APPENDIX A
BACKGROUND

This Appendix contains background material, which supplements the material contained in **Chapter 1, Introduction and Background** and **Chapter 2, Purpose and Need.** This appendix consists of the following sections:

- A.1 History of O'Hare
- A.2 Inventory of Existing Facilities
- A.3 Airline Activity at O'Hare
- A.4 Existing Airspace and Runway Operating Configurations
- A.5 Historical Delay at O'Hare
- A.6 Other Airports in the Chicago Airport System
- **Attachments A-1** through**A-19** as follows:
    - **Attachment A-1:** O'Hare Modernization Act, page A- 52
    - **Attachment A-2:** O'Hare Airport Master Plan (02/2004) Section 7.3 – Implementation Plan, page A-73
    - **Attachment A-3:** FAA Order Limiting Scheduled Operation at O'Hare (1/21/04), page A-90
    - **Attachment A-4:** FAA Order Limiting Scheduled Operation at O'Hare Amendment #1 (4/21/04), page A-99
    - **Attachment A-5:** Delay Reduction Determination (716/04), page A-105
    - **Attachment A-6:** Letter from FAA Steinberg to Department of Justice (7/14/04), page A-106
    - **Attachment A-7:** Department of Justice Letter to FAA Steinberg (7/15/04), page A-112
    - **Attachment A-8:** United Airlines Comments on Delay Reduction (8/13/04), page A-115
    - **Attachment A-9:** American Airlines Comments on Delay Reduction (8/13/04), page A-135
    - **Attachment A-10:** City of Chicago Letter to FAA Related to Delay Reduction (8/13/04), page A-141
    - **Attachment A-11:** Third FAA Order Limiting Scheduled Operations at O'Hare (8/18/04), page A-145
    - **Attachment A-12:** FAA Letter to Gary, IN. (8/24/04), page A-159
    - **Attachment A-13:** FAA Letter Rockford, IL (8/24/04), page A-162

- **Attachment A-14:** Excerpts from 1993-1997 NPIAS, page A-164
- **Attachment A-15:** Excerpts from 1998-2002 NPIAS, page A-169
- **Attachment A-16:** Excerpts from 2001-2005 NPIAS, page A-174
- **Attachment A-17:** Excerpts from 2005-2009 NPIAS, page A-179
- **Attachment A-18:** Status of Potential Delay Reduction Alternatives from O'Hare Delay Reduction Task Forces, page A-191
- **Attachment A-19 :** Congestion, Delay Reduction, and Operating Limitations at Chicago O'Hare International Airport, Proposed Rule and Notice, page A-194

A.1 HISTORY OF O'HARE

This section provides background information on the development of the Airport to show how O'Hare has evolved in response to key trends occurring in the commercial air transportation industry. Key developments occurred in the 1930s and 1940s (beginning of commercial air transportation); the 1950s and 1960s (beginning of the jet age); the 1970s and 1980s (domestic deregulation); the 1990s (international deregulation/bilateral agreements), and 2000s, as discussed below.

A.1.1 The 1930s and 1940s

In the 1930s, Chicago's Midway International Airport was the world's busiest commercial airport with service to numerous cities across the country. At its meeting on April 25, 1944, the Chicago Plan Commission, the organization spearheading the development of a new Chicago airport, adopted the goal of ultimately developing an airport that would make Chicago the center of aviation. In 1946, the Federal government transferred the 1,080-acre Orchard Place Airport to the City of Chicago under the Surplus Property Act of 1944. Orchard Place Airport was originally developed as a home for the military and Douglas aircraft manufacturing facilities. In June 1949, Orchard Field was renamed O'Hare Airport in honor of Edward H. "Butch" O'Hare, a decorated WWII Naval Aviator and recipient of the Congressional Medal of Honor. The original Airport had four intersecting concrete runways (refer to **Exhibit A-1**).

A.1.2 The 1950s and 1960s

By the 1950s, jets began to enter service in many airline fleets, replacing piston-engine propeller aircraft. These jet-powered aircraft required greater runway lengths for takeoffs and landings and larger gate capacity to accommodate the greater wingspans and increased passenger loads.

Commercial service was initiated at O'Hare in 1955, serving over 175,000 passengers in its first year of operation. In 1958, international travel was initiated. Midway Airport, the City's primary airport at the time, was not capable of accommodating the original generation of jet aircraft. Long-term financial obligations were undertaken with execution of the airline agreement for development at O'Hare in 1959. This first airport use agreement set the

precedent for airlines paying for airport infrastructure improvements. O'Hare was expanded to approximately 6,804 acres and numerous capital improvements and infrastructure modifications were undertaken, such as new runways (including the world's longest at the time), the nation's first passenger loading bridges, and a dual-level roadway system. Other improvements included larger passenger terminal facilities and automobile parking, a separate heating and refrigeration plant, new apron areas, cargo buildings, rental car facilities, and an underground fueling system. See **Exhibit A-2**.

By 1962, all of Midway's scheduled commercial airline operations moved to O'Hare. More than 10 million passengers traveled through O'Hare that year, making it the world's busiest airport. In 1965, the number of total passengers traveling through O'Hare doubled to 20 million.

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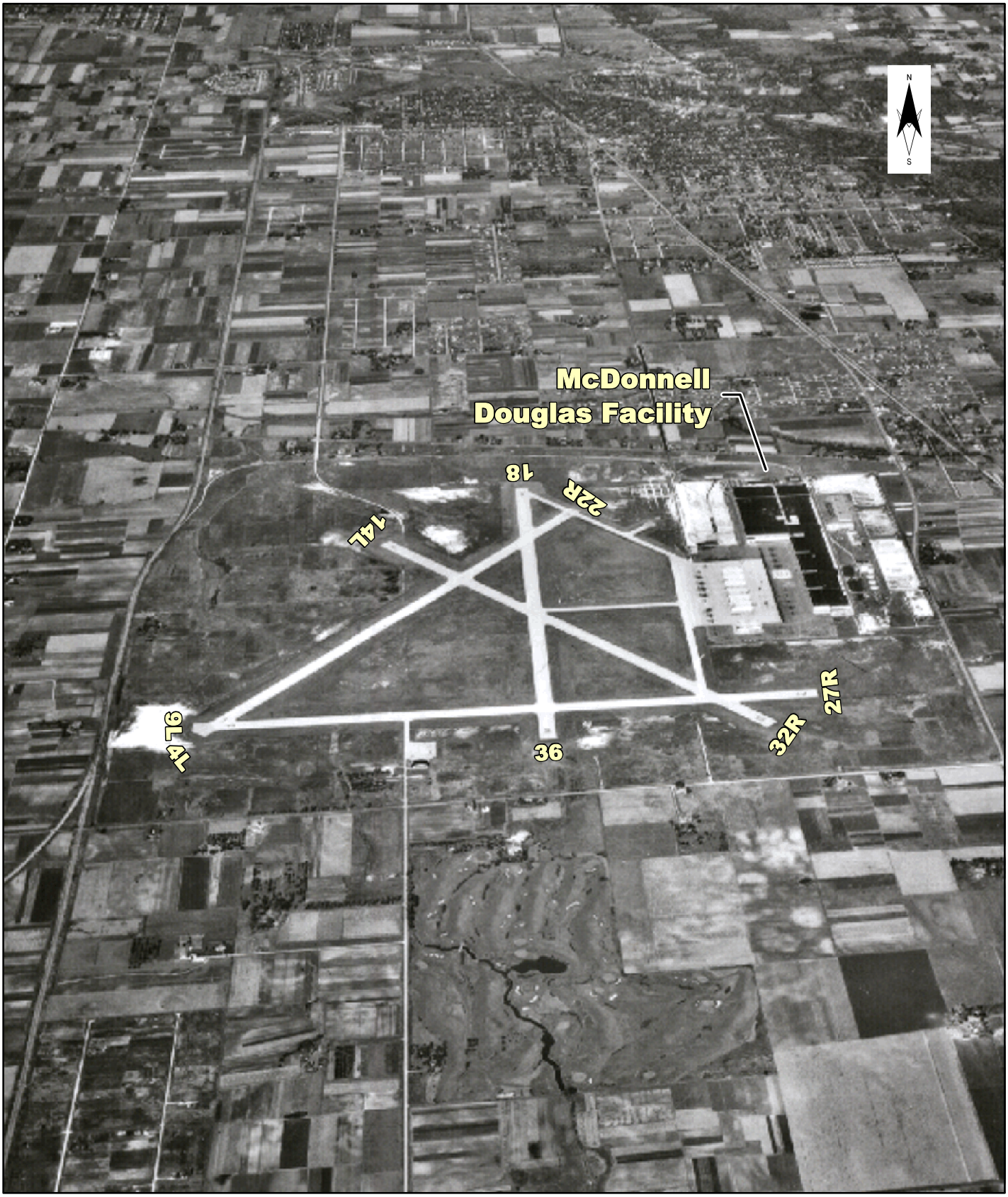

Source: World Gateway Program, Environmental Assessment, 2002.

Chicago O'Hare International Airport

O'Hare Modernization
Environmental Impact Statement

Chicago O'Hare International Airport "Pre-1950"

Exhibit A-1

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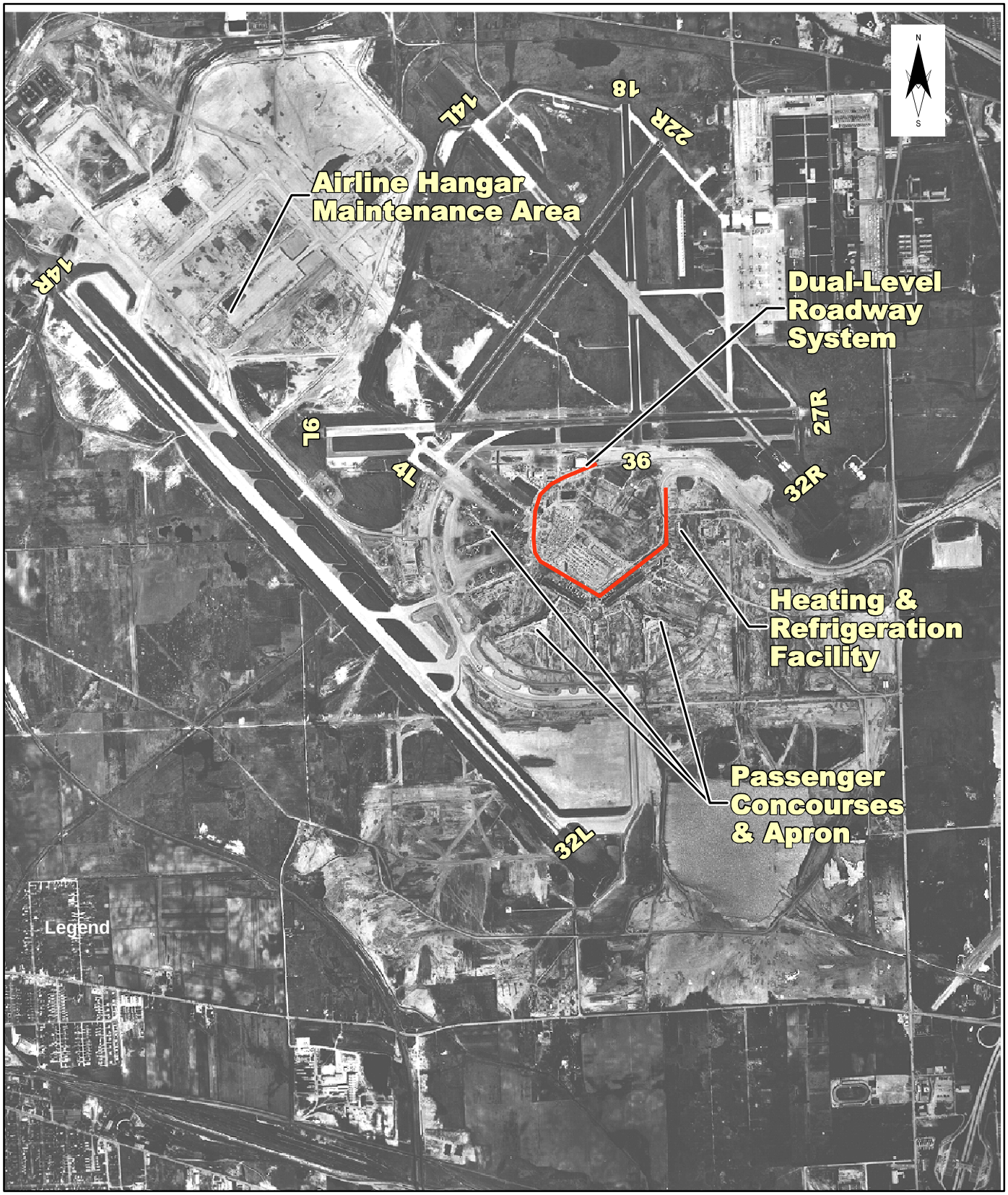

Source: World Gateway Program, Environmental Assessment, 2002.

Chicago O'Hare International Airport

O'Hare Modernization
Environmental Impact Statement

Chicago O'Hare International Airport "Pre-1961"

▶ Exhibit A-2

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A.1.3 The 1970s and 1980s

In 1976, O'Hare handled over 40 million total passengers. The Airline Deregulation Act of 1978 had a profound effect on airline operations, with an increase in airline travel at both O'Hare and airports nationwide. The Airline Deregulation Act opened the domestic airline market by providing much greater freedom for airlines to enter or leave markets, change routes, and compete on the basis of price. This resulted in a rapid growth in the number of airlines and changes in routes in the late 1970s and early 1980s.

In response to domestic airline deregulation, O'Hare's terminal facilities were reconfigured to accommodate the needs of hubbing airlines. Hubbing airlines need a number of gates close together to allow passengers to move quickly between aircraft arriving from and departing to many destinations in a short period of time. As the activity of United Airlines and American Airlines continued to grow, the O'Hare Development Program of the early 1980s, reflecting many of the elements of the Airport's 1984 Master Plan, provided for new terminal facilities designed to support a strong hub facility for both airlines. FAA issued a Final EIS in 1984 for the Master Plan.[1]

Subsequent to the FAA's issuance of a Record of Decision (ROD) for the 1984 Master Plan, the Suburban O'Hare Commission filed a petition seeking review of the FAA's decision. The primary area of disagreement was in the adequacy of consideration of the possibility of utilizing other airports or constructing a new airport to alleviate some of the demands on O'Hare. The petitioners argued that the level of analysis in the ROD was inadequate. The ROD incorporated by reference the years of planning and merely represented a summation of a voluminous, multi-year inquiry into the proposed development and the Court ruled that this approach was adequate. The Court's decision is reported in *Suburban O'Hare Commission v. Dole* (787 F.2d 186, United States Court of Appeals, 7th Circuit, 1986).

Although international travel was still in its infancy, the Master Plan also included a temporary international facility, located in the basement of the parking garage until a new international terminal, Terminal 5, could be completed. Other developments included extension of the CTA Blue Line rail service to O'Hare in 1984; the expansion of Terminal 3, and construction of Concourse L; and construction of United Airlines' Terminal 1, completed in 1988, which included Concourses B and C. Development of the Airport Transit System (ATS) to connect remote parking lots and all of the terminals was also completed to accommodate the growth in numbers of passengers. Relocation of the inner and outer taxiway system allowed for an expanded gate and apron area, reducing delay. Development of support facilities included construction of the South Cargo Area, Southeast Services Area, and Airport Maintenance Complex. Aerial photos of the Airport during this period are shown in **Exhibits A-3** through **A-5**.

[1] Final Environmental Impact Statement, Chicago O'Hare International Airport, U.S. Department of Transportation, Federal Aviation Administration, May 1984.

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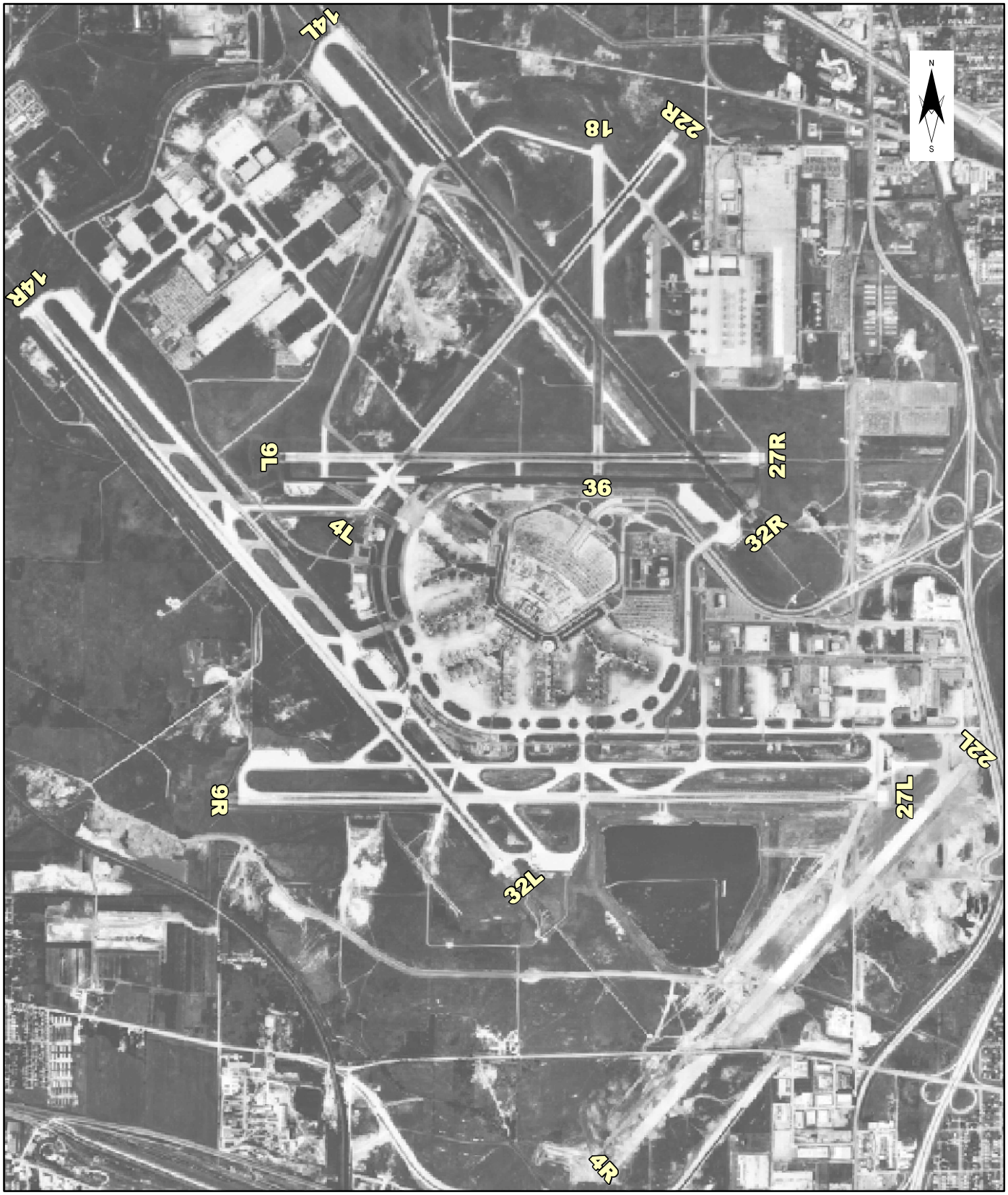

Source: World Gateway Program, Environmental Assessment, 2002.

Chicago O'Hare International Airport

O'Hare Modernization
Environmental Impact Statement

Chicago O'Hare International Airport "1970"

Exhibit A-3

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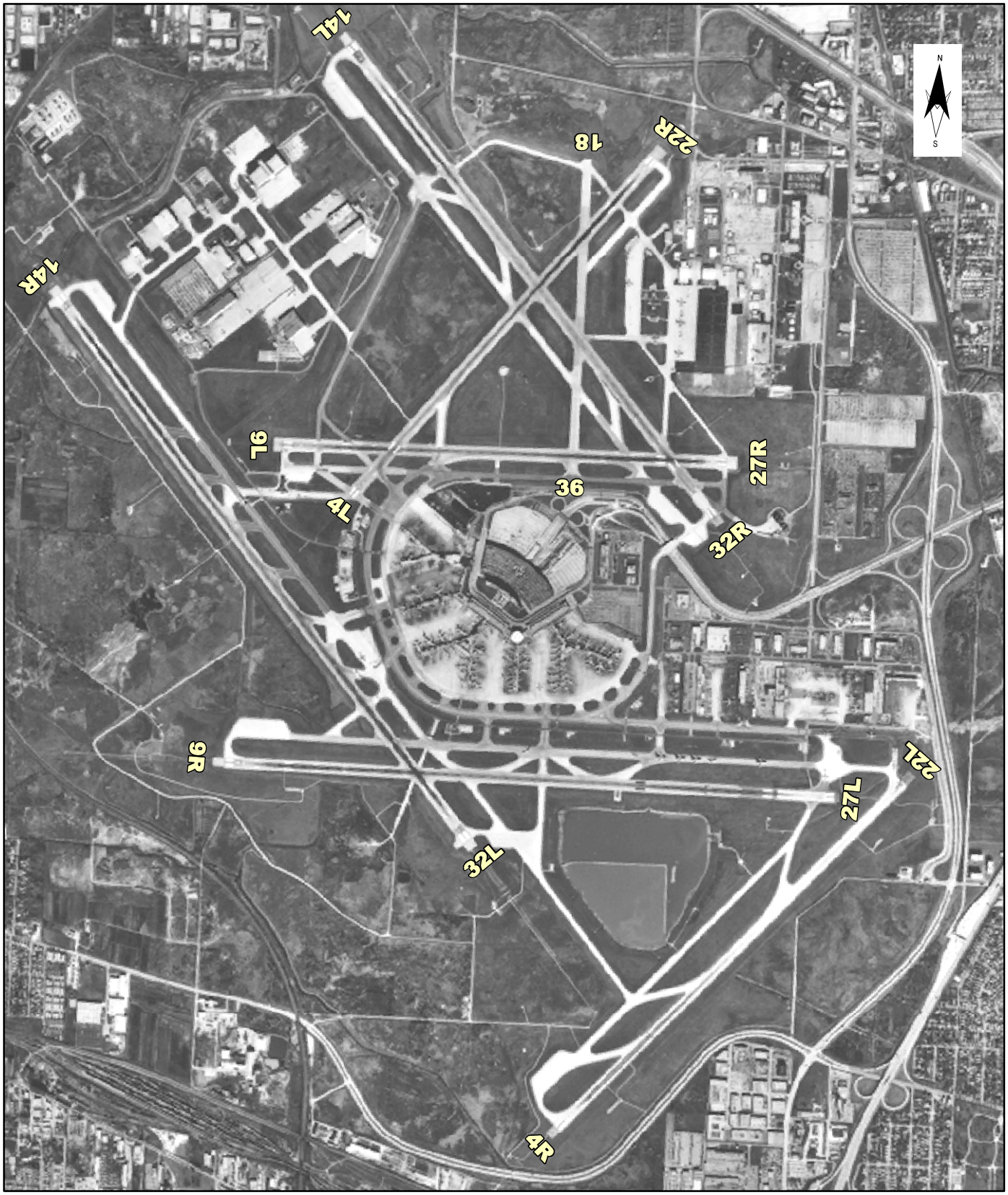

Source: World Gateway Program, Environmental Assessment, 2002.

Chicago O'Hare International Airport

O'Hare Modernization
Environmental Impact Statement

Chicago O'Hare International Airport "1981"

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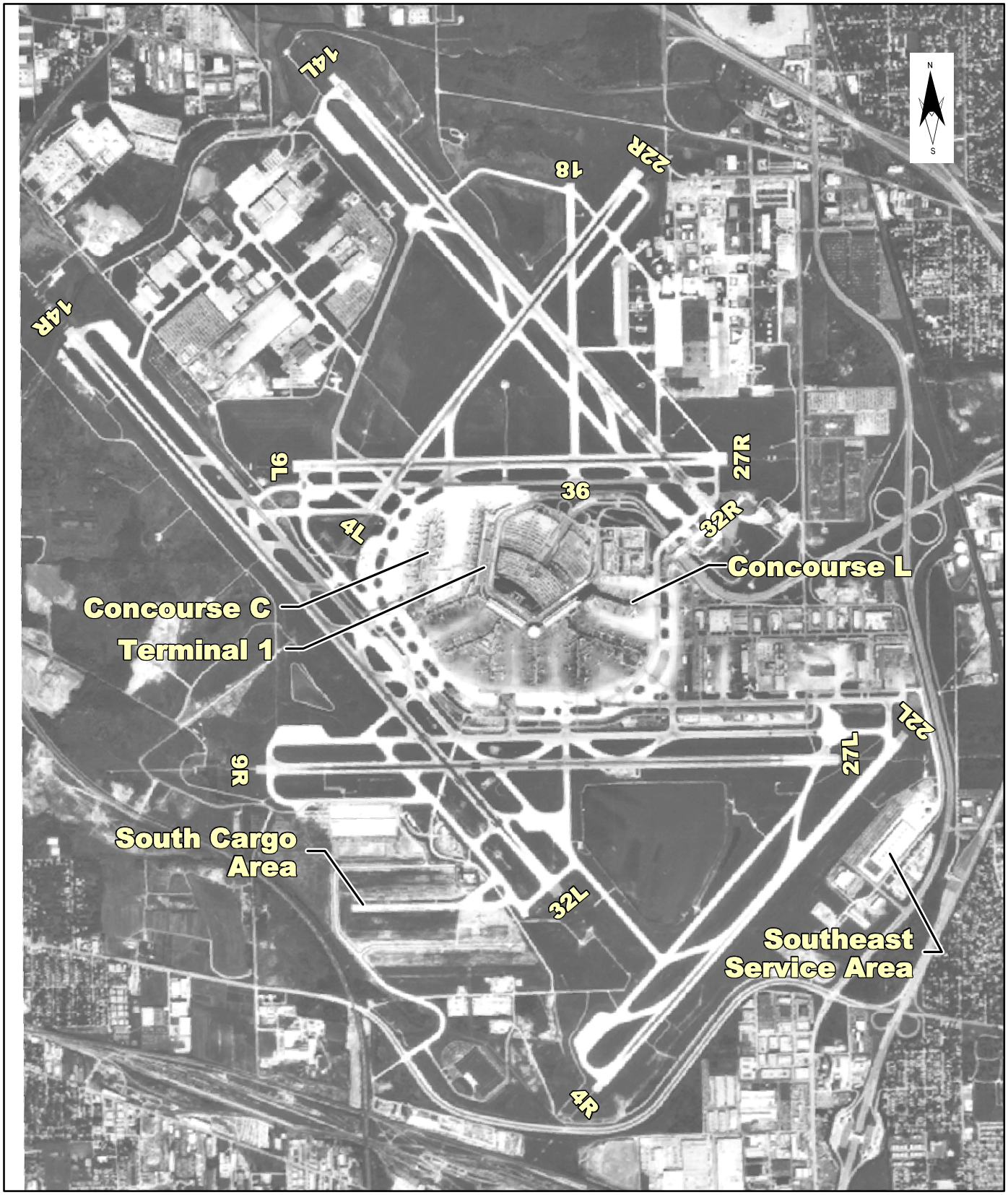

Source: World Gateway Program, Environmental Assessment, 2002.

