as appropriate. The DOT requests comments and suggestions as to how best to minimize the burden on parties that may be subject to these reviews. The process that the DOT would use to conduct these reviews is proposed in § 93.47 and further explained below.

The DOT proposes to review competitive issues arising from standalone slot transactions having the potential for significant anti-competitive effects, such as those that would significantly change the market structure at one of the slot-controlled airports, allow unreasonable industry concentration, permit one or two airlines to excessively dominate a market, or create an environment that would facilitate monopoly powers or practices that would tend to cause a carrier to unreasonably raise fares, reduce services, or exclude competition. Such transactions raise concerns because they may impede the pro-competitive goals of the Airline Deregulation Act.

Among the issues that the DOT may consider in determining whether a particular standalone slot transaction merits further competitive review are those analyzed in connection with the Delta-US Airways slots swap, including whether:

- The transaction would increase the airline's already dominant position in a significant manner, or place the airline in a significantly dominant position;
  - the transaction would significantly enhance an airline's ability to unreasonably increase its airfares in a manner unconstrained by competitors;
- or
- the transaction would enable slot interests to be used in an anti-competitive manner, such as by targeting smaller competitors.

The DOT requests comments on the use of these and other criteria to address competitive concerns.

The DOT believes that the transparency of the transfer mechanisms proposed in some of the secondary market alternatives discussed earlier would allow a better understanding of the dynamics behind slot transactions. That additional transparency may protect against the kind of behavior

departures, finding that Delta's share of slot interests at LGA would increase substantially, while US Airways' share of slot interests at DCA would also increase substantially. The DOT noted that low-cost airlines have a limited presence at both airports, and the DOT determined that the transaction would further inhibit new entry because the airlines would have a greater interest in maintaining price premiums by forestalling new entry. See 75 FR at 7309-7310 (Feb. 18, 2010); 75 FR at 26329-26330 (May 11, 2010).

<sup>75</sup> See 15 U.S.C. 18a.

<sup>76</sup> See 75 FR at 26327.

<sup>77</sup> See 49 U.S.C. 40101(a).

complained of by some. If the proposed transparent system to implement slot transfers reveals standalone slot transactions that have the potential to substantially reduce competition or create unreasonable industry concentration, the DOT has authority to investigate further and disapprove or approve with remedies that address the potential harm. The DOT also may monitor bulletin board postings, if that option is adopted in a final rule, to determine whether it suspects anti-competitive behavior. These procedures for reviewing slot transfer transactions do not limit the Secretary's authority under 49 U.S.C. 41712 to investigate and prohibit unfair or deceptive practices or unfair methods of competition.

To prevent harm to the public interest pertaining to factors other than competition, the DOT is proposing to review standalone slot transactions for purposes of analyzing effects that may be inconsistent with the public interest objectives. The DOT's public interest review could consider adverse effects on the traveling public, service to small communities, service through secondary or satellite airports, or other areas covered by the public interest. The DOT requests comments on the use of these and other criteria to address public interest concerns.

#### 4. Exceptions to Reviews of Standalone Slot Transactions

The DOT expects very few proposed standalone transactions would raise significant competitive or public interest concerns. Accordingly, the DOT proposes to exempt from its review the more routine types of transactions involving small numbers of slots (such as those consisting of fewer than eight slots in total), involving limited terms (such as those extending over two or fewer scheduling seasons), involving one-for-one trades among incumbents at any of the three airports, or involving a sale or lease entirely to a new entrant or incumbent that holds or operates a relatively small proportion of the slots at an airport. However, the DOT would consider multiple transactions within a period of a few years, including slot transfers to multiple carriers under the marketing or operational control of a single entity, as constituting a single aggregate transaction that could be subject to review. As with HSR filing guidance published by DOJ and the Federal Trade Commission, the DOT would seek to ensure that carriers not enter into multiple small transactions with the purpose of evading the review process; multiple transactions within a three-year period could be reviewed if

they constituted a pattern and raised competitive or public interest issues.

The DOT does not intend to review transactions that would be excepted from the bulletin board process. Nevertheless, it may conduct such reviews if it believes carriers have engaged in multiple transactions or have structured transactions to circumvent the competitive or public interest review process.

The DOT requests comments on whether the exceptions described above create a sufficient safe harbor so that transactions enhancing competition and providing public benefits are encouraged, while still providing the DOT with an opportunity to review transactions that could impede competition, promote monopoly markets, unreasonably raise fares, reduce service, cause undue harm to small communities or service to secondary or satellite airports, or otherwise adversely impact the public interest. Are there alternative ways to describe the sorts of slot transfers that may be excluded from the review (that is, measured by the percentage gain in market share by an acquiring carrier)? Do the proposed timeframes for additional review permit carriers to plan slot transfers without discouraging those transactions?

#### 5. Process

With respect to the proposals outlined above regarding reviews of standalone transactions for competitive or public interest factors, if upon first examination, the DOT determines that review is necessary, the DOT anticipates using expedited procedures to conduct that review. The procedures may include an opportunity for public comment as in the Delta/US Airways slot swap proceeding, or, for example, as in a potential proceeding involving a tentative DOT decision that seeks public comment. The DOT intends to harmonize such proceedings with DOJ. The DOT requests comments on appropriate procedures to synchronize the process with DOJ and to avoid undue burden and duplication on the parties.

With respect to information submitted by the parties to a transaction, the DOT proposes that parties could request that any information submitted to the DOT for review and designated as confidential not be disclosed to the public. The DOT, subject to the procedures at 49 CFR part 7, would keep such designated information confidential and not include it in any public proceeding. The DOT would treat a request to examine or copy this information as any other request under

the Freedom of Information Act, 5 U.S.C. 552, and process the request under the DOT's procedures at 49 CFR part 7. The DOT would use the procedures described in proposed § 93.47(e) for receiving, handling, and disclosing such confidential information. The procedures at 14 CFR 302.12 (commonly known as Rule 12) would not apply. The DOT requests comments on these proposed procedures, including the handling of confidential documents or alternative procedures, to ensure that decisions are made in a timely, effective, and transparent manner.

#### F. Retiming, Suspension, and Withdrawal of Slots for Operational Reasons

The FAA proposes to reserve the authority to retime or temporarily suspend a slot if a reduction in operations during a particular time period is required. Events such as a runway or taxiway closure, a change in separation standards, or fleet mix change that could impact throughput<sup>78</sup> at the airport may reduce the airport's capacity on a short-term basis. As it has done in the past, the FAA would first seek voluntary cooperation to retime or reduce operations at the airport through waivers of the usage requirements and temporary schedule reductions. If these voluntary measures were insufficient, the FAA would temporarily suspend slots until reaching the desired operational level. The FAA would conduct a lottery of slot holdings in the particular time period to determine which slot to suspend, and credit would be given for any voluntarily suspended slot. The FAA would not suspend a slot held by a carrier that holds fewer than 20 slots on any day of the week at the airport. The FAA would provide notice 45 days in advance of its intention to temporarily suspend a slot, unless the operational circumstances necessitate a shorter notice period. Once the situation requiring a reduction in operations ceases, any temporarily suspended slots would be returned to the carrier that held them provided that carrier still is operating at the airport.

The FAA also reserves the authority to permanently withdraw slots at an airport. The FAA first would make a determination of decreased airport capacity that it does not expect to increase for an indefinite period of time.

<sup>78</sup> A fleet mix change could affect throughput in several ways. Introduction of larger aircraft with greater separation standards could reduce the number of aircraft that could use a runway. A fleet mix change also could change the runways available for use, which could affect the throughput.

The FAA expects to use a permanent withdrawal only in the most unusual circumstances when voluntary cooperation and a temporary suspension of slots is determined insufficient to address capacity constraints. The FAA would conduct a lottery of slot holdings in the particular time period to determine which slots to withdraw. The FAA would not withdraw a slot held by a carrier that holds fewer than 20 slots on any day of the week at the airport. The FAA would provide notice 45 days in advance of its intention to permanently withdraw a slot, unless the operational circumstances necessitate a shorter notice period. Following withdrawal, the slot would cease to exist.

