

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

[Docket No.: FAA-2004-19411; SFAR No. 105]

RIN 2120-A147

Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: The FAA is adopting a reservation system to limit the number of unscheduled aircraft arrivals at Chicago's O'Hare International Airport (O'Hare) during the peak hours of 7 a.m. through 8:59 p.m., central time, Monday through Friday, and 12 p.m. through 8:59 p.m. central time on Sunday. This Special Federal Aviation Regulation (SFAR) is effective through October 28, 2005. This action is consistent with other FAA actions regarding scheduled arrivals at O'Hare, which combined together effectively reduce congestion and delays at the airport.

DATES: This SFAR becomes effective August 8, 2005.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

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

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

(3) Accessing the Government Printing Office's Web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

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

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the

comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact a 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/avr/arm/sbrefa.cfm>.

Authority

The U.S. Government has exclusive sovereignty over the airspace of the United States.¹ 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.²

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 of the sort experienced at O'Hare in late 2003 and much of 2004 can have a crippling effect on other parts of the system, causing significant losses in time and money for individuals and businesses, as well as the air carriers and other operators at O'Hare and beyond.

In 1968, under this statutory authority, the FAA designated O'Hare as a High Density Traffic Airport and through the High Density Rule (HDR) limited the number of takeoffs and landings at O'Hare.³ Under 14 CFR 93.125, operators at each HDR airport including O'Hare must obtain a reservation or slot for each instrument

flight rules (IFR) takeoff or landing. The HDR remained in effect at O'Hare for over three decades. At the time of the rule's sunset at O'Hare, scheduled peak-hour air carrier and commuter operations (including both arrivals and departures) were limited to 145 per hour, with ten additional reservations available for the "other" category of unscheduled operations.⁴

Each reservation for an unscheduled operation at an HDR airport is for a single arrival or departure flight on a specific day within a specific 30 or 60-minute timeframe. FAA Advisory Circular No. 93-1, "Reservations for Unscheduled Operations at High Density Traffic Airports," describes the procedures for obtaining a reservation beginning 72 hours in advance of the proposed arrival or departure. The FAA uses similar procedures during Special Traffic Management Programs that are initiated during special events such as major conventions or sporting events that cause temporary increases in airport demand.

Background

Since November 2003, O'Hare has suffered an inordinate and unacceptable number of delays as the result of over-scheduling at the airport, which was also having 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. effective November 1, 2004, so that the system could return to a reasonably balanced level of operations and delay.⁵ 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, the same date the restrictions on scheduled arrivals took effect, the FAA implemented a corresponding voluntary reservation program for unscheduled arrivals using the general procedures followed during Special Traffic Management Programs and the HDR. Consequently, many aircraft operators are familiar with the procedures the FAA is adopting in this rule.

In the NPRM, we discussed the background events that led the agency to conclude that changes to the arrival system at O'Hare were necessary and

¹ 49 U.S.C. 40103(a).

² 49 U.S.C. 40103(b)(1).

³ 33 Fed. Reg. 17896 (1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K. The regulatory limits of subpart K were lifted at O'Hare after July 1, 2002.

⁴ 14 CFR 93.123(a)(2004). The "Other" class of users includes general aviation, charter, military, public aircraft, and other unscheduled operations by air carriers and foreign air carriers.

⁵ Operating Limitations at Chicago International Airport. Docket No. FAA-2004-16944.

provided a basis for the proposed SFAR. We specifically recognized that the primary reason for the unacceptable congestion and delays at O'Hare was due to increased arrivals of scheduled flights. We also recognized that the overall number of unscheduled arrivals at O'Hare has been stable. As each operation at the airport was disadvantaged and impacted by the recent congestion, each operation correspondingly contributes to the cumulative demand. The NPRM proposed retaining the historic average number of weekday arrivals at O'Hare during peak hours for unscheduled operations, which is four per hour. We did not propose an increase for unscheduled arrivals beyond this average, except for the ability to respond to favourable operating conditions by adding reservations when permissible; but we also did not propose reductions similar to those made by scheduled air carriers in March, June, and November of 2004.

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. This rule will maintain the historical level of unscheduled operations at O'Hare and support other agency actions at O'Hare that address congestion and delay until additional capacity exists at the airport.

Discussion of Comments

We received 12 comments during the comment period and six additional comments after the closing date. Fifteen commenters opposed the proposed rule, including the National Air Carrier Association (NACA), Gannett, Alticor Aviation, Dow Chemical, National Air Transportation Association (NATA), National Business Aviation Association (NBAA), General Aviation Manufacturers Association (GAMA), Illinois Department of Transportation, City of Chicago, Thomas Cook Airlines, Blue Cross/Blue Shield of Tennessee, Mark Travel Corp., Apple Vacations, and two citizens. The Air Transport Association (ATA) supported the proposal. Two of the comments appear to be college writing assignments and do not provide any new information or suggestions.

Most of the objecting commenters support the need to require scheduling changes by those carriers conducting scheduled service. They argue that it is the increases in scheduled flights that caused the congestion and the proposed solution here is unfair to those conducting unscheduled operations. They contend that the proposal fails to address the nature of charter, business,

and general aviation operations. They also argue that a significant number of passengers on unscheduled flights connect to scheduled flights at O'Hare and that it is not practical to operate at other Chicago area airports. Some commented that there should be exceptions for flights supporting aircraft maintenance and that small corporate aviation departments may be at a disadvantage getting reservations in comparison to the greater resources of larger aircraft operators. Furthermore, it is also argued that the proposal unfairly impacts the fixed base operator at the airport.

Public Charters

Four commenters (Thomas Cook Airlines, NACA, Mark Travel Corp., and Apple Vacations) requested that we redefine the term "unscheduled operator" and clarify that public charters are included in this term.⁶ These commenters contend that although they are technically "unscheduled operators," they typically plan their flight and other tour arrangements anywhere from between 6 months and 1 year in advance in order to obtain gates, customs approval and secure ground handling agreements. Under Department of Transportation (DOT) regulations (14 CFR part 380), a public charter operator must file a prospectus with the DOT that includes the flight schedule, a listing of the origin/destination cities, dates, type of aircraft, number of seats and charter price for each flight. These four commenters also state that since these public charter flights may be scheduled up to one year in advance, it is extremely difficult to assume responsibility for arrangements such as gate handling, customs, hotel, and to only be able to obtain a flight reservation at a key airport such as O'Hare 72 hours in advance of the actual flight. For example, Apple Vacations provided an example of a pending prospectus that it filed for flights between December 2004 and December 2005, which covers 495 roundtrip operations (including weekends and off-peak hours) between O'Hare and Cancun, and O'Hare and various Caribbean and Mexican points. Moreover, DOT rules prohibit a charter operator from cancelling a public charter for any reason, except for circumstances that make it physically impossible to perform the charter trip, less than 10 days before the scheduled

date of the departure of the outbound flight. (See 14 CFR 380.12.)

Consequently, these commenters propose that public charter operators be permitted to obtain the arrival reservation six months prior to the planned flight or at the same time that the public charter operator files its prospectus at DOT.

We agree that public charters should be included in the unscheduled operation category at O'Hare, but find that these operations differ in certain respects from other unscheduled operations and thus require limited accommodations in this rule. In order to accurately define the type of operations included in the category of unscheduled operations, we have revised the definition of the term "unscheduled arrival" and have included the terms public charter and public charter operator. Both terms are defined in 14 CFR part 380, which sets forth DOT regulations governing public charters. Section 380.2 defines a public charter as a one-way or round-trip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator. This section also defines a public charter operator as a U.S. or foreign public charter operator. We are adopting these two terms as defined in 14 CFR part 380. In addition, we are removing from the definition of unscheduled operation, "irregular," as that term does not accurately reflect public or on-demand charters, and we are withdrawing the term "unscheduled operator" since it is unnecessary.