Chicago O'Hare International Airport

O'Hare Modernization
Environmental Impact Statement

Chicago O'Hare International Airport "1987"

▶ Exhibit A-5

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A.1.4 The 1990s

Bilateral and open skies agreements between the United States and other nations in the 1990s affected existing operations and future development at O'Hare. These bilateral agreements expanded the rights of U.S.-flag carriers to serve international destinations. In return, foreign-flag carriers have been afforded the same rights to serve the United States.

As a major international air travel market, Chicago was specifically named in many treaties to receive new air service. During this period, a U.S. initiative for international deregulation called for creating more "open skies" agreements with other nations. These agreements would permit airlines from both the United States and other participating countries to serve any international city-pairs as often as they choose, rather than specific city pairs and frequencies legislated in a bilateral agreement. An example is the agreement between the United States and Canada. Signed in 1995, the agreement enables virtually unrestricted access to carriers from both countries on routes between the United States and Canada.

International deregulation led U.S.- and foreign-flag airlines to foster strategic alliances and code-sharing agreements, which continues today. These agreements allowed U.S.- and foreign-flag airlines to share route structures to certain cities and create markets for city-pairs that otherwise could not support service. The alliances allowed the foreign-flag airlines to make available to domestic connecting passengers a wider variety of destinations available through one-ticket transactions.

Two of the largest alliances are the Star Alliance, which includes United, Lufthansa, and other airlines, and the "**one**world alliance", which includes American, British Airways, Japan Airlines, and others. In addition, although they do not operate a hub at O'Hare, other major carriers and their alliance partners use O'Hare, including Delta Air Lines and Air France, and KLM and Continental Airlines. **Exhibit A-6** depicts the Airport in 1997. During 1997, O'Hare handled over 70 million total passengers.

The development of Terminal 5 and the ATS extension in the 1990s provided international travelers with improved connections and transportation service, but the creation of airline alliances has changed the way many airport managers, including the City of Chicago at O'Hare, plan to meet these needs in the future. An acoustical dampening Ground Run-Up Enclosure (GRE) was also installed in the 1990s to significantly reduce routine aircraft engine maintenance run-up noise.

The former military site at O'Hare encompasses approximately 370 acres at the northeast corner of the Airport. The site includes a 352-acre property that served the O'Hare Air Reserve Station. The site previously served as a base for an Illinois Air National Guard unit that has relocated to Scott Air Force Base, and an Air Force Reserve unit that was decommissioned under the Base Realignment and Closure (BRAC) process. The former military site also includes a 17-acre property that was occupied by the U.S. Army Reserve. The deed to the property is scheduled to be transferred to the City, as recommended in the 1984 Master Plan, once the Air Force and the Army issue a Finding of Suitability to Transfer (FOST). Currently, the City is leasing a portion of the property to various cargo users, including Polar Air and Airborne and the fixed base

operator, Signature Flight Services. The City of Chicago is also using a portion of this property for City Offices.

A.1.5 The 2000s

In 2000, O'Hare was ranked the third most delayed airport in the country.[2] Overall, slightly more than six percent of all flights were delayed significantly (i.e., more than 15 minutes). The summer of 2000 was a particularly delay-prone period at O'Hare and throughout the nation due to weather and airline labor issues.

In light of the growing aviation delays being experienced throughout the country, the Senate Commerce, Energy, and Transportation Committee held hearings in Chicago during the summer of 2001 to discuss how an expanded O'Hare could alleviate these delays. At the time these hearings were held, the Committee encouraged the City of Chicago and the State of Illinois to reach some agreement on airport expansion before September 1, 2001, or according to congressional leaders, run the risk of Congressional intervention.

The terrorist attacks of September 11, 2001, military conflict in Afghanistan and Iraq, outbreak of the Severe Acute Respiratory Syndrome (SARS), formation of the Transportation Security Administration (TSA), and a weakened global economy had significant effects on the air transportation system. Airlines reduced their flight schedules as the number of passenger enplanements decreased substantially. Despite these recent events, however, enplanements have been recovering, and O'Hare continues to be the world's busiest airport in terms of operations. In 2003, FAA reported that O'Hare was the most delayed airport in the nation with 69,185 operations significantly delayed.[3] In late 2003 and in 2004, unprecedented levels of delay prompted the FAA to enter into discussions with the Airlines to reduce flight schedules into and out of O'Hare. See Attachments A-3, A-4, and A-11 for additional information.

On March 25, 2005, the FAA issued a Notice of Proposed Rulemaking (NPRM) to extend the limitation of flight schedules:

> The FAA is proposing this rule to address persistent flight delays related to over-scheduling at O'Hare International Airport (O'Hare). This proposed rule is intended as an interim measure, because the FAA anticipates that the rule would yield to longer term solutions to traffic congestion at the airport. Such solutions include an application by the City of Chicago that, if approved, would modernize the airport and reduce levels of delay, both in the medium term and long term. For this reason, the proposed rule includes provisions allowing for the limits it imposes to be gradually relaxed and in any event would sunset in 2008.

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[2] Airport Capacity Benchmark Report 2001, U.S. Department of Transportation, Federal Aviation Administration, Website, http://www.faa.gov/events/benchmarks/download.htm.

[3] FAA OPSNET, November 2004.

The NPRM makes clear, however, that the use of arrival caps as a method of reducing flight delays is not preferable to the long term goal of increasing airport capacity through infrastructure enhancements. As stated:

> Although arrival caps are being proposed in this rule, imposing caps on the use of airport capacity does not meet aviation demand; rather, such caps artificially limit operations during certain hours to achieve the benefit of delay reduction. The FAA's preferred approach to reducing delay and congestion is to increase airport infrastructure so that capacity meets demand. Because a timely increase to airport capacity is not always feasible, alternative measures may be necessary to address congestion that adversely affects the efficiency of the national airspace system.

A copy of the NPRM is included as Attachment A-19. The City of Chicago continues to proceed with the planning and development of O'Hare to meet the needs of passengers and the airlines.

A.1.5.1 Development of the O'Hare Modernization Program (OMP)

On June 29, 2001, the Mayor of Chicago announced a concept to enhance the capacity and efficiency of O'Hare and reduce delay, which later evolved into the OMP. Under the City's concept, O'Hare's existing seven-runway configuration would be replaced by an eight-runway configuration, in which six runways would be oriented generally in the east/west direction, the existing northeast/southwest-oriented Runways 4L/22R and 4R/22L would remain, and Runways 14L/32R and 14R/32L would be closed. The resulting airfield would resemble those at Hartsfield-Jackson Atlanta International (Atlanta) and Dallas/Fort Worth International airports, where recent advances in air traffic control technology for parallel runway operations have been incorporated. **Exhibit A-7** shows the runway layouts of Atlanta and Dallas/Fort Worth.

On October 18, 2001, the Governor of the State of Illinois proposed an alternative version of a modernization plan.[4] The Governor also proposed development of the South Suburban Airport near Peotone, Illinois; increased use of the Greater Rockford Airport; and continued operation of Meigs Field.

On December 5, 2001, the Mayor and the Governor announced that they had virtually reached agreement on the major components of a long-range conceptual plan to address delay and airfield congestion at O'Hare.[5] The agreement in support of legislation included the substantive aspects of the Mayor's plan as well as development of the South Suburban Airport in Peotone and a delay in the closure of Meigs Field.[6] Legislation to help implement this agreement was proposed in the United States Congress, but was not enacted.

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4 "Ryan backs most of city O'Hare plan; Governor also pushes ahead with proposal to build Peotone;" Chicago Tribune article, October 18, 2001.

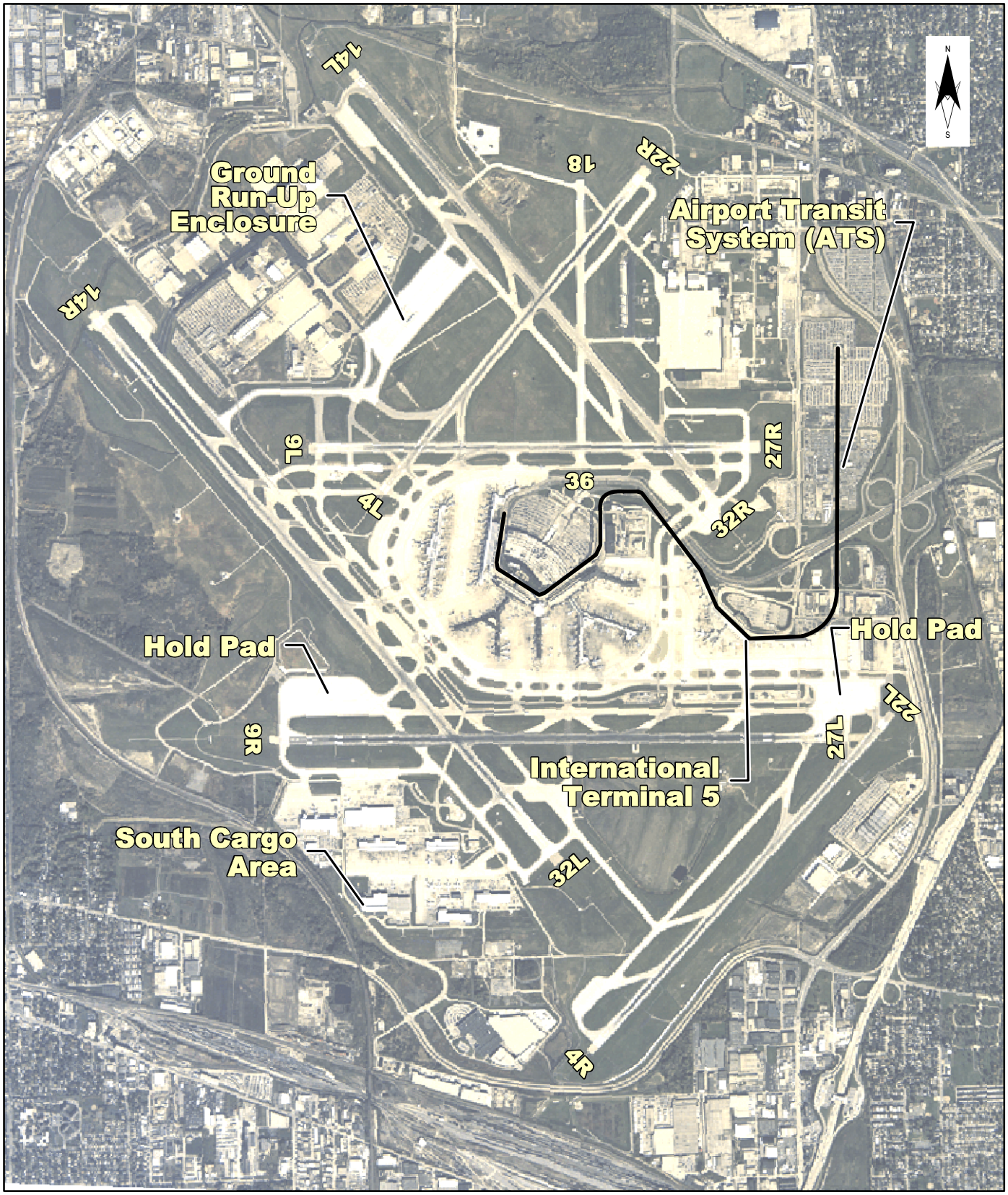
5 "One more time: Close the deal" Chicago Tribune article, pg. 26, December 5, 2001.

6 Meigs Field, once part of the Chicago Airport System, was closed in March 2003.

A.1.5.2 O'Hare Modernization Act

Legislation related to the proposed expansion of O'Hare was adopted by the Illinois legislature, and signed into law by the Governor on August 6, 2003.[7] The law is included as **Attachment A-1** to this appendix.

[7] O'Hare Modernization Act, Illinois Public Act 93-0450, August 6, 2003.



Source: World Gateway Program, Environmental Assessment, 2002.

Chicago O'Hare International Airport

O'Hare Modernization Environmental Impact Statement

Chicago O'Hare International Airport "1997"

Exhibit A-6

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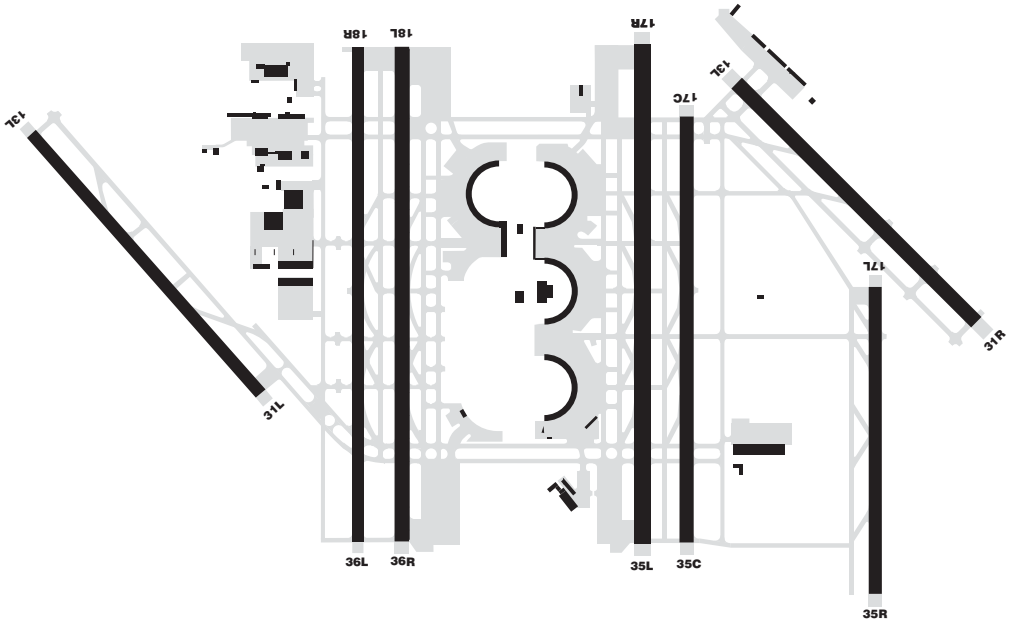
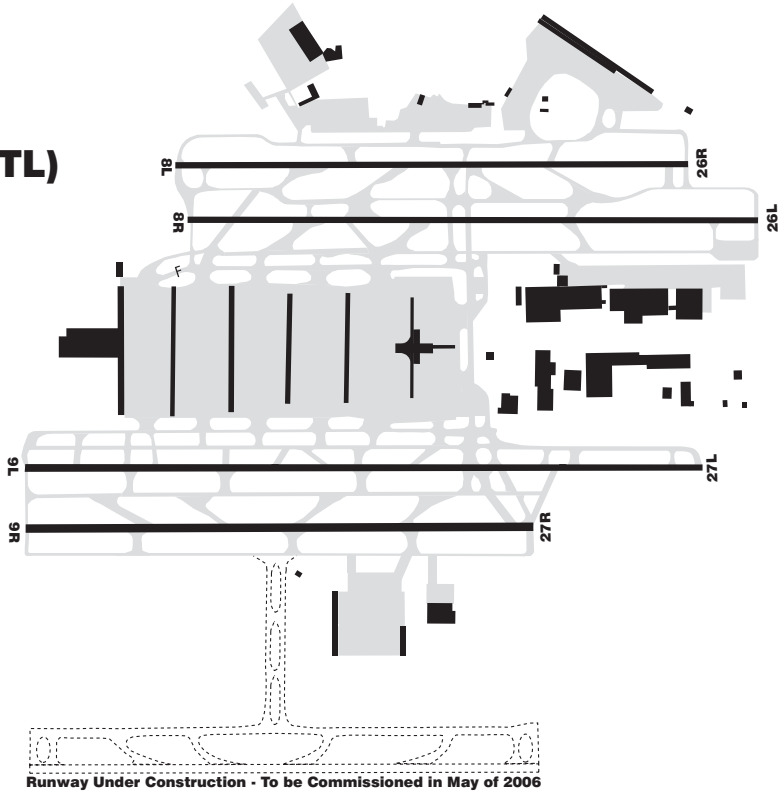
Dallas-Fort Worth International Airport (DFW)



Atlanta/Hartsfield-Jackson Atlanta International Airport (ATL)



Source: www.airnav.com, November 2004.

Chicago O'Hare International Airport

O'Hare Modernization Environmental Impact Statement

General Layout of DFW and ATL

Exhibit A-7

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A.2 INVENTORY OF EXISTING FACILITIES

This section describes the following major functional areas at O'Hare: (1) airfield, (2) terminal area, (3) ground transportation, parking, and access, and (4) air cargo and support facilities.

A.2.1 Airfield

Detailed runway data at O'Hare, including aircraft approach categories, are provided in **Table A-1**. As shown on **Exhibit 1-2**, the airfield at O'Hare consists of six (6) primary air carrier runways configured as three (3) parallel sets, and one (1) commuter/general aviation runway.[8]

TABLE A-1
EXISTING RUNWAY DATA SUMMARY - 2002

Runway Designation (a)	Length (feet)	Width (feet)	Parallel Separation (feet)	Approach Category
4L / 22R	7,500	150	9,800	NPI / CAT I (b)
4R / 22L	8,075	150	9,800	CAT I / CAT I (c)
9L / 27R	7,967	150	5,450	CAT I / CAT I
9R / 27L	10,144	150	5,450	CAT I / CAT I
14L / 32R	10,005	150	6,500	CAT III / CAT I (d)
14R / 32L	13,000	200	6,500	CAT III / CAT I
18 / 36 (g)	5,341	150	n / a (e)	Visual / Visual (f)

Notes: (a) Runway designations on the nearest 10 degrees of magnetic heading for that runway relative to aircraft using that runway.
(b) NPI - Non-Precision Approach - an instrument landing system approach using air navigational facilities with only horizontal guidance.
(c) Cat I = Category I - an instrument landing system [precision approach] with a decision height of no less than 200 feet and a visibility of not less than 0.5 mile with a Runway Visual Range (RVR) of 2,400 feet with operative touchdown zone and runway centerline lights.
(d) Cat III = Category III - an instrument landing system [precision approach] with a decision height of less than 100 feet and a RVR of less than 1,200 feet.
(e) n / a – not applicable
(f) Visual refers to a visual approach on a runway intended solely for the operation of aircraft using visual approach procedures with no straight-in-instrument approach procedures.
(g) Runway 18 / 36 has been permanently closed.

Source: U.S. Terminal Procedures, East Central (EC). United States Government Flight Information Publication. December 27, 2001.

[8] For purposes of this EIS, Runway 18/36 is included in the text and on exhibits for the 2002 Baseline Conditions since the runway was still active at that time; Chicago O'Hare International Airport, Chicago IL, Categorical Exclusion Determination for Improvement to Taxiways and Associated Edge Lighting and Pavement Markings Leading to and from the General Aviation Area, Federal Aviation Administration, August 27, 2003.

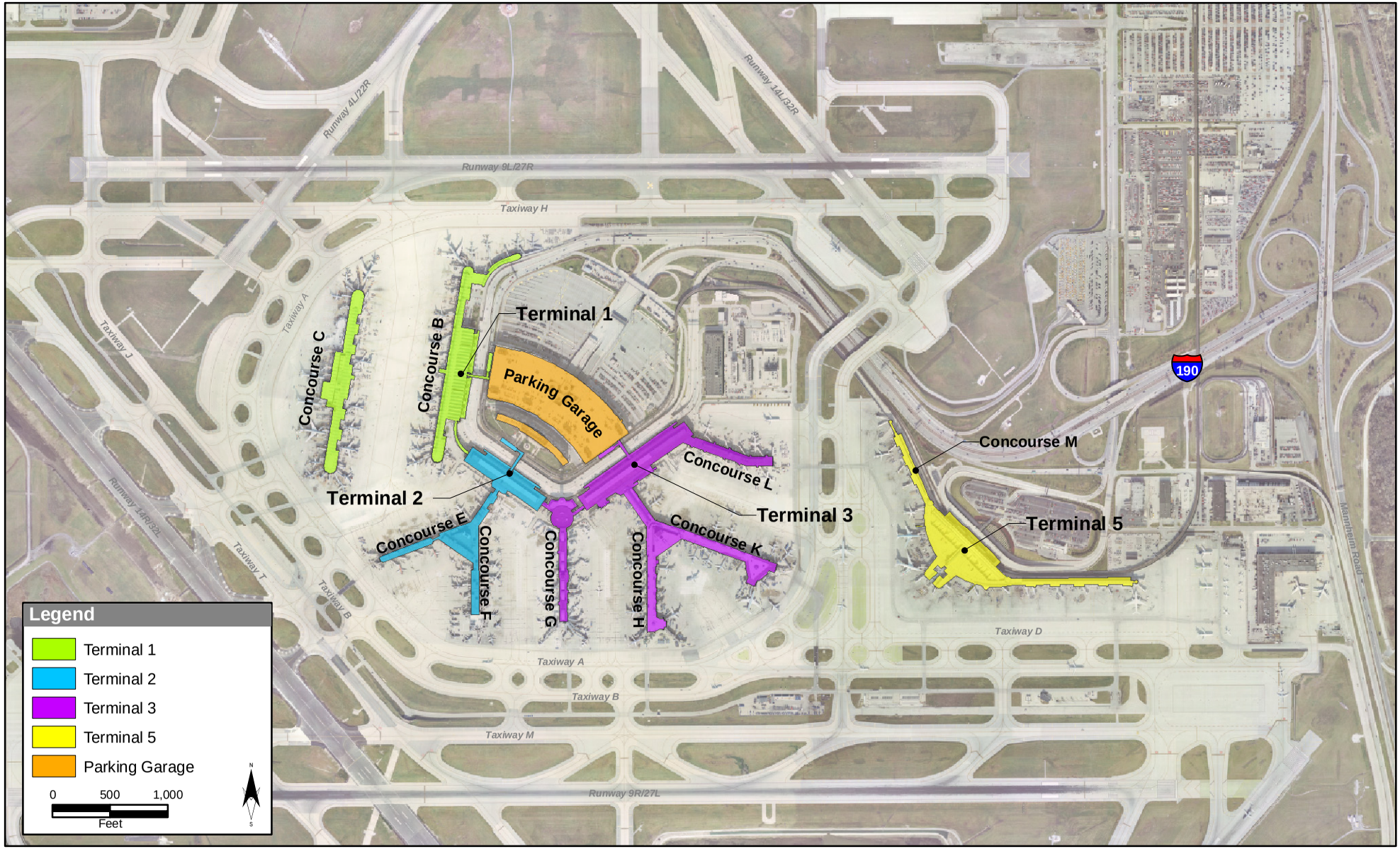
A.2.2 Terminal Area

The characteristics of the terminal facilities at O'Hare are summarized in **Table A-2** and shown in **Exhibit A-8.**

TABLE A-2
SUMMARY OF AIRCRAFT PARKING POSITIONS (GATES)

Facility	Gates	Hardstands	Linear Gate Frontage
Terminal 1	50	0	7,259
Terminal 2	45	15	4,436
Terminal 3	73	0	9,864
Subtotal (Terminal Core Area)	**168**	**15**	**21,559**
Terminal 5	21	5	3,970
Total	**189**	**20**	**25,529**

Notes: (a) Terminals 1, 2, and 3 are in the Terminal Core Area. Terminal 5 is separate from the Terminal Core Area;
(b) There is currently no Terminal 4.
Source: O'Hare International Airport Master Plan, City of Chicago, February 2004.