The FAA believes that a carrier that ceases all operations at an airport should not continue to hold a slot and earn rental income from it, just as it believes that non-carriers should not be permitted to hold slots. The FAA believes slots held in these ways undermine the FAA's promotion of efficient use of a scarce resource controlled by the U.S. Government. The FAA proposes to allow a carrier that ceases all operations to hold the slot at that airport for no longer than 2 years after the end of the season in which it ceased operations. The carrier could lease the slot during this period so that it does not permanently lose it. This 2-year period provides adequate time for the carrier to determine its long-term plans for operating at the airport and either resume operations at the airport, return the slot to the FAA, or sell the slot to another carrier. After the 2 years elapse, the slot would revert to the FAA, and any carrier operating the slot would have to cease that operation. Similarly, if a carrier's DOT economic authority or FAA operating certificate is suspended, surrendered, or revoked, any slots held by that carrier would revert to the FAA. The FAA has determined only operating carriers may hold slots. If that carrier had an existing agreement under which another carrier were operating the slots, the FAA could allocate the slots on a temporary, non-historical basis for the remainder of the scheduling season or up to the duration of the agreement to avoid disrupting operations or expectations of the operating carrier.

### G. *Unscheduled Operations*

The FAA proposes to limit unscheduled operations into and out of JFK, EWR, and LGA during the slot-controlled hours. Unscheduled operations already are limited at LGA by Order, and the FAA previously had proposed limits on unscheduled operations at JFK and EWR. Although

unscheduled operations (including general aviation, passenger and cargo charter, ferry, and other ad hoc operations) are typically a small percentage of overall traffic, the FAA has determined these limits are necessary because any airport operation affects congestion and delays. Even a few additional operations during peak hours could result in significant additional delay, thus eroding the effectiveness of the slot limits. Accordingly, limitations on unscheduled operations should be part of any comprehensive plan to manage congestion and delays and ensure the effectiveness of limits on scheduled operations. A comprehensive plan should seek to balance airport access to all potential operators without permitting unreasonably increased congestion and delays in the absence of FAA oversight.

The FAA believes most unscheduled operations can be accommodated under this proposed rule if operators are flexible in their arrival and departure times. Moreover, the FAA believes that general aviation demand and a segment of flights conducted as business and private charters can be accommodated within regional capacity, including operating at Westchester County Airport, Islip MacArthur Airport, Republic Airport, Stewart International Airport, Morristown Municipal Airport, and Teterboro Airport. Based on data from the FAA's Enhanced Traffic Management System (ETMS) for the year ended May 31, 2008,<sup>79</sup> most unscheduled flights can be accommodated in the actual requested hour or through capacity in an adjacent hour (1 hour on either side of the actual hour of operation in the data), or through additional reservations available in visual meteorological conditions. If an operator cannot obtain a reservation for its preferred time, its planned flight times may need to be revised because of the limited available reservations.

Unscheduled operations at JFK would be limited to two per hour, at EWR to one per hour, and at LGA to three per hour. The proposed LGA limits are consistent with the limit that has been in place since 2009. Although the limits for JFK and EWR are lower than that for LGA, these limits generally correlate to actual hourly unscheduled operations at the airports in summer 2008. To the extent possible, ATC would permit additional operations (for example, in

<sup>79</sup> The FAA also reviewed unscheduled operations in summer 2009, 2010 and 2012 and found slightly fewer unscheduled operations in those years. Therefore, the higher 2008 traffic is used for this analysis.

favorable weather conditions or if unallocated slots exist in a particular time period). Also, a secondary market alternative for unscheduled operations, in addition to the existing reservation system, could allow slot holders to exchange slots that they are not able to use on a particular day. The FAA requests comments on whether allowing slots to be exchanged in the secondary market to unscheduled operators would lead to a more efficient use of limited operational capacity.

Reservations obtained through the FAA's Airport Reservation Office (ARO) would be required prior to conducting the operation (except in the case of emergency operations) and could be obtained up to 72 hours in advance. These reservations would allow an unscheduled operation (either arrival or departure) during a 60-minute period. The reservations would be allocated on a first-come, first-served basis, determined by the time the request is received by the ARO. When the ARO allocates a reservation, it would assign a unique reservation number. Operators would primarily obtain reservations through the ARO's interactive computer system accessed via the Internet or touch-tone telephone system. This system is known as the e-CVRS. Operators would provide the date and time of the proposed operation along with other identifying information concerning the aircraft and the intended flight. Additional reservations would be available in the e-CVRS system, but these reservations may not appear until close to the reservation time.

All operations at the airport other than declared emergencies, whether under instrument flight rules (IFR) or visual flight rules (VFR), would require a reservation. However, non-emergency national security, law enforcement, military, public aircraft, or other similar mission-critical operations may be accommodated above the limits with prior FAA approval. In the case of diplomatic or other flights in direct support of foreign governments, the FAA would permit additional reservations, if necessary, to accommodate these flights but may approve an operation at a time other than the one initially requested.

The filing of a request for reservation would not constitute the filing of an IFR flight plan as required under other rules. However, an IFR flight plan could not be filed until the reservation is obtained. The operator would include the reservation number in the "Remarks" section of the flight plan to indicate that it has a reservation for the operation.

The FAA recognizes the needs of public charter operators to confirm

airport access for commercial planning and 14 CFR part 380 compliance purposes. Accordingly, the FAA proposes to allow public charter operators to obtain a reservation up to 6 months in advance for a planned individual operation or a series of operations occurring fewer than three times per month. Public charter operators planning to conduct a series of operations more than three times per month would need a slot for those operations.

Public charter operations that seek a reservation more than 72 hours and up to 6 months in advance of the planned operation, would submit their request to the FAA's Slot Administration Office. A public charter operator would be required to provide the Slot Administration Office with a certification that any required prospectus has been submitted to the DOT in accordance with 14 CFR part 380; the call sign/flight number to be used for ATC communication by the direct air carrier conducting the operation; the date and time of the proposed arrival or departure; and the origin airport immediately prior to JFK, EWR, or LGA, or the destination airport immediately following JFK, EWR, or LGA; and aircraft type. A public charter operator also would be required to notify the Slot Administration Office of any changes to the above information after the reservation has been allocated.

The number of reservations available in advance for public charter operations would be limited to one per hour at LGA and two per day at JFK and EWR. If a public charter operator were unable to obtain an advance reservation, it could attempt to obtain a reservation within the 3-day window that is open to all unscheduled operations. A public charter operator also could attempt to obtain a slot from another carrier in the secondary market under proposed § 93.45.

*H. Miscellaneous Amendments*

Because the HDR no longer is in effect for JFK, EWR, LGA, and ORD, the FAA

proposes to remove references to these airports in part 93, subparts K and S. These out-of-date references have caused confusion for the public, and these amendments would reduce that confusion. Accordingly, the FAA proposes to remove references to these airports in §§ 93.123 (including the table in § 93.123(a)), 93.211, 93.223, 93.226. The FAA also proposes to remove §§ 93.133, 93.215, 93.217, 93.218, and 93.221(e) because they do not apply to DCA, which is the only airport for which the HDR applies. None of these amendments would substantively change how the HDR applies to DCA.

**IV. Regulatory Notices and Analyses**

*A. Regulatory Evaluation*

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct 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 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) 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, that they 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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers

seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined this proposed rule has benefits that justify its costs, and is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 because it raises novel policy issues contemplated under that executive order. The rule is also "significant" as defined in the DOT's Regulatory Policies and Procedures. The proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, would not create unnecessary obstacles to international trade and would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

**Total Benefits and Costs of This Rule**

The FAA developed this analysis using 2009 data to model the behaviors of carriers based on meeting the minimum requirement of the proposed rule. Under this assumption, carriers would incrementally increase actual operations in year one to meet the new use-or-lose requirement and this new operating level would grow by the FAA's Terminal Area Forecast (TAF) until it reached the daily limits. In the first year carrier utilization of slots will be at least 80%. After this year, any increase in operations and slot utilization is due to an increase in forecasted demand. Total benefits and costs for the regulatory case are estimated at \$74,696,596 (\$65,242,900 Present Value at 7%) for benefits and \$53,056,768 (\$46,341,836 Present Value at 7%) for costs, assuming the highest cost secondary market alternative (either alternative four or five) is adopted. Moreover, the FAA believes that this rule would improve utilization of existing slots, possibly increase a carrier's penalty for retaining slots of limited value and thus result in the return of some slots, and would result in net benefits over one year.

**TOTAL COST AND BENEFITS OF ALTERNATIVES FOUR OR FIVE OF THE PROPOSED RULE**

Year 2012	Benefits	Present value (7%)	Costs	Present value (7%)	Net benefits
Regulatory Case .....	\$74,696,596	\$65,242,900	\$53,056,768	\$46,341,836	\$18,901,064

Who is potentially affected by this rule?

- Operators of scheduled and non-scheduled, domestic and international flights, and new entrants who do not yet operate at JFK, LGA, and EWR.