We also agree that the advance planning necessary for public charter operations and compliance with 14 CFR part 380 justifies certain relief from the proposed 72-hour window for obtaining an arrival reservation.

We have reviewed operational data for the three carriers that historically and regularly have conducted public charter operations at O'Hare (USA3000 Airlines, Ryan International Airlines, and TransMeridian Airlines). Recent data since October 2004 indicates that these carriers average approximately four peak day (Thursday) arrivals during the peak hours, mostly in the late afternoon and early evening hours. The majority of these flights operate on less than a daily basis and some operate to certain destinations on a seasonal basis. Mark Travel indicates it did not increase operations in the January to July 2004 period over the level it conducted in the same period in 2003 and NACA estimates there typically would be no more than six to eight peak period public charter flights on a given day.

In determining that four arrivals per hour accommodates the historic hourly

⁶ In the NPRM, we proposed that the term, unscheduled operator include irregular charter, hired aircraft service, ferry flights and other non-passenger flights.

(weekday) level of unscheduled arrivals at O'Hare, we included public charter operations, other charter and unscheduled flights that did not appear in the Official Airline Guide. Under this rule, a minimum of 54 arrival reservations during the 14 controlled hours will be available for general aviation and other unscheduled arrivals. This is expected to be sufficient to meet the historic needs of general aviation, public charter, and other unscheduled operators.

Based on this, we have included a limited exception to the 72-hour period to accommodate the specific needs of public charter operations. This rule provides that public charter operators may obtain up to one reservation per hour up to six months in advance of the planned arrival. This limitation appears to be sufficient to accommodate the expected public charter demand, as described above. This provides public charter operators with opportunity to obtain a daily total of 14 reservations well in advance and the flexibility to schedule their arrivals throughout the peak period. Due to the DOT regulatory limits on cancellation of public charter flights within 10 days of the flight, cancellations of any advance public charter arrival reservations would be available for inclusion in the regular 72-hour reservation pool.

The Airport Reservation Office (ARO) process was developed to accept requests and issue reservations for a short window of time. For public charter operations that seek a reservation between the dates of 6 months prior to the scheduled operation and 72 hours prior to the scheduled operation, the FAA's Slot Administration Office is able to accept and process these requests. Carriers seeking reservations for public charter operations may follow the process proposed for any entity seeking a reservation 72 hours in advance, or they may contact the Slot Administration Office and provide the necessary information to receive a reservation up to 6 months in advance, if available.

Public charter operators must provide the Slot Administration Office with a certification that its prospectus has been accepted by the DOT in accordance with 14 CFR part 380 for the flight requiring a reservation; 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(s); origin airport immediately prior to O'Hare and aircraft type. A public charter operator must notify the Slot Administration Office of any changes to the above information once a reservation has been allocated. If

each of the arrival reservations reserved for public charters has been allocated, a public charter operator may request a reservation through the ARO beginning 72 hours in advance.

Private Charter and Business Aviation

NATA claims that the proposed reservation system will have a serious, adverse impact on charter and business aviation, arguing the FAA has failed to consider the "on-demand" nature of these operations. NATA further argues that simply arranging the planned time for a particular flight should a reservation not be available is not a practical solution since travellers rely on general aviation to make a connecting flight out of ORD. The ability to easily connect to a flight out of Chicago is particularly problematic for travellers coming from remote communities.

The FAA finds NATA's comments in this regard unpersuasive. The agency believes that the vast majority of charter and business aviation can be easily accommodated under the reservation system implemented today. A brief review of the voluntary reservation system in effect since last November indicates that requests for reservations are fairly evenly distributed throughout the 72-hour period provided, with approximately one third of the reservations filled on each day. Thus, reservations are likely available for on-demand operations. Additionally, the FAA believes NATA has overstated the need to obtain a reservation at a moment's notice. Most travellers connecting to a scheduled flight out of ORD will have purchased a ticket for that flight well in excess of 72 hours before its departure. Likewise, most business meetings are scheduled sufficiently in advance that calling for an arrival reservation up 72 hours in advance of anticipated arrival should not pose a problem.

Military and Public Aircraft Operations

The Illinois Department of Transportation commented that flights operated by and for the State of Illinois should be accommodated notwithstanding the reservation limit, and that State business often requires a tight time schedule utilizing the most efficient and advantageous airport and ground transportation system. The City of Chicago requests that since O'Hare handles very few military and public use aircraft flights, these operations should be exempted from the limits due to the critical nature of their schedules.

Historically under the HDR, military operations and public use aircraft operations were subject to the

reservation requirement. As stated previously, this rule does not limit the airport to fewer than the average number of unscheduled operations, including military and public aircraft operations, that are currently conducted or have been conducted since the HDR limits were eliminated in July 2002. This rule does, however, spread these operations over several hours.

Military and public aircraft are subject to this final rule and are expected to obtain reservations for most flights through the adopted procedures using e-CVRS or the ARO. As provided for in proposed section 6.c. (now codified as section 7.c.), the FAA will accommodate non-emergency flights in support of national security, law enforcement, or similar requirements above the administrative limit with prior approval by the FAA. We intended to include military operations and public use aircraft operations in paragraph 7.c. However, we are clarifying the regulatory text by specifically listing these operations. We anticipate these exceptions to be limited. Since the operations must be approved in advance by the ARO, changes to proposed arrival times may be necessary to minimize impacts at the airport if needed. We do not support a blanket exception for flights of this nature. The incremental addition of just a few flights during peak hours cumulatively affects the airport. Carriers conducting scheduled operations have had to either reduce operations or limit growth to reach the manageable level that exists today and most of the unscheduled arrivals at O'Hare will be covered by this rule. While the FAA does not expect or intend for unscheduled operators at the airport to be unfairly burdened, it certainly is not fair to categorically exclude all military and public aircraft flights while limiting general aviation and others with similar time or operational constraints. The public interest is served by permitting access for these flights but they still remain subject to the rule.

Number of Arrival Reservations, Applicable Hours, and Other Operational Issues

Several commenters indicated the number of arrivals should be increased to six per hour (Apple Vacations, NACA and Thomas Cook Airlines) based on the relative percentage of scheduled and unscheduled reservations available under the HDR. As indicated earlier, we based the average of four arrivals per hour on recent, historic average unscheduled arrivals. While comments were submitted regarding the impact that the closure of Meigs Field has had

on O'Hare, traffic previously conducted at Meigs has already been accommodated at O'Hare and other airports in the area, and is already included in the determination of the four arrivals per hour. However, historic usage after the slot controls were eliminated does not support establishing a pool of six unscheduled arrivals per hour simply because scheduled arrivals have increased during the same time. Thus, we do not find a basis to increase the hourly allotment of four reservations to six.

The City of Chicago requested we include some flexibility in the rule for the unscheduled operations arrival rate when unique local events are taking place in the Chicago area. The City further requested that the reservation program commence at 8 a.m. rather than 7 a.m., as proposed in the notice. The City contends that moving the restrictions an hour later will allow business executives to schedule a morning meeting in the 8:30 a.m. or 9:30 a.m. time periods and not be in doubt about their ability to make the meeting because they would not need to get a reservation. The City argues that air traffic tends to be lower in the 7–7:59 a.m. timeframe in comparison to the rest of the day.

