

# Rules and Regulations

Federal Register

Vol. 73, No. 211

Thursday, October 30, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 93

[Docket No. FAA-2005-19411; Amdt. No. 93-89]

RIN 2120-A147

#### Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport

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

**ACTION:** Final rule; Extension of expiration date.

**SUMMARY:** This action extends the expiration date of Special Federal Aviation Regulation (SFAR) No. 105 through October 31, 2010. This action maintains the reservation system established for unscheduled arrivals at Chicago O'Hare International Airport (O'Hare) following the expiration of limitations imposed on scheduled operations at the airport. This action is necessary to reduce congestion and delays at the airport and is consistent with O'Hare's status as a Schedules Facilitated Airport (Level 2) under the International Air Transport Association (IATA) Worldwide Scheduling Guidelines (WSG).

**DATES:** This final rule is effective on October 31, 2008, and SFAR No. 105 published at 70 FR 39610 (July 8, 2005), as amended in this rule, shall remain in effect until October 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Gerry Shakley, System Operations Services, Air Traffic Organization; telephone: (202) 267-9424; e-mail: [gerry.shakley@faa.gov](mailto:gerry.shakley@faa.gov). For legal questions concerning this rule, contact: Robert Hawks, Regulations Division, Office of the Chief Counsel; telephone: (202) 267-7143; fax: (202) 267-7971; e-mail: [rob.hawks@faa.gov](mailto:rob.hawks@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Availability of Rulemaking Documents

You may obtain an electronic copy using 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>.

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

##### Small Business Regulatory Enforcement Fairness Act

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

##### Authority

The U.S. Government has exclusive sovereignty over the airspace of the United States.<sup>1</sup> Under this broad authority, Congress has delegated to the Administrator extensive and plenary authority to ensure the safety of aircraft and the efficient use of the nation's navigable airspace. In this regard, the Administrator is required to assign by regulation or order use of the airspace to ensure its efficient use.<sup>2</sup>

The FAA's broad statutory authority to manage the efficient use of airspace encompasses management of the nationwide system of air commerce and air traffic control. To ensure the efficient use of the airspace, the FAA must take steps to prevent congestion at an airport

from disrupting or adversely affecting the air traffic system for which the FAA is responsible. Inordinate delays can have a crippling effect on other parts of the system, causing significant losses in time and money for individuals and businesses, including the air carriers and other operators at O'Hare and beyond. This rule facilitates the Agency's exercise of its authority to manage the safe and efficient use of the navigable airspace.

##### Background

Since November 2003, O'Hare has suffered an inordinate and unacceptable number of delays resulting from over-scheduling at the airport, which also has had a crippling effect on the entire National Airspace System. In August 2004, the FAA intervened by ordering a limit on the number of scheduled arrivals at the airport during the peak operating hours of 7 a.m. through 8:59 p.m., Central Time, effective November 1, 2004, so that the system could return to a reasonably balanced level of operations and delay.<sup>3</sup>

On October 20, 2004, the FAA published a notice of proposed rulemaking (NPRM) seeking public comments on a proposed reservation system for unscheduled arrivals at O'Hare (69 FR 61708), effective November 1, 2004. While this rulemaking was pending, the FAA implemented a corresponding voluntary reservation program for unscheduled arrivals using the general procedures followed during the Special Traffic Management Programs and the High Density Rule.

On July 8, 2005, the FAA published SFAR No. 105, "Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport."<sup>4</sup> As stated in SFAR No. 105, the benefits achieved by the FAA's August 18 Order would dissipate if certain operations at the airport remained capped but other operations were permitted to grow. SFAR No. 105 maintained the historical level of unscheduled operations at O'Hare and supported other agency actions at O'Hare that address congestion and delay until additional capacity exists at the airport.

In SFAR No. 105, the FAA discussed that it may be necessary to extend this

<sup>1</sup> 49 U.S.C. 40103(a).

<sup>2</sup> 49 U.S.C. 40103(b)(1).

<sup>3</sup> Operating Limitations at Chicago International Airport, Docket No. FAA-2004-16944.

<sup>4</sup> 70 FR 39610.

rule limiting unscheduled arrivals at O'Hare to coincide with a final rule addressing scheduled arrivals, if adopted, or with an extension of the August 2004 Order. The NPRM addressing scheduled arrivals at O'Hare was published on March 25, 2005 (70 FR 15520).