- All communities with air service to JFK, LGA, and EWR.
- Passengers of scheduled flights to JFK, LGA, and EWR.

- The Port Authority of New York and New Jersey, which operates the airports.
- FAA Air Traffic Control.

### Assumptions

- All costs and benefits are in 2010 dollars.
- Costs and benefits estimated for the first year.
- Additional flights added to meet new usage requirement excludes weekends (Saturday and Sunday).
- Assume some flights rescheduled to meet new usage requirement.
- Present value discount rate of 7 percent is applied.
- Some unscheduled flights would be redirected.
- Carriers that would need to add a large number of flights in less desirable hours (hours 0600 and 2100) would return or sell those slots.

The majority of the costs and benefits from this proposed rule are from changes to the usage requirement. The secondary market and new administrative and reporting requirements result in minor benefits and costs. Benefits include consumer benefits (measured as consumer surplus) from additional flights at JFK, EWR, and LGA. Costs are attributed to the additional operating costs carriers incur for these added flights to meet the proposed usage requirement, the additional minutes of delay and any administrative and reporting costs.

### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” 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 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 RFA.

The initial regulatory flexibility analysis addresses:

- Description of reasons the agency is considering the action;

The purpose of this rulemaking is to replace the current temporary Orders

limiting operations at LGA, JFK, and EWR with a permanent rule. Under the existing Orders the hourly scheduled operations are limited to 81 at JFK, 81 at EWR, and 71 at LGA, and unscheduled operations are limited to 3 at LGA. This proposal, if adopted, would replace those Orders and continue the existing limits on scheduled operations in addition to limiting unscheduled operations to 2 per hour at JFK and 1 at EWR and establishing daily scheduled operations limits. The FAA also intends to increase the use of slots through a revised usage requirement and secondary market.

- Statement of the legal basis and objectives of the proposed rule;

This rulemaking is promulgated under the authority described in Title 49 U.S.C. Subtitle VII, Part A, Subpart I, Sections 40101, 40103, 40105, and 41712 and in Title 15 U.S.C. Section 21. 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 the FAA deems necessary for safe and efficient utilization.

- Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule;

This rule would replace existing FAA Orders and does not duplicate, overlap, or conflict with other federal rules.

- Description of the recordkeeping and other compliance requirements. The FAA proposes a secondary market and offers five alternatives. The secondary market would permit a carrier to buy, sell, or lease a slot to another carrier or to trade a slot with another carrier. For all five alternatives, each carrier party to the negotiated transaction would be required to submit a request for approval to the FAA along with the final terms of the transaction including the names of all parties to the transaction, the consideration offered by each party, the effective date of the transfer, and, if appropriate, the length of the lease. For four of the alternatives, carriers would also submit information that would be submitted to the bulletin board through either the carrier or the FAA.

The scheduled carrier would incur reporting costs for buying, selling, leasing or trading a slot. While these costs for an operator are minimal, largely voluntary, and can provide revenue opportunities for small operators, a full discussion of these costs now follows. For all five alternatives, each carrier party to the negotiated transaction would be

required to submit a request for approval to the FAA along with the final terms of the transaction including the names of all parties to the transaction, the consideration offered by each party, the effective date of the transfer, and, if appropriate, the length of the lease. Each respondent would require 30 minutes, that includes 30 minutes for the transferring carrier and 30 minutes for the receiving carrier. Given the legal nature of the agreement a lawyer would be retained with an hourly burden labor rate<sup>80</sup> of \$89.89.

For alternatives that require the bulletin board the FAA estimates that carriers would need at least one hour to report the buying, selling, or trading of a slot. As mentioned above the FAA estimates that carriers would post up to 25 trades. To estimate the annual reporting costs to carriers for buying, selling, or trading on the bulletin board, the FAA multiplied the estimated number of annual reports by the number of hours needed per report and the wage. The hourly burden labor rate was for a computer support specialist<sup>81</sup> at \$30.74. Total yearly cost to carriers, at all three airports, is estimated to be between \$461 and \$2,305. For alternative 4, there is also the added cost to carriers of submitting bids on the bulletin board. The bidding period would last 14 days, and the FAA estimates that bidders would spend approximately 2 hours dealing with the bid over the course of 14 days. Given the public nature of the bid, carriers would seek legal review before postings bids for an hourly burden labor rate for a lawyer<sup>82</sup> of \$89.89. The rate multiplied by 2 hours per bid sums to \$179.78. Again, the FAA estimated that there would be roughly 25 notices per airport a year with approximately 5 bids per notice for a total of bids a year.

- A description and estimated number of small entities to which the rule would apply.

Any scheduled carrier, employing less than 1,500 employees, with existing slots or wanting a slot today would be affected by this rule. There are two

<sup>80</sup> <http://www.bls.gov/oes/current/oes532011.htm>; Bureau of Labor Statistics Occupational Employment and Wages Statistics; Lawyer (May 2009); In May 2009, the Employee Benefit Research Institute, using a Bureau of Labor Statistics Survey of employee benefits estimated the total 2009 benefit as a percentage of payroll at 30.2 percent.

<sup>81</sup> <http://www.bls.gov/oes/current/oes151041.htm>, Occupational Employment and Wages, May 2009; (15-1041 Computer Support Specialists).

<sup>82</sup> <http://www.bls.gov/oes/current/oes532011.htm>; Bureau of Labor Statistics Occupational Employment and Wages Statistics; Lawyer (May 2009); In May 2009, the Employee Benefit Research Institute, using a Bureau of Labor Statistics Survey of employee benefits estimated the total 2009 benefit as a percentage of payroll at 30.2 percent.

carriers operating scheduled service with less than 1,500 employees and one carrier with scheduled service that has slightly more than 1,500 employees. Also, unscheduled operators that employ less than 1,500 employees would be considered small entities.

The delay costs for the small entities at the New York City area airports would not result in a significant economic impact. The annual delay cost equals the average of delay per flight, multiplied by the total number of flights, then by 50 percent attributed to ground delay, and then multiplied by the average airplane operating cost. When this total delay cost is divided by annual revenue the result is less than 2 percent for the small entity scheduled operators. The FAA believes that compliance cost less than two percent of annual revenue is not a significant economic impact.

A small number of unscheduled passenger flights planning to operate at EWR or JFK may have to operate at another New York City area airport, such as Teterboro, if they are unable to obtain a reservation. This change in plans may result in an additional ground transportation cost to or from the alternative airport. However, when considering the cost of travel by private jet compared to commercial passenger service, any additional ground transportation cost is not significant.

The FAA believes the nonscheduled cargo carriers would not have a significant economic impact, as their flights would continue and most of their flights occur at night and would not incur delay costs.

The FAA considered two alternatives to the proposed rule. The first alternative was to simply extend the existing Orders. This alternative was rejected because the FAA wanted to increase competition by making slots available to more operators. The FAA believes these operators are likely to be small entities. The second alternative was to remove the existing Orders. This alternative would result in unacceptable delay costs from the increase in operations.

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

### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign

commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. 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 proposed rule and determined that it would impose the same costs on domestic and international entities and thus has a neutral trade impact.

### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 (in 1995 dollars) 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 \$143.1 million in lieu of \$100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. 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.

This action contains the following proposed information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

*Title:* Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport.

*Summary:* The FAA proposes to replace the current temporary Orders limiting operations with a permanent

rule to address the issues of slot management at JFK, EWR, and LGA airports. The rule would limit scheduled and unscheduled operations. The FAA also proposes to adjust the usage requirements at the New York City area airports, establish a cap on unscheduled operations at JFK and EWR, and develop a secondary market for the exchange of slots. More information on the proposed requirements is detailed elsewhere in today’s notice.

*Use of:* The information is reported to the FAA by carriers holding slots at JFK, EWR, or LGA. This information is used to allocate, track usage, withdraw, and confirm transfers of slots among the operators and facilitates the transfer of slots in the secondary market. The FAA uses this information in order to maintain an accurate accounting of operations to ensure compliance with the operations permitted under the rule and those actually conducted at the airports.

The FAA also uses this information to help provide access to unscheduled operators seeking access to these airports.

The slot exchange information posted on the FAA’s electronic bulletin board is designed to enhance competition by making the availability of slots known to new entrant and incumbent carriers seeking to serve these markets.

*Respondents:* Respondents would be carriers with existing service at JFK, EWR, and LGA and new carriers initiating service at those airports in the future (by acquiring slots through slot allocation or the secondary market). Various carriers included in these totals have service at all three airports. There are 26 operating carriers at LGA, 46 at EWR, and 75 at JFK.