We have reviewed the proposed hours of limitations and are eliminating the proposed restrictions on Saturdays and until noon on Sundays since total demand during those periods is typically within average airport capacity. We are concerned that eliminating all restrictions in the 7 a.m. hour for unscheduled arrivals, and possibly a corresponding elimination for scheduled arrivals, would lead to demand immediately before the 8 a.m. hour, which could place the airport in an early morning delay situation. While we have decided to retain the reservation requirement for weekdays beginning at 7 a.m., the rule does provide that the FAA may make additional reservations available should capacity exist and significant delays not be expected. The FAA intends to use that authority to provide opportunities for reservations for unscheduled operations when arrivals set aside for scheduled operations are not expected to be used; when capacity exists in the system; and when events or other local circumstances warrant special consideration. We believe the flexibility to add reservations in positive operating conditions could allow greater access by general aviation and other unscheduled operations without the risks of having to implement restrictions later in the day.

The General Aviation Manufacturers Association (GAMA) commented that

visual flight rules (VFR) flights should be accommodated as space is available in real-time, and should not require an advance reservation. The FAA's review indicates the number of unscheduled VFR arrivals at O'Hare is minimal, and since they occur when operating conditions are favorable, typically there is capacity to accommodate additional operations. FAA air traffic control procedures also provide that these VFR flights will be accommodated as traffic and workload permits. Therefore, the limits on unscheduled VFR arrivals will not be necessary and the final rule excludes these flights. GAMA further comments that arrival reservations should not apply to any runway less than 5,000 feet in length that does not intersect with another runway greater than 5,000 feet in length. The FAA established historic levels of arrivals at O'Hare based on experience with the airport acceptance rates, different runway configurations, and operating conditions. We do not find it feasible to exempt unscheduled arrivals utilizing specific runways since an operator could not be certain it would be cleared to land on a qualifying runway until shortly before arrival.

NACA also requested that the FAA accommodate flights that want to arrive at O'Hare as a result of designating O'Hare as an alternate airport for flight planning purposes. There are various types of restrictions that may be applicable to a particular airport. Due to runway configuration, certain aircraft may not be able to operate at an airport. There may be noise restrictions, departure procedures, and other operational procedures that must be factored into flight planning purposes and the selection process of an alternate. This reservation system at O'Hare must be considered as such a restriction. It is a traffic management tool and if an unscheduled IFR operation intends to use O'Hare as an alternate, that operator must be prepared to meet all the requirements necessary to operate at the airport, including a reservation. While O'Hare may be the preferable choice as an alternate from the operator's view, it is not feasible to exacerbate the cumulative impacts of demand by both scheduled and unscheduled service. The reservation requirement unquestionably does not apply in the case of an emergency. However, while not prepared to categorically permit the regular use of O'Hare as an alternate airport and not have the required reservation, we recognize there may be circumstances when safety or other considerations lead an operator to arrive at O'Hare without a reservation and

current regulations provide for those cases.

Foreign Air Carriers

NACA opposes exclusion of unscheduled flights by foreign air carriers from the requirement to obtain a reservation to arrive at O'Hare and comments that excluding foreign fifth freedom charter operators to abide by the reservation system will give foreign charter air carriers and enormous competitive advantage over U.S. charter carriers.

Given our decision on public charter operations, which is the main focus of NACA's concern, we do not find that the exclusion of foreign air carriers from the provisions of this rule will result in any competitive advantage over U.S. carriers conducting charter operations. Under the adopted provisions for public charter operations, the reservation is requested by and allocated to the public charter operator, regardless of whether the charter is operated by a U.S. or foreign air carrier. The public charter operator retains the discretion to select the direct air carrier. Thus, this rule does not provide any advantage to a public charter operator to select a U.S. certificated carrier or a foreign air carrier.

With respect to non-public charter operations by foreign air carriers, which also will not require a reservation, these operations account for a de minimus level of activity at O'Hare and are either covered by bilateral agreement between the foreign carrier's homeland and the United States (to which NACA does not object) or are authorized by the Department of Transportation subject to public interest finding. Therefore, we do not believe that excluding these operations from the reservation requirement will have an adverse impact on U.S. charter carriers.

Effective Date

On March 21, 2005, the FAA extended the August 18, 2004 Order on scheduled arrivals at O'Hare through Saturday, October 29, 2005 (70 FR 15540; March 25, 2005). This SFAR is effective through Friday, October 28, 2005, since the adopted limits for unscheduled arrivals do not apply on Saturdays. The FAA also issued an NPRM on March 18, 2005, inviting comment on alternatives to address congestion at O'Hare, ranging from letting the current limits on scheduled and unscheduled arrivals expire, to adopting limitations on operations through April 5, 2008, which is when additional capacity might become available or market-based approaches are implemented. (70 FR 15520; March

25, 2005). The FAA expects that similar actions on limitations and the potential duration would be taken for both scheduled and unscheduled operations. If a rule is adopted to limit scheduled arrivals at O'Hare, the FAA would consider extending this SFAR for a similar duration. Several commenters, including NATA, NBAA, and some of the corporate aircraft operators, raised concerns that the reservation system was a reimposition of the expired HDR. NBAA notes that the HDR began as a temporary measure but remained in place for many years. NBAA comments that the rule should only apply for 6 months. GAMA recommends that the FAA establish a formal review process, perhaps on a two-year basis, to determine if limits are still needed.

We agree that a sunset provision is appropriate and this rule will expire on October 28, 2005. The NPRM on alternatives to address congestion at O'Hare after that date will consider issues such as the duration of any proposed limits and periodic reviews such as GAMA suggested. The agency will consider whether this SFAR should be extended if necessary.

Paperwork Reduction Act

Information collection requirements associated with this final rule have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120-0694.

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. OMB approved the collection of this information and assigned OMB Control Number 2120-0694.

This final rule establishes a reservation system to limit the number of unscheduled aircraft arrivals at Chicago's O'Hare International Airport (O'Hare) during the peak hours of 7 a.m. through 8:59 p.m., central time, Monday through Friday, and 12 p.m. through 8:59 p.m. central time on Sunday. We received no comments from the public that specifically discussed information collection.

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.

International Compatibility

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

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

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 the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis for 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).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected cost impact is so minimal that a proposal does not warrant a full evaluation, this order permits a statement to that effect and the basis for it be included in the preamble and a full regulatory evaluation cost benefit evaluation need not be prepared. The FAA did make such a determination for this final rule.

This final rule will apply to unscheduled instrument flight rule (IFR)

arrival operations at O'Hare. For purposes of this rule, unscheduled arrivals are those conducted as public, on-demand and other charter flights, hired aircraft service, ferry flights, general aviation, and other non-passenger flights. In this economic evaluation, we have considered the effects on operators of on-demand charters, and public charters both domestic and foreign, general aviation, military, and public use flights.

The FAA used the Air Traffic Control System Command Center's (ATCSCC) Enhanced Traffic Management System (ETMS) data to determine the historical count of unscheduled arrivals at O'Hare. The ETMS database records all flights with flight plans conducted at the airport. The unscheduled flights are defined to include all flights not listed in the Official Airline Guide (OAG) reported in FAA Flight Schedule Data System (FSDS) database. Since this system is updated daily to reflect any changes, it gives an accurate list of scheduled operators and the number of scheduled arrivals planned for O'Hare. Therefore, O'Hare's unscheduled demand is determined by subtracting all OAG scheduled flights from the total flights reported in the ETMS database.