Source: Aerial Images: Martinez Co., Novemder, 2002 Existing ALP

Chicago O'Hare International Airport

O'Hare Modernization
Environmental Impact Statement

Existing Terminal Area

▶ Exhibit A-8

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A.2.3 Ground Transportation, Parking, and Access

Ground access facilities include a two-level roadway system at the Terminal Core Area (Terminals 1, 2, and 3) with separate enplaning and deplaning curbfronts. Terminal 5 is served by its own roadway system. Public parking facilities, with space for over 22,000 vehicles, include a mixture of surface lots and parking structures around the Airport. The Airport Transit System (ATS) is a free, 24-hour rail system that provides for passenger connections between each of the three domestic terminals, the international terminal, and long-term parking. The ATS is fully automated, consists of 2.7 miles of elevated track, and can accommodate up to 2,400 passengers per hour; from beginning to end, travel time is about nine minutes. Additionally, a number of other public and nonpublic roads provide access to the various airline and Airport support areas. **Exhibit A-9** illustrates the existing passenger access routes.

A.2.4 Cargo and Support Facilities

In addition to the airfield, terminal, and other facilities mentioned above, many other services support passenger and cargo airline operations at O'Hare. **Exhibit A-10** depicts some of the Airport support facilities. These include:

- General aviation facilities, including a general aviation terminal, automobile parking, and aircraft parking apron;
- Cargo facilities, provided in three areas: a) the South Cargo Area, with apron and warehouse facilities for FedEx, UPS, United, American, and several other U.S.- and foreign-flag airlines; b) the East Cargo Area, with warehouses for Delta Cargo and formerly for Lynx Air Cargo (as well as apron) and c) the Southeast Services Area, with warehouses and logistics facilities for freight forwarders;
- Airline support facilities, including aircraft and vehicle maintenance, flight kitchens, and hangars;
- Maintenance facilities for Airport operations, snow removal operations, and construction staging;
- Fuel and deicing fluid storage facilities;
- Aircraft rescue and fire fighting (ARFF) facilities; and
- United States Post Office facility.

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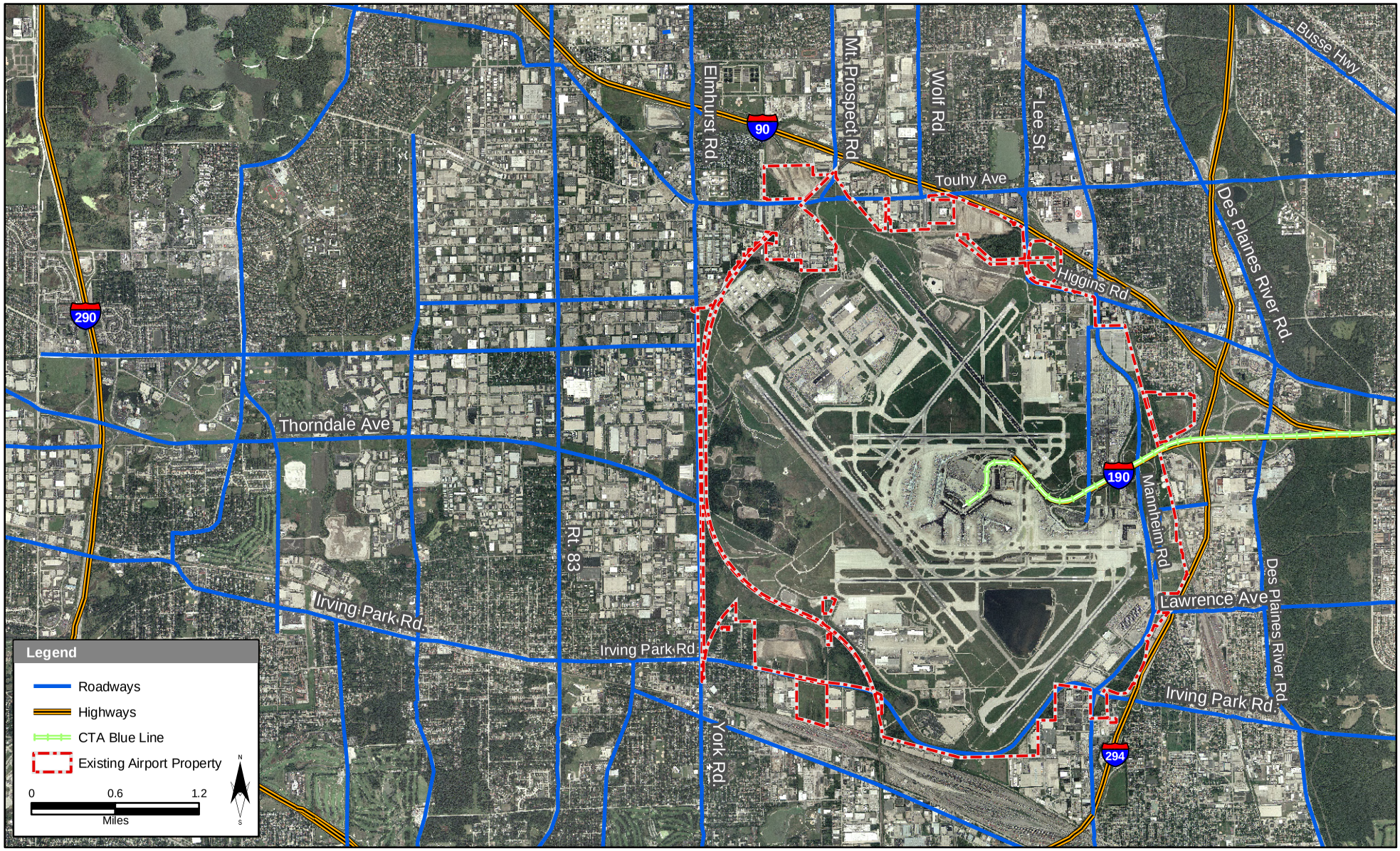

Source: AerialsExpress, Sept. 2002. Roads; ESRI Streetmap 2003.

Chicago O'Hare International Airport

O'Hare Modernization
Environmental Impact Statement

Passenger Access

▶ **Exhibit A-9**

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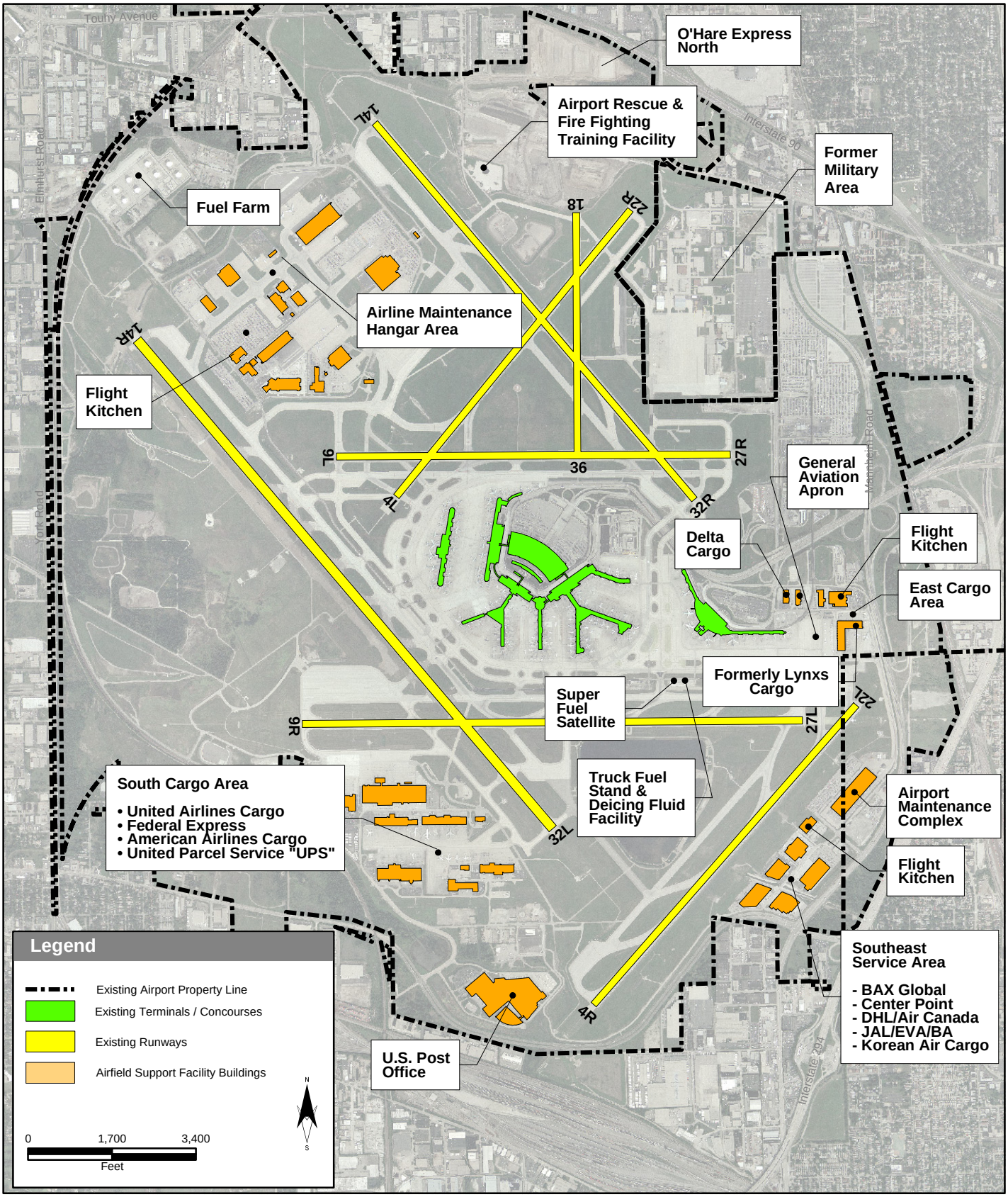

Source: Aerial Express Photo Dated September, 2002, Existing ALP CAD Layers

Chicago O'Hare International Airport

Existing Support Facilities

O'Hare Modernization
Environmental Impact Statement

Exhibit A-10

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A.3 AIRLINE ACTIVITY AT O'HARE

As stated in **Chapter 1, Introduction and Background,** a connecting hub airport (such as O'Hare) provides opportunities for passengers arriving from many cities to connect to flights departing to a wide range of destinations. Before the hub and spoke system developed, it required 25 flights to connect five cities with another five cities. With the development of the hub and spoke system, five cities can be connected with another five cities with only 10 flights. **Exhibit A-11** graphically contrasts the point to point and hub and spoke system.

As of October 2004, 47 scheduled passenger airlines served O'Hare -- 10 U.S. flag air carriers, 27 foreign-flag air carriers, and 10 regional/commuter carriers. In addition, 23 carriers provided scheduled cargo service at O'Hare. **Table A-3** lists the airlines currently serving O'Hare, along with each airline's primary role.

TABLE A-3
AIRLINES SERVING CHICAGO O'HARE INTERNATIONAL AIRPORT

U.S. Flag	Foreign Flag	
Alaska Airlines	Aer Lingus	Korean Air
America West Airlines	Air Canada	Kuwait Airways
American Airlines	Air France	LACSA
Continental Airlines	Air India	LOT Polish Airlines
Delta Air Lines	Air Jamaica	Lufthansa German Airlines
Northwest Airlines	Alitalia	Mexicana Airlines
Spirit Airlines	Aviacsa	Pakistan International
United Airlines, including TED	BMI British Midland Airways	Privatair
US Airways	British Airways	Royal Jordanian Airlines
USA 3000	Cayman Airways International	Scandinavian Airlines System
	El Al Israel Airlines	Swiss International Air Lines
	Iberia Airlines of Spain	TACA Airlines
	Japan Airlines	Turkish Airlines
	KLM Royal Dutch Airlines	
Regional/Commuter	**Cargo Operators**	
American Eagle	ABX Air	Kalitta Air
Continental Express	Air France	Korean Air
Delta Connection/Comair	Alitalia	Lufthansa
Independence Air	Air China	Macair
Northwest Airlink/Mesaba	Atlas Air Inc.	MartinAir Holland
United Express/Air Wisconsin	Astar Air Cargo	Nippon Cargo Airlines
United Express/Chautauqua	CAL Cargo	Northwest
United Express/Mesa	China Southern	Polar Air Cargo
United Express/Skywest	Custom Air Transport	Ryan International Airlines
United Express/Trans States	El Al Israel Airlines	Singapore Airlines Cargo
	FedEx	UPS Air Cargo
	Iberia	

Sources: Back Aviation Solutions OAG Schedules Database; Website, http://www.flychicago.com/ohare/airlines/airlines_commercial.shtm#lingus

As shown in **Table A-4**, O'Hare provides nonstop service to, 127 domestic and 48 international destinations.

TABLE A-4
NON-STOP DESTINATIONS FROM O'HARE

Domestic Destinations Served by O'Hare		
Akron / Canton, Ohio	Harrisburg, Pennsylvania	Portland, Maine
Albany, New York	Hartford, Connecticut – Bradley	Portland, Oregon
Albuquerque, New Mexico	Honolulu, Hawaii	Providence, Rhode Island
Allentown, Pennsylvania	Houston, TX– Bush Intercontinental	Raleigh / Durham, North Carolina
Anchorage, Alaska	Huntsville / Decatur, Alabama	Reno, Nevada
Appleton, Wisconsin	Indianapolis, Indiana	Richmond, Virginia
Atlanta, Georgia	Jacksonville, Florida	Roanoke, Virginia
Austin, Texas	Kahului, Hawaii	Rochester, Minnesota
Baltimore, Maryland	Kalamazoo, Michigan	Rochester, New York
Birmingham, Alabama	Kansas City, Missouri	Sacramento, California
Bloomington, Illinois	Knoxville, Tennessee	Saginaw, Michigan
Boise, Idaho	La Crosse, WI / Winona, MN	Salem, North Carolina
Boston, Massachusetts	Lansing, Michigan	Salt Lake City, Utah
Buffalo, New York	Las Vegas, Nevada	San Antonio, Texas
Burlington, Vermont	Lexington, Kentucky	San Diego, California
Cedar Rapids / Iowa City, Iowa	Lincoln, Nebraska	San Francisco, California
Champaign, Illinois	Little Rock, Arkansas	San Jose, California
Charleston, South Carolina	Los Angeles, California – LAX	San Juan, Puerto Rico
Charleston, West Virginia	Louisville, Kentucky	Santa Ana, California – John Wayne
Charlotte, North Carolina	Madison, Wisconsin – Dane County	Savannah, Georgia
Chattanooga, Tennessee	Manchester, New Hampshire	Seattle / Tacoma, Washington
Cincinnati, Ohio	Memphis, Tennessee	Sioux Falls, South Dakota
Cleveland, Ohio	Miami, Florida	South Bend, Indiana
Colorado Springs, Colorado	Milwaukee, Wisconsin	Spokane, Washington
Columbia, South Carolina	Minneapolis / St. Paul, Minnesota	Springfield, Illinois
Columbus, Ohio	Moline, Illinois	Springfield, Missouri
Dallas / Ft. Worth, Texas – DFW	Myrtle Beach, South Carolina	St. Louis, Missouri
Dayton, Ohio	Nashville, Tennessee	St. Petersburg, Florida
Denver, Colorado	New Orleans, Louisiana	St. Thomas, Virgin Islands
Des Moines, Iowa	Newark, New Jersey	Syracuse, New York
Detroit, Michigan - Metro Wayne	New York, New York – Kennedy	Tampa, Florida
Dubuque, Iowa	New York, New York – LaGuardia	Toledo, Ohio
El Paso, Texas	Newburgh, New York	Traverse City, Michigan
Evansville, Indiana	Norfolk, Virginia	Tucson, Arizona
Fargo, North Dakota	Oakland, California	Tulsa, Oklahoma
Fayetteville, Arkansas	Oklahoma City, OK – Will Rogers	Washington, DC – Dulles
Fort Myers, Florida	Omaha, Nebraska	Washington, DC – Reagan National
Fort Wayne, Indiana	Orlando, Florida	Wausau, Wisconsin
Ft. Lauderdale, Florida	Palm Springs, California	West Palm Beach, Florida
Grand Rapids, Michigan	Peoria, Illinois	Westchester County, New York
Green Bay, Wisconsin	Philadelphia, Pennsylvania	Wichita, Kansas
Greensboro / High Point / Winston-Greenville, South Carolina	Phoenix, Arizona – Sky Harbor	Wilkes-Barre / Scranton, Pennsylvania
	Pittsburgh, Pennsylvania	

TABLE A-4
NON-STOP DESTINATIONS FROM O'HARE

International Destinations Served by O'Hare		
Amman, Jordan	Guatemala City, Guatemala	Paris, France – Charles DeGaulle
Amsterdam, Netherlands	Hong Kong, P.R. China	Puerta Vallarta, Mexico
Aruba	Istanbul, Turkey	Rome, Italy – Fiumicino
Beijing, P.R. China	Krakow, Poland – Balice	San Luis Potosi, Mexico
Brussels, Belgium	London, England – Heathrow	Sao Paulo, Brazil
Buenos Aires, Argentina – Pistarini	Madrid, Spain	Seoul, Korea
Calgary, Alberta, Canada	Manchester, England	Shanghai, China
Cancun, Mexico	Mexico City, Mexico – Juarez	Shannon, Ireland
Copenhagen, Denmark	Milan, Italy – Malpensa	Stockholm, Sweden – Arlanda
Dublin, Ireland	Montego Bay, Jamaica	Tokyo, Japan – Narita
Durango, Mexico	Monterrey, Mexico	Toronto, Ontario, Canada – Pearson
Dusseldorf, Germany	Montreal, Quebec, Canada – Dorval	Vancouver, British Columbia, Canada
Edmonton, Alberta, Canada	Morelia, Mexico	Warsaw, Poland
Frankfurt, Germany	Munich, Germany	Winnipeg, Manitoba, Canada
Grand Cayman	Osaka, Japan	Zacatecas, Mexico
Guadalajara, Mexico	Ottawa, Ontario, Canada	Zurich, Switzerland

Source: Back Aviation Solutions OAG Schedules Database, October 16, 2004.

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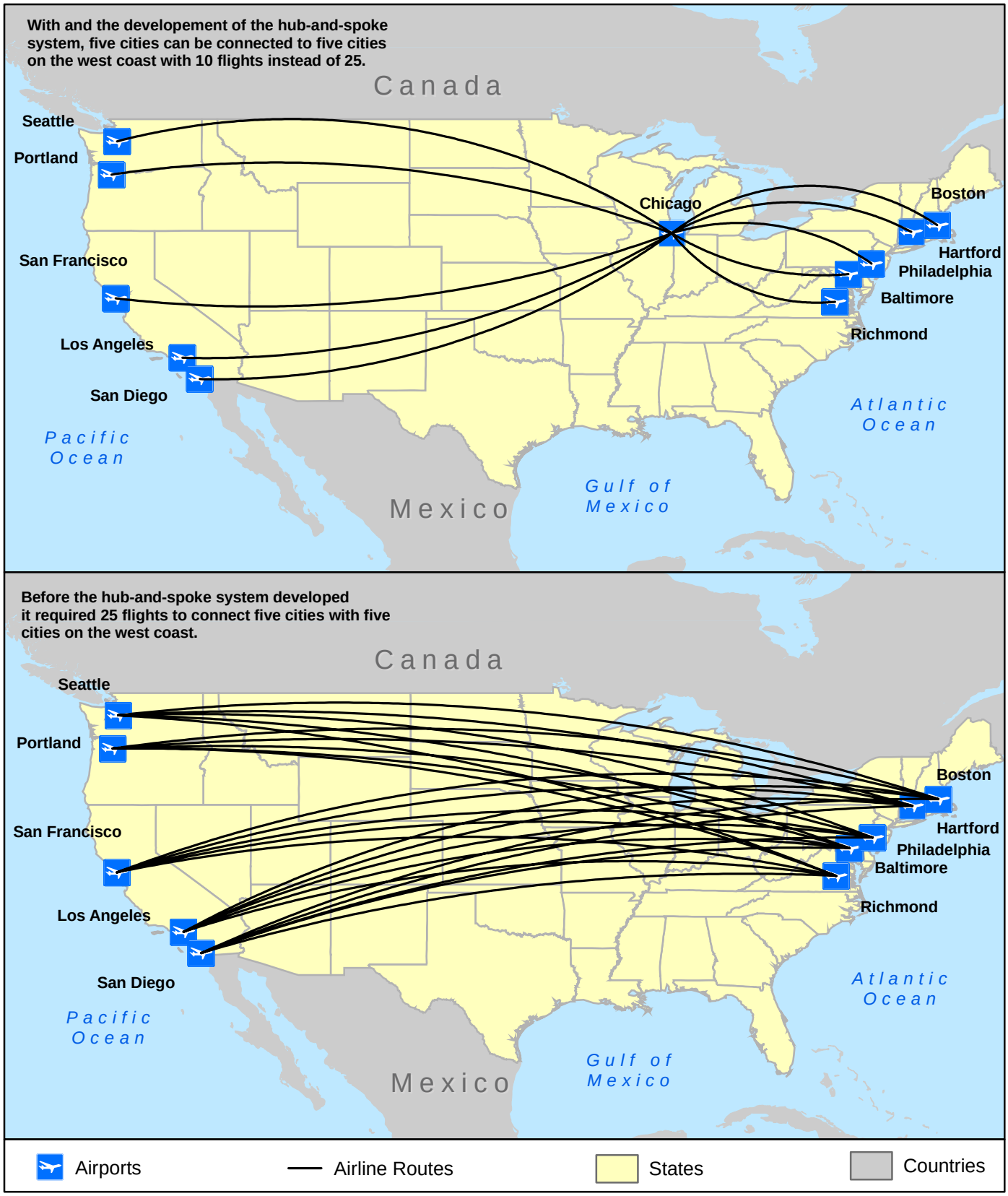

Source: Airports, States, Countries, and Water Bodies, ESRI 2004. Airplane Routes, TPC Analysis, 2004.

Chicago O'Hare International Airport

O'Hare Modernization Environmental Impact Statement

Hub-and-Spoke vs. Point-to-Point

▶ Exhibit A-11

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A.4 EXISTING AIRSPACE AND RUNWAY OPERATING CONFIGURATIONS

A.4.1 Air Traffic Control at O'Hare

The Federal Aviation Administration (FAA) Act of 1958 established the FAA as the responsible agency for the control and use of navigable airspace within the United States. The FAA Air Traffic Organization, Central Service Area, with offices in Des Plaines, Illinois, has administrative control of air traffic within the airspace surrounding O'Hare. The FAA has established the National Airspace System (NAS) to protect persons and property on the ground and to establish a safe and efficient airspace environment for civil, commercial, and military aviation. The NAS covers the common network of U.S. airspace, including: air navigation facilities; airports and landing areas; aeronautical charts; associated rules, regulations, and procedures; technical information; personnel; and material.

Airspace in the United States is broadly classified as either "controlled" or uncontrolled". The difference between controlled and uncontrolled airspace relates primarily to requirements for pilot qualifications, ground-to-air communications with Air Traffic Control, navigation and air traffic services, and weather conditions. All air carrier aircraft are always under Air Traffic Control as they are continuously in controlled airspace. Six classes of airspace have been designated and are depicted in **Exhibit A-12**. Airspace designated as Class A, B, C, D, or E is considered controlled airspace. Aircraft operating within controlled airspace are subject to varying requirements for positive air traffic control, depending upon the class of airspace in which they are located.[9] When overlapping airspace designations apply to the same airspace, the operating rules associated with the more restrictive airspace designation apply. While operating in controlled airspace, aircraft are monitored and in communication with the appropriate air traffic control facility: Center, Terminal Radar Approach Control (TRACON), or airport traffic control tower.

O'Hare is located in Class B airspace, a special airspace designation requiring special procedures and equipment to account for the high number of operations. The shape of Class B airspace is roughly circular, extending outward 25 nm (like an upside-down wedding cake) from the Airport in varying segments, as shown in **Exhibit A-12**. The Class B airspace surrounding O'Hare is irregularly shaped due to a number of airports in the vicinity of O'Hare, such as Palwaukee to the north and Aurora to the west. The airspace surrounding these airports is governed by local airport traffic control towers. For example, the Palwaukee airspace north of O'Hare affects the floor of the Class B airspace by raising it 1,100 feet above the normal floor height for that distance from a Class B Airport. This was done to accommodate and provide a safety buffer for the lower flying general aviation and corporate traffic at Palwaukee.

[9] "Positive control" means control of all air traffic, within designated airspace, by air traffic control.

A.4.1.1 Air Traffic Control in the Chicago Region

A number of FAA air traffic organizations are responsible for the safe operation of aircraft entering and leaving O'Hare and the airspace above the Chicago region. This section describes the three facilities responsible for air traffic control outside the immediate Airport environment.

A.4.1.2 Air Route Traffic Control Center

The FAA has established 20 Air Route Traffic Control Centers (Centers) in the continental United States to control aircraft operating under IFR within controlled airspace and while in flight at cruising altitudes. Center controllers assign specific routes and altitudes along Federal airways to maintain safe aircraft separation and orderly air traffic flow. The Center uses radio communication and long-range radar with automatic tracking capability to provide en route air traffic services. Typically, the Center splits its airspace into sectors and assigns a controller or team of controllers to each sector. As an aircraft travels through Center airspace, one sector hands off control of the aircraft to an adjacent sector.