Respondents also would be unscheduled operators seeking to operate at LGA, JFK, or EWR. For the period from May through August 2010, there were approximately 50 unscheduled operators at LGA, 25 at JFK, and 30 at EWR that used the respective airports for more than five operations.

*Frequency:* The information collection requirements of the rule involve carriers notifying the FAA of their use of slots. Each carrier must notify the FAA of its: (1) Slot requests for the upcoming season; (2) slot usage (operations); (3) requests for approval of one-for-one slot trades; (4) requests for approval of slots transferred between carriers under the same marketing control; and (5) submissions of bulletin board notices of intent to transfer slots and requests for approval of secondary market transactions. The information collection

requirements also include reservation requests from unscheduled operators seeking access to the three airports during the slot-controlled hours.

Slot requests for the upcoming scheduling season would take place twice per year, before the winter and summer IATA scheduling seasons. Slot usage reporting would occur four times per year, with interim and final usage reports for each scheduling season. Requests for approval of one-for-one trades, request for approvals for slots transferred between carriers under the same marketing control, and submission of bulletin board notices regarding the intent to transfer slots would all be event-driven and would occur as frequently as secondary market transactions warrant. The FAA estimates there would be approximately 2,700 secondary market transactions per year for all three airports. Similarly, reservation requests by unscheduled operators would also be event-driven and could occur as frequently as the hourly limit at the respective airport.

*Annual Burden Estimate:* The annual reporting burden for each subsection of the rule is presented below. These burden estimates consist of costs that would result from the imposition of this proposed rule. These include: A reservation system for unscheduled operations at JFK, EWR, and LGA, schedule requests for the upcoming season, reporting and monitoring of the usage requirement, and the documentation required for the secondary market bulletin board at all three airports.

*Reservation system:* 51 unscheduled operations per day (34 at JFK, 17 at EWR). From prior experience with the reservation system at LGA the reporting time per reservation is two minutes. LGA would continue to have up to 48 unscheduled operations per day.

JFK:

- (34 reservations per day) \* (2 minutes per reservation) \* (365 days per year) = Total Annual Hourly Burden = 414 hours

EWR:

- (17 reservations per day) \* (2 minutes per reservation) \* (365 days per year)—Total Annual Hourly Burden = 207 hours

LGA:

- *Monday–Fridays:* (48 reservations per day) \* (2 minutes per reservation) \* (5 days per week) \* (52 weeks per year) = Total Annual Hourly Burden = 416 hours
- *Sundays:* (30 reservations per day) \* (2 minutes per reservation) \* (1 day per week) \* (52 weeks per year) = Total Annual Hourly Burden = 52 hours

- Total burden (Mon–Fri, Sunday): = Total Annual Hourly Burden = 468 hours

*Schedule Requests for Upcoming Season:* The FAA estimates it would take each carrier approximately two hours per scheduling season to submit the required schedule request reports. These reports would be submitted to the FAA on a semiannual basis, corresponding with the winter and summer IATA scheduling seasons. There are 26 operating carriers at LGA, 46 at EWR and 75 at JFK for a total of 147 operating carriers at the three NY airports.

(147 carriers) \* (2 hours per report) \* (2 scheduling seasons) = Total Annual Hourly Burden = 588 hours<sup>83</sup>

*Usage requirement:* To confirm adherence to the usage requirement, the FAA proposes to require carriers to submit an interim and final usage report to the FAA, for each scheduling season. The interim report would be due by September 1 for the summer scheduling season and February 1 for the winter scheduling season. The final report would be due no later than 30 days after the end of the respective scheduling season. The interim and final reports should detail slot usage for each day of the respective scheduling season and report the following information for each slot held: the slot number, airport code, time, and arrival or departure designation; the operating carrier; the date and scheduled time of the actual operation, the flight number, origin and destination, and aircraft type identifier; and whether the flight was actually conducted.

(147 carriers) \* (1.5 hours per submittal) \* (4 occurrences per year) = Total Annual Hourly Burden = 882 Hours

*Secondary market transactions:* Reporting costs for the secondary market would vary according to which of the five alternatives the FAA chooses. Alternative 1 is the least costly. This alternative is very similar to current practices for lease agreements. This alternative does not include the costs for a bulletin board, rather carriers would privately-negotiate buy, sell, lease, and trade transactions. Alternatives 2, 3, 4, and 5 alternatively propose a bulletin board to post information on buy, sell, trade, and lease transactions. Costs include the reporting by carriers to the FAA.

From prior experience, the FAA estimates that there would be

<sup>83</sup> This analysis does not assume that a carrier operating at more than one of the affected airports would recognize an economy of scale, thus reducing the estimated amount of time required to comply with the proposed requirements.

approximately 2,700 slot transfer transactions yearly for all three airports. This amounts to roughly 575 transactions for EWR, 1480 for LGA, and 645 for JFK. Many transactions include trades among carriers with unified marketing control, and those carriers could use the simplified process under proposed § 93.46 to reduce the reporting burden. The proposed oversight of secondary market competition may require submission of additional information, but the DOT expects few transactions would be reviewed.

*Secondary Market Trades (not via Bulletin Board):*

- 2,700 (total transactions) – 75 (bulletin board transactions) = 2,625 secondary market trades
- 2,625 (secondary market trades) \* 1 hour per transaction (or 30 minutes per party) = 2,625 hours

The FAA estimates that there would be roughly 25 notices per airport per year that would be posted to a bulletin board under alternatives 2, 3, and 4. The FAA estimates carriers would spend 2 hours preparing and submitting those notices. For alternative 4, the FAA estimates approximately 5 bids per notice for a total of 375 bids at the three airports per year. The FAA estimates that bidders would spend approximately 2 hours dealing with each bid.

*Secondary Market Bulletin Board Transactions:*

(125 bids per airport) \* (2 hours to respond to bids) \* (3 airports) = Total Annual Hourly Burden = 750 hours

### Summary

The agency requests comments to—  
(1) Evaluate whether the proposed information requirements are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate 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 the collection of 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 March 9, 2015, 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, via facsimile at (202) 395-6974, 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.

#### *F. International Compatibility and Cooperation*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to 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.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

#### *G. Environmental Analysis*

FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures*, 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 rulemaking action qualifies for the categorical exclusion identified in paragraph 312d "Issuance of regulatory documents (e.g., Notices of Proposed Rulemaking and issuance of Final Rules) covering administration or procedural requirements (Does not include Air Traffic procedures; specific Air Traffic procedures that are categorically excluded are identified under paragraph 311 of this Order.)". It has been determined that no extraordinary circumstances exist that may cause a significant impact and therefore no further environmental

review is required. A documented categorical exclusion has been filed in the docket.

#### **V. Executive Order Determinations**

##### *A. Executive Orders 12866 and 13563*

See the "Regulatory Evaluation" discussion in the "Regulatory Notices and Analyses" section elsewhere in this preamble.

##### *B. Executive Order 13132, Federalism*

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal 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.

##### *C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a "significant energy action" under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### **VI. Additional Information**

##### *A. Comments Invited*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites 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. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA

will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD-ROM, mark the outside of the disk or CD-ROM, and identify electronically within the disk or CD-ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

##### *B. Availability of Rulemaking Documents*

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies) or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

Copies may also be obtained 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. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

#### **VII. The Proposed Amendment**

##### **List of Subjects in 14 CFR Part 93**

Air traffic control, Airports, Navigation (air).

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

### PART 93—SPECIAL AIR TRAFFIC RULES

■ 1. Revise the authority citation for part 93 to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40106, 40109, 40113, 41712, 44502, 44514, 44701, 44715, 44719, 46301; 15 U.S.C. 21.

■ 2. Amend part 93 by adding subpart C to read as follows:

#### Subpart C—LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport Slot Management Rules

Sec.

- 93.35 Applicability.
- 93.36 Definitions.
- 93.37 Slots for scheduled arrivals and departures.
- 93.39 Determination of historic precedence.
- 93.41 Allocation of slots.
- 93.43 Reversion, suspension, and withdrawal of slots.
- 93.44 Reporting requirements.
- 93.45 Transfer of slots.
- 93.46 Operation of slots by carriers under common marketing control.
- 93.47 Oversight of competitive issues.
- 93.49 Unscheduled operations.