The FAA analyzed both annual and monthly arrivals at O'Hare over the 2000-2005 periods. We found that unscheduled arrivals are a small and stable share of all flights conducted at O'Hare. As there is little variation in the flight arrival distribution by major passenger group across the monthly arrivals from January 2004 through March, 2005, we used the most current month, March, 2005, for the detailed discussion that follows. Table 1 shows O'Hare's monthly and average daily arrival count for scheduled and unscheduled arrivals by major passenger group during March 2005.⁷ These unscheduled flights were conducted by on-demand air taxis, public charters, general aviation, military, and public use operators. Daily, there were 1,352 arrivals, with 1,322 scheduled arrivals by domestic and foreign operators, accounting for 97.8 percent of the total arrival flights at O'Hare. There were 30 daily unscheduled arrivals, which includes 4 unscheduled cargo arrivals, accounting for 2.2 percent of the total O'Hare arrivals.

⁷ The FAA considered monthly data from January 2000 through March 2005. The comparison with

other months indicates the results are similar to the March 2005 data.

TABLE 1.—DISTRIBUTION OF O'HARE MONTHLY AND DAILY ARRIVALS: MARCH 2005

	Number of operators	Actual arrivals	Average daily arrivals	Hourly arrivals for 14-hour day	Percent
Domestic Scheduled Arrivals	39	39,520	1,275	91.06	94.3
Scheduled Passenger/Cargo	29	39,001	1,258	89.86	93.1
Scheduled Cargo Only	10	519	17	1.20	1.2
Domestic Unscheduled Arrivals	45	932	30	2.15	2.2
Unscheduled Passenger/Cargo	39	820	26	1.89	1.9
Unscheduled Carrier Cargo Only	6	112	4	0.26	.3
Foreign Scheduled Arrivals	43	1,451	47	3.34	3.5
Scheduled Passenger/Cargo	39	1,342	43	3.09	3.2
Scheduled Cargo Only	4	109	4	0.25	.3
Total O'Hare Arrivals	127	41,903	1,352	96.55	100.0

To estimate the compliance cost of this rule, we first identify who would incur the potential costs. In particular, we wanted to identify operators flying for commercial reasons where arrival constraints could be burdensome. Private, noncommercial operators have substantially more arrival flexibility than a public charter or air taxi operator. To identify the operators that may be affected by this rule, we looked at individual flights in the ETMS database for March 2005. We identified about 45 operators conducting unscheduled arrivals at O'Hare.⁸ General aviation operations are the largest share of the 932 arrival flights during March 2005. The general aviation operators conducted 431 unscheduled arrivals, or nearly 46 percent of the total unscheduled arrivals. Analysis of monthly data suggest the number of general aviation flights at O'Hare have remained stable. Besides the general aviation operators, we identified three public charter operators conducting 228 unscheduled arrivals, three military or public use operators conducting 9 unscheduled arrivals, and about 36 on-demand air taxis providing passenger or cargo flights, which accounted for 264 unscheduled arrivals.

On-demand Air Taxi and Public Charter Flights—These operators are typically, either on-demand air taxi flights that operate unscheduled air transport service for hire under 14 CFR part 135, or public charter flights governed by 14 CFR part 380. Most on-demand air taxi operators provide air transport services to serve customers who desire a flexible schedule.

Public charters provide low-cost air transport service with fairly firm, future travel schedules. Public charter flights may include only the flights, or be sold as a package and include hotels, guided

tours, and ground transport. The Department of Transportation (DOT) requires public charter operators to register with the Office of Aviation Analysis, Special Authorities Division and to file a prospectus before they operate, sell, or receive money from any prospective participant. The prospectus (14 CFR 380.25) must spell out all the terms of the contract with a prospective participant as well as all travel schedules and itineraries. While public charter flights and ground arrangements are subject to change, operators cannot cancel a public charter fewer than 10 days before departure, except under restrictive rules. Under this final rule, the FAA provides a limited waiver of the 72-hour advance reservation provision for public charters. Under this final rule, one arrival reservation per hour can be requested as early as 6 months before the arrival date.

General Aviation Flights—General aviation at O'Hare usually are private, corporate, or business flights. These general aviation flights account for a small share of all flights at O'Hare, but represent the largest share of unscheduled arrivals at O'Hare. General aviation operators have substantially more arrival-time flexibility than the for-hire operators.

Of the total 932 unscheduled arrivals in March 2005, 431 arrivals were classified for the purposes of this analysis as general aviation. This is less than 1 flight per hour for the 14-peak hour periods applicable to this rule. **Foreign Flights**—The rule will not affect foreign carriers. Under this rule, foreign public charters will operate under Part 380 in the same manner and conditions as U.S. registered operators. The rule provides limited exception to the 72-hour advance reservation requirement for public charter operators. Given the special filing requirements for public charters, the FAA will allow operators to request one arrival reservation per hour and allocation up to 6 months,

rather than only 72 hours, before the flight.

Military and Public Use Flights—No significant change is expected for military or public use operations. The arrival limit is consistent with the historical number of unscheduled arrivals, including those of military and public use aircraft. FAA intends to grant non-emergency flights in support of national security, law enforcement, or similar requirements above the arrival limit on a case-by-case basis with prior FAA approval. However, the FAA does not intend to provide a blanket exception for this category of user and it is expected that most of these flights will obtain reservations using the same procedures as other unscheduled operators.

Visual Flight Rule Arrivals—The hourly limit for unscheduled arrivals applies to IFR arrivals, not to unscheduled VFR arrivals. The FAA Air Traffic Control procedures currently allow VFR flights under favorable weather and ATC conditions.

Economic Impacts on Unscheduled Operators

The FAA evaluated the following three cost categories that may occur because of this final rule to assess the potential impact on unscheduled operators and their passengers:

- Unscheduled reservations requirements under the 72-hour advance reservation procedures
- Potential lost revenue because of restricted flights at O'Hare
- Use of alternative airports—ground transport and passenger's value of time costs

The summary results of these potential costs suggest that this rule will have a minimum impact on the affected entities. The private reservation costs will be less than \$2.00 per reservation, or only \$14,611 for the 6-month period of this rule. The FAA also estimated the public reservation costs resulting from this rule will be \$16,119 for the 6-month

⁸ The general aviation flights were aggregated and not identified by individual operator in the ETMS database, which is used in this regulatory evaluation to identify scheduled and unscheduled operations.

period used in this analysis. The FAA will be able to grant arrivals for nearly all unscheduled operators with modest changes to arrival time. If the available reservations are not acceptable to the operator, they will still have the choice of using an alternative airport. For purposes of estimating the upper limit of potential costs of this rule, the FAA estimates the potential costs for ground transportation and passenger value of time for using an alternative airport such as Midway will be \$9,600 or \$160 per round-trip for the affected passengers. However, since the historical number of unscheduled arrivals at O'Hare has been 4 or less, FAA expects only a few flights may use an alternative airport. Further, unscheduled operators will not lose revenue because of this rule, since the total unscheduled flights to Chicago will not be reduced. Therefore, the FAA expects the potential costs incurred by unscheduled operators, their passengers, and the FAA because of this rule will be de minimus. A detailed discussion of each cost category is provided below.

Reservation Costs for Unscheduled Arrivals

For this analysis, the FAA estimated the total private and public costs to place reservations for unscheduled arrivals would be \$30,730. Historically under the high-density rule (HDR) at O'Hare, unscheduled operators could request reservations up to 48 hours before the arrival. It was extended to 72 hours in 2002. Under this final rule, unscheduled arrivals at O'Hare may request a reservation beginning 72 hours in advance, except for public charters, who may request reservations beginning 6 months before the arrival date.

The reservations made 72 hours in advance or less must be made with the FAA's Airport Reservation Office (ARO) using the Enhanced Computer Voice Reservation System (e-CVRS), which is already in use at O'Hare and other designated airports. Reservations will be assigned on a 30-minute basis, with not more than two arrivals in a half-hour period. Operators can request a reservation using touch-tone telephone, an Internet web interface using electronic information technology, automated telephone systems and calls direct to ARO. As these systems are already in place, the unscheduled reservations need no new capital or equipment. Reservations requested up to 6 months in advance are made through the Slot Administration Office.