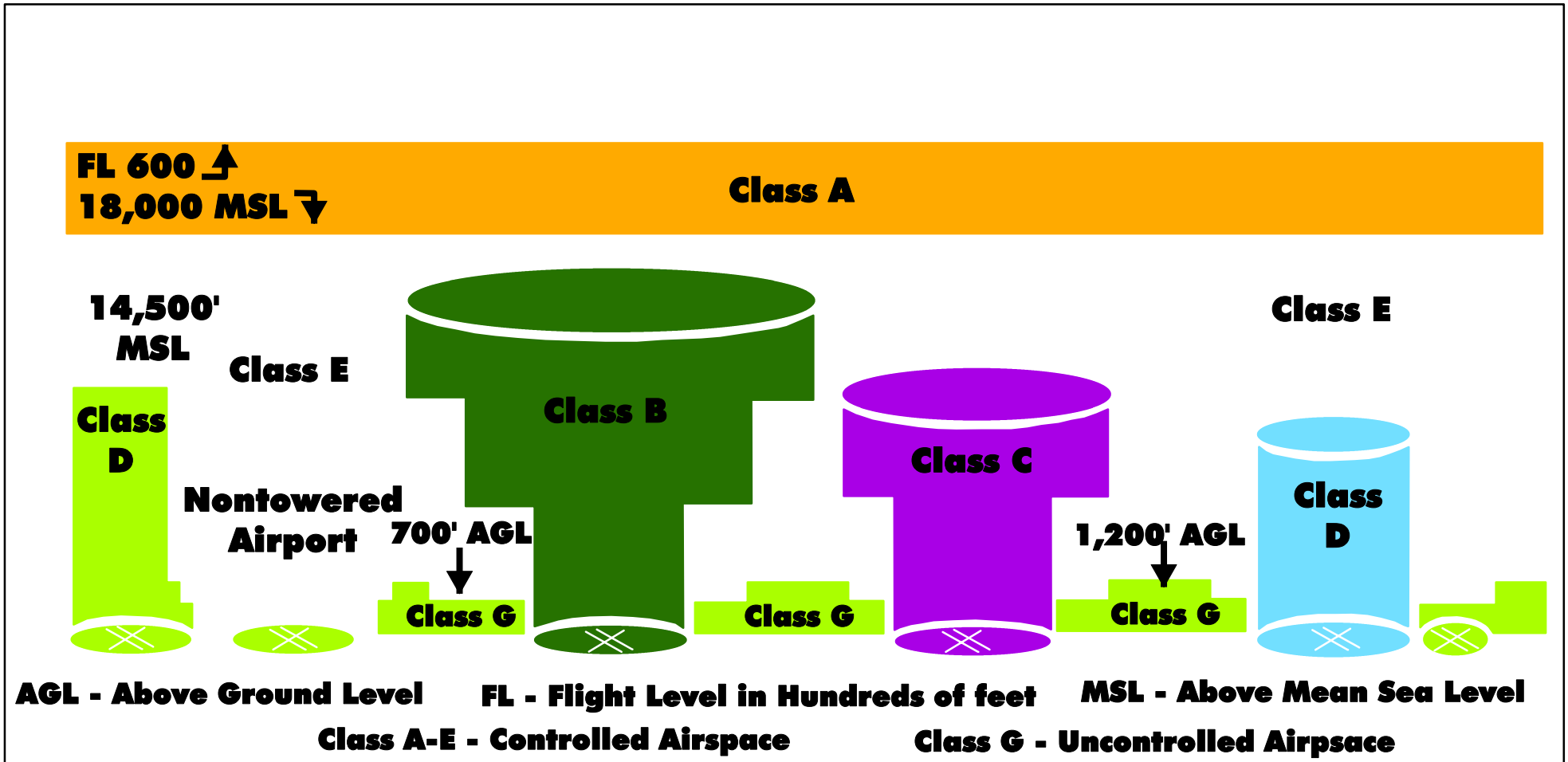
The Chicago Air Route Traffic Control Center (Chicago Center), located in Aurora, Illinois, controls aircraft entering and leaving the Midwest region.

A.4.1.3 Terminal Radar Approach Control (TRACON)

Chicago Terminal Radar Approach Control (Chicago TRACON) provides radar air traffic control service to aircraft operating in the Chicago region. The Chicago TRACON, located in Elgin, Illinois, has control responsibility for aircraft operating under IFR within a radius of approximately 40 miles from O'Hare, up to an altitude of 13,000 feet above MSL. After Chicago Center transfers control of arriving aircraft to the TRACON, controllers then assign and direct aircraft to a specific runway at the desired destination airport. Similarly, Chicago TRACON controllers provide initial sequencing and separation of departing aircraft before transferring control to Chicago Center controllers, who then direct the aircraft toward their destinations. **Exhibit A-13** shows specific routes arriving into and departing from TRACON airspace.

A.4.1.4 Airport Traffic Control Tower

O'Hare is equipped with an Airport Traffic Control Tower (ATCT) operated by the FAA. Generally, the duties of ATCT controllers include air and ground communications, visual sighting, and other means to provide air traffic control services to aircraft operating in the immediate vicinity of an airport. Tower controllers direct aircraft as they taxi to and from runways and authorize aircraft to land or takeoff. The tower is usually responsible for all aircraft operations within a five-mile radius surrounding the Airport. O'Hare ATCT controllers manage traffic from the ground up to either 3,000 or 5,000 feet above MSL, depending on the runway operating configuration.



Source: Chicago Terminal Airspace Project, Final Environmental Impact Statement, August 31, 2001.

Chicago O'Hare International Airport

O'Hare Modernization
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Airspace Diagram

▶ **Exhibit A-12**

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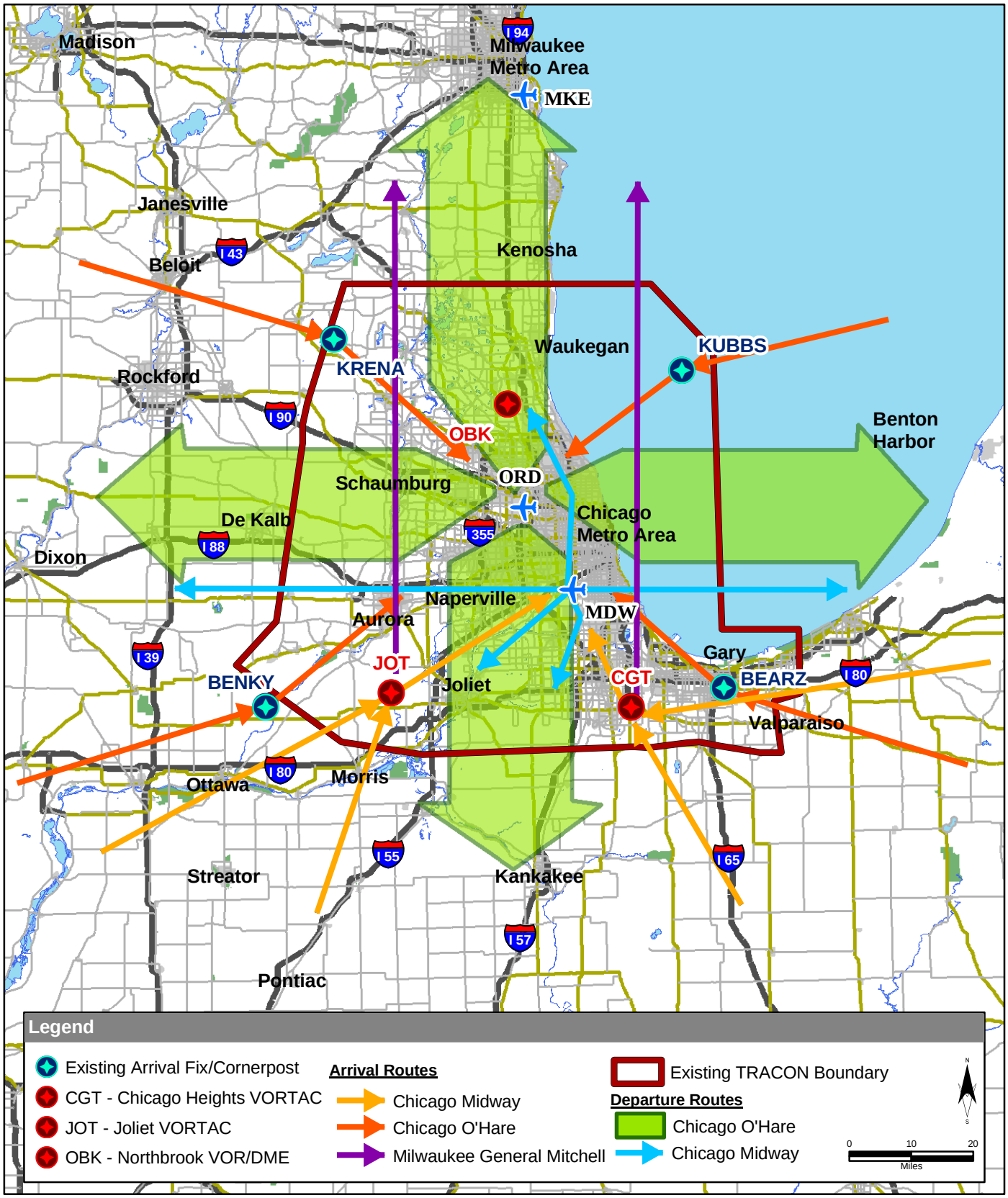

Source: Chicago Terminal Airspace Project, FAA 2000

Chicago O'Hare International Airport

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Arrival and Departure Routes in the Chicago Region

Exhibit A-13

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A.4.2 Runway Operating Configurations

Wind coverage is typically used to describe how often an airfield can operate in various wind conditions that occur throughout the year. It is defined as the percent of time during the year that wind conditions allow operations to take place at an airport and is controlled by the direction and velocity of the winds, the layout of the airfield, and the types of aircraft that use the airfield. The wind coverage of an airfield can have an impact on the capacity of the airfield as it determines the amount of time during the year that the airfield or particular runways on the airfield are available for use. **Exhibit A-14** shows the all-weather wind rose for O'Hare.

The runway operating configuration at O'Hare is primarily dictated by weather conditions. Some operating configurations are designed for instrument flight rule (IFR) conditions when pilots experience poor visibility, whereas other configurations are designed for visual flight rule (VFR) conditions when weather is favorable. Because it is highly desirable that aircraft land and take off into the wind, critical factors in determining the most appropriate operating configuration are wind speed and wind direction, although visibility and cloud layer elevations also play a role.

A.4.2.1 Description of Primary Runway Operating Configurations in 2002

Exhibit A-15 shows the primary runway operating configurations at O'Hare. In 2002, the most commonly utilized runway operating configurations were Plan W and Plan X, which each handled about 37 percent of total operations at O'Hare; Plan B handled about 10 percent, and Plan B Modified handled about 4 percent. Also in 2002, the Parallel 27s and Parallel 14s Plans, which are primarily used in low visibility IFR conditions, together handled about 7 percent of total operations at O'Hare. The remaining 5 percent of total operations were handled by numerous other lesser used configurations, including Plans R, A, Parallel 9s, Parallel 22s, Parallel 32s.

During periods of visual meteorological conditions (VMC), the four predominant VFR runway operating configurations are:

- **Plan X:** Under this operating configuration, aircraft arrive on Runways 4R and 9R and depart on Runway 32L from the intersection of Taxiway T10, and Runways 9L, and 4L. During periods of high arrival demand, Runway 9L is used as a third arrival runway.
- **Plan W:** Under this operating configuration, aircraft arrive on Runways 27L, 22R, and 27R, with aircraft assigned to Runway 22R having to hold short of Runway 27R on the landing roll. Aircraft depart on Runways 22L and 32L from the intersection of Taxiway T10. During the later afternoon periods, Runway 32R is also used by international departures.
- **Plan B:** Under this operating configuration, aircraft arrive on Runways 14R and 22R and depart on Runways 14L, 22L, and 27L. During periods of high arrival demand, Runway 22L is used as a third arrival runway.

- **Plan B Modified:** Under this operating configuration, Runways 14R and 9R function as the primary arrival runways. Land and hold short (LAHSO) procedures are applied between aircraft landing on Runways 14R and 9R. During periods of high arrival demand, Runway 22R is used as a third arrival runway. Under this configuration, Runways 14L and 22L function as the departure runways.

During periods of instrument meteorological conditions (IMC), different runway operating configurations are used. The two predominant IMC operating configurations are described below and shown in **Exhibit A-15**.

- **Parallel 27s:** Under this configuration, Runways 27R and 27L are used as the arrival runways, while Runways 32R, 22L, and 32L from the intersection of Taxiway T10 are used for departures.
- **Parallel 14s:** Under this configuration, Runways 14R and 14L are used as the arrival runways and Runways 27L, 22L, and 9L are used as the departure runways.

A.4.2.2 Recent FAA Changes to Runway Operating Configurations

Since 2002, the FAA has taken a number of actions that have affected the use of converging and/or intersecting runways. Following is a description of these actions:

- **Plan B Modified** - In March 2003, the FAA refined its interpretation of land-and-hold-short operation (LAHSO) procedures at O'Hare. The refined interpretation introduced runway dependencies that caused the elimination of one of the Airport's higher-capacity good weather (VFR) operating configurations, specifically Plan B Modified.[10]
- **Plan X** - In January 2004, the O'Hare Tower increased the separations required between aircraft landing on Runway 9L and departing on Runway 32L, due to wake turbulence concerns. This Tower Order has reduced the capacity of Plan X, one of the Airport's higher-capacity good weather (VFR) operating configurations.[11]
- **Plan B** – In June 2004, the FAA was authorized through a waiver to conduct intersecting runway operations to Runway 27L and Runway 14R thus reducing the runway dependencies during operation of this configuration. This waiver results in a higher hourly capacity and a more efficient operating environment for both arriving and departing aircraft.

As a result of the first two actions listed above, the capacities of two important operating configurations, (Plan X and Plan B Modified), at O'Hare have been reduced, contributing to increased congestion and delay. The third action listed above, although not used as frequently

[10] Land and Hold Short Operations (LAHSO), FAA Order ORD 7110.118, February 9, 2001.
[11] FAA O'Hare Tower Order 7110.65E, Section 4-2-8, paragraph 26, February 15, 2004.

as Plan X, increased hourly arrival and departure rates during weather conditions which allow the use of this configuration. However, as a result of the additional operational restrictions, annual average delay at O'Hare is expected to increase from 9.3 minutes per operation in 2002, to over 20 minutes per operation in 2007.[12]

In the good weather configurations (i.e., VFR configurations: Plan B, Plan X, and Plan W), arrival and departure activity levels can be accommodated when arrivals receive priority. Providing adequate arrival capacity, however, entails the use of converging approaches and LAHSO procedures. Under LAHSO, aircraft are permitted to land on certain runways under various configurations, and then hold short of certain intersecting runways. Using LAHSO, intersecting/crossing runways can be used to provide independent operations subject to certain operating criteria. While LAHSO provides sufficient capacity to serve the current activity levels during good weather, it cannot be used under poor weather conditions (IFR) (ceiling at or below 1,000-foot and/or visibility less than or equal to three statute miles), or in wet runway conditions. As a result, during poor weather, the arrival acceptance rate at O'Hare drops substantially.

[12] Ricondo & Associates, Inc., [CCT] Preliminary Draft TAAM Simulation Data for Noise and Air Quality Analysis – [Existing Airfield 2002], January 2004; Preliminary Draft TAAM Simulation Data for Noise and Air Quality Analysis – 2007 No Action with NAR, February 2004.

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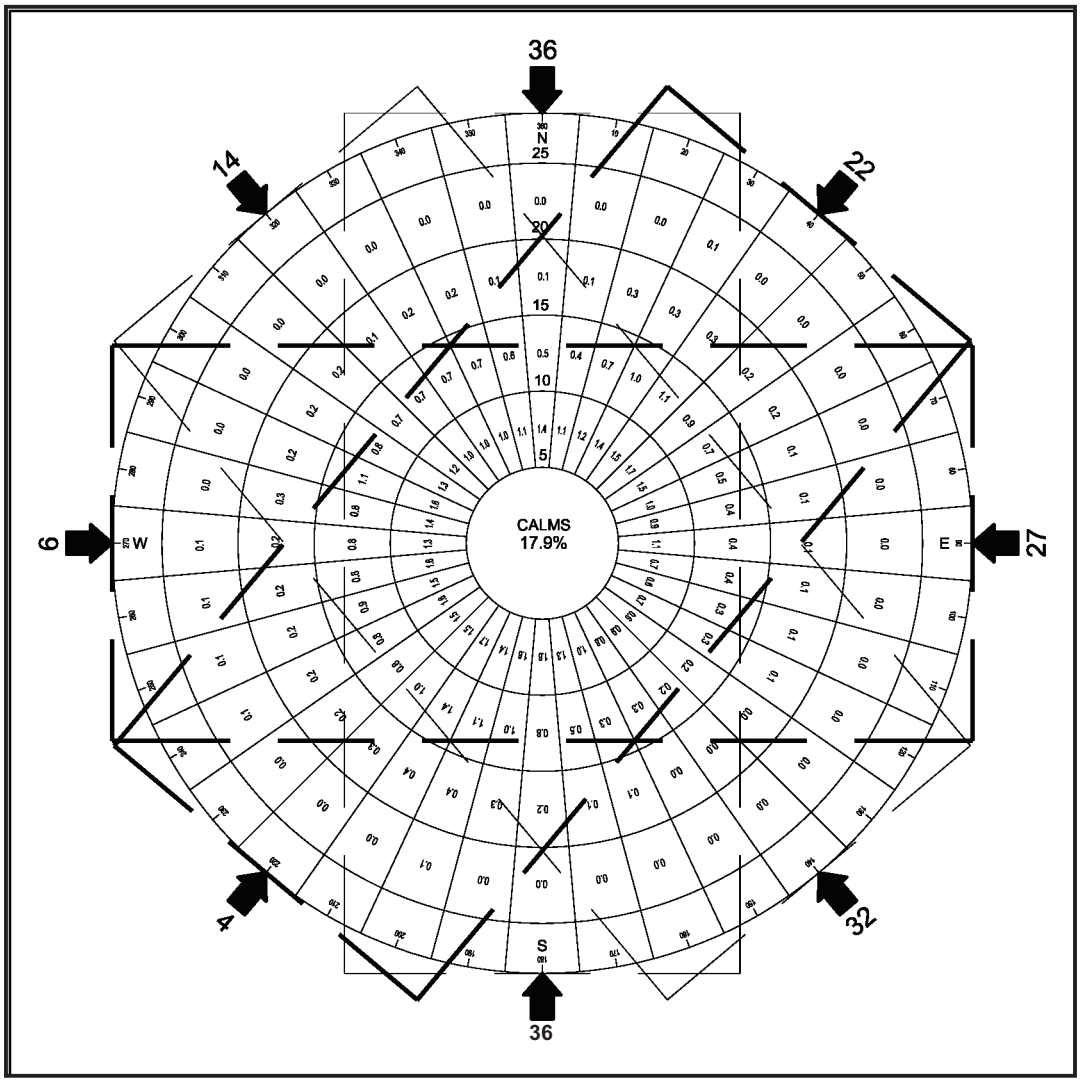

ALL WEATHER WIND COVERAGE TABLE				
CROSSWIND COMPONENT	RUNWAY COVERAGE			
	4-22	9-27	14-32	18-36
10.5 KTS	90.4%	87.0%	84.4%	88.5%
	100.0% (Existing)			
13 KTS	96.3%	94.3%	92.8%	95.1%
	100.0% (Existing)			
16 KTS	99.0%	98.3%	97.8%	98.5%
	100.0% (Existing)			
20 KTS	99.9%	99.7%	99.5%	99.7%
	100.0% (Existing)			

Source: O'Hare Mater Plan/ City of Chicago; February 2004.

Chicago O'Hare International Airport

O'Hare Modernization Environmental Impact Statement

O'Hare All Weather Wind Rose

▶ Exhibit A-14

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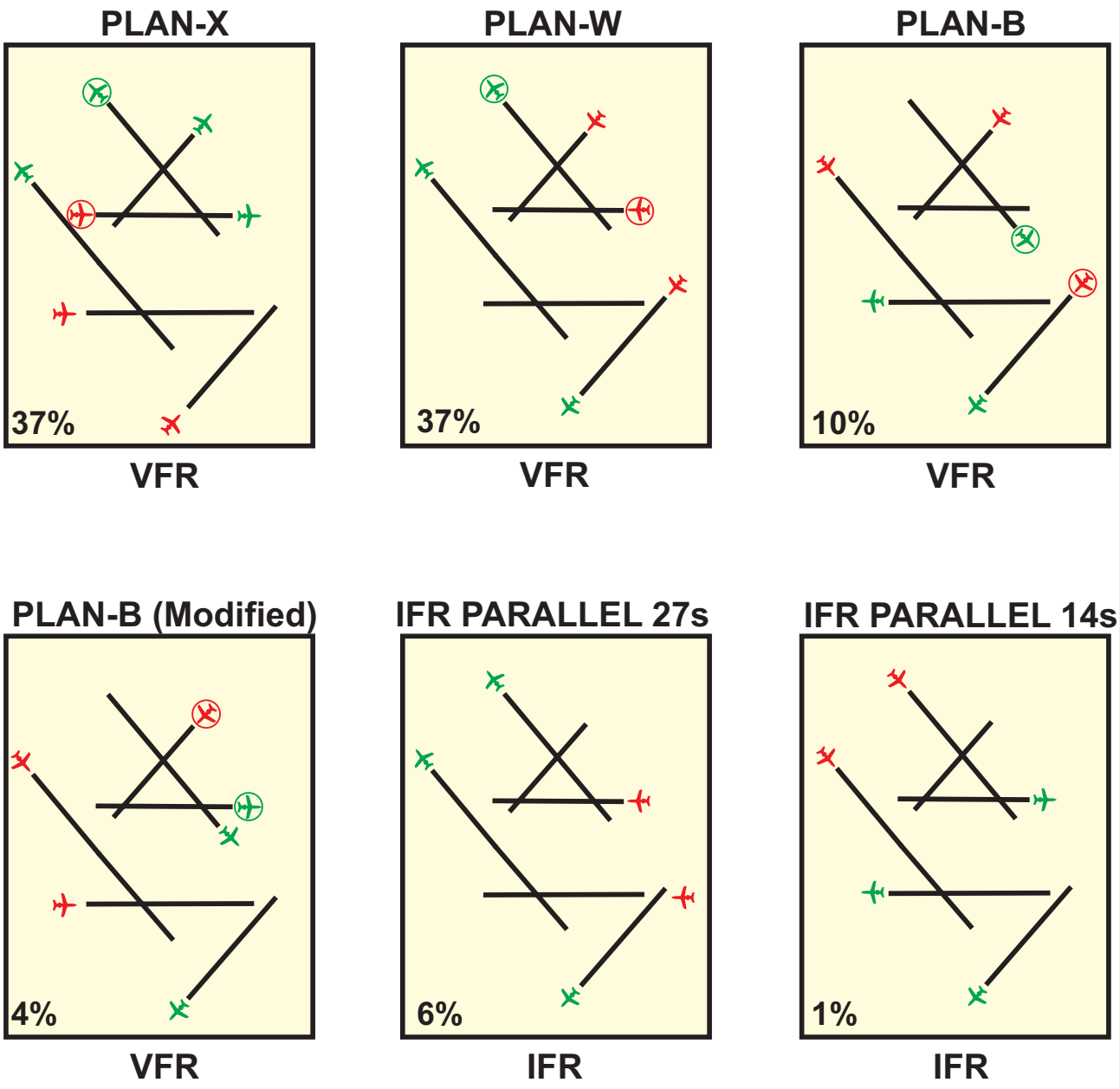

Legend

- Primary Arrival Runway
- Primary Departure Runway
- Overflow Arrival Runway
- Overflow Departure Runway

VFR- Visual Flight Rules

IFR- Instrument Flight Rules

Note: Remaining operations handled by secondary runway operating configurations.

Not To Scale

Source: TAAM Simulation Data for noise & Air Quality analysis [2002] Ricondo & Associates, Inc. [CCT].

Chicago O'Hare International Airport

O'Hare Modernization Environmental Impact Statement

2002 Primary Runway Operating Configurations

▶ **Exhibit A-15**

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A.5 HISTORICAL DELAY AT O'HARE

This section presents the historical delay statistics at O'Hare.

A.5.1 Capacity Benchmarks

Table A-5 shows the capacity benchmarks[13] established in the *Airport Capacity Benchmark Report 2004*. The capacity benchmarks are theoretical estimates and "assume no constraints in the en route system or the airport terminal area."[14]

TABLE A-5
O'HARE INTERNATIONAL AIRPORT - CAPACITY BENCHMARKS

Airport Capacity Benchmark Report 2004

Rate Description	Operation per Hour
Optimum	190 – 200
Marginal	190 – 200
Instrument Flight Rules (IFR)	136 - 144

Note: The 2004 Benchmark Report defined three rates for each airport: Optimum rate is based on periods of unlimited ceiling and visibility, using visual approaches. Marginal rate is based on periods when the weather is not good enough for visual approaches, but is still better than instrument conditions; and IFR rate is based on instrument conditions (ceiling less than 1000 feet or visibility less than 3 statute miles) when radar separation between aircraft is required.

Source: Airport Capacity Benchmark Report 2004, Federal Aviation Administration.

A.5.2 Typical Characteristics of Operations at O'Hare

The flight operational demand at O'Hare typically has the following characteristics:

- The major hub carriers (American Airlines and United Airlines) have traditionally scheduled arrivals and departures in alternating hours throughout the day.
- Each peak period or bank is about 60 to 90 minutes long depending on the time of day.
- Departure and arrival banks overlap; however, the beginning and end of the periods are less concentrated than the middle of the bank; therefore the overlap is typically less concentrated than it would be if the highest levels of the departure and arrival banks overlapped.
- As annual activity levels have increased, demand distribution throughout the day has changed since 2001 as shown in **Chapter 2, Exhibit 2-5.** As a result, when delays occur, there is a domino effect through subsequent hours.