#### Subpart C—John F. Kennedy International Airport, Newark Liberty International Airport, LaGuardia Airport Slot Management Rules

##### § 93.35 Applicability.

(a) This subpart prescribes the air traffic rules for the arrival and departure of aircraft used for scheduled and unscheduled service, other than helicopters, at John F. Kennedy International Airport (JFK), Newark Liberty International Airport (EWR), and LaGuardia Airport (LGA).

(b) This subpart prescribes procedures for the assignment, transfer, lease, and withdrawal of slots issued by the FAA for scheduled operations at JFK, EWR, and LGA.

(c) This subpart applies to operations at:

- (1) JFK, daily from 0600 through 2259, Eastern time;
- (2) EWR, daily from 0600 through 2259, Eastern time; and
- (3) LGA, Monday through Friday from 0600 through 2159, Eastern time, and Sunday from 1200 through 2159, Eastern time.

(d) A U.S. or, to the extent provided for by international agreements, foreign air carrier conducting operations solely under another carrier's marketing control with unified inventory control is

not considered a separate carrier under this subpart.

##### § 93.36 Definitions.

For purposes of this subpart: *Airport Reservation Office (ARO)* is an operational unit of the FAA's David J. Hurley Air Traffic Control System Command Center. Its responsibilities include the administration of reservations for unscheduled operations at JFK, EWR, and LGA (excluding reservations for public charter operations allocated under § 93.49(d)).

*Carrier* is a U.S. or foreign air carrier with authority to conduct scheduled service or regularly conducted commercial service under parts 121, 129, or 135 of this chapter and the appropriate economic authority under 14 CFR chapter II and 49 U.S.C. chapter 401, 411, and 413.

*Enhanced Computer Voice Reservation System (e-CVRS)* is the FAA system used to make an arrival or departure reservation at JFK, EWR, or LGA. Reservations are made through a touch-tone telephone interface, an Internet Web interface, or directly through the ARO.

*New entrant* is a U.S. or foreign air carrier that holds or operates fewer than 20 slots on any day of the week, in any combination during the slot-controlled hours, at the respective airport, with that number including any slots that have been returned to the FAA after the slot return deadline or had slots revoked by the FAA for insufficient use, during the two corresponding scheduling seasons immediately preceding the scheduling season for which a slot allocation is conducted.

*Public charter* is defined in 14 CFR 380.2 as a one-way or roundtrip charter flight to be performed by one or more direct carriers that is arranged and sponsored by a charter operator.

*Public charter operator* is defined in 14 CFR 380.2 as a U.S. or foreign public charter operator.

*Reservation* is an authorization received from the FAA to operate an unscheduled arrival to or departure from JFK, EWR, or LGA for a specific 60-minute period during the slot-controlled hours.

*Scheduled operation* is the arrival or departure segment of any operation regularly conducted by a carrier between JFK, EWR, or LGA and another airport regularly served by the carrier.

*Scheduled series of flights* is at least 5 operations on the same day-of-week that represent substantially the same scheduled service. These operations generally would be at the same time within a specific 30-minute period, have the same flight number, serve the same

market, and be distributed regularly throughout the season.

*Slot* is the operational authority assigned by the FAA to a carrier to conduct one scheduled operation or a series of scheduled operations, or a series of public charter operations that are operated more than three times per month, at JFK, EWR, or LGA on a particular day(s) of the week during a specific 30-minute period.

*Slot-controlled hours are:*

- (1) For JFK, daily from 0600 through 2259, Eastern time;
- (2) For EWR, daily from 0600 through 2259, Eastern time;
- (3) For LGA, Monday through Friday from 0600 through 2159, Eastern time, and Sunday from 1200 through 2159, Eastern time.

*Slot return deadline* is the date by which a carrier must return a slot that it does not intend to operate. For the summer season, the deadline is January 15. For the winter season, the deadline is August 15.

*Standalone slot transaction* is a slot transfer by one carrier to another carrier (whether by sale, purchase, lease, or trade), akin to monetizing a slot. A standalone slot transaction would occur independently of any slot transfers that would result from a carrier merger or acquisition, defined as a transaction that combines the ownership/operation/control of two (or possibly more) carriers into a single entity. Specifically, slot divestitures undertaken in response to a DOJ investigation of an airline merger or acquisition under the Hart Scott Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, would not be considered standalone slot transactions.

*Summer scheduling season* begins on the last Sunday of March.

*Unscheduled operation* is an arrival or departure segment of any operation that is not regularly conducted by an air carrier, foreign air carrier, or other operator of an aircraft, excluding helicopters, between JFK, EWR, or LGA and another service point. Certain types of air carrier and foreign air carrier operations are considered unscheduled operations under this subpart including: on demand, public and other charter flights; hired aircraft services; extra sections of scheduled flights; ferry flights; and other non-passenger flights.

*Winter scheduling season* begins on the last Sunday of October.

##### § 93.37 Slots for scheduled arrivals and departures.

(a) No person may operate certain public charters or any scheduled arrival into or departure out of JFK, EWR, or LGA during the slot-controlled hours

without first obtaining a slot under this subpart.

(b) Except as otherwise approved by the Administrator, the number of slots are limited to no more than 81 per hour at JFK, 81 per hour at EWR, and 71 per hour at LGA.

(1) At JFK, the number of slots may not exceed 44 in any 30-minute period, 81 in any 60-minute period, or a total of 1,205 between the slot-controlled hours of 0600 and 2159.

(2) At EWR, the number of slots may not exceed 44 in any 30-minute period, 81 in any 60-minute period, or a total of 1,205 between the slot-controlled hours of 0600 and 2159.

(3) At LGA, the number of slots may not exceed 38 in any 30-minute period, 71 in any 60-minute period, or a total of 1,136 during the slot-controlled hours.

(4) The FAA may adjust the number of arrival and departure slots in any period as necessary based on the actual or potential delays created by such number or other considerations relating to congestion, airfield capacity, and the air traffic control system.

#### **§ 93.39 Determination of historic precedence.**

(a) Any carrier holding operating authorizations (except for temporary, one-season-only, or other contingent operating authorizations) allocated under the Order limiting operations at JFK, the Order limiting operations at EWR, or the Order limiting operations at LGA, as evidenced by the FAA's records, will be assigned corresponding slots in 30-minute periods consistent with the limits under § 93.37(b) and the carrier's summer and winter season schedules as approved by the FAA. The carrier will have historic precedence, subject to the requirements of this section, for these slots for the subsequent corresponding season.

(b) To be eligible for historic precedence, an allocated slot must be used at least 80% of the time for which it is allocated during the scheduling period, subject to the following:

(1) Absent approval by the FAA, the same flight or series of flights must be reported as used for an allocated slot throughout the summer or winter season.

(2) For a series of flights operated on more than one day-of-week, each day-of-week is considered a separate series of flights.

(3) The FAA will treat as used a slot held by a carrier that ceases operations using that slot due to a strike.

(4) The FAA may waive these usage requirements in the event of a highly unusual and unpredictable condition

which is beyond the carrier's control and which affects carrier operations for a period of five or more consecutive days.

(5) The FAA may waive these usage requirements for a period of up to 180 days if a slot is allocated to or otherwise acquired by a new entrant carrier.

(c) A slot allocated by the FAA under § 93.41(i) does not have historic precedence for the subsequent corresponding season.

#### **§ 93.41 Allocation of slots.**

(a) Requests for slots must be submitted to the FAA Slot Administration Office at the address and by the deadline published by the FAA in a **Federal Register** notice for each summer and winter scheduling season. The request must include the following minimum information:

(1) The requesting carrier must submit its entire schedule at JFK, EWR, and LGA, as appropriate, for the particular season, noting which requests, if any, are in addition to, or changes from, the previous corresponding season at the respective airport.

(2) Each slot request must indicate the effective dates of the request, proposed days of operation, proposed time of operation (indicated as either UTC or local time), whether the operation is for an arrival or departure, flight number, and aircraft type.

(b) The FAA first will accommodate requests for slots for which the carrier has historic precedence and are for the same time period as the previous corresponding season.

(c) After accommodating historic precedence slots, the remaining slots available for allocation will be divided into two pools:

(1) Not less than 50% of the available slots will be for new entrants that have not returned slots to the FAA after the slot return deadline, or had slots revoked by the FAA for insufficient use, during the two corresponding scheduling seasons immediately preceding the scheduling season for which a slot allocation is being conducted; and

(2) The remainder will be for any carrier.

(d) Within each pool, the FAA first will accommodate carrier requests to retire slots for operational reasons.

(e) Within each pool, the FAA next will accommodate carrier requests to extend an allocated seasonal slot to year-round service.