For the approximately 6-month period for which the proposal would be in effect, we estimate these operators will

make more than 10,000 reservations, requiring more than 20,000 minutes (340 hours), and costing \$14,611. This private cost estimate for the reservation requirement equals the added labor costs to place reservations for unscheduled arrivals. The FAA expects pilots or flight engineers to make the unscheduled flight reservations. The pilots of unscheduled flights perform many non-flying duties including record keeping and scheduling. The fully burdened rate is \$43.01 an hour for airline pilots, copilots, flight engineers, and those of commercial pilots for unscheduled air transport using the Bureau of Labor Statistics' Occupational Employment Statistics series. The FAA estimates each reservation will take two minutes. At the fully burdened labor rate of \$43.01 an hour the reservation costs would be less than \$2 per reservation for unscheduled flights. Therefore, the FAA expects the costs to unscheduled flight operators will be small.

For the same two-minute reservation, we estimated public cost based on a GS 13-Step 5-level employee (\$47.44 an hour) approving the reservation. At a fully burdened rate of \$47.44 an hour, the total public costs will be \$16,119.

Potential Lost Revenue Due to Limits on Unscheduled Arrivals

The FAA does not expect operators of unscheduled arrivals at O'Hare to lose revenue because of the hourly limit during the restricted periods. The limit of four arrivals an hour during the restricted hours does not reduce the historic average number of unscheduled arrivals at O'Hare, but instead, requires operators to spread the arrivals more evenly throughout the service day. The FAA does not expect the unscheduled arrivals to be affected, since the limit set in this rule matches the long-term hourly average.

Under the reservation procedures, the FAA will offer operators the closest available half hour, if the requested reservation is not available. Given the historical dispersion of arrival flights throughout the day at O'Hare, the FAA expects most reservation requests can be accepted.

We initially computed the historical average hourly arrivals per day of week using the unscheduled arrival data from FAA's ETMS data system, for January 4–July 24, 2004, the 7-month period preceding FAA's August Order for scheduled operations. The average hourly arrivals ranged from 2.7 to 4.0 arrivals an hour, depending on the day of week. Using the March 2005 ETMS data shows the actual unscheduled arrivals at O'Hare are within the four

hourly limit.⁹ While some past hourly arrivals exceeded the hourly limit set in this final rule, on average, arrivals at O'Hare have been within the 4 hourly limit. If future arrival reservation requests exceed the limit, these flights may shift to other times in the restricted period, when flights fall below the limit or use alternative airports close to O'Hare.

The hourly distribution of unscheduled arrivals shows there are unused arrival slots throughout the service day. Unscheduled operators can shift the arrival time or day to use these available arrival slots, or arrive before 7 a.m. Therefore, the limit of four unscheduled arrivals an hour should not decrease the number of daily, unscheduled operations. Further, ATC may allow more flights when they decide weather and conditions are acceptable. The FAA concludes that this final rule will not reduce the number of daily, unscheduled arrivals at O'Hare.

Costs of Using Alternative Airports

The FAA has also considered potential costs to operators and passengers if they cannot obtain arrival reservations at their desired time at O'Hare. Since the FAA will grant reservations based on a first-come first-served basis, it is possible some desired arrival times at O'Hare will not be available. The costs of using alternative airports, if any, would most likely be incurred by the passenger as a pass through from the operator.

To identify the likely occurrence of using an alternative airport, FAA used the results of g ATC's ETMS data analysis. This analysis provided the average daily arrivals by hour and day of week for the 7-month period from January 2004 through July 2004. During this period, the average unscheduled arrivals exceeded the 4-hour limit only 8 times, or .7% of the periods covered. Further, given the 30 average daily unscheduled arrivals in March 2005, suggest there may be some unused reservations during several of the 14-hour peak periods. Therefore, FAA expects only a few flights will choose to land at an alternative airport. However, if the alternative arrival time is not acceptable, then the operator can choose to use another airport close to O'Hare, such as Chicago's Midway Airport. This may be the case if the passenger needs direct access to O'Hare for a connecting flight or other reasons. These passengers may incur the added costs of ground

⁹ March 2005 data is representative of the monthly flights in other periods from January 2004 through March 2005.

transport and lost passenger time to travel to O'Hare.

O'Hare is about 22 miles (about 40 minutes in travel time) from Midway. In this case, the passenger will incur the costs of ground transport and passenger time to travel by airport shuttle, local train, or limousine service from the alternative airport to O'Hare. Airport shuttles between Midway and O'Hare typically cost less than \$20 per trip; the local train between Midway and O'Hare costs \$2.50 per trip; and private limousine service cost is expected to be less than \$100 per trip. The FAA estimates the passenger's value of time¹⁰ to be to \$28.60 an hour. Therefore, for a 40-minute trip, the value of passenger time for the extra travel between Midway and O'Hare will be about \$20. Our analysis indicates the average cost would be \$160 per trip for each affected passenger. FAA estimates the total costs would be \$9,600 for 60 passengers over the 6-month period for 15 flights, each carrying an average of 4 passengers. FAA believes the use of an alternative airport will not be required very often, since the actual unscheduled arrivals at O'Hare have consistently remained at 4 or less arrivals per hour. In summary, the FAA expects this final rule will help reduce system delays and the associated costs, while the economic costs of arrival restrictions will be small. As the rule will restrict only those unscheduled arrivals under instrument flight rules, all visual flight rule flights can continue as before. As discussed above, we estimated the total private reservation costs of this final rule to be \$14,611 and so will be *de minimis*. The public reservation costs will be \$16,911. After examining O'Hare's hourly operations, the FAA determined that all unscheduled arrivals at O'Hare can be accommodated and meet the constraint of four arrivals an hour. However, some planned arrival times may need to be shifted somewhat to available reservation times. Some may choose to arrive at an alternative airport close to O'Hare. While these costs, are unlikely, the FAA estimates that if they were applicable, they would be about \$9,600 for the 6 month period, and so *de minimis*. Further, the FAA has made exceptions for the unique circumstances of public charters and plans to grant added reservations for unscheduled operations if the ATC weather, capacity, and delay conditions at O'Hare are

favorable. Thus, this rule provides system delay benefits at a minimal cost.

Regulatory Flexibility Determination

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

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

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 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.

Just as in the initial regulatory flexibility analysis the FAA expects there will be a substantial number of small entities affected by this final rule, however, the economic effect will be insignificant.

Final Rule Summary

This rule will address the unacceptable number of delays Chicago O'Hare International Airport. Under this final rule (1) unscheduled operations are limited to four arrivals per hour during the period 7 a.m. through 8:59 p.m. central time, Monday through Friday, and 12 through 8:59 p.m. on Sunday; (2) unscheduled operators must request arrival reservations, beginning 72 hours in advance; and (3) one arrival reservation per hour is available to public charter operators beginning 6 months before their planned arrival times. This final rule will ensure the effectiveness of the flight limits placed on scheduled arrivals at O'Hare as set up in the Administrator's Order issued August 18, 2004. This final rule will be in effect beginning 30 days after this

final rule is published through October 28, 2005. The FAA's economic assessment covers a 6-month time period.

Public Comments

There were two comments about the FAA small entities determination in the initial regulatory analysis. The U.S. Small Business Administration filed a comment about the methodology and findings in the preliminary Regulatory Flexibility Determination. The FAA responded directly to SBA and in the discussion below. In addition, the National Air Transportation Association raised similar concerns about how FAA addressed the requirements of the Regulatory Flexibility Act.