On November 2, 2005, the FAA extended the expiration date on SFAR No. 105 until March 31, 2006.<sup>5</sup> On March 31, 2006, the FAA extended the expiration date on SFAR No. 105 through October 28, 2006,<sup>6</sup> to maintain the current operating environment at the airport while considering comments to the proposed rule for scheduled arrivals.<sup>7</sup>

On August 29, 2006, the FAA published the "Congestion and Delay Reduction at Chicago O'Hare International Airport" final rule.<sup>8</sup> That final rule codified the limit on scheduled arrivals initially imposed under the FAA's August 2004 Order and expires on October 31, 2008. On November 1, 2006, the FAA extended the expiration date on SFAR No. 105 through October 31, 2008, to coincide with the sunset date of the "Congestion and Delay Reduction at Chicago O'Hare International Airport" final rule.<sup>9</sup>

The ongoing implementation of the O'Hare Modernization Program should result in increased capacity at the airport. On October 31, 2008, the "Congestion and Delay Reduction at Chicago O'Hare International Airport" final rule will sunset, and O'Hare will be designated a Schedules Facilitated Airport (Level 2) under the IATA WSG. Under the Level 2 guidelines, airlines conducting scheduled operations at O'Hare must submit their proposed schedules in advance on a semiannual basis and cooperate through schedule adjustments to reduce congestion and delays. Through this voluntary system of schedule adjustments, O'Hare should be able to utilize the increased capacity without restrictions on arrivals and departures.

Under the Level 2 guidelines, scheduled operations are managed in advance to reduce the risks of congestion and delay. Because of the nature of unscheduled operations, it is impossible to effectively manage capacity significantly in advance of the operations. Consequently, to coincide with the Level 2 status of O'Hare, and to reduce the risks of congestion and

delay, the FAA extends the limits imposed by SFAR No. 105 until October 31, 2010.

Extending the limits imposed by SFAR No. 105 should not unduly burden unscheduled operations at O'Hare. The reservation system currently in place provides reservations in excess of the number of unscheduled flights arriving at O'Hare. From May 2002 to September 2008, there were on average 25 daily general aviation unscheduled operations, which constitute the majority of unscheduled operations. This data reflects a decline from 2006 (33 operations in same period) and 2007 (29 operations in the same period). Under the current rule, 64 daily arrival reservations are available for allocation. The data also reflects limited demand for public charter flights, which are permitted to obtain reservations up to six months in advance of operations. Although the demand for unscheduled operations does not exceed available capacity, the reservation system spreads the unscheduled operations throughout the day to allow the FAA to manage congestion and delay, and it provides some advance information about the anticipated number of unscheduled operations.

Because of the current demand levels, the FAA does not believe that an increase in the number of hourly reservations exclusively set aside for unscheduled arrivals is justified. Additionally, the rule allows the approval of additional reservations that do not result in significant delay or congestion or when there is additional capacity temporarily available, which should provide added flexibility for unscheduled operations.

Therefore, the FAA finds that notice and comment procedures under 5 U.S.C. section 553(b) are impracticable and contrary to the public interest. The FAA further finds that good cause exists to make this rule effective in less than 30 days.

#### International Compatibility

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

#### Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of

the new information collection requirements(s) in this final rule to the Office of Management and Budget (OMB) for its review. 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. OMB approved the collection of this information and assigned OMB Control Number 2120-0694.

#### Executive Order 12866 and DOT Regulatory Policies and Procedures

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (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, the 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 final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

In the preamble of SFAR No. 105, the FAA stated that it might consider extending SFAR 105 for a time period that would coincide with a final rule limiting scheduled operations. The FAA will continue to extend this SFAR

<sup>5</sup> 70 FR 66253.

<sup>6</sup> The limits on unscheduled arrivals do not apply on Saturdays.

<sup>7</sup> 71 FR 16217.

<sup>8</sup> 71 FR 51382.

<sup>9</sup> 71 FR 64111.

through October 31, 2010. The rule requires maintaining the current level of operations at Chicago O'Hare to ensure consistency with O'Hare's Level 2 status. In the final economic assessment of SFAR No. 105, the FAA found that the rule provided system delay benefits at minimal cost. Similarly, the FAA finds that this extension is cost beneficial by continuing to provide system delay benefits at minimal cost.

FAA has, therefore, determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

#### 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.

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

This final rule extends the expiration date of SFAR No. 105, which provides for fewer airport delays at minimum cost. Just as in the initial and final regulatory flexibility analyses, the FAA expects there will be a substantial number of small entities affected by the extension of this SFAR, however, the economic impact continues to be insignificant.

Therefore as the acting FAA administrator, I certify this rule will not

have a significant economic impact on a substantial number of small entities.

#### International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of the extension of this final rule and has determined that it not have an effect on foreign commerce.

#### 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 \$136.1 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

#### Executive Order 13132, Federalism

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

#### Environmental Analysis

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

#### Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). The FAA has determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### List of Subjects for Part 93

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

#### The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14 Code of Federal Regulations as follows:

#### PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC

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

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

■ 2. In part 93, Special Federal Aviation Regulation (SFAR) No. 105 is amended by revising Section 9 to read as follows:

#### Special Federal Aviation Regulation No. 105—Operating Limitations for Unscheduled Operations at Chicago's O'Hare International Airport

\* \* \* \* \*

■ *Section 9. Expiration.* This Special Federal Aviation Regulation expires at 9 p.m., Central Time, on October 31, 2010 unless sooner terminated.

Issued in Washington, DC, on October 24, 2008.

**Robert A. Sturgell,**

*Acting Administrator.*

[FR Doc. E8-25904 Filed 10-29-08; 8:45 am]

**BILLING CODE 4910-13-P**