(f) Within each pool, the FAA then will accommodate any remaining carrier requests. If all requests cannot be accommodated, the FAA will consider the following factors:

(1) The effective period of operation;

(2) The extent and regularity of intended slot use with priority given to year-round service;

(3) Schedule constraints of carriers requesting slots; and

(4) The operational impacts of scheduled demand, including the distribution of flights and the mix of arrivals and departures.

(g) If an available slot cannot be allocated according to the factors in paragraph (f) of this section, the FAA may consider the following factors:

(1) Airport facilities constraints including gates, terminals, parking, customs and immigration, and curfews; and

(2) Competition and impacts to markets served.

(h) A carrier allocated a slot under paragraph (f) of this section must operate that slot and may not transfer it for two corresponding seasons, except that carrier may engage in a one-for-one trade for operational reasons.

(i) Notwithstanding paragraphs (a) through (g) of this section, the FAA may assign an available slot to a carrier on a non-permanent, first-come, first-served basis subject to permanent assignment under this subpart. Any remaining unassigned slots may be made available to unscheduled operations on a non-permanent basis according to the procedures in § 93.49.

(j) The FAA will assign each slot a designation that consists of the airport code, slot number, 30-minute time period, frequency, summer or winter season, and arrival or departure designation.

(k) If directed by the Office of the Secretary of Transportation, the FAA will not apply the provisions of this section to any foreign air carrier or commuter operator of a country that provides slots to U.S. air carriers and commuter operators on a basis more restrictive than provided under this subpart.

#### **§ 93.43 Reversion, suspension, and withdrawal of slots.**

(a) Absent prior approval by the FAA and except as otherwise provided in this subpart, a carrier that ceases all operations at an airport may transfer, sell, or lease any slots to another carrier as provided in § 93.45, but the carrier may not hold any slots for a period exceeding 2 years after the season in which it ceases all operations at the respective airport.

(b) If a carrier's DOT economic authority or FAA operating certificate is suspended, surrendered, or revoked, any slots held by that carrier revert to the FAA. If another carrier is operating

the slots under an agreement with the holding carrier, the FAA may allocate those slots on a temporary basis not exceeding the duration of the agreement.

(c) The FAA may retime or temporarily suspend slots at any time to fulfill operational needs. The FAA will provide a 45-day notice, unless shorter notice is required for operational needs, to an affected carrier prior to temporarily suspending a slot that specifies the date by which operations using that slot must cease. The FAA will determine the suspended slots by lottery of slot holdings in the particular time period during which slots are being suspended. The FAA will reassign a suspended slot, if at all, only to the carrier from which it was suspended, provided the carrier continues to conduct scheduled operations at the respective airport.

(d) If the FAA determines to reduce the number of allocated slots following a determination of decreased airport capacity, it may permanently withdraw slots to reach the accepted limit. The FAA will determine the withdrawn slots by lottery of slot holdings in the particular time period during which slots are being withdrawn. Following withdrawal, those slots would cease to exist.

(e) The FAA will not retime, suspend, or withdraw slots, under this section, of a carrier that holds fewer than 20 slots on any day of the week at the respective airport.

#### § 93.44 Reporting requirements.

(a)(1) No later than September 1 for the summer scheduling season and February 1 for the winter scheduling season, each carrier holding a slot must submit an interim report of slot usage for each day of the applicable scheduling season.

(2) No later than 30 days after the last day of the applicable scheduling season, each carrier must submit a final report of the completed operations for each day of the entire scheduling season.

(b) The report required under paragraph (a) this section must contain, in a format acceptable to the FAA, the following information for each slot:

(1) The slot number, airport code, time, and arrival or departure designation;

(2) The operating carrier;

(3) The date and scheduled time of each of the operations conducted with the slot, including the flight number, origin and destination, and aircraft type identifier; and

(4) Whether the flight was actually conducted.

(c) The FAA may withdraw the slots of any carrier that does not meet the reporting requirements of paragraph (a) of this section.

#### § 93.45 Transfer of slots. [ALTERNATIVE ONE]

(a) Except as otherwise provided in this subpart, a carrier may buy, sell, or lease a slot to another carrier for any consideration and for any time period, and a carrier may trade a slot with another carrier for a slot at any U.S. or foreign slot-controlled airport.

(b) Requests for FAA approval of transfers under this section must be submitted in writing by all parties to the transaction to the FAA Slot Administration Office in a manner acceptable to the Administrator. Requests must provide the names of the transferor and recipient; business address and telephone number of the person representing the transferor and recipient; whether the slot is to be used for an arrival or departure; and the slot designation of the slot as described in § 93.41(j).

(c) The request for FAA approval also must include the final terms of the transaction including:

(1) The names of all parties to the transaction;

(2) The consideration offered by each party;

(3) The effective date of the transfer; and

(4) The length of the lease, if applicable.

(d) Prior to approving the transfer, the FAA will confirm the transferred slots come from the transferor's FAA-approved slot holdings and that no transfer limitations apply.

(e) The Secretary may review the final terms of the transaction for any anti-competitive effects or adverse public interest effects under § 93.47. The FAA may not approve the transfer until the Secretary notifies the FAA of the Secretary's approval or non-objection or the 14-day notice period under § 93.47(b) elapses.

(f) The slot may not be used by the transferee until the conditions of this section have been met, and the FAA provides notice of its approval of the transfer.

#### § 93.45 Transfer of slots. [ALTERNATIVE TWO]

(a) Except as otherwise provided in this subpart, a carrier may buy, sell, or lease a slot to another carrier for any consideration and for any time period, and a carrier may trade a slot with another carrier for a slot at any U.S. or foreign slot-controlled airport.

(b) Except as permitted under paragraphs (c), (d), (e), (f), and (g) of this

section, a carrier must provide notice to the FAA four months before its intended transaction date of its intent to transfer a slot prior to negotiating with another carrier. The notice of intent to transfer must include the slot number and time, effective date of the transfer, and, if applicable, the duration of the lease. The FAA will post a notice of the offer to transfer the slot and relevant details on the FAA Web site at <http://www.faa.gov>. The notice will state the opening and closing dates for bids and the contact information of the transferring carrier for bid submission. The offering carrier may accept any bid and negotiate the final terms of the transfer, but it may consider only bids submitted during the bidding period.

(c) A carrier may trade a slot with another carrier on a one-for-one basis without providing notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification by both carriers that no consideration or promise of consideration was provided by either party to the trade.

(d) A carrier may lease a slot to another carrier without notice to the FAA under paragraph (b) of this section provided the lease is effective for no longer than two scheduling seasons.

(e) Carriers with agreements where one carrier operates solely under the other's marketing control may transfer a slot with another party subject to that agreement without notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification of that agreement by both carriers.

(f) Prior to [90 DAYS AFTER EFFECTIVE DATE], a carrier may buy, sell, or trade with another carrier a slot that was subject to a lease or short-term trade under the Order limiting operations at JFK, Order limiting operations at EWR, or Order limiting operations at LGA without notice to the FAA under paragraph (b) of this section.

(g) Requests for FAA approval for transfers under this section must be submitted in writing by all parties to the transaction to the FAA Slot Administration Office in a manner acceptable to the Administrator.

Requests must provide the names of the transferor and recipient; business address and telephone number of the person representing the transferor and recipient; whether the slot is to be used for an arrival or departure; and the slot designation of the slot as described in § 93.41(j).

(h) The request for FAA approval also must include the final terms of the transaction including, as applicable:

- (1) The names of all parties to the transaction;
- (2) A description of the transaction;
- (3) The consideration offered by each party;
- (4) The names of all bidders and consideration offered by each bidder;
- (5) The effective date of the transfer; and
- (6) The length of the lease.

(i) Prior to approving the transfer, the FAA will confirm the relevant slots are part of the carrier's FAA-approved slot holdings and that no transfer limitations apply.

(j) The Secretary may review the final terms of the transaction for any anti-competitive effects or adverse public interest effects under § 93.47. The FAA may not approve the transfer until the Secretary notifies the FAA of the Secretary's approval or non-objection or the 14-day notice period under § 93.47(b) elapses.

(k) The slot may not be used by the transferee until the conditions of this section have been met, and the FAA provides notice of its approval of the transfer.

**§ 93.45 Transfer of slots. [ALTERNATIVE THREE]**

(a) Except as otherwise provided in this subpart, a carrier may buy, sell, or lease a slot to another carrier for any consideration and for any time period, and a carrier may trade a slot with another carrier for a slot at any U.S. or foreign slot-controlled airport.