FAA Response: The FAA has conducted a rigorous examination of the possible impacts of this final rule on small entities. The FAA has considered both the efficiency and equity of limiting flights of unscheduled operators while setting the arrival limits for scheduled operators under the August 2004 Order. In determining the effect of this final rule on small entities, we have estimated the historical number of unscheduled arrivals and reviewed the hourly distribution of these flights throughout the service day.

The FAA conducted analysis first for the August Order, which placed a cap on scheduled operations at O'Hare. Then, we conducted another analysis for the Notice of Proposed Rule Making (NPRM: Congestion and Delay Reduction At Chicago's O'Hare International Airport, **Federal Register**, March 22, 2005 (70 FR 15520; March 25, 2005)). During the initial analysis in support of the August 2004 order, the FAA examined airport arrivals over the 140 weekdays from November 3, 2003 through May 14, 2004. We found that O'Hare had an average of 90 arrivals an hour in all weather. This included an average of 86 scheduled and four unscheduled flights during the peak periods from noon through 6:59 p.m., when the arrival demand at O'Hare is highest. Therefore, the limits set for unscheduled arrivals measure the maximum average capacity of the airport during various weather, runway, and operating conditions. The FAA reexamined the average number of unscheduled flights at O'Hare for the 7-month period, January 4–July 24, 2004. We found the average of four unscheduled arrivals continued to be an accurate and stable estimate of unscheduled operations at O'Hare. Based on the historical count of unscheduled arrivals and the hourly distribution throughout the service day, we expect the hourly arrival limit set in

¹⁰ Values for passenger time are provided in "Treatment of Values of Passenger Time in Air Travel" in the FAA Report, Economic Values for FAA Investment and Regulatory Decisions: A Guide, June 2004.

this rule to allow nearly all the unscheduled arrivals. For a few arrivals, some operators may have to adjust their arrival times. More recently, in March 2005, FAA reviewed the unscheduled operations at O'Hare. Consistently, the number of unscheduled arrivals have been stable and within the four-hour limit established in this rule. This final rule does not apply to unscheduled flights that fly Visual Flight Rules (VFR) procedures. As discussed in the regulatory evaluation, VFR arrivals can continue to operate, as before. Many of these operators are likely to be small entities.

Number of Affected Entities

The FAA estimated the number of entities affected by this proposed rule, as well as which of these entities may be small entities.

The U.S. Bureau of Census, 2002 Economic Census for Air Transportation (issued July 2004) estimates there are nearly 2,173 establishments providing unscheduled air transportation service in the United States. Of these establishments, there were 1,455 providing unscheduled chartered passenger air transportation; 240 providing unscheduled chartered freight air transportation, and the remaining 478 providing other unscheduled air transportation services. Under the U.S. Small Business Administration's industry size standards by North American Industry Classification System (NAICS) codes, unscheduled chartered passenger air services (NAICS 481211) and unscheduled chartered freight air transportation services (NAICS 481212) with fewer than 1,500 employees (except offshore marine air transportation services with less than \$23.5 million in annual revenue), and other unscheduled air transportation services with annual revenue of less than \$6 million, are classified as small entities.¹¹

In 2004, the FAA reported the results from a national survey of the air taxi industry, comprised mostly of establishments providing on-demand flights.¹² The survey results, which used

1997 Census data, identified more than 3,000 unscheduled operators and found that most of these operators were small entities. Over 50 percent of the passenger and cargo operators surveyed had five or fewer employees; and fewer than 50 unscheduled operators had more than 100 employees. Further, the largest number of operators had between 1–5 aircraft.

While any of these operators may request reservations to land at O'Hare, the FAA identified about 45 unscheduled operators that were doing business at O'Hare in March 2005. Of the 45 operators providing unscheduled arrivals at O'Hare, most are expected to be small entities. This finding is consistent with results of the 2002 Economic Census for the Air Transportation industry, and with recent results of the national survey of air taxi operators. The national survey reported that 90 percent of unscheduled operators have fewer than 25 employees, operate less than 10 aircraft, and have annual revenue less than \$5 million.

We identified the unscheduled operators arriving at O'Hare in the following manner. First, we obtained the total number of operations by operator from the FAA's Enhanced Traffic Management System (ETMS) database, and the scheduled arrivals published in the Official Airline Guide (OAG) database. By subtracting scheduled arrivals from the total arrivals, what remains is the unscheduled operations. Next, we excluded unscheduled operators that exceeded small size standards established by the U.S. Small Business Administration of 1,500 employees for unscheduled passenger and freight operations, and \$6 million for other unscheduled operations.

To confirm whether the unscheduled operators at O'Hare were small entities, the FAA used the Department of Transportation Form 41 reports and recently published corporate financial reports of carriers operating unscheduled arrivals. Of the nearly 45 unscheduled operators at O'Hare, the FAA identified 16 unscheduled passenger operators and 8 cargo operators that are classified as small entities according to the size standards of the U.S. Small Business Administration. Many of the general aviation operators are also expected to be small. Given the affected small entities identified in March 2005, more than 100 small entities are likely to be affected by this final rule over the six-

month compliance period. On this basis, the FAA concludes there will be a substantial number of small entities likely to be affected by this final rule.

Cost Impact and Reporting and Recordkeeping Requirements

While the FAA expects there will be a substantial number of small entities affected by this final rule, the economic effect is expected to be small.

Under the reservation system, unscheduled operators will be granted reservations on a first-come, first-served basis during a given 30-minute segment. If a reservation request for a specific 30-minute reservation is not available, these operators will be offered the closest, available reservation times. Therefore, these unscheduled operators will have the alternative and discretion of shifting the unscheduled operations to the next available reservation, access an alternative airport, or even arrive before or after the restricted flight periods. Given the hourly distribution of unscheduled arrivals, the FAA expects that most operators will be able to find an acceptable arrival reservation. The FAA intends to allow more arrivals during the restricted periods, whenever Air Traffic Control determines the weather, and delay conditions are favorable.

Under this final rule, unscheduled arrivals at O'Hare will be required to place reservations beginning 72-hours in advance. Public charter operators may request a reservation up to 6 months prior to operation. The FAA has made one reservation per hour available for such requests. These requests are filed with the FAA Slot Administration Office using established procedures and equipment. The reservations for unscheduled flights must be made with the FAA's Airport Reservation Office (ARO) using the Enhanced Computer Voice Reservation System (e-CVRS). This reservation system is already in use at O'Hare and other designated airports. The reservations could be made using touch-tone telephone, an Internet Web interface using electronic information technology, automated telephone systems and calls directly to ARO. Thus, the unscheduled reservation system would not require new capital or equipment.

These reservation costs are estimated to be less than \$2.00 per reservation, or \$14,611 for the 6-month period used in this analysis. The FAA assumed pilots or flight engineers would make the unscheduled flight reservations. The pilots of unscheduled flights such as general aviation, charter operators, and business aircraft operations perform many non-flying duties, which include

¹¹ U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification System (NAICS) Codes, January 28, 2004.

¹² The survey included all on demand operations with rotorcraft; all on-demand passenger operations with airplanes of 30 passenger seats or less and a maximum payload capacity of 7,500 pounds or less; scheduled passenger operations of less than five round trips per week on a least one route between two or more points according to the published flight schedule; and aircraft operations with nine passenger seats or less and a payload under 7,500 pounds used in scheduled passenger operations (i.e. five or more round trips between two or more

points) that can also operate under the on-demand regulations.

recordkeeping and scheduling. The FAA estimates it would take each operator 2 minutes per reservation at the fully burdened labor rate of \$43.01 per hour (the average of annual earnings data for airline pilots, copilots, and flight engineers, and those of commercial pilots for unscheduled air transportation provided in the Bureau of Labor Statistics' Occupational Employment Statistics series). For the 6-month period used in this analysis, the reservation costs would be \$14,611, assuming the operators make more than 10,000 reservations, requiring more than 20,000 minutes (340 hours) over the 6-month period the rule would be in effect. Thus, the costs would be less than \$2 per reservation for the individual respondents or recordkeepers making the reservations for unscheduled flights.