[13] Capacity Benchmarks are defined as the maximum number of flights an airport can routinely handle in an hour, for the most commonly used runway operating configuration in each specified weather condition.

[14] Airport Capacity Benchmark Report 2004, FAA, Page 1, October 2004.

- A high number of connections occur at O'Hare, and passengers arriving late are prone to missing their connection to their final destination. As levels of delays increase, the number of missed connections is likely to grow.

A.5.3 Historic ASPM Delays at O'Hare

A.5.3.1 Background

FAA's Aviation System Performance Metrics (ASPM) database includes flight data from the Enhanced Traffic Management System (ETMS) (computer records of all instrument flight rules flights), ground and flight movement times from Aeronautical Radio, Inc. (ARINC) for those aircraft equipped with electronic sensors, and data reported in the Airline Service Quality Performance (ASQP) database. Actual flight times can be compared with either (1) airline flight plans filed with the FAA, or (2) airline schedules from the Official Airline Guide (OAG) and carrier reservation systems.

Two types of average arrival and average departure delay are reported directly by ASPM as measures of on-time performance. The main difference between the two is whether OAG scheduled times or flight plan times are used to compare against actual flight times. In addition, the user can calculate the average arrival and departure delays as "excess-travel-time" delay by combining delays incurred by aircraft in different phases of flight (en route, taxi-in, taxi-out, etc.). These three types of delay are described below.

1. ***Delays Relative to Schedule (on-time Performance).*** ASPM reports delays as the actual arrival or departure times relative to OAG scheduled arrival or departure times. Such delays are of particular interest to consumers whose main concern is knowing how late flights can be expected to arrive or depart relative to the OAG schedule.
2. ***Delays Relative to Flight Plan (on-time Performance).*** ASPM also reports delays as the actual arrival or departing time relative to flight-planned arrival or departure time. Knowing how close flights operate to their flight-planned times is particularly useful to the airlines and facility operators.
3. ***Calculated Excess-Travel-Time Delays (Congestion Delays).*** ASPM allows the user to calculate delays as excess travel times by combining actual phase-of-flight times (i.e., airborne, taxi-in, taxi-out) and Expected Departure Clearance Time (EDCT) or flow-control delays. Because of the direct relationship between excess travel time and aircraft direct operating costs, this delay metric is the preferred measure for estimating the cost to the airlines of delays at an airport, and for calibrating airfield/airspace simulation models such as the Total Airspace and Airport Modeller (TAAM).

Excess-travel-time delay for arrivals is equal to the sum of the following differences in operating times: (a) actual airborne time and flight-planned "off-to-on" times, (b) actual taxi-in times and nominal taxi-in times, and (c) actual wheels-off time at the origin airport and the flight-planned

wheels-off time including EDCT delay that is incurred at an upline airport but caused by conditions at the Airport.

Excess-travel-time delay for departures is obtained by subtracting the EDCT delay incurred at the origin airport, but caused by conditions at the destination airport, from the sum of taxi-out delay and gate delay.

ASPM does not directly report the overall average delay per aircraft operation considering both arrivals and departures at an airport. However, this metric can be calculated as the weighted average of arrival and departure delays.

A.5.3.2 ASPM Delay Reporting

Table A-6 shows the average monthly delays based on ASPM data for O'Hare from January 1998 to September 2004; **Table A-7** shows the average annual delays based on ASPM data for the 35 airports considered within FAA's Operational Evolution Plan (OEP). **Exhibits A-16** through **A-20** graph the recent historical ASPM delays at O'Hare.

TABLE A-6
AVERAGE MONTHLY DELAYS AT ORD: JANUARY 1998 - SEPTEMBER 2004

	Average delay relative to schedule (min)			Average delay relative to flight plan (min)			Average delay calculated as excess-travel time (min)		
Period	Depart	Arrival	Average	Depart	Arrival	Average	Depart	Arrival	Average
Jan-98	18.50	14.13	16.28	14.94	11.86	13.38	14.91	8.85	11.84
Feb-98	12.62	11.17	11.88	10.57	9.60	10.08	10.59	7.84	9.19
Mar-98	17.36	13.65	15.48	14.33	11.82	13.06	14.41	9.03	11.68
Apr-98	13.99	9.36	11.64	11.58	7.59	9.55	12.03	5.08	8.50
May-98	21.21	13.61	17.36	16.70	11.08	13.85	16.90	6.83	11.79
Jun-98	24.36	17.37	20.82	19.40	14.07	16.70	20.02	6.88	13.37
Jul-98	17.16	11.70	14.39	13.72	9.32	11.49	14.45	4.65	9.47
Aug-98	21.69	16.23	18.92	16.89	13.02	14.93	17.52	7.52	12.45
Sep-98	17.62	12.45	15.00	14.03	10.55	12.26	14.87	7.89	11.33
Oct-98	17.21	12.96	15.05	14.15	10.79	12.44	14.82	7.29	11.00
Nov-98	12.83	9.54	11.16	10.81	8.15	9.46	11.49	6.55	8.98
Dec-98	17.36	12.13	14.71	13.87	10.02	11.92	14.04	6.09	10.01
Jan-99	31.18	26.57	28.84	24.46	21.86	23.14	24.49	15.34	19.85
Feb-99	15.68	13.19	14.42	12.92	10.82	11.85	13.15	7.93	10.50
Mar-99	17.61	13.28	15.41	14.04	11.14	12.57	14.24	8.62	11.39
Apr-99	23.06	20.58	21.80	18.60	17.70	18.14	19.25	14.54	16.86
May-99	22.10	18.33	20.18	18.01	15.69	16.83	18.70	12.73	15.67
Jun-99	26.90	21.70	24.26	20.59	16.42	18.47	21.67	10.04	15.76
Jul-99	26.22	19.29	22.71	20.69	14.64	17.62	21.58	7.38	14.38
Aug-99	18.02	14.14	16.06	14.64	11.44	13.02	15.25	7.15	11.15
Sep-99	14.23	9.98	12.07	12.05	8.28	10.14	12.72	6.66	9.64
Oct-99	14.48	11.10	12.77	12.23	9.41	10.80	12.78	6.82	9.76
Nov-99	13.72	9.47	11.56	11.77	7.87	9.79	12.36	6.37	9.32
Dec-99	21.56	17.43	19.47	17.26	14.98	16.10	17.44	12.12	14.74
Jan-00	21.52	17.74	19.61	17.40	15.14	16.26	17.41	12.39	14.87

TABLE A-6
AVERAGE MONTHLY DELAYS AT ORD: JANUARY 1998 - SEPTEMBER 2004

	Average delay relative to schedule (min)			Average delay relative to flight plan (min)			Average delay calculated as excess-travel time (min)		
Period	**Depart**	**Arrival**	**Average**	**Depart**	**Arrival**	**Average**	**Depart**	**Arrival**	**Average**
Feb-00	18.96	14.99	16.95	15.41	12.41	13.89	15.70	9.94	12.79
Mar-00	18.34	13.26	15.77	15.13	10.95	13.02	15.43	9.51	12.44
Apr-00	22.67	19.67	21.16	16.90	16.25	16.57	17.17	13.39	15.27
May-00	27.05	20.29	23.64	19.73	15.77	17.73	20.41	11.00	15.66
Jun-00	33.03	25.25	29.04	24.43	19.73	22.02	25.02	10.91	17.78
Jul-00	33.77	27.82	30.75	23.62	21.98	22.79	24.80	6.85	15.70
Aug-00	33.03	26.82	29.89	23.86	21.27	22.55	25.07	8.09	16.47
Sep-00	22.95	14.71	18.77	17.58	11.61	14.55	18.15	9.52	13.77
Oct-00	18.06	12.34	15.15	14.75	10.11	12.39	15.13	8.76	11.89
Nov-00	21.52	16.95	19.20	16.65	14.04	15.33	16.87	11.98	14.39
Dec-00	41.21	32.21	36.64	29.17	25.74	27.43	28.99	19.81	24.33
Jan-01	18.29	13.83	16.03	14.99	11.41	13.17	15.05	10.05	12.51
Feb-01	20.70	17.4	19.03	15.67	14.54	15.10	15.82	12.99	14.39
Mar-01	17.69	13.1	15.37	13.83	10.69	12.24	14.09	9.79	11.91
Apr-01	24.25	20.14	22.18	17.52	15.74	16.62	18.11	14.3	16.19
May-01	21.81	15.09	18.41	17.00	12.2	14.57	17.49	11.78	14.60
Jun-01	23.49	16.56	19.98	18.39	12.69	15.50	18.24	9.99	14.06
Jul-01	25.68	17.54	21.56	19.6	13.37	16.45	19.94	11.25	15.54
Aug-01	27.74	18.71	23.17	21.14	14.13	17.59	20.98	12.06	16.46
Sep-01	19.79	12.68	16.20	15.53	9.45	12.46	16.06	8.25	12.11
Oct-01	17.07	11.86	14.44	13.42	9.1	11.24	14.15	9.06	11.58
Nov-01	13.57	9.36	11.45	11.55	7.23	9.37	12.41	7.21	9.79
Dec-01	16.69	11.48	14.06	13.3	8.86	11.06	13.94	8.06	10.97
Jan-02	14.14	11.18	12.65	11.2	8.96	10.07	12.04	8.68	10.34
Feb-02	12.39	8.87	10.62	10.5	7.32	8.90	11.48	7.93	9.69
Mar-02	18.05	13.09	15.55	14.47	10.48	12.46	15.16	9.69	12.41
Apr-02	15.58	11.68	13.62	12.93	9.49	11.20	13.99	9.99	11.97
May-02	12.88	8.67	10.76	11.11	6.94	9.01	11.87	7.06	9.44
Jun-02	24.91	18.9	21.88	19.47	14.36	16.89	20.27	13.71	16.96
Jul-02	18.84	12.1	15.44	15.55	9.51	12.50	16.34	9.38	12.82
Aug-02	18.87	12.46	15.64	14.52	9.65	12.06	15.73	9.98	12.83
Sep-02	13.68	8.1	10.87	11.43	6.59	8.99	12.62	8.6	10.59
Oct-02	12.82	7.83	10.30	11.24	6.44	8.82	12.23	7.94	10.06
Nov-02	14.54	10.81	12.66	11.64	8.95	10.29	12.56	10.15	11.35
Dec-02	18.67	14.79	16.72	14.5	11.78	13.13	14.9	11.91	13.39
Jan-03	15.05	12.05	13.54	12.21	9.75	10.97	13.35	10.93	12.13
Feb-03	14.96	13.47	14.21	11.86	10.76	11.31	12.63	10.81	11.71
Mar-03	16.39	13.09	14.73	13.07	11.06	12.06	14.25	12.25	13.25
Apr-03	15.56	11.93	13.73	12.48	10.37	11.42	13.87	12.94	13.40
May-03	15.88	11.28	13.56	12.99	9.71	11.34	14.11	11.61	12.85
Jun-03	15.91	10.14	12.98	13.49	8.73	11.07	14.76	10.37	12.53
Jul-03	25.85	18.7	22.22	20.26	15.91	18.05	21.23	15.67	18.41
Aug-03	22.26	15.54	18.85	17.53	13.19	15.33	18.41	13.01	15.67

TABLE A-6
AVERAGE MONTHLY DELAYS AT ORD: JANUARY 1998 - SEPTEMBER 2004

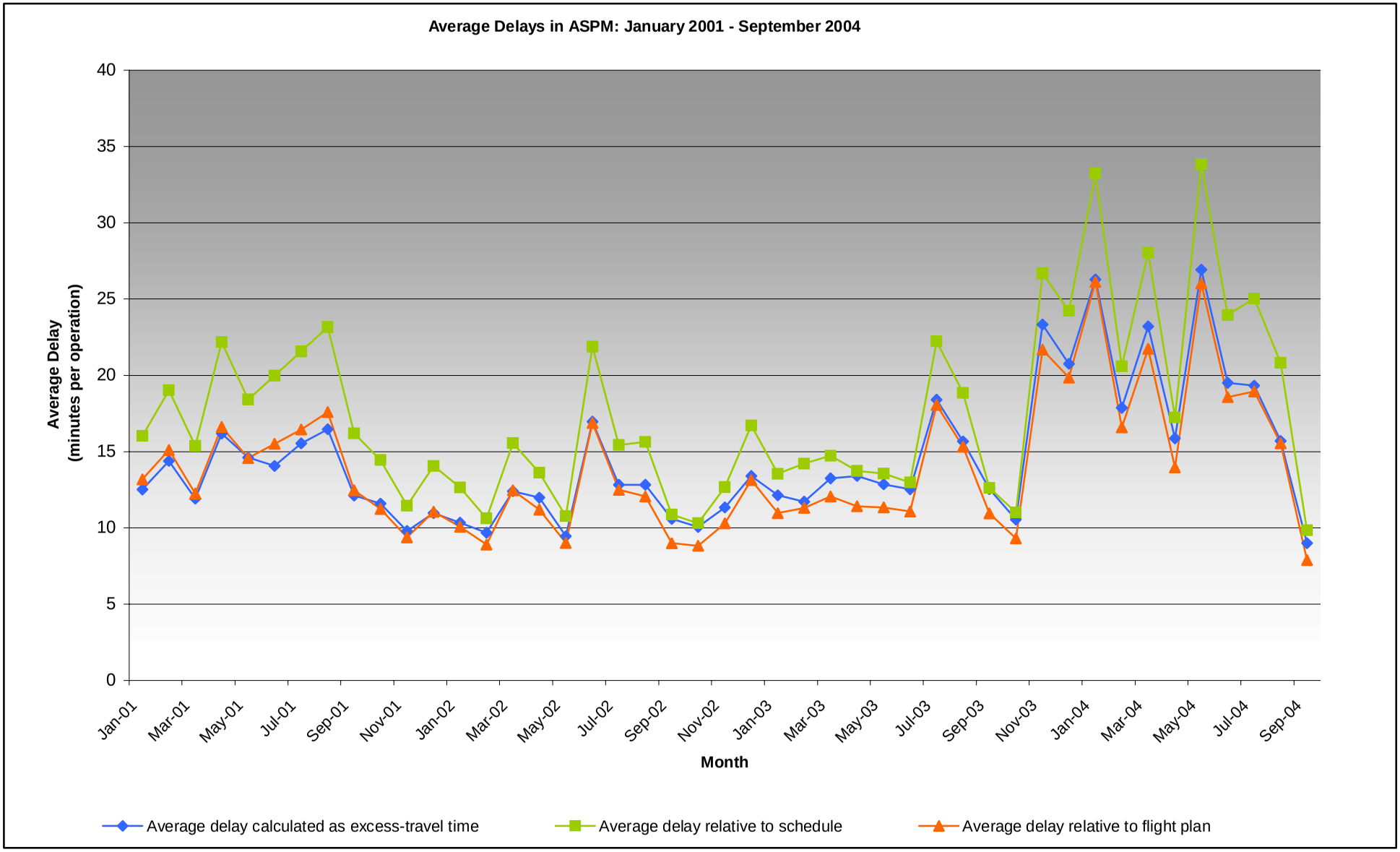
	Average delay relative to schedule (min)			Average delay relative to flight plan (min)			Average delay calculated as excess-travel time (min)		
Period	**Depart**	**Arrival**	**Average**	**Depart**	**Arrival**	**Average**	**Depart**	**Arrival**	**Average**
Sep-03	15.41	9.87	12.62	13.28	8.67	10.95	14.29	10.83	12.54
Oct-03	13.23	8.78	11.01	11.24	7.39	9.32	12.43	8.67	10.55
Nov-03	26.96	26.43	26.70	20.21	23.16	21.68	20.72	25.97	23.34
Dec-03	26.28	22.17	24.23	20.58	19.12	19.85	20.81	20.72	20.77
Jan-04	34.62	31.84	33.24	25.2	27.06	26.13	25.82	26.77	26.29
Feb-04	23.26	17.91	20.59	17.98	15.18	16.58	18.56	17.19	17.88
Mar-04	30.08	26.02	28.05	21.77	21.7	21.74	22.61	23.8	23.20
Apr-04	19.80	14.68	17.24	15.4	12.53	13.96	16.28	15.47	15.87
May-04	38.61	29.05	33.84	28.94	23.09	26.02	29.15	24.68	26.92
Jun-04	28.71	19.19	23.96	22.22	14.91	18.57	22.38	16.62	19.50
Jul-04	30.11	19.95	25.03	22.84	15.06	18.95	23.03	15.61	19.32
Aug-04	24.84	16.79	20.81	18.82	12.27	15.54	19.31	12.07	15.69
Sep-04	13.68	6.00	9.84	11.38	4.4	7.89	12.43	5.56	8.99

Source: Leigh Fisher Associates [TPC] Analysis of data obtained from the FAA's Aviation System Performance Metrics (ASPM) data system, October 2004.

TABLE A-7
AVERAGE DELAYS FOR THE 35 AIRPORTS CONSIDERED IN OEP - RELATIVE TO SCHEDULE, FLIGHT PLAN, AND EXCESS TRAVEL TIME - RANKED BY 2003 RESULTS

		Average delay relative to schedule (minutes per operation)						Average delay relative to flight plan (minutes per operation)						Average delay calculated as excess-travel time (minutes per operation)					
Rank	Airport	1998	1999	2000	2001	2002	2003	1998	1999	2000	2001	2002	2003	1998	1999	2000	2001	2002	2003
1	EWR	21.1	23.1	22.9	18.5	12.9	17.5	18.3	20.3	19.9	16.0	11.4	15.9	17.4	19.6	18.7	16.4	12.5	16.8
2	PHL	14.7	18.4	20.6	16.8	14.4	16.0	12.6	14.7	16.5	13.8	12.4	14.1	11.8	13.5	15.3	14.6	13.3	15.1
3	**ORD**	**15.2**	**18.2**	**23.0**	**17.8**	**13.9**	**16.7**	**12.4**	**14.8**	**17.8**	**13.9**	**11.2**	**13.7**	**10.8**	**13.2**	**15.4**	**13.4**	**11.8**	**14.9**
4	LGA	15.4	20.1	31.3	19.8	14.9	15.9	13.5	17.2	25.7	16.3	12.3	13.5	12.1	15.8	23.8	17.0	13.0	14.8
5	ATL	15.6	17.0	18.6	15.1	14.7	14.1	13.6	14.7	15.4	12.6	12.8	13.0	12.5	13.6	14.0	12.3	12.7	13.5
6	JFK	17.2	18.8	20.2	18.7	14.3	15.3	13.9	15.1	16.0	15.0	11.7	12.5	11.0	12.2	13.6	12.8	10.4	11.1
7	MSP	14.8	13.7	15.2	12.8	11.5	10.6	12.2	11.4	12.5	10.7	9.8	9.4	11.3	11.2	11.5	11.1	10.8	10.2
8	MDW	14.7	16.1	19.2	13.8	12.6	12.1	11.1	12.2	14.1	10.4	10.4	10.0	8.1	9.1	10.7	8.8	9.5	9.6
9	IAD	13.7	15.0	16.6	14.4	13.0	13.8	11.7	12.3	12.6	10.8	10.1	11.3	8.3	10.0	10.4	8.9	8.1	9.6
10	DFW	11.2	13.3	16.2	14.1	11.6	10.7	9.3	10.7	12.7	11.3	9.3	9.1	9.1	10.0	11.7	11.1	9.8	9.4
11	PHX	15.3	14.8	17.4	13.0	11.1	11.6	12.3	12.1	13.8	10.6	9.2	9.7	9.4	9.8	11.1	9.6	8.8	9.4
12	CLT	9.6	10.9	12.0	10.0	9.7	10.7	8.3	8.6	9.5	8.1	8.2	9.2	7.4	7.2	8.6	8.3	9.0	9.3
13	BOS	14.5	15.9	20.3	16.6	11.1	11.8	12.4	13.1	16.3	13.3	9.0	10.0	10.1	10.8	13.4	12.4	8.4	9.0
14	MIA	14.2	16.6	16.9	15.4	12.4	14.0	10.7	12.2	12.5	11.8	9.9	11.1	8.1	8.8	8.9	8.8	8.1	8.8
15	CVG	10.1	12.3	14.2	9.8	10.3	11.1	9.2	11.3	12.7	8.6	9.2	10.1	8.3	9.6	9.9	7.2	7.9	8.8
16	MEM	11.9	10.4	11.6	11.0	11.8	10.7	10.0	8.9	9.8	9.6	10.6	9.8	8.1	7.1	7.6	8.0	9.4	8.7
17	IAH	11.9	11.9	13.3	12.0	10.3	10.0	9.9	9.8	11.0	9.9	9.1	9.0	8.3	8.1	9.2	8.9	8.8	8.5
18	STL	16.8	15.6	16.4	12.3	11.1	9.4	14.3	13.0	13.6	10.6	9.4	8.2	13.1	11.9	12.1	10.6	10.3	8.5
19	DTW	14.9	14.7	15.9	12.4	11.5	9.4	11.1	11.0	12.0	9.8	9.1	7.9	10.3	10.7	11.7	10.9	10.4	8.4
20	BWI	11.2	13.9	15.0	12.2	12.2	11.7	9.0	10.7	11.2	9.5	9.7	9.7	6.1	7.1	7.8	7.7	8.3	8.4
21	SFO	21.5	17.1	21.5	15.1	11.2	10.7	18.1	14.1	17.3	12.4	9.5	9.3	15.7	12.5	14.1	10.8	8.7	8.2
22	CLE	10.9	13.4	13.7	10.0	9.2	10.9	8.9	10.9	11.1	8.1	7.7	9.3	7.3	8.6	9.1	7.1	6.4	7.7
23	FLL	12.1	15.5	17.5	14.4	12.3	12.3	9.5	11.8	12.8	10.8	9.8	10.0	6.2	7.5	8.1	7.5	7.1	7.5
24	PIT	9.4	11.9	12.8	10.8	9.3	10.5	7.9	9.2	9.7	8.4	7.4	8.6	7.0	7.3	7.8	7.5	6.8	7.5
25	DEN	13.2	12.4	18.0	15.7	10.2	9.1	11.1	10.7	15.0	12.4	8.5	7.9	8.3	8.1	10.6	9.5	7.4	7.3
26	LAS	13.6	14.0	17.0	13.2	11.6	11.1	9.8	10.3	11.9	9.5	8.9	8.8	6.4	6.9	7.8	6.9	6.7	7.1
27	DCA	10.0	11.9	13.2	11.4	8.2	9.9	8.4	9.4	10.3	8.8	6.3	8.0	6.8	7.1	8.1	7.6	5.5	6.8
28	LAX	12.6	13.5	16.8	12.7	9.0	8.8	9.5	10.3	12.3	9.5	6.7	7.1	6.9	8.3	9.7	8.6	6.3	6.7
29	SEA	11.4	12.2	13.5	13.8	9.6	8.4	9.2	9.9	10.5	11.0	7.5	7.2	6.8	7.7	8.1	8.8	6.8	6.4
30	HNL	NA	NA	13.4	13.3	10.4	8.4	NA	NA	9.3	9.8	7.4	6.3	NA	NA	6.1	7.2	6.4	6.2
31	SLC	10.2	9.6	12.3	11.1	8.8	8.2	8.7	8.0	9.9	8.9	7.3	7.0	7.5	7.0	7.9	7.6	6.2	5.9
32	MCO	10.9	12.9	15.2	12.2	10.0	10.1	8.4	9.6	11.3	9.1	7.8	8.3	5.6	6.1	7.1	6.3	5.5	5.8
33	TPA	11.2	13.2	13.6	11.7	9.9	9.8	8.8	9.9	9.9	8.7	7.7	8.1	5.6	6.0	5.9	5.8	5.3	5.7
34	SAN	11.4	11.4	14.3	11.6	8.8	8.8	8.5	8.5	10.4	8.8	7.0	7.2	5.1	5.2	6.2	6.1	5.5	5.7
35	PDX	10.0	9.5	11.1	10.3	8.5	7.5	8.2	8.0	8.8	8.3	7.0	6.5	5.7	5.7	5.9	5.4	5.0	4.9

Source: Leigh Fisher Associates [TPC] analysis of data obtained from the FAA's Aviation System Performance Metrics (ASPM) data system, October 2004.



Source: Leigh Fiahser Associates [TPC] based on ASPM data, October 2004.