(b) Except as permitted under paragraphs (c), (d), (e), and (f) of this section, a carrier may negotiate tentative terms of a transfer without providing advance notice to the FAA. A carrier must provide notice to the FAA four months before its intended transaction date of these tentative transfer terms that includes the slot number and time, effective date of the transfer, consideration offered, and, if applicable, the duration of the lease. The FAA will post a notice of the relevant details of the transfer on the FAA Web site at <http://www.faa.gov>. The notice will state the opening and closing dates for bids and the contact information of the transferring carrier(s) for bid submission. The offering carrier may accept the tentative transaction or any counterbid and then negotiate the final terms of the transfer, but it may consider only bids submitted during the bidding period.

(c) A carrier may trade a slot with another carrier on a one-for-one basis without providing notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification by both

carriers that no consideration or promise of consideration was provided by either party to the trade.

(d) A carrier may lease a slot to another carrier without notice to the FAA under paragraph (b) of this section provided the lease is effective for no longer than two scheduling seasons.

(e) Carriers with agreements where one carrier operates solely under the other's marketing control may transfer a slot with another party subject to that agreement without notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification of that agreement by both carriers.

(f) Prior to [90 DAYS AFTER EFFECTIVE DATE], a carrier may buy, sell, or trade with another carrier a slot that was subject to a lease or short-term trade under the Order limiting operations at JFK, Order limiting operations at EWR, or Order limiting operations at LGA without notice to the FAA under paragraph (b) of this section.

(g) Requests for FAA approval for transfers under this section must be submitted in writing by all parties to the transaction to the FAA Slot Administration Office in a manner acceptable to the Administrator. Requests must provide the names of the transferor and recipient; business address and telephone number of the person representing the transferor and recipient; whether the slot is to be used for an arrival or departure; and the slot designation of the slot as described in § 93.41(j).

(h) The request for FAA approval also must include the final terms of the transaction including:

- (1) The names of all parties to the transaction;
- (2) The consideration offered by each party;
- (3) The names of all bidders and consideration offered by each bidder, if applicable;
- (4) The effective date of the transfer; and
- (5) The length of the lease, if applicable.

(i) Prior to approving the transfer, the FAA will confirm the transferred slots come from the transferor's FAA-approved slot holdings and that no transfer limitations apply.

(j) The Secretary may review the final terms of the transaction for any anti-competitive effects or adverse public interest effects under § 93.47. The FAA may not approve the transfer until the Secretary notifies the FAA of the Secretary's approval or non-objection or the 14-day notice period under § 93.47(b) elapses.

(k) The slot may not be used by the transferee until the conditions of this section have been met, and the FAA provides notice of its approval of the transfer.

**§ 93.45 Transfer of slots. [ALTERNATIVE FOUR]**

(a) Except as otherwise provided in this subpart, a carrier may buy, sell, or lease a slot to another carrier for any consideration and for any time period, and a carrier may trade a slot with another carrier for a slot at any U.S. or foreign slot-controlled airport.

(b) Except as permitted under paragraphs (c), (d), (e), and (f) of this section, a carrier must provide notice to the FAA four months before its intended transaction date of its intent to transfer a slot prior to negotiating with another carrier. The notice of intent to transfer must include the slot number and time, effective date of the transfer, and, if applicable, the duration of the lease. The FAA will post a notice of the offer to transfer the slot and relevant details on the FAA Web site at <http://www.faa.gov>. The notice will state the opening and closing dates for bids and the contact information of the transferring carrier. Bids must be submitted through the bulletin board for public posting. The offering carrier may accept any bid and negotiate the final terms of the transfer, but it may consider only bids submitted during the bidding period.

(c) A carrier may trade a slot with another carrier on a one-for-one basis without providing notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification by both carriers that no consideration or promise of consideration was provided by either party to the trade.

(d) A carrier may lease a slot to another carrier without notice to the FAA under paragraph (b) of this section provided the lease is effective for no longer than two scheduling seasons.

(e) Carriers with agreements where one carrier operates solely under the other's marketing control may transfer a slot with another party subject to that agreement without notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification of that agreement by both carriers.

(f) Prior to [90 DAYS AFTER EFFECTIVE DATE], a carrier may buy, sell, or trade with another carrier a slot that was subject to a lease or short-term trade under the Order limiting operations at JFK, Order limiting operations at EWR, or Order limiting

operations at LGA without notice to the FAA under paragraph (b) of this section.

(g) Requests for FAA approval for transfers under this section must be submitted in writing by all parties to the transaction to the FAA Slot Administration Office in a manner acceptable to the Administrator. Requests must provide the names of the transferor and recipient; business address and telephone number of the person representing the transferor and recipient; whether the slot is to be used for an arrival or departure; and the slot designation of the slot as described in § 93.41(j).

(h) The request for FAA approval also must include the final terms of the transaction including:

(1) The names of all parties to the transaction;

(2) The consideration offered by each party;

(3) The names of all bidders and consideration offered by each bidder, if applicable;

(4) The effective date of the transfer; and

(5) The length of the lease, if applicable.

(i) Prior to approving the transfer, the FAA will confirm the transferred slots come from the transferor's FAA-approved slot holdings and that no transfer limitations apply.

(j) The Secretary may review the final terms of the transaction for any anti-competitive effects or adverse public interest effects under § 93.47. The FAA may not approve the transfer until the Secretary notifies the FAA of the Secretary's approval or non-objection or the 14-day notice period under § 93.47(b) elapses.

(k) The slot may not be used by the transferee until the conditions of this section have been met, and the FAA provides notice of its approval of the transfer.

**§ 93.45 Transfer of slots. [ALTERNATIVE FIVE]**

(a) Except as otherwise provided in this subpart, a carrier may buy, sell, or lease a slot to another carrier for currency only and for any time period, and a carrier may trade a slot with another carrier for a slot at any U.S. or foreign slot-controlled airport.

(b) Except as permitted under paragraphs (c), (d), (e), and (f) of this section, a carrier must provide notice to the FAA four months before its intended transaction date of its intent to transfer a slot. The notice of intent to transfer must include the slot number and time, effective date of the transfer, and, if applicable, the duration of the lease. The FAA will post a notice of the offer

to transfer the slot and relevant details on the FAA Web site at <http://www.faa.gov>. The notice will state the opening and closing dates for bids but not the identity of the transferring carrier. Bids must be submitted through the bulletin board for public posting. The identity of the bidders may not be disclosed during the bidding period. The offering carrier must accept the highest bid submitted during the bidding period.

(c) A carrier may trade a slot with another carrier on a one-for-one basis without providing notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification by both carriers that no consideration or promise of consideration was provided by either party to the trade.

(d) A carrier may lease a slot to another carrier without notice to the FAA under paragraph (b) of this section provided the lease is effective for no longer than two scheduling seasons.

(e) Carriers with agreements where one carrier operates solely under the other's marketing control may transfer a slot with another party subject to that agreement without notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification of that agreement by both carriers.

(f) Prior to [90 DAYS AFTER EFFECTIVE DATE], a carrier may buy, sell, or trade with another carrier a slot that was subject to a lease or short-term trade under the Order limiting operations at JFK, Order limiting operations at EWR, or Order limiting operations at LGA without notice to the FAA under paragraph (b) of this section.

(g) Requests for FAA approval for transfers under this section must be submitted in writing by all parties to the transaction to the FAA Slot Administration Office in a manner acceptable to the Administrator. Requests must provide the names of the transferor and recipient; business address and telephone number of the person representing the transferor and recipient; whether the slot is to be used for an arrival or departure; and the slot designation of the slot as described in § 93.41(j).

(h) The request for FAA approval also must include the final terms of the transaction including:

(1) The names of all parties to the transaction;

(2) The price offered by each bidder;

(3) The effective date of the transfer; and

(4) The length of the lease, if applicable.

(i) Prior to approving the transfer, the FAA will confirm the transferred slots come from the transferor's FAA-approved slot holdings and that no transfer limitations apply.

(j) The Secretary may review the final terms of the transaction for any anti-competitive effects or public interest effects under § 93.47. The FAA may not approve the transfer until the Secretary notifies the FAA of the Secretary's approval or non-objection or the 14-day notice period under § 93.47(b) elapses.

(k) The slot may not be used by the transferee until the conditions of this section have been met, and the FAA provides notice of its approval of the transfer.