Looking at the average number of unscheduled arrivals for the 30-day period of August 2004, the FAA found an average of 3 unscheduled arrivals per hour. Again, examining the historical arrivals of unscheduled operations by day of week during the January 4–July 24 period, suggests that for most days of the week, there will be four or fewer arrivals per hour. The average daily arrivals by day of week ranged from 2.7 to 4.0 hourly arrivals during this 7-month period. During March 2005, there were approximately 2 unscheduled arrivals for all operators during the 14-hour periods the limit is in effect during the weekday. The FAA expects that unscheduled operators, including each of the small entities, can continue operating at their historical levels under this final rule. Therefore, it is unlikely this rule will preclude small entities from operating at O'Hare. However, they may be required to spread their arrivals more evenly throughout the service day.

Further, if small operators are restricted under this rule, then, they may choose to arrange to arrive at alternative airports, close to O'Hare. If so, they will incur ground transportation costs of \$9,600 over 6 months. In this circumstance, the FAA expects the passenger, and not the firm, to incur the added ground transportation costs, as well as the value of passenger time. Even so, these transportation costs are minor for a passenger of an air taxi. Airport shuttles between Midway and O'Hare typically cost less than \$20 per trip; the local train between Midway and O'Hare cost only \$2.50 per trip; and private limousine service cost are expected to be less than \$100 per trip. The value of passenger time to travel to and from an alternative airport such as Chicago's Midway Airport would be about \$20. FAA estimates the average costs to the

passenger of using an alternative airport would be about \$160. Thus, FAA does not expect small operators or their passengers to incur significant economic costs because of this rule.

Alternatives and Efforts To Minimize Economic Impact

After considering comments, the FAA has changed proposed reservation rules for public charter service. These operators have unique circumstances. Because public charters are required under 14 CFR part 380 to give a notice of cancellation before 10 days of the planned departure, the FAA has made some arrival reservations available for request up to 6 months prior to operation. Because this rule is needed to ensure the total number of arrivals at O'Hare will not result in unmanageable delays, the FAA considered lower alternative arrival limits. The FAA chose four unscheduled hourly arrivals to lessen the impact on these operations. This limit recognizes historic operational levels, while still achieving the expected decrease in delays.

Conclusion

The FAA intends for this rule to complement the scheduled flight reductions in place at O'Hare under the August Order. The FAA expects to reduce delays and therefore to minimize the economic impact on small entities, as well as other operators at O'Hare. The FAA did not change the operating environment for flights operating under visual flight rules. Many of these operators are expected to be small operators, which will not be affected by this final rule. For those small entities that are flying under instrument flight rules, costs resulting from reservation requirements at O'Hare, or the use of alternative airports will be minor. We expect only a few operators will have to adjust their arrival time. Given the historical unscheduled arrivals at O'Hare, FAA expects most unscheduled arrivals will be able to continue to arrive at O'Hare. Further, the FAA expects that small entities, along with all O'Hare operators, will benefit from reduced congestion and delays resulting from the flight limits on scheduled and unscheduled operations. Given these findings, the FAA Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Analysis

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign

commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will not have an effect on foreign commerce.

Unfunded Mandates Assessment

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

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore 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 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 analysed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We

have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 93

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

The 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, 44701, 44719, 46301.

■ 2. Special Federal Aviation Regulation No. 105, Operating Limitations for Unscheduled Operations at Chicago's O'Hare International Airport is added to read as follows:

Section 1. *Applicability.* This Special Federal Aviation Regulation (SFAR) No. 105 applies to persons conducting unscheduled arrivals under instrument flight rules (IFR) to Chicago's O'Hare International Airport (O'Hare) during the hours of 7 a.m. through 8:59 p.m., central time, Monday through Friday, and 12 p.m. through 8:59 p.m., central time on Sunday. This SFAR does not apply to helicopter operations, flights conducted under visual flight rules (VFR), or by foreign air carriers, except those flights conducted by Canadian air carriers or operators.

Section 2. *Terms.* For purposes of this SFAR:

"Additional Reservation" is an approved reservation above the operational limit in section 3. Additional Reservations are available for unscheduled arrivals only, and are allocated in accordance with the procedures described in section 7 of this SFAR.

"Airport Reservation Office (ARO)" is an operational unit of the FAA's David J. Hurley Air Traffic Control System Command Center. It is responsible for the administration of reservations for the "other" category of operations, i.e. unscheduled flights at High Density Traffic Airports (14 CFR, part 93, subpart k), unscheduled flights under Special Traffic Management Programs, and the O'Hare Arrival Reservation

Program (excluding public charter flights allocated in accordance with section 6).

"Enhanced Computer Voice Reservation System (e-CVRS)" is the system used by the FAA to make arrival and/or departure reservations at designated airports requiring reservations. Reservations are made through a touch-tone telephone interface, an Internet Web interface, or directly through the ARO.

"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 air 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 in compliance with applicable Notices to Airmen (NOTAMs) and procedures established by the FAA Administrator to operate an unscheduled arrival flight to O'Hare during peak hours.

"Unscheduled Arrival" is an arrival other than one regularly conducted and scheduled by an air carrier or other operator between O'Hare and another service point. However, certain types of air carrier operations are also considered as unscheduled for the purposes of this rule, including public, on-demand, and other charter flights; hired aircraft service; ferry flights; and other non-passenger flights.

Section 3. *Operational Limits.* Except as provided for in section 7 below, Unscheduled IFR Arrivals to O'Hare are limited to four Arrival Reservations per hour and no more than two Arrival Reservations during each half-hour, for the peak hours described in section 1.

Section 4. *Reservation Requirement.* Each person conducting an unscheduled IFR flight to O'Hare during the peak hours described in section 1 must obtain, for such flight operation, an Arrival Reservation allocated by the ARO or, in the case of public charters, in accordance with the procedures in section 6. An Arrival Reservation is not an air traffic control clearance. Additionally, it is the separate responsibility of the pilot/operator to comply with all NOTAMs, security or other regulatory requirements to operate at O'Hare.

Section 5. *Reservation Procedures.*

a. The FAA's ARO will receive and process all Reservation requests for Unscheduled Arrivals at O'Hare during the effective period, except for requests for public charter flights. Requests for Reservations for public charter flights are addressed in section 6. Reservations are allocated on a "first-come, first-

served" basis determined by the time the request is received at the ARO. Standby lists are not maintained. The computer reservation system may be accessed using a touch-tone telephone, via the Internet, or by telephoning the ARO directly. Requests for Reservations will be accepted beginning 72 hours prior to the proposed time of arrival at O'Hare. For example, a request for an 11 a.m. Reservation on a Thursday will be accepted beginning at 11 a.m. on the previous Monday.

b. A maximum of two transactions per telephone call/Internet session will be accepted.

c. The ARO will allocate Reservations on a 30-minute basis. Reservation periods are half-hourly from the top and bottom of the hour (00 through 29 and 30 through 59) regardless of the arrival time within the period. For example, a 1920 arrival uses a 1900–1929 Reservation.

d. An Arrival Reservation does not ensure against traffic delays, nor does it guarantee arrival within the allocated time period. Aircraft specifically delayed by ATC traffic management initiatives are not required to obtain a new Reservation based on the revised arrival time.

e. Operators must check current NOTAMs in effect for the airport. A reservation from e-CVRS does not constitute permission to operate if additional operational limits or procedures are required by NOTAM and/or regulation.

f. 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 must be filed only after the Reservation is obtained, and must be filed in accordance with FAA regulations and procedures. The ARO does not accept or process flight plans.

g. Operators may obtain Reservations by (1) accessing the Internet; (2) calling the ARO's interactive computer system via touch-tone telephone; or (3) calling the ARO directly. The telephone number for the e-CVRS computer is 1–800–875–9694. This toll free number is valid for calls originating within the United States, Canada, and the Caribbean. Operators outside those areas may access e-CVRS by calling the toll number of (703) 707–0568. The Internet Web address for accessing e-CVRS is <http://www.fly.faa.gov/ecvrs>. Operators may contact the ARO at (703) 904–4452 if they have a technical problem making a Reservation using the automated interfaces, if they have a question concerning the procedures, or if they wish to make a telephone Reservation

from outside the United States, Canada, or the Caribbean.

h. When filing a request for an Arrival Reservation at O'Hare, the operator must provide the following information:

(1) Date(s) and hour(s) (UTC) of the proposed arrival(s).