Chicago O'Hare International Airport

O'Hare Modernization
Environmental Impact Statement

Average Delays in ASPM:
January 2001 - September 2004

▶ Exhibit A-16

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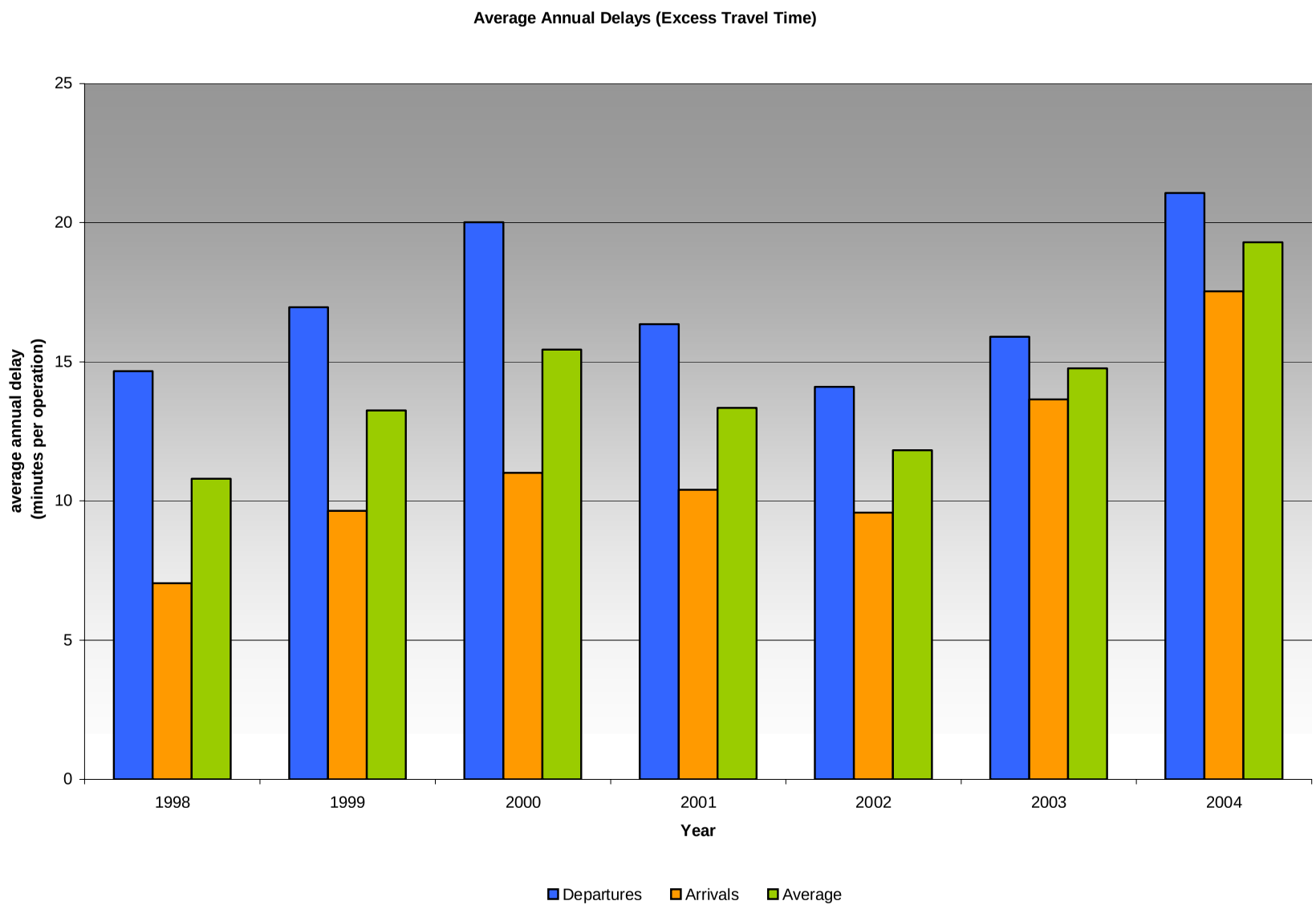

Source: Leigh Fisher Associates [TPC] based on ASPM data, October 2004.

Chicago O'Hare International Airport

O'Hare Modernization
Environmental Impact Statement

Average Annual Delays (Excess Travel Time)

Exhibit A-17

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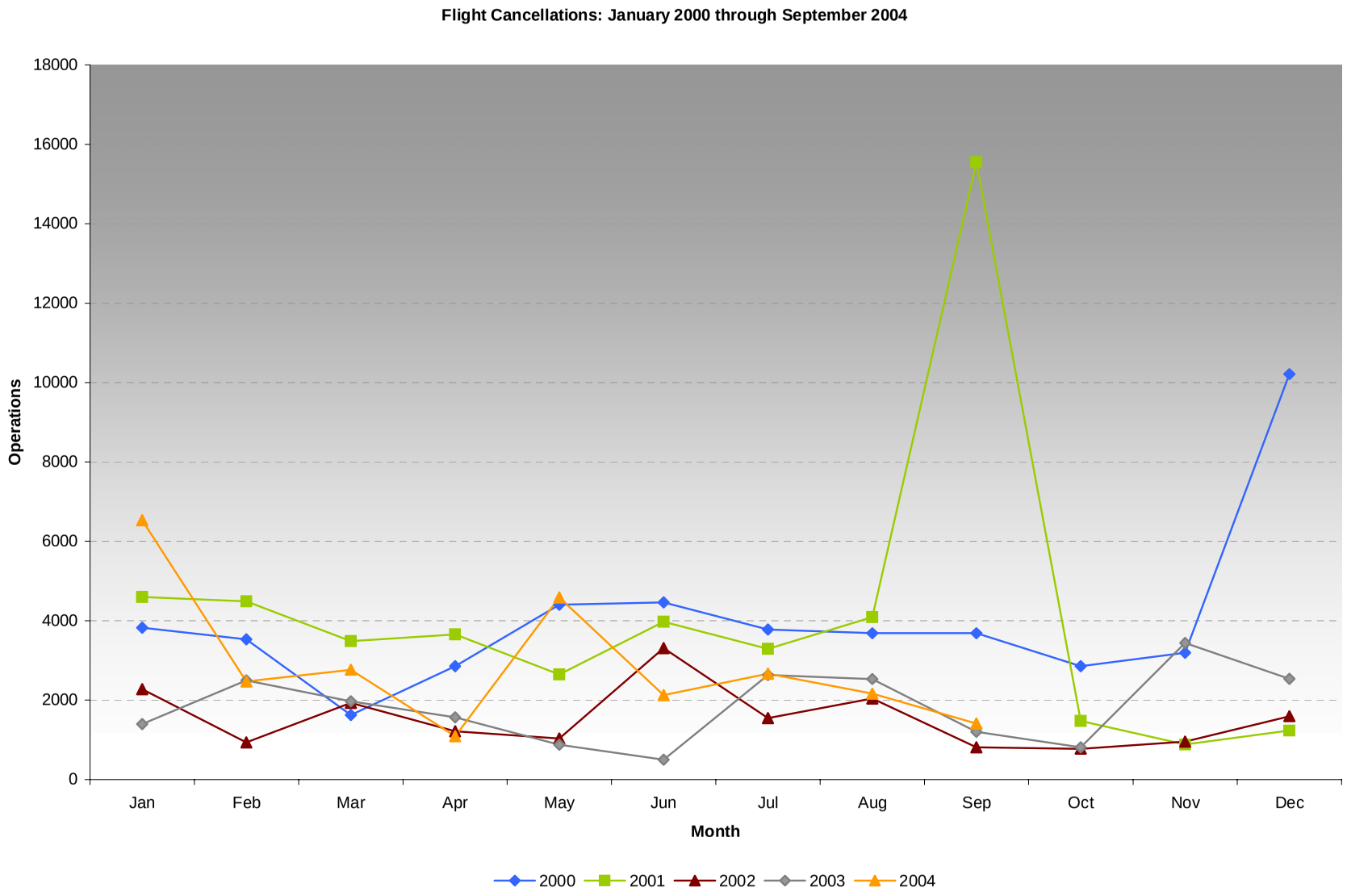

Source: Leigh Fisher Associates [TPC] based on ASPM data, October 2004.

Chicago O'Hare International Airport

O'Hare Modernization
Environmental Impact Statement

Flight Cancellations: 2000 - 2004

▶ Exhibit A-18

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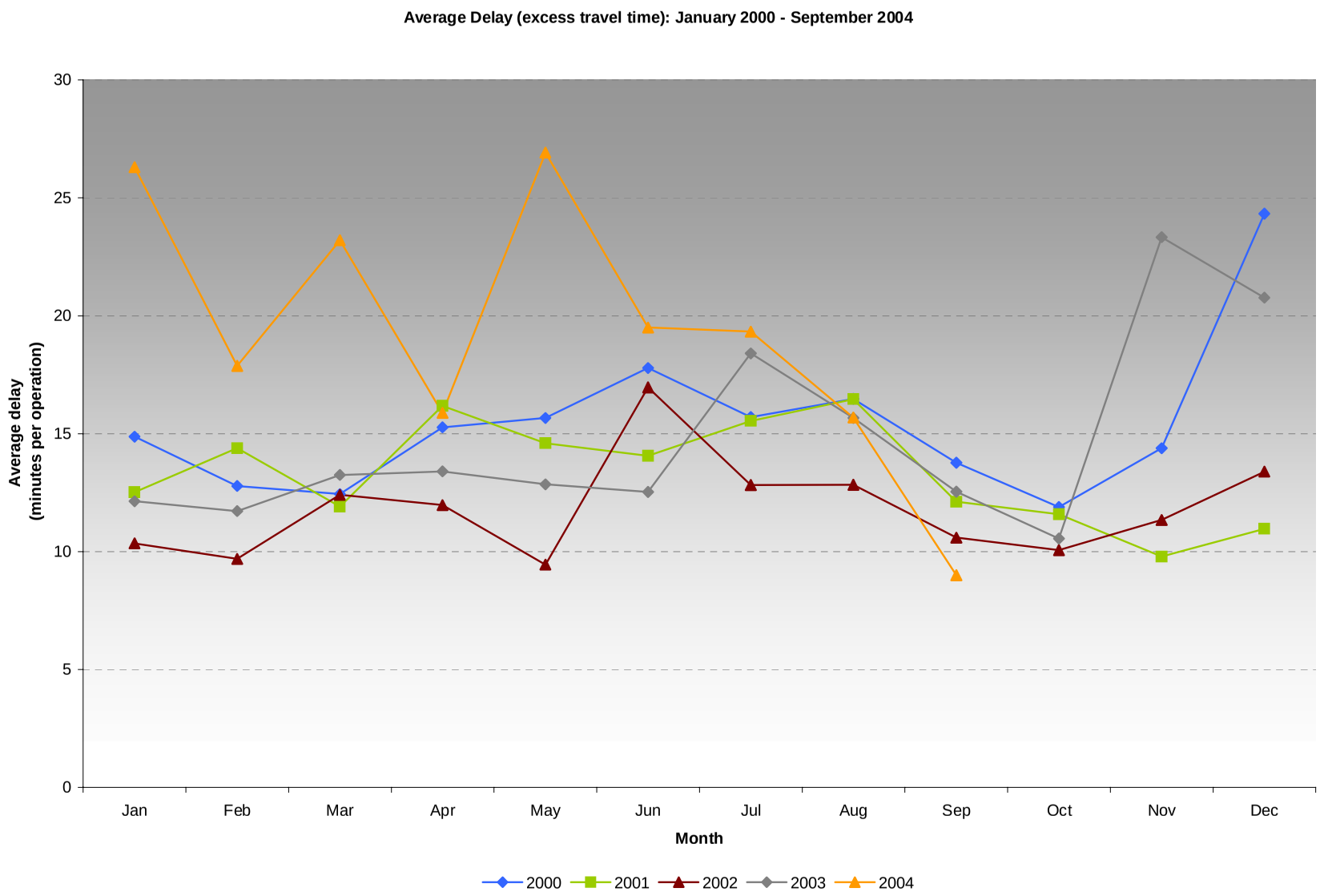

Source: Leigh Fisher Associates [TPC] based on ASPM data, October 2004.

Chicago O'Hare International Airport

O'Hare Modernization
Environmental Impact Statement

Average Delay (Excess Travel Time): 2000 - 2004

▶ Exhibit A-19

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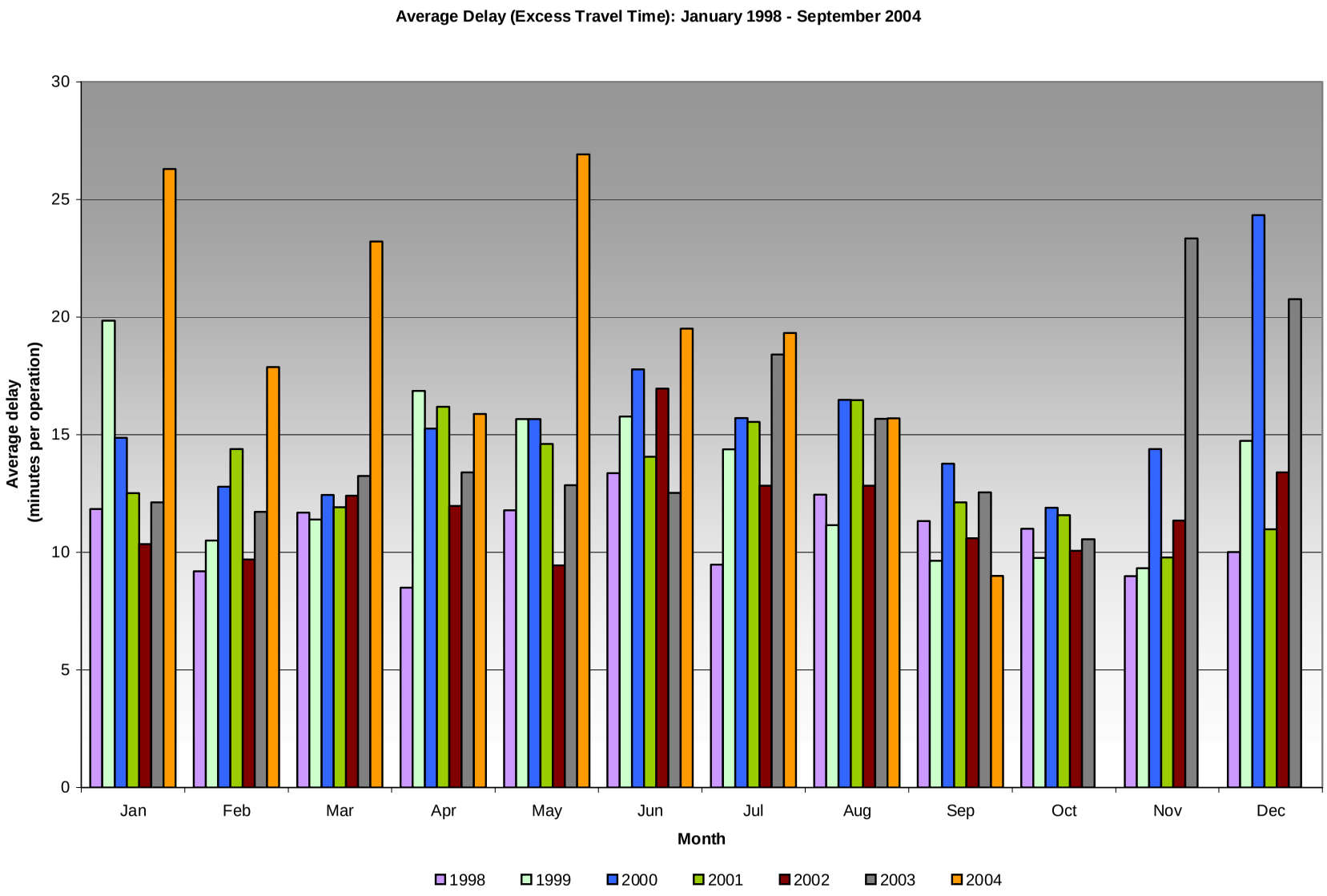

Source: Leigh Fisher Associates [TPC] based on ASPM data, October 2004.

Chicago O'Hare International Airport

O'Hare Modernization
Environmental Impact Statement

Average Delay (Excess Travel Time): 1998 - 2004

Exhibit A-20

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A.6 OTHER AIRPORTS SERVING THE CHICAGO REGION

Airports are classified as air carrier, commercial service, general aviation, military, cargo, and private. Air carrier, commercial service, and cargo airports provide scheduled air service by commercial airlines. All other public airports, unless operated by the military, are considered general aviation airports. General aviation airports include a wide range of aircraft operations and can be publicly or privately owned and operated. In some cases, an airport can be a joint use airport where military operations take place with air carrier and/or general aviation operations.

Table A-8 lists airports within approximately 30 nautical miles (nm)[15] of O'Hare. This list consists of two air carrier airports, one commercial service airport, and thirteen general aviation airports.

TABLE A-8
OTHER AIRPORTS WITHIN 30 MILES OF O'HARE

Airport	City	Type	Within O'Hare Class B Airspace(a)	Fiscal Year 2001 Annual Operations(b)
Aurora Municipal Airport	Aurora, IL	General Aviation	No	111,167
Campbell Airport	Grayslake, IL	General Aviation	Yes	21,000
Chicago Midway International Airport	Chicago, IL	Air Carrier	Yes	280,527
Clow International Airport	Plainfield, IL	General Aviation	Yes	62,000
DuPage Airport	West Chicago, IL	General Aviation	Yes	193,593
Frankfort	Frankfort, IL	General Aviation	No	22,000
Gary/Chicago International Airport	Gary, IN	Air Carrier	No	48,483
Howell-New Lenox	New Lenox, IL	General Aviation	No	29,930 (c)
Joliet Regional	Joliet, IL	General Aviation	No	30,000
Lake in the Hills	Lake in the Hills, IL	General Aviation	Yes	43,000
Lansing Municipal	Lansing, IL	General Aviation	No	65,000
Lewis University Airport	Romeoville, IL	General Aviation	Yes	94,248
Palwaukee Municipal Airport	Wheeling, IL	General Aviation	Yes	173,461
Schaumburg Regional Airport	Schaumburg, IL	General Aviation	Yes	84,360
Waukegan Regional Airport	Waukegan, IL	General Aviation	No	95,118

Notes: (a) Outermost boundary of Class B airspace is a 25 nm radius from the center of O'Hare;
(b) Terminal Area Forecast, Fiscal Year 2002. Federal Aviation Administration.
(c) Howell-New Lenox is not listed in 2002 TAF; Number of yearly operations based on average of 82 per day according to Website, http://www.airnav.com; November 2004.

Multiple airport systems are a feature of nearly all metropolitan areas that generate high levels of originating traffic.[16] The definition of a multi-airport system is that set of significant airports

[15] 1 nautical mile (nm) = 1.15 statute miles.
[16] Airport Systems, Planning, Design, and Management, R. DeNeufville and A Odoni, page 134, McGraw-Hill 2003.

that serve commercial transport in a metropolitan region without regard to ownership or political control of the individual airports.[17] The Chicago Airport System, as defined by the City of Chicago Department of Aviation, consists of O'Hare and Midway. However, a number of commercial service airports in neighboring communities, including Milwaukee's General Mitchell International Airport, the Greater Rockford Airport, and Gary/Chicago International Airport, maintain service areas[18] that at least partially overlap those of O'Hare and Midway (i.e., north suburbs for Milwaukee, northwestern suburbs for Rockford, northwestern Indiana for Gary). In addition, it should be noted that both Milwaukee and Rockford aggressively market themselves as regional alternatives to O'Hare within their respective service areas. Thus, these facilities combine to serve part of the total air transportation needs of the Chicago region. Each of these airports serves a distinct role as described in the following sections. In addition, the State of Illinois is proposing to build a new commercial service airport, known as the South Suburban Airport (SSA), near Peotone, Illinois. **Exhibit A-21** shows the location of O'Hare relative to these other airports. The following sections describe the other commercial service airports in the Chicago Airport System.

A.6.1 Midway International Airport

Midway, owned by the City of Chicago, is one of the fastest growing commercial service airports in the nation and is classified by the FAA as a large hub. Midway complements O'Hare by providing service by low-fare airlines that offer point-to-point service to local passengers. International service has also been provided.

As a result of the recent significant growth in activity, improvements at Midway have included the recently completed two-level terminal facility on the east side of Cicero Avenue, opposite the airfield. In conjunction with the development of the new terminal, a new access roadway system with separate curb fronts for arriving and departing passengers has been constructed. A new two-level concourse and gate facility is connected to the terminal by a pedestrian bridge that crosses Cicero Avenue. The original terminal plan called for 41 gates (old terminal had 29), however a change occurred during construction with two gates being added with construction of the "banana" concourse annex. This resulted in 43 gates being available from the Concourse facility on the west side of Cicero Avenue. The Concourse facility also includes a Federal Inspection Service (FIS) area.

Aircraft demand at Midway Airport is expected to exceed its operational capability during the planning horizon. Based on current air traffic procedures, the airfield at Midway can process about 350,000 annual aircraft operations.[20]

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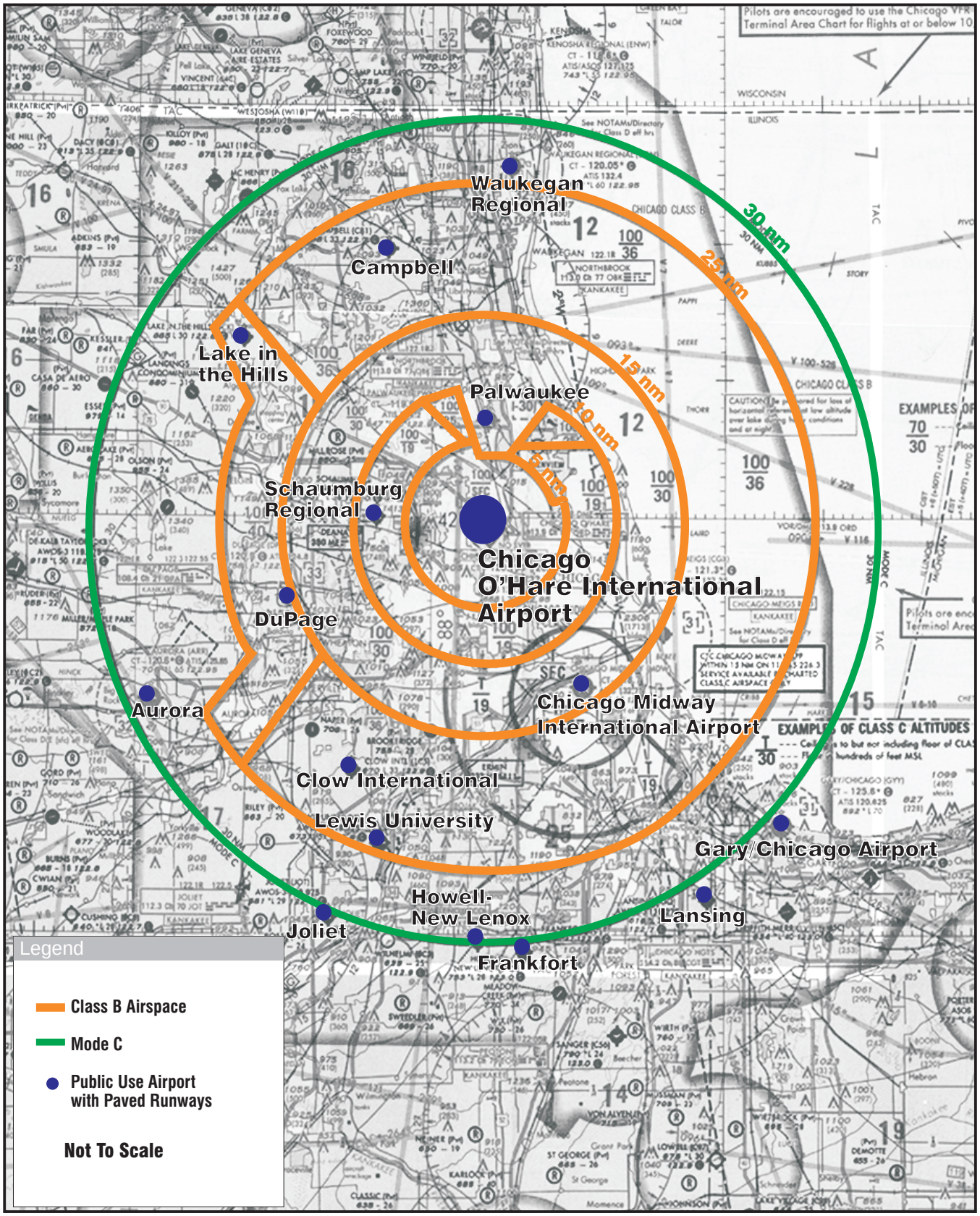
[17] Airport Systems, Planning, Design, and Management, R. DeNeufville and A Odoni, page 132, McGraw-Hill 2003.
[18] Commonly accepted as a one-hour drive time.
[20] Crawford, Murphy & Tilly Inc. [TPC] Annual Service Volume Computations, Airport Capacity and Delay, FAA, AC 150/5060-5.