**§ 93.46 Operation of slots by carriers under common marketing control.**

A carrier that operates solely under the marketing control of another carrier may operate the other carrier's slots without transferring the slots provided that:

(a) The marketing carrier is responsible for ensuring that there are slots assigned for the planned operations of the carrier under its marketing control. The marketing carrier must submit information in advance to the FAA Slot Administration Office, at least on a seasonal basis, detailing the airport, carrier, marketed and operational flight number ranges, and effective dates.

(b) The marketing carrier must submit changes throughout the reporting period.

(c) The marketing carrier is responsible for submitting the usage reports required under § 93.44.

**§ 93.47 Oversight of public interest and competitive issues.**

(a) The Secretary may review a standalone slot transfer transaction conducted under § 93.45, to determine adverse public interest and/or anti-competitive effects, as described in 49 U.S.C. 40101(a). Small transactions of fewer than 8 slots in total or transfers extending for 2 or fewer seasons) would not be subject to review under this section. However, the Secretary may consider multiple transactions within a three-year period as constituting a single aggregate transaction, including transactions that involve the transfer of slots to carriers under the marketing or operational control of a single entity.

(b) The following procedures are used when conducting a review for public interest or competitive factors under paragraph (a) of this section.

(1) Within 14 days of receiving from the FAA the final terms of a transaction under § 93.45, the Secretary will notify

the parties of the Secretary's determination of whether to request and evaluate additional information. If the Secretary decides to request and evaluate additional information, the DOT will request the additional information.

(2) After receiving notice of a slot transfer under § 93.45, the FAA may not approve the transaction without further notice from the Secretary.

(3) If the Secretary does not notify the parties and the FAA within 14 days of the intent to request and evaluate additional information, the FAA may approve the transaction.

(c) The procedures for objections to public disclosure of information at 14 CFR 302.12 do not apply to information submitted to the DOT under paragraphs (a) or (b) of this section. Any person seeking confidential treatment for information submitted to the DOT under paragraphs (a) or (b) of this section must clearly designate the information for which confidential treatment is sought by including appropriate markings on each page of the submission. The DOT will not disclose such designated information to the public, except as required under the Freedom of Information Act, 5 U.S.C. 552, and pursuant to the procedures in 49 CFR part 7.

(d) Nothing in this section limits the authority of the Secretary to investigate and prohibit any unfair or deceptive practice or an unfair method of competition, as provided by 49 U.S.C. 41712.

**§ 93.49 Unscheduled operations.**

(a) During the slot-controlled hours, no person may operate an aircraft other than a helicopter to or from JFK, EWR, or LGA unless he or she has received, for that unscheduled operation, a reservation that is assigned by the ARO or, in the case of certain public charters, in accordance with the procedures in paragraph (d) of this section. The FAA will accept requests for reservations through the e-CVRS beginning 72 hours prior to the proposed time of arrival to or departure from the respective airport. Additional information on procedures for obtaining a reservation is available on the Internet at <http://www.fly.faa.gov/ecvrs>.

(b) Reservations, including those assigned to certain public charter operations under paragraph (d) of this section, will be available to be assigned by the ARO on a 60-minute basis as follows:

- (1) At JFK, two reservations per hour during the slot-controlled hours.
- (2) At EWR, one reservation per hour during the slot-controlled hours.

(3) At LGA, three reservations per hour during the slot-controlled hours.

(c) The ARO will receive and process all reservation requests for unscheduled arrivals and departures and assign reservations on a first-come, first-served basis determined by the time the request is received by the ARO.

(d) One reservation per hour at LGA and two reservations per day at JFK and EWR will be available for assignment to certain public charter operations prior to the 72-hour reservation window in paragraph (a) of this section.

(1) A public charter operator may request a reservation up to six months in advance of the date of the flight operation for a planned individual operation or a series of operations occurring fewer than 3 times per month. Reservation requests must be submitted to the Federal Aviation Administration, Slot Administration Office, AGC-200, 800 Independence Avenue SW., Washington, DC 20591. Requests may be made via facsimile at (202) 267-7277 or by email at [7-awa-slotadmin@faa.gov](mailto:7-awa-slotadmin@faa.gov).

(2) The public charter operator must certify that its prospectus has been accepted by the Department of Transportation in accordance with 14 CFR part 380.

(3) The public charter operator must identify the call sign/flight number or aircraft registration number of the direct air carrier; the date and time of the proposed operation; the airport served immediately prior to or after JFK, EWR, or LGA; aircraft type; and the nature of the operation (e.g., ferry or passenger). Any changes to an approved reservation must be approved in advance by the Slot Administration Office.

(4) A series of operations occurring more than 3 times per month is required to have a slot allocated by the FAA as provided in § 93.37.

(5) If all reservations available under paragraph (d)(1) of this section have been assigned, the public charter operator may request a reservation under paragraph (a) of this section.

(e) The filing of a request for a reservation does not constitute the filing of an IFR flight plan as required by regulation. The IFR flight plan may be filed only after the reservation is obtained, must include the reservation number in the "Remarks" section, and must be filed in accordance with FAA regulations and procedures.

(f) Air Traffic Control will accommodate declared emergencies without regard to reservations. Non-emergency national security, law enforcement, military, public aircraft, or other similar mission-critical operations may be accommodated above the reservation limits with the prior

approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate waiver will be available on the Internet at <http://www.fly.faa.gov/ecvrs>.

(g) Notwithstanding the limits in paragraph (b) of this section, if conditions are favorable, and significant delay is unlikely, the FAA may determine that additional reservations may be accommodated for a specific time period. Unused slots also may be made available temporarily for unscheduled operations. Reservations for additional operations must be obtained through the ARO.

(h) No reservations may be bought, sold, or leased.

(i) A Reservation must be canceled if it will not be used as assigned.

■ 3. Amend § 93.123 to revise paragraphs (a), (b)(4) to read as follows:

**§ 93.123 High density traffic airports.**

(a) Each of the following airports is designated as a high density traffic airport and, except as provided in § 93.129 and paragraph (b) of this section, or unless otherwise authorized by ATC, is limited to the hourly number of allocated IFR operations (takeoffs and landings) that may be reserved for the specified classes of users for that airport:

**IFR OPERATIONS PER HOUR**

Class of user	Ronald Reagan Washington National Airport
Air carriers .....	37
Commuters .....	11
Other .....	12

(b) \* \* \*

(4) The allocation of IFR reservations for air carriers except commuters at Ronald Reagan Washington National Airport does not include extra sections of scheduled flights. The allocation of IFR reservations for scheduled commuters at Ronald Reagan Washington National Airport does not include extra sections of scheduled flights. These flights may be conducted without regard to the limitation upon the hourly IFR reservations at those airports.

\* \* \* \* \*

**§ 93.133 [Removed and Reserved]**

■ 4. Remove and reserve § 93.133.

■ 5. Amend § 93.211 to revise paragraph (a) to read as follows:

**§ 93.211 Applicability.**

(a) This subpart prescribes rules applicable to the allocation and withdrawal of IFR operational authority (takeoffs and landings) to individual air carriers and commuter operators at the High Density Traffic Airports identified in subpart K of this part.

\* \* \* \* \*

**§ 93.215, 93.217 and 93.218 [Removed and Reserved]**

■ 6. Remove and reserve §§ 93.215, 93.217, and 93.218.

■ 7. Amend § 93.221 to remove paragraph (e).

■ 8. Amend § 93.223 to revise paragraph (b) to read as follows:

**§ 93.223 Slot withdrawal.**

(b) Separate slot pools shall be established for air carriers and

commuter operators at each airport. The FAA shall assign, by random lottery, withdrawal priority numbers for the recall priority of slots at each airport. Each additional permanent slot, if any, will be assigned the next higher number for air carrier or commuter slots, as appropriate, at each airport. Each slot shall be assigned a designation consisting of the applicable withdrawal priority number; the airport code; a code indicating whether the slot is an air carrier or commuter operator slot; and the time period of the slot. The designation shall also indicate, as appropriate, if the slot is daily or for certain days of the week only; is limited to arrivals or departures; and is allocated for international operations or for EAS purposes.

\* \* \* \* \*

■ 9. Amend § 93.226 to revise paragraph (a)(3) introductory text to read as follows:

**§ 93.226 Allocation of slots in low-demand periods.**

(a) \* \* \*

(3) For Ronald Reagan Washington National Airport:

\* \* \* \* \*

Issued in Washington, DC, on December 19, 2014.

**Susan L. Kurland,**  
*Assistant Secretary for Aviation and International Affairs.*

**Richard M. Swayze,**  
*Assistant Administrator for Policy, International Affairs, and Environment.*

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