(2) Aircraft call sign, flight identification, or tail/registration number. Operators using a 3-letter identifier and flight number for air traffic control (ATC) communication must obtain a reservation using that same information. Operators communicating with ATC using an aircraft tail number or other flight identification must obtain a reservation using that information.

(3) Aircraft type identifier.

(4) Departure airport (3 or 4-letter identifier) immediately prior to arriving at O'Hare.

Should the requested time not be available, the closest available time before and after the requested time will be offered.

i. Changes must be made to an e-CVRS Reservation using the telephone interface, the Internet web interface, or by calling the ARO before the time of the allocated Arrival Reservation at O'Hare.

j. The operator must cancel the Reservation if it will not be used. Cancellations must be made through e-CVRS as soon as practical using the telephone interface, the Internet web interface, or by calling the ARO in order to release the Arrival Reservation for reallocation.

k. The following information is needed to change or cancel a Reservation:

(1) Aircraft 3-letter identifier and flight number or registration/tail number used to make the original reservation.

(2) Date and Time (UTC) of Reservation.

(3) Reservation number.

Section 6. *Special Procedures for Public Charter Arrivals.*

a. One Arrival Reservation in each hour will be available for allocation to Public Charter operations prior to the adopted 72-hour Reservation window in section 5.

b. The Public Charter Operator may request an Arrival Reservation up to six months from the date of the flight operation. Reservations should be submitted to Federal Aviation Administration, Slot Administration Office, AGC-220, 800 Independence Avenue, SW., Washington, DC 20591. Submissions may be made by facsimile to (202) 267-7277 or by e-mail to 7-AWA-slotadmin@faa.gov.

c. The Public Charter Operator must certify that its prospectus has been accepted by the Department of Transportation in accordance with 14 CFR part 380.

d. 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 arrival(s), origin airport immediately prior to O'Hare, and aircraft type. Any changes to an approved Reservation must be approved in advance by the Slot Administration Office.

e. If Arrival Reservations under paragraph (a) above have been allocated and are unavailable, the public charter operator may request Reservations under section 5.

Section 7. *Additional Reservations.*

a. Notwithstanding the restrictions in section 1, if the Air Traffic Organization determines that ATC weather and capacity conditions are favorable and significant delay is not likely, the FAA may determine that additional Reservations may be accommodated for a specific time period. Generally, the availability of additional Reservations will not be determined more than 8 hours in advance. Unused Arrival Reservations allocated for scheduled operations may also be made available for Unscheduled Arrivals. If available, additional Reservations will be added to e-CVRS and granted on a first-come, first-served basis using the procedures described in section 5 of this SFAR. Reservations for additional arrival operations are not granted by the local ATC facility and must be obtained through e-CVRS or the ARO.

b. An operator who has been unable to obtain a Reservation at the beginning of the 72-hour window may find that a Reservation may be available on the scheduled date of operation due to additional Reservations or cancellations.

c. ATC will accommodate declared emergencies without regard to Reservations. Non-emergency flights in support of national security, law enforcement, military aircraft operations or public-use aircraft 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 included on the Internet at the e-CVRS Web site at <http://www.fly.faa.gov/ecvrs>.

Section 8. *Making Arrival Reservations Using e-CVRS.*

a. Telephone users. When using a touch-tone telephone to make a Reservation, you are prompted for a response. All input is accomplished

using the keypad on the telephone. One issue with a touch-tone telephone entry is that most keys have a letter and number associated with them. When the system asks for a date or time, it is expecting an input of numbers. A problem arises when entering a tail number, or 3-letter identifier. The system does not detect if you are entering a letter (alpha character) or a number. Therefore, when entering an aircraft identifier and flight number or aircraft registration/tail number, two keys are used to represent each letter or number. When entering a number, precede the number you wish by the number 0 (zero) i.e., 01, 02, 03, 04, * * * If you wish to enter a letter, first press the key on which the letter appears and then press 1, 2, or 3, depending upon whether the letter you desire is the first, second, or third letter on that key. For example to enter the letter "N," first press the "6" key because "N" is on that key, then press the "2" key because the letter "N" is the second letter on the "6" key. Since there are no keys for the letters "Q" and "Z," e-CVRS pretends they are on the number "1" key. Therefore, to enter the letter "Q," press 11, and to enter the letter "Z," press 12.

Note: The "N" character must be entered along with an aircraft tail number (see Table 1). Operators using a 3-letter identifier and flight number to communicate with ATC facilities must enter that same information when making a Reservation.

TABLE 1.—CODES FOR CALL SIGN/ TAIL NUMBER INPUT

Codes for Call Sign/Tail Number Input Only			
A-21	J-51	S-73	1-01
B-22	K-52	T-81	2-02
C-23	L-53	U-82	3-03
D-31	M-61	V-83	4-04
E-32	N-62	W-91	5-05
F-33	O-63	X-92	6-06
G-41	P-71	Y-93	7-07
H-42	Q-11	Z-12	8-08
I-43	R-72	0-00	9-09

b. Additional helpful key entries:

(See Table 2).

TABLE 2.—HELPFUL KEY ENTRIES

#	After entering a call sign/tail number, depressing the "pound key" (#) twice will indicate the end of the tail number.
*	Will return to the start of the process.
2	
*	Will repeat the call sign/tail number used in a previous reservation.
3	
*	Will repeat the previous question.
5	

TABLE 2.—HELPFUL KEY ENTRIES—
Continued

* 8	Tutorial Mode: Each prompt for input includes a more detailed description of what is expected as input. *8 are a toggle on/off switch. Entering *8 in tutorial mode will return you to the normal mode.
* 0	Expert Mode: In the expert mode each prompt for input is brief with little or no explanation. Expert mode is also on/off toggle.

c. Internet Web Based Interface. The e-CVRS reservation system includes a Web-based interface. The Internet

option provides a fast, user-friendly environment for making Reservations. The Internet address is *http://www.fly.faa.gov/ecvrs*. Flight information may be added or edited using e-CVRS after the reservation is initially obtained.

All users of e-CVRS must complete a one-time registration form containing the following information: full name; e-mail address; a personal password; password confirmation; and company affiliation (optional). Your e-mail and password are required each time you login to use e-CVRS. Instructions are provided on each page to guide you

through the reservation process. If you need help at any time, you can access page-specific help by clicking the question mark “?” located in the upper right corner of the page.

Section 9. *Expiration*. This Special Federal Aviation Regulation terminates on October 28, 2005, unless sooner terminated.

Issued in Washington, DC, on June 30, 2005.

Marion C. Blakey,
Administrator.

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