Source: FAA Chicago Section 21 Aeronautical Chart, November 2001

Chicago O'Hare International Airport

O'Hare Modernization Environmental Impact Statement

Airports and Airpsace within 30 Nautical Miles (nm) of O'Hare

▶ Exhibit A-21

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A.6.2 Gary/Chicago International Airport

In 1995, the City of Chicago and the City of Gary, Indiana, signed an agreement establishing the Chicago/Gary Regional Airport Authority. This agreement provides for certain coordination in development and operation between O'Hare, Midway, and the Gary/Chicago International Airport (GYY). GYY is situated in Lake County, Indiana, about 25 miles southeast of the Chicago Central Business District. GYY has had commercial service intermittently in recent years and is actively pursuing air carriers to establish and expand service. The Airport currently provides commercial service to several locations. In 2002, GYY accommodated about 50,800 aircraft operations (including air cargo, military, and general aviation operations).[21]

A Final Environmental Impact Statement for proposed improvements at the Gary/Chicago International Airport was signed on October 8, 2004. A notice of availability was published on October 19, 2004.[22] A notice of availability of the Record of Decision (ROD) for proposed improvements at the Gary/Chicago International Airport was published on March 24, 2005.[23] The Final EIS states,

> The Gary/Chicago Airport Authority, operator of the Gary/Chicago International Airport, submitted an Airport Layout Plan for various items listed in the Airport Authority's 2001 Master Plan to address enhancements to the Runway Safety Area [RSA] of Runway 12-30 to bring the runway into compliance with current FAA design standards. Also addressed are other improvements to the airport recommended in the 2001 Master Plan and a Railroad Relocation Study. These improvements include: Improvements to existing Runway 12-30 to conform with current FAA Standards, the primary air carrier runway at the Gary/Chicago International Airport: acquire land northwest of airport to allow for modifications to runway safety area (RSA); relocate EJ&E Railway, with phased relocation including possible north shift alternative that is under consideration; modify ongoing cleanup activities for compatibility; relocate airside perimeter roadway with security fencing (including addition of southwest access road) with phased relocation; bury transmission line; extend Runway 12 to the northwest (approximately 546 feet by 150 feet); relocate Runway 12-30 navaids; improve/grade RSA for Runway 12 (approximately 1,100 feet); relocate Runway 12 threshold to remove prior displacement; displace Runway 30 threshold using declared distance standards approximately 546 feet to the northwest to improve Runway 30 RSA; extend parallel Taxiway A to new end of Runway 12; and acquire land southeast of airport, located within or immediately adjacent to runway protection zone (RPZ). Improvements to provide additional runway length on Runway 12-30 (proposed to occur simultaneously with and requiring accomplishment of the improvements to conform to FAA standards described above): acquire additional land or rights northwest of existing runway; extend Runway 12-30 to the northwest (up to approximately 1,354 feet by 150 feet) [when completed, the primary Runway 12/30 will be 8,900_feet in length]; relocate Runway 12 navaids; extend parallel Taxiway A to new end of Runway 12; construct deicing hold pads on Taxiway A at the ends of Runway 12 and Runway 30; develop two high-speed exit taxiways; improve/grade extended Runway 12 safety area (approximately 1,100 feet); relocate Runway 12 threshold to end of extended runway pavement. Expansion of existing passenger terminal and apron to accommodate projected demands, based upon the low case forecast, through the year 2020. Analysis of site(s) adjacent to extended Runway

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[21] 2002 Terminal Area Forecast, Federal Aviation Administration, Years are fiscal.

[22] The Notice of Availability for the Gary/Chicago International Airport Final EIS, FAA, Federal Register, Volume 69, October 19, 2004.

[23] The Notice of Availability for the Gary/Chicago International Airport Record of Decision, FAA, Federal Register, Volume 70, Number 56, March 24, 2005.

12-30 to preserve flexibility and land-use compatibility for potential aviation related development, including new passenger terminal and air cargo areas, and to allow acquisition and/or reservation of these areas for the long term.[24]

A.6.3 Greater Rockford Airport

The Greater Rockford Airport is located approximately 80 miles northwest of the Chicago Central Business District. Rockford currently provides commercial service to several locations. Rockford is also home to United Parcel Service's (UPS) second largest air hub sorting facility and currently ranks 23rd in the nation in terms of cargo landed weight. Rockford currently has two intersecting runways, the longest of which is 10,000 feet with a Category III instrument landing system. Because of these capabilities, aircraft are sometimes diverted from O'Hare to Rockford during poor weather conditions.

A.6.4 General Mitchell International Airport

General Mitchell International Airport, owned and operated by Milwaukee County, is located in Milwaukee, Wisconsin, approximately 85 miles north of the Chicago Central Business District. General Mitchell is a medium-hub commercial service airport that provides non-stop or direct service to over 90 cities. The Airport currently has five runways, including two sets of parallels and a passenger terminal facility with 42 gates. General Mitchell is currently in the process of completing an Airport Master Plan for the expansion of the airport. The current proposal includes the extension of two existing runways and construction of a new 7,000-foot third parallel runway.

A.6.5 Proposed South Suburban Airport

The State of Illinois is proposing to build a new commercial service airport, known as the South Suburban Airport (SSA), near Peotone, Illinois. On July 28, 2000, the FAA published a Notice of Intent (NOI) to prepare a tiered EIS for FAA site approval and the proposed acquisition of land by the State of Illinois. The proposed action reviewed in the SSA Tier 1 EIS was FAA's site approval to preserve the option of developing a potential, future air carrier airport to serve the greater Chicago Market Area as determined necessary and appropriate to meet future aviation capacity needs. Site approval for the future option allowed for land acquisition prior to the site undergoing suburban development. At a later date, it will be determined how market demands would be met. The FAA's proposed site approval was based upon the continuing need to protect the airspace and preserve a technically feasible site from encroachment by suburban development. On July 12, 2002, the FAA issued a Record of Decision on the SSA Tier 1 EIS approving the site.[25]

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[24] Gary/Chicago International Airport Final EIS, coversheet, FAA, October 8, 2004.

[25] Record of Decision for Tier 1: FAA Site Approval and Land Acquisition by the State of Illinois, Proposed South Suburban Airport, U.S. Department of Transportation, Federal Aviation Administration, July 12, 2002.

On October 28, 2003, the FAA issued a NOI to prepare a Tier 2 EIS for the first phase of construction and operation of Inaugural Airport Facilities.[26] Environmental scoping meetings were held in December 2003. The proposed Federal action under consideration in this Tier 2 EIS is approval of an ALP for development of an inaugural air carrier airport at the FAA approved site. It is the State of Illinois' intent that this airport serve the forecast needs of air carrier passengers, cargo, and general aviation within the south suburban area while continuing to preserve the site for future forecast needs. In addition, the State of Illinois is continuing to pursue property acquisition within the footprint of the proposed inaugural Airport.[27] Evaluation of future SSA improvements to address the long-term needs of the greater Chicago Market Area beyond an inaugural facility, including appropriate environmental studies, would be undertaken if and when these needs arise.

[26] Notice of Intent to Prepare a Tiered Environmental Impact Statement and Conduct Environmental Scoping for the Construction and Operation of Inaugural Airport Facilities by the State of Illinois for the South Suburban Airport, Federal Register, Volume 68, Number 208, October 28, 2003.

[27] IDOT letter to Citizens dated November 15, 2004.

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ATTACHMENT A-1
O'HARE MODERNIZATION ACT

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AN ACT in relation to airports.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short Title. This Act may be cited as the O'Hare Modernization Act.

Section 5. Findings and purposes.

(a) The Illinois General Assembly finds and determines:

(1) The reliability and efficiency of the State and national air transportation systems significantly depend on the efficiency of the Chicago O'Hare International Airport. O'Hare has an essential role in air transportation for the State of Illinois. The reliability and efficiency of air transportation for residents and businesses in Illinois and other States depend on efficient air traffic operations at O'Hare.

(2) O'Hare cannot efficiently perform its role in the State and national air transportation systems unless it is reconfigured with multiple parallel runways.

(3) The O'Hare Modernization Program will enhance the economic welfare of the State of Illinois and its residents by creating thousands of jobs and business opportunities.

(4) O'Hare provides, and will continue to provide, unique air transportation functions that cannot be replaced by any other airport in Illinois.

(5) Public roadway access through the existing western boundary of O'Hare to passenger terminal and parking facilities located inside the boundary of O'Hare and reasonably accessible to that western access is an essential element of the O'Hare Modernization Program. That western access to O'Hare is needed to realize the

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full economic opportunities created by the O'Hare Modernization Program and to improve ground transportation in the O'Hare area. It is important to the State that the western access be constructed not later than the time existing runway 14R-32L is removed from service.

(6) For the reasons stated in paragraphs (1), (2), (3), (4), and (5), it is essential that the O'Hare Modernization Program be completed efficiently and without unnecessary delay.

(7) For the reasons stated in paragraphs (1), (2), (3), (4), and (5), it is essential that acquisition of property as required for the O'Hare Modernization Program be completed as expeditiously as practicable.

(8) The General Assembly recognizes that the planning, construction, and use of O'Hare and the planning, construction, and use of the O'Hare Modernization Program will be subject to intensive regulatory scrutiny by the United States and that no purpose would be served by duplicative or redundant regulation of the safety and impacts of the airport or the O'Hare Modernization Program.

(9) The General Assembly recognizes that the City of Chicago has enacted and successfully implemented ordinances that combat past and ongoing discrimination against minorities and women in the market that competes for contracts with the City of Chicago. These ordinances are among the strongest and most successful in the country, and have made significant progress in combatting discrimination against minorities and women throughout northeastern Illinois.

(b) It is the intent of the General Assembly that all agencies of this State and its subdivisions shall facilitate the efficient and expeditious completion of the O'Hare

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Modernization Program to the extent not specifically prohibited by law, and that legal impediments to the completion of the project be eliminated.

Section 10. Definitions. As used in this Act:

"Airport property" means (i) any property or an interest in property that is, or hereafter becomes, part of O'Hare International Airport and (ii) any property or an interest in property that is not part of O'Hare International Airport, but that is acquired by the City of Chicago for purposes of air navigation or air safety in accordance with standards established by the Federal Aviation Administration. "Airport property", however, shall not include any substitute property acquired pursuant to Section 15 of this Act, including property acquired for cemetery purposes.

"O'Hare Modernization Program" means the plan for modernization of O'Hare International Airport by (1) construction and reconfiguration of runways, taxiways, and facilities for movement and servicing of aircraft; construction of western airport access and related roadways; construction and reconfiguration of roadways, terminals, passenger transportation facilities, parking facilities, and cargo facilities; construction of drainage and stormwater management facilities; and related projects, within the area bounded on the north, between Carmen Drive and the Union Pacific/Canadian Pacific Railroad, by Old Higgins Road, and between Old Higgins Road and Touhy Avenue, by the Union Pacific/Canadian Pacific Railroad, and east of the Union Pacific/Canadian Pacific Railroad by the northern boundary of O'Hare existing on January 1, 2003; on the east by the eastern boundary of O'Hare existing on January 1, 2003; on the southeast by the southeastern boundary of O'Hare existing on January 1, 2003; on the south between the eastern boundary of O'Hare and the Union Pacific Railroad by the southern

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boundary of O'Hare existing on January 1, 2003; on the south, between the Union Pacific Railroad and the east boundary of York Road by the Canadian Pacific railroad yard; on the west, between the Canadian Pacific Railroad Yard and the railroad spur intersecting York Road between Arthur and Pratt Avenues, by the east boundary of York Road; and on the northwest, between York Road and the Union Pacific/Canadian Pacific Railroad, by the railroad spur, and between the railroad spur and the point at which the extended eastern boundary of Carmen Drive intersects the Union Pacific/Canadian Pacific Railroad, by the Union Pacific/Canadian Pacific Railroad, and between the Union Pacific/Canadian Pacific Railroad and Old Higgins Road, by the extended eastern boundary of Carmen Drive and by Carmen Drive; and (2) provision for air navigation and air safety outside that area in accordance with standards established by the Federal Aviation Administration.

"O'Hare" means Chicago O'Hare International Airport.

"City" means the City of Chicago.

Section 15. Acquisition of property. In addition to any other powers the City may have, and notwithstanding any other law to the contrary, the City may acquire by gift, grant, lease, purchase, condemnation (including condemnation by quick take under Section 7-103.149 of the Code of Civil Procedure), or otherwise any right, title, or interest in any private property, property held in the name of or belonging to any public body or unit of government, or any property devoted to a public use, or any other rights or easements, including any property, rights, or easements owned by the State, units of local government, or school districts, including forest preserve districts, for purposes related to the O'Hare Modernization Program. The powers given to the City under this Section include the power to acquire, by

condemnation or otherwise, any property used for cemetery purposes within or outside of the City, and to require that the cemetery be removed to a different location. The powers given to the City under this Section include the power to condemn or otherwise acquire (other than by condemnation by quick take under Section 7-103 of the Code of Civil Procedure), and to convey, substitute property when the City reasonably determines that monetary compensation will not be sufficient or practical just compensation for property acquired by the City in connection with the O'Hare Modernization Program. The acquisition of substitute property is declared to be for public use. Property acquired under this Section includes property that the City reasonably determines will be necessary for future use, regardless of whether final regulatory or funding decisions have been made; provided, however, that quick-take of such property is subject to Section 7-103.149 of the Code of Civil Procedure.

Section 20. Condemnation by other governmental units. No airport property may be subject to taking by condemnation or otherwise by any unit of local government other than the City of Chicago, or by any agency, instrumentality, or political subdivision of the State.

Section 21. Reimbursement for tax base losses.

(a) Whenever the City acquires parcels of property within any school district or community college district for the O'Hare Modernization Program, the City shall, for the following taxable year and for each of the 5 taxable years thereafter, pay to that district the amount of the total property tax liability of the acquired parcels to the district for the 2002 taxable year, increased or decreased each year by the percentage change of the district's total tax extension for the current taxable year from the total tax

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extension for the prior taxable year; provided that no annual increase shall exceed the lesser of 5% or the annual increase in the Consumer Price Index. Funds payable by the City under this Section shall be paid exclusively from non-tax revenues generated at airports owned by the City, and shall not exceed the amount of those funds that can be paid for that purpose under 49 U.S.C. 47107(l)(2).

(b) Notwithstanding any other provision of this Section: (i) no funds shall be payable by the City under this Section with respect to any taxable year succeeding the 2009 taxable year; (ii) in no event shall such funds be payable on or after January 1, 2010; (iii) in no event shall the total funds paid by the City pursuant to this Section to all districts for all taxable years exceed $20,000,000; and (iv) any amounts payable to a district by the City with respect to any parcel of property for any taxable year shall be reduced by the amount of taxes actually paid to the district for that taxable year with respect to that parcel or any leasehold interest therein.

(c) Whenever the City acquires property that is subject to this Section, the City shall notify the assessor of the county in which the property is located. The assessor or the clerk of that county shall, on an annual basis, notify the affected school district or community college district of all property that has been identified as being subject to this Section, and shall provide the district and the City with such information as may be required in determining the amounts payable by the City under this Section. The City shall make payments as required by this Section no later than 90 days after that information is received and verified by the City.

(d) As used in this Section, "Consumer Price Index" means the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor.

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Section 25. Jurisdiction over airport property. Airport property shall not be subject to the the laws of any unit of local government except as provided by ordinance of the City. Plans of all public agencies that may affect the O'Hare Modernization Program shall be consistent with the O'Hare Modernization Program, and to the extent that any plan of any public agency or unit or division of State or local government is inconsistent with the O'Hare Modernization Program, that plan is and shall be void and of no effect.

Section 27. Minority and women-owned businesses and workers. All City contracts for the O'Hare Modernization Program shall be subject to all applicable ordinances of the City governing contracting with minority and women-owned businesses and prohibiting discrimination and requiring appropriate affirmative action with respect to minority and women participants in the work force, including but not limited to Section 2-92-330 of the Municipal Code of the City of Chicago (relating to hiring of Chicago residents), Section 2-92-390 of the Municipal Code of the City of Chicago (relating to hiring of women and minorities), and Sections 2-92-420 through 2-92-570 of the Municipal Code of the City of Chicago (relating to contracting with minority-owned and women-owned business enterprises), to the extent permitted by law and federal funding restrictions. The City of Chicago shall file semi-annual reports with the General Assembly documenting compliance with such ordinances with respect to work performed as part of the O'Hare Modernization Program and disclosing the extent to which that work is performed by minority and women workers and minority-owned and women-owned business enterprises.

Section 28. Advisory Committee. An O'Hare Modernization Advisory Committee is established to monitor, review, and

report the utilization of minority owned business enterprises and women owned business enterprises, as defined in Section 2-92-420 in the Municipal Code of the City of Chicago, the employment of women, and the employment of minorities, as defined in Section 2-92-420 of the Municipal Code of the City of Chicago, during the O'Hare Modernization project. The City of Chicago shall work with the Advisory Committee in accumulating necessary information for the Committee to submit reports, as necessary, to the General Assembly and the City of Chicago. The Committee shall consist of 13 members: 7 members selected by the Mayor of the City of Chicago; 2 members selected by the President of the Illinois Senate; 2 members selected by the Speaker of the Illinois House of Representatives; one member selected by the Minority Leader of the Illinois Senate; and one member selected by the Minority Leader of the Illinois House of Representatives.

The Advisory Committee shall meet periodically and shall report the information gathered to the Mayor of the City of Chicago and to the General Assembly by December 31st of every year.

Section 30. Home Rule. It is declared to be the law of this State, pursuant to paragraph (h) of Section 6 of Article VII of the Illinois Constitution, that the regulation and supervision of the City of Chicago's implementation of the O'Hare Modernization Program is an exclusive State function that may not be exercised concurrently by any unit of local government.

Section 90. The Archeological and Paleontological Resources Protection Act is amended by adding Section 1.5 as follows:

(20 ILCS 3435/1.5 new)

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Sec. 1.5. O'Hare Modernization. Nothing in this Act limits the authority of the City of Chicago to exercise its powers under the O'Hare Modernization Act or requires that City, or any person acting on behalf of that City, to obtain a permit under this Act when acquiring property or otherwise exercising its powers under the O'Hare Modernization Act.

Section 91. The Human Skeletal Remains Protection Act is amended by adding Section 4.5 as follows:

(20 ILCS 3440/4.5 new)

Sec. 4.5. O'Hare Modernization. Nothing in this Act limits the authority of the City of Chicago to exercise its powers under the O'Hare Modernization Act or requires that City, or any person acting on behalf of that City, to obtain a permit under this Act when acquiring property or otherwise exercising its powers under the O'Hare Modernization Act.

Section 92. The Illinois Municipal Code is amended by changing Sections 11-51-1, 11-102-2, and 11-102-4 as follows:

(65 ILCS 5/11-51-1) (from Ch. 24, par. 11-51-1)

Sec. 11-51-1. Cemetery removal. Whenever any cemetery is embraced within the limits of any city, village, or incorporated town, the corporate authorities thereof, if, in their opinion, any good cause exists why such cemetery should be removed, may cause the remains of all persons interred therein to be removed to some other suitable place. However, the corporate authorities shall first obtain the assent of the trustees or other persons having the control or ownership of such cemetery, or a majority thereof. When such cemetery is owned by one or more private parties, or private corporation or chartered society, the corporate authorities of such city may require the removal of such cemetery to be

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done at the expense of such private parties, or private corporation or chartered society, if such removal be based upon their application. Nothing in this Section limits the powers of the City of Chicago to acquire property or otherwise exercise its powers under Section 15 of the O'Hare Modernization Act.

(Source: P.A. 87-1153.)

(65 ILCS 5/11-102-2) (from Ch. 24, par. 11-102-2)

Sec. 11-102-2. Every municipality specified in Section 11-102-1 may purchase, construct, reconstruct, expand and improve landing fields, landing strips, landing floats, hangers, terminal buildings and other structures relating thereto and may provide terminal facilities for public airports; may construct, reconstruct and improve causeways, roadways, and bridges for approaches to or connections with the landing fields, landing strips and landing floats; and may construct and maintain breakwaters for the protection of such airports with a water front. Before any work of construction is commenced in, over or upon any public waters of the state, the plans and specifications therefor shall be submitted to and approved by the Department of Transportation of the state. Submission to and approval by the Department of Transportation is not required for any work or construction undertaken as part of the O'Hare Modernization Program as defined in Section 10 of the O'Hare Modernization Act.

(Source: P.A. 81-840.)

(65 ILCS 5/11-102-4) (from Ch. 24, par. 11-102-4)

Sec. 11-102-4. Every municipality specified in Section 11-102-1 may contract for the removal or relocation of all buildings, railways, mains, pipes, conduits, wires, poles, and all other structures, facilities and equipment which may interfere with the location, expansion or improvement of any

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public airport, or with the safe approach thereto or take-off therefrom by aircraft, and may acquire by gift, grant, lease, purchase, condemnation or otherwise any private property, public property or property devoted to any public use or rights or easements therein for any purpose authorized by this Section and Sections 11-102-1 through 11-102-3. Nothing in this Section limits the powers of the City of Chicago to acquire property or otherwise exercise its powers under Section 15 of the O'Hare Modernization Act.

(Source: Laws 1961, p. 576.)

Section 93. The Downstate Forest Preserve District Act is amended by changing Section 5e as follows:

(70 ILCS 805/5e) (from Ch. 96 1/2, par. 6308e)

Sec. 5e. Property owned by a forest preserve district shall not be subject to eminent domain or condemnation proceedings, except as otherwise provided in Section 15 of the O'Hare Modernization Act.

(Source: P.A. 85-993.)

Section 93.5. The Vital Records Act is amended by changing Section 21 as follows:

(410 ILCS 535/21) (from Ch. 111 1/2, par. 73-21)

Sec. 21. (1) The funeral director or person acting as such who first assumes custody of a dead body or fetus shall make a written report to the registrar of the district in which death occurred or in which the body or fetus was found within 24 hours after taking custody of the body or fetus on a form prescribed and furnished by the State Registrar and in accordance with the rules promulgated by the State Registrar. Except as specified in paragraph (2) of this Section, the written report shall serve as a permit to transport, bury or

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entomb the body or fetus within this State, provided that the funeral director or person acting as such shall certify that the physician in charge of the patient's care for the illness or condition which resulted in death has been contacted and has affirmatively stated that he will sign the medical certificate of death or the fetal death certificate. If a funeral director fails to file written reports under this Section in a timely manner, the local registrar may suspend the funeral director's privilege of filing written reports by mail. In a county with a population greater than 3,000,000, if a funeral director or person acting as such inters or entombs a dead body without having previously certified that the physician in charge of the patient's care for the illness or condition that resulted in death has been contacted and has affirmatively stated that he or she will sign the medical certificate of death, then that funeral director or person acting as such is responsible for payment of the specific costs incurred by the county medical examiner in disinterring and reinterring or reentombing the dead body.

(2) The written report as specified in paragraph (1) of this Section shall not serve as a permit to:

(a) Remove body or fetus from this State;

(b) Cremate the body or fetus; or

(c) Make disposal of any body or fetus in any manner when death is subject to the coroner's or medical examiner's investigation.

(3) In accordance with the provisions of paragraph (2) of this Section the funeral director or person acting as such who first assumes custody of a dead body or fetus shall obtain a permit for disposition of such dead human body prior to final disposition or removal from the State of the body or fetus. Such permit shall be issued by the registrar of the district where death occurred or the body or fetus was found. No such permit shall be issued until a properly completed

certificate of death has been filed with the registrar. The registrar shall insure the issuance of a permit for disposition within an expedited period of time to accommodate Sunday or holiday burials of decedents whose time of death and religious tenets or beliefs necessitate Sunday or holiday burials.

(4) A permit which accompanies a dead body or fetus brought into this State shall be authority for final disposition of the body or fetus in this State, except in municipalities where local ordinance requires the issuance of a local permit prior to disposition.

(5) A permit for disposition of a dead human body shall be required prior to disinterment of a dead body or fetus, and when the disinterred body is to be shipped by a common carrier. Such permit shall be issued to a licensed funeral director or person acting as such, upon proper application, by the local registrar of the district in which disinterment is to be made. In the case of disinterment, proper application shall include a statement providing the name and address of any surviving spouse of the deceased, or, if none, any surviving children of the deceased, or if no surviving spouse or children, a parent, brother, or sister of the deceased. The application shall indicate whether the applicant is one of these parties and, if so, whether the applicant is a surviving spouse or a surviving child. Prior to the issuance of a permit for disinterment, the local registrar shall, by certified mail, notify the surviving spouse, unless he or she is the applicant, or if there is no surviving spouse, all surviving children except for the applicant, of the application for the permit. The person or persons notified shall have 30 days from the mailing of the notice to object by obtaining an injunction enjoining the issuance of the permit. After the 30-day period has expired, the local registrar shall issue the permit unless he or she

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has been enjoined from doing so or there are other statutory grounds for refusal. The notice to the spouse or surviving children shall inform the person or persons being notified of the right to seek an injunction within 30 days. Notwithstanding any other provision of this subsection (5), a court may order issuance of a permit for disinterment without notice or prior to the expiration of the 30-day period where the petition is made by an agency of any governmental unit and good cause is shown for disinterment without notice or for the early order. Nothing in this subsection (5) limits the authority of the City of Chicago to acquire property or otherwise exercise its powers under the O'Hare Modernization Act or requires that City, or any person acting on behalf of that City, to obtain a permit under this subsection (5) when exercising powers under the O'Hare Modernization Act.

(Source: P.A. 88-261; 89-381, eff. 8-18-95.)

Section 94. The Illinois Aeronautics Act is amended by changing Sections 38.01 and 47 and by adding Section 47.1 as follows:

(620 ILCS 5/38.01) (from Ch. 15 1/2, par. 22.38a)

Sec. 38.01. Project applications.

(a) No municipality or political subdivision in this state, whether acting alone or jointly with another municipality or political subdivision or with the state, shall submit any project application under the provisions of the Airport and Airway Improvement Act of 1982, or any amendment thereof, unless the project and the project application have been first approved by the Department. No such municipality or political subdivision shall directly accept, receive, or disburse any funds granted by the United States under the Airport and Airway Improvement Act of 1982, but it shall designate the Department as its agent to accept,

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receive, and disburse such funds, provided, however, nothing in this Section shall be construed to prohibit any municipality or any political subdivision of more than 500,000 inhabitants from disbursing such funds through its corporate authorities. It shall enter into an agreement with the Department prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and applicable laws of this state. This subsection (a) does not apply to any project application submitted in connection with the O'Hare Modernization Program as defined in Section 10 of the O'Hare Modernization Act.

(b) The City of Chicago may submit a project application under the provisions of the Airport and Airway Improvement Act of 1982, as now or hereafter amended, or any other federal law providing for airport planning or development, if the application is submitted in connection with the O'Hare Modernization Program as defined in Section 10 of the O'Hare Modernization Act, and the City may directly accept, receive, and disburse any such funds.

(Source: P.A. 92-341, eff. 8-10-01.)

(620 ILCS 5/47) (from Ch. 15 1/2, par. 22.47)

Sec. 47. Operation without certificate of approval unlawful; applications.) An application for a certificate of approval of an airport or restricted landing area, or the alteration or extension thereof, shall set forth, among other things, the location of all railways, mains, pipes, conduits, wires, cables, poles and other facilities and structures of public service corporations or municipal or quasi-municipal corporations, located within the area proposed to be acquired or restricted, and the names of persons owning the same, to the extent that such information can be reasonably ascertained by the applicant.

It shall be unlawful for any municipality or other

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political subdivision, or officer or employee thereof, or for any person, to make any alteration or extension of an existing airport or restricted landing area, or to use or operate any airport or restricted landing area, for which a certificate of approval has not been issued by the Department; Provided, that no certificate of approval shall be required for an airport or restricted landing area which was in existence and approved by the Illinois Aeronautics Commission, whether or not being operated, on or before July 1, 1945, or for the O'Hare Modernization Program as defined in Section 10 of the O'Hare Modernization Act; except that a certificate of approval shall be required under this Section for construction of a new runway at O'Hare International Airport with a geographical orientation that varies from a geographical east-west orientation by more than 10 degrees, or for construction of a new runway at that airport that would result in more than 8 runways being available for aircraft operations at that airport. The Department shall supervise, monitor, and enforce compliance with the O'Hare Modernization Act by all other departments, agencies, and units of State and local government.

Provisions of this Section do not apply to special purpose aircraft designated as such by the Department when operating to or from uncertificated areas other than their principal base of operations, provided mutually acceptable arrangements are made with the property owner, and provided the owner or operator of the aircraft assumes liabilities which may arise out of such operations.

(Source: P.A. 81-840.)

(620 ILCS 5/47.1 new)

Sec. 47.1. Review by Department of O'Hare Modernization Program. The Department shall monitor the design, planning, financing, and construction of the O'Hare Modernization

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Program as defined in Section 10 of the O'Hare Modernization Act in order to ensure that the O'Hare Modernization Program proceeds in a timely, efficient, and safe manner, and shall monitor the effects of the O'Hare Modernization Program on units of local government throughout the State. The Department shall file reports with the General Assembly as the Department deems appropriate concerning the design, planning, financing, and construction of the O'Hare Modernization Program as defined in Section 10 of the O'Hare Modernization Act, and the effects of the O'Hare Modernization Program on units of local government.

Section 95. The Code of Civil Procedure is amended by changing Section 2-103 and adding Section 7-103.149 as follows:

(735 ILCS 5/2-103) (from Ch. 110, par. 2-103)

Sec. 2-103. Public corporations - Local actions - Libel - Insurance companies.

(a) Actions must be brought against a public, municipal, governmental or quasi-municipal corporation in the county in which its principal office is located or in the county in which the transaction or some part thereof occurred out of which the cause of action arose. Except as otherwise provided in Section 7-102 of this Code, if the cause of action is related to an airport owned by a unit of local government or the property or aircraft operations thereof, however, including an action challenging the constitutionality of this amendatory Act of the 93rd General Assembly, the action must be brought in the county in which the unit of local government's principal office is located. Actions to recover damage to real estate which may be overflowed or otherwise damaged by reason of any act of the corporation may be brought in the county where the real

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estate or some part of it is situated, or in the county where the corporation is located, at the option of the party claiming to be injured. Except as otherwise provided in Section 7-102 of this Code, any cause of action that is related to an airport owned by a unit of local government, and that is pending on or after the effective date of this amendatory Act of the 93rd General Assembly in a county other than the county in which the unit of local government's principal office is located, shall be transferred, upon motion of any party under Section 2-106 of this Code, to the county in which the unit of local government's principal office is located.

(b) Any action to quiet title to real estate, or to partition or recover possession thereof or to foreclose a mortgage or other lien thereon, must be brought in the county in which the real estate or some part of it is situated.

(c) Any action which is made local by any statute must be brought in the county designated in the statute.

(d) Every action against any owner, publisher, editor, author or printer of a newspaper or magazine of general circulation for libel contained in that newspaper or magazine may be commenced only in the county in which the defendant resides or has his, her or its principal office or in which the article was composed or printed, except when the defendant resides or the article was printed without this State, in either of which cases the action may be commenced in any county in which the libel was circulated or published.

(e) Actions against any insurance company incorporated under the law of this State or doing business in this State may also be brought in any county in which the plaintiff or one of the plaintiffs may reside.

(Source: P.A. 85-887.)

(735 ILCS 5/7-103.149 new)

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Sec. 7-103.149. Quick-take; O'Hare Modernization Program purposes. Quick-take proceedings under Section 7-103 may be used by the City of Chicago for the purpose of acquiring property within the area bounded on the north, between Carmen Drive and the Union Pacific/Canadian Pacific Railroad, by Old Higgins Road, and between Old Higgins Road and Touhy Avenue, by the Union Pacific/Canadian Pacific Railroad, and east of the Union Pacific/Canadian Pacific Railroad by the northern boundary of O'Hare existing on January 1, 2003; on the east by the eastern boundary of O'Hare existing on January 1, 2003; on the southeast by the southeastern boundary of O'Hare existing on January 1, 2003; on the south between the eastern boundary of O'Hare and the Union Pacific Railroad by the southern boundary of O'Hare existing on January 1, 2003; on the south, between the Union Pacific Railroad and the east boundary of York Road by the Canadian Pacific railroad yard; on the west, between the Canadian Pacific Railroad Yard and the railroad spur intersecting York Road between Arthur and Pratt Avenues, by the east boundary of York Road; and on the northwest, between York Road and the Union Pacific/Canadian Pacific Railroad, by the railroad spur, and between the railroad spur and the point at which the extended eastern boundary of Carmen Drive intersects the Union Pacific/Canadian Pacific Railroad, by the Union Pacific/Canadian Pacific Railroad, and between the Union Pacific/Canadian Pacific Railroad and Old Higgins Road, by the extended eastern boundary of Carmen Drive and by Carmen Drive, for the O'Hare Modernization Program as defined in Section 10 of the O'Hare Modernization Act.

Section 96. The Religious Freedom Restoration Act is amended by adding Section 30 as follows:

(775 ILCS 35/30 new)

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Sec. 30. O'Hare Modernization. Nothing in this Act limits the authority of the City of Chicago to exercise its powers under the O'Hare Modernization Act for the purposes of relocation of cemeteries or the graves located therein.

Section 98. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 99. Effective date. This Act takes effect upon its becoming law, and Section 95 of this Act applies to cases pending on or after the effective date.

ATTACHMENT A-2
O'HARE AIRPORT MASTER PLAN (02/2004)
SECTION 7.3 – IMPLEMENTATION PLAN

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Table VII-1
Preliminary Implementation Schedule

Master Plan Project Component	First Full Year of Operation
OMP Runway Components	
New Future Runway 9L-27R	2007
Extension of Existing Runway 9R-27L (Future Runway 10L-28R)	2009
Relocation of Existing Runway 18-36 (Future Runway 10C-28C)	2009
Extension of Existing Runway 9L-27R (Future Runway 9R-27L)	2013
Relocation of Existing Runway 14L-32R (Future Runway 9C-27C)	2013
Relocation of Existing Runway 14R-32L (Future Runway 10R-28L)	2013
WGP Terminal Components	
Concourse K	2009
Terminal 4	2013
Terminal 6	2013
West Terminal Complex Components	
Satellite Concourse	2009
Terminal Building/Concourse	2013
West Terminal Ground Access	2013

Source: City of Chicago, Department of Aviation
Prepared by: Ricondo & Associates, Inc.

7.3 Capital Development Program Costs

The Master Plan reflects the October 2003 Future ALP and encompasses three capital development programs: OMP, CIP, and WGP. Each capital development program is briefly discussed in this section with its planned capital costs, and major assumptions are shown in **Appendix D**. This section concludes with a review of relevant financial benchmarks over the course of the 20-year planning horizon (i.e., 2003-2022).

7.3.1 OMP Costs

The OMP will be implemented in phases as discussed in Section 7.1, and is expected to be a multi-year process entailing the construction of runways, associated taxiways, and related facilities; relocation of existing facilities; and construction of a new western passenger terminal complex with supporting roadway and parking facilities. The OMP also includes a noise program component to provide sound insulation of eligible schools and single family, owner-occupied homes. The noise program is in addition to the noise mitigation projects included in the Five-Year CIP. The estimated cost of the OMP is approximately $6.6 billion in 2001 dollars. The first full year of operation for the completed OMP is assumed to be 2013.

Table VII-2 summarizes the cost estimates for each component of the OMP, stated in 2001 dollars.

Table VII-2

OMP Cost Estimates (2001 Dollars)

	Project Cost ($000s)
Program Wide Requirements:	
Program Wide Requirements	$58,277
Preliminary Engineering	43,689
Wetlands Mitigation	24,272
Noise Mitigation (OMP-Phase 1)	220,000
Land Acquisition	339,296
Land/Environmental Contingency	223,301
Subtotal – Program Wide Requirements Costs	$908,835
Other Program Costs:	
Miscellaneous Operations Budget	$19,418
Program Contingency	301,660
Subtotal – Other Program Costs	$321,078
Airfield (Design and Construction/Decommission):	
Runway 9L-27R	$548,543
Runway 10L Extension	494,175
Runway 10C-28C	908,739
Runway 18-36 Decommission	2,322
Runway 9R Extension	138,032
Runway 9C-27C	642,789
Runway 14L-32R Decommission	1,422
Runway 10R-28L	365,166
Runway 14R-32L Decommission/Taxiway Conversion	110,157
Subtotal – Airfield Costs	$3,211,345
West Terminal Complex (Design and Construction):	
Western Airside Concourse	$579,832
Energy Plant	59,307
Fuel Storage and Distribution Improvements	61,168
Western Terminal	918,297
Parking Facilities	108,115
Subtotal – West Terminal Complex Costs	$1,726,719
On-Airport Circulation (Design and Construction):	
People Mover	$418,903
Maintenance Facility	13,120
Subtotal – On-Airport Circulation Costs	$432,023
Total OMP Costs (2001 dollars)	$6,600,000

Source: Ricondo & Associates, Inc., and O'Hare Partners, based on cost estimate analyses from TOK, LLC. and AOR.
Prepared by: Ricondo & Associates, Inc.

7.3.2 CIP Costs

The CIP addresses the Airport's facility needs and is essentially a repair and replacement program that ensures the Airport will be able to operate throughout the planning horizon. The 20-Year CIP includes the following types of projects: terminal support improvements, terminal improvements, airfield improvements, H&R system improvements, certain noise mitigation projects, fuel system improvements, and safety and security enhancements. The estimated cost for the 20-Year CIP is $4.1 billion in escalated dollars, as presented in **Table VII-3**.

Table VII-3

CIP Cost Estimates (Escalated Dollars)

	Project Cost ($000s)
Five-Year CIP (2003-2007)	
Terminal Support Improvements	$200,264
Terminal Improvements	425,622
Airfield Improvements	372,198
Heating and Refrigeration	102,761
Noise Mitigation Projects	37,305
Fueling System	98,934
Safety and Security	145,734
Planning and Other Projects	3,333
Subtotal – Five-Year CIP	$1,386,151
Subtotal – Subsequent Years (2008-2022)	$2,742,121
Total 20-Year CIP Cost (escalated dollars) 1/	$4,128,274

1/ Total may not add due to rounding.

Source: City of Chicago, Department of Aviation.
Prepared by: Ricondo & Associates, Inc.

7.3.3 WGP Costs

The WGP was conceived to expand gate capacity through construction of new terminal complexes and enabling projects and provide additional improvements within the Terminal Core Area. In December 2000, the City commenced work on the formulation of WGP Phase 1. In September 2002, in light of changed conditions in the industry and the economy, the City and the airlines agreed to suspend work on the WGP. The City's design-build contractor for the Terminal 6 Complex was directed to complete its 30 percent design submittal and demobilize. All other formulation work was suspended. Work will resume consistent with demand. The WGP is comprised of the following two phases:

- *Phase 1:* (1) construction of a new Terminal 6 Complex (including terminal and concourse facilities, curbfront and circulation roads, parking structure, realignment of terminal access roadways); (2) realignment of the ATS; (3) construction of a Concourse K extension; (4) Terminal 2 interior upgrades; and (5) reconfiguration of Taxiway A/B and construction of new Taxiway N.

- *Phase 2:* (1) construction of a new Terminal 4 including an FIS facility and (2) construction of a Terminal 2 FIS facility.

The WGP design included a reconfigured Terminal 2 with a new FIS facility. For the purpose of the Master Plan, this component of the WGP is not included (as discussed in Section 5.2) and the program cost is adjusted accordingly. However, such improvements to Terminal 2 are not precluded from future development.

The estimated cost of the WGP is approximately $2.6 billion in 1999 dollars, as shown in **Table VII-4**. The first full year of operation is assumed to be 2013.

Table VII-4

WGP Cost Estimates (1999 Dollars)

	Project Cost ($000s)
Airport-wide, Airfield, and Airside Projects	$243,830
Terminal 2 FIS Facilities	$78,680
Terminal 4:	
Enabling Projects	$99,130
Apron and Fueling	88,680
Roadway/Access/ATS	79,030
Terminal	639,490
Utilities	62,050
Subtotal – Terminal 4	$968,380
Terminal 6	
Enabling Projects	$70,560
Apron and Fueling	48,340
Northern Extension	108,980
Parking Structure	114,220
Roadway/Access/ATS	244,450
Tenant Relocations	35,510
Terminal	546,550
Utilities	184,300
Subtotal – Terminal 6	$1,352,910
Total WGP Cost (1999 dollars)	$2,643,800

Source: Landrum & Brown; Project components included in OMP Master Plan selected by Ricondo & Associates, Inc.
Prepared by: Ricondo & Associates, Inc.

7.4 Financial Feasibility

This section demonstrates the City's ability to fund the Master Plan development. The implementation schedule contained in Table VII-1 was utilized for the purposes of demonstrating financial viability; however, actual financial strategies and plans will be determined during the implementation process. The following topics are presented in this section:

- Airport Financial Structure
- Financing Plan
- Debt Service
- Operation and Maintenance Expenses
- Fund Deposits
- Non-Airline Revenues
- Airline Revenues
- Airline Cost per Enplaned Passenger
- Summary

7.4.1 Airport Financial Structure

This section discusses Airport accounting practices, including the cost-revenue center structure utilized for airline rate-setting purposes, the requirement governing the issuance of airport revenue bonds by the City, and the rate-setting mechanisms in place at the Airport.

7.4.1.1 Airport Accounting

The Airport is owned by the City and operated by the DOA. The City maintains the books, records, and accounts of the Airport in accordance with generally accepted accounting principles and also as required by the provisions of the Amended and Restated Airport Use Agreement and Terminal Facilities Lease (Airport Use Agreements), City's General Airport Revenue Bond Ordinance (the Bond Ordinance), and Second Lien Indenture and Third Lien Indenture (collectively, the Indentures). The City's fiscal year ends December 31. All capitalized terms herein are as defined in the Airport Use Agreements, Bond Ordinance, and Indentures.

Under the Airport Use Agreements, in order to equitably allocate the net cost of operating, maintaining, improving, and expanding the Airport among the airlines that are signatory to an Airport Use Agreement (the Airline Parties), various physical and functional areas of the Airport are segregated for the purpose of accounting for the operation and maintenance expenses (O&M Expenses), revenues, required fund deposits, and debt service on Airport Obligations. Each such designated area is a Cost-Revenue Center (CRC). The Airport Use Agreements provide that the aggregate of fees, rentals, and charges paid by the Airline Parties will be sufficient to pay for the net cost of operating, maintaining, and developing the Airport (excluding the Land Support Area) including the satisfaction of debt service coverage, deposit, and payment requirements of the Bond Ordinance and Indentures.

Five CRCs in the Airport's financial structure affect the calculation and adjustment of airline fees, rentals, and charges at the Airport. The CRCs are described as follows:

- *Airfield Area.* The Airfield Area includes the aircraft parking areas, runways, taxiways, infield areas, navigational aids, and other areas/facilities required for aircraft taxiing, landing, and takeoff.
- *Terminal Area.* The Terminal Area includes the domestic terminal structures and a designated portion of the H&R Complex.
- *Terminal Support Area.* The Terminal Support Area includes the public parking facilities, roadways, walkways, automobile rental areas, ground transportation system, and O'Hare Hilton Hotel.

- *International Terminal Area.* The International Terminal Area includes the International Terminal and a designated portion of the H&R Complex.
- *Fueling System.* The Fueling System includes the tank farm and all facilities that are part of the Airport's hydrant fueling system.

The revenues and expenses of the Land Support Area, including certain vacant land and air rights and facilities such as air cargo, hangar, flight kitchen, and freight forwarding facilities, are not included in the calculation of airline fees, rentals, and charges.

7.4.1.2 Bond Ordinance and Indentures

The Bond Ordinance was adopted by City Council of the City on March 31, 1983, and specifies the security for bondholders and provides conditions for the issuance of First Lien general airport revenue bonds (GARBs). The Bond Ordinance has been supplemented and amended from time to time. The Indentures, which have also been supplemented from time to time, provide the conditions for the issuance of Second Lien and Third Lien GARBs.

7.4.1.3 Airport Use Agreements

The City's main financial and operational arrangement with the major airline users of the Airport is contained in the Airport Use Agreements, which contain, among other provisions, contractual support of the Airline Parties for bonds and other obligations issued to fund Airport capital improvements. The Airport Use Agreements are in place to formalize the rights and responsibilities of the airline users and the City. As of August 2003, the City has Airport Use Agreements with 14 air carriers including: Air Canada, American, American Eagle, America West, Atlantic Coast, Continental, Delta, FedEx, Northwest, Trans World, United, US Airways, United Parcel Service, and Air Wisconsin (collectively, the Airline Parties).[1] The term of the Airport Use Agreements expires on May 11, 2018. For purposes of this analysis, beyond the lease expiration in 2018, the same terms and conditions as in the Airport Use Agreements are assumed.

Under the Airport Use Agreements, the City can finance Airport Capital Projects with Airport Obligations upon receipt of approval of a Majority-In-Interest (MII) of the Airline Parties.

Each of the CRCs (except the Land Support Area) has allocated to it Revenues, O&M Expenses, Debt Service (including a Debt Service coverage component), and certain Fund Deposit requirements. Net deficits generated in the Terminal Area and the Airfield Area are paid by the Airline Parties in the form of Terminal Area use charges and Landing Fees, respectively. The net cost of the Fueling System is paid in the form of a Fueling System Fee.

The Airport Use Agreements do not provide for any specific fees and charges related to the Terminal Support Area or the International Terminal Area. Any Terminal Support Area net deficit or net surplus is allocated to the Terminal Area and the International Terminal Area. The net cost of the International Terminal Area is paid by the airlines that are signatory to an International Terminal Use Agreement (International Terminal Airline Parties or ITAPs). Airlines or other users of the Airport who are not signatories to an Airport Use Agreement or an International Terminal Use Agreement are assessed Airport fees and charges enacted by City ordinances. The Airline Parties and ITAPs are collectively referred to as the Signatory Airlines.

[1] TWA was acquired by American Airlines in April 2001 and is operated as American Airlines.

7.4.2 Financing Plan

Funding sources for the Master Plan include the following:

- Federal grants-in-aid under the Airport Improvement Program (AIP)
- Passenger facility charges (PFCs)
- General airport revenue bonds (GARBs)
- Third-party financing

The actual amount of funding available from certain of these sources will depend primarily on future levels of aviation activity at the Airport, future federal reauthorizations, and future airline approvals. **Table VII-5** shows the estimated amount of Master Plan funding sources, which are described in the following paragraphs.

Table VII-5

Estimated Sources of Funds

	Sources of Funds (Percentages)						
	FAA AIP Grants		Passenger Facility Charge		Airport Revenue Bonds	Third-Party Financing[2/]	
Program	Entitlement	Discretionary[1/]	Pay-As-You-Go	Bond Funds			Total[3/]
OMP	1%	8%	2%	20%	59%	10%	100%
CIP	0%	6%	11%	30%	54%	0	100%
WGP	0	0	0	0	78%	22%	100%

1/ Includes discretionary LOI funds, discretionary noise funds, and assumed funding for safety and security projects.

2/ Assumes that 33.3 percent of terminal project costs are eligible for third-party financing resulting in 10 percent of OMP total project cost and 22 percent of WGP total project cost.

3/ Totals may not add due to rounding.

Source: Capital Development Program OMP and WGP – Fullerton & Friar, Inc.; Capital Development Program CIP – City of Chicago and Fullerton & Friar, Inc.
Prepared by: Ricondo & Associates, Inc.

7.4.2.1 FAA AIP

The Airport and Airway Improvement Act of 1982 (the Act) authorizes the AIP. The Act authorized funding for the AIP from the Airport and Airway Trust Fund for airport development, airport planning, and noise compatibility planning and programs. The Airport and Airway Trust Fund is funded through several aviation user taxes on airline fares, air freight, and aviation gasoline.

Under the AIP, the Airport receives annual entitlement grants based on numbers of enplaned passengers and cargo tonnage and is eligible to receive discretionary grants. AIP grants may be used for land acquisition, noise mitigation, airfield improvements, airport roadways, public areas of terminal projects, and safety and security systems and equipment. In the award of discretionary funds, the FAA gives priority to projects that enhance airport capacity where capacity constraints have been identified.

On December 12, 2003, President Bush signed into law FAA reauthorization legislation known as Vision 100 – Century of Flight Authorization Act of 2003. Under the reauthorization, the AIP has been extended four federal fiscal years to September 30, 2007. The funding levels for AIP

investment are $3.4 billion in the first year, increasing by $100 million per year in each subsequent year.

This financial analysis assumes that federal programs similar to the AIP continue throughout the planning horizon.

7.4.2.2 PFCs

Since 1991, PFCs have been authorized by Title 14 of the Code of Federal Regulations, Part 158, and the PFC program administered by the FAA. PFCs are collected from qualified passengers to fund eligible projects. Since April 1, 2001, a PFC of up to $4.50 per qualified enplaned passenger, less an $0.08 airline processing charge, can be imposed by an airport operator. The DOA currently collects a $4.50 PFC from qualified enplaned passengers using O'Hare.

PFCs may be used on a pay-as-you go basis or leveraged to support PFC bonds. PFC bonds can be issued either as stand-alone PFC bonds or double-barrel PFC bonds, which are backed by both a pledge of PFCs and general airport revenues. As of January 1, 2004, the Airport has outstanding approximately $879 million of First and Second Lien PFC stand-alone bonds. The Airport plans to issue double-barrel PFC bonds in the future to finance project costs.

Projects that are eligible for PFC funding are those that:

- Preserve or enhance the capacity, safety, or security of the national air transportation system;
- Reduce noise or mitigate noise effects; or
- Furnish opportunities for enhanced competition between or among air carriers.

The $3.00 PFC was made available with the requirement that an airport operator forfeit 50 percent of its AIP passenger entitlement grants. Almost 10 years later, the maximum PFC was increased to $4.50 with the requirement to forfeit 75 percent of passenger entitlement grants. Therefore, this financial analysis assumes that the PFC program increases to $6.00 in January 2011. With the increase of the PFC from $4.50 to $6.00 consistent with historical forfeiture percentages associated with AIP entitlement grants, this analysis assumes that all O'Hare AIP passenger entitlements are required to be forfeited.

7.4.2.3 General Airport Revenue Bonds

As of January 1, 2004, the Airport has outstanding approximately $3.2 billion of First Lien, Second Lien, and Third Lien GARBs. The debt service associated with the issuance of GARBs is allocated to appropriate cost centers and included in airline rates and charges. Issuance of GARBs requires approval under the current Airport Use and Lease Agreement. The Airport plans to issue additional GARBs to finance project costs and refund existing debt.

7.4.2.4 Third-Party Financing

The City intends to fund selected portions of the planned new terminal facilities at the Airport (i.e., WGP and West Terminal Complex) with third-party financing, which may or may not include special facility debt. This approach is consistent with the City's use of special facility debt to fund portions of the existing terminal facilities at the Airport.

7.4.3 Debt Service

Table VII-6 presents total projected Net Debt Service Requirements, including existing debt service and estimated future debt service, less savings from future refundings and restructurings. All amounts reflect certain adjustments required to be made under the Airport Use Agreements for the purpose of calculating airline fees, rentals, and charges.

Table VII-6

Projected Annual Net Debt Service Requirements ($000s)

	Short Term					Intermediate Term	Long Term
	2003	2004	2005	2006	2007	2012	2022
Existing Debt Service	$132,688	$179,800	$198,386	$198,102	$201,611	$217,513	$43,865
Future Debt Service Less Savings from Future Refundings and Restructurings	0	(6,775)	13,340	23,152	45,522	462,790	974,028
Total Projected Net Debt Service Requirements[1/]	$132,688	$173,025	$211,726	$221,255	$247,134	$680,303	$1,017,894

1/ Totals may not add due to rounding.

Source: Fullerton & Friar, Inc.
Prepared by: Ricondo & Associates, Inc.

Existing debt service includes debt service on all outstanding GARBs and certain Special Facility Revenue Bonds to be included in the Airline Parties' rates and charges under the Airport Use Agreements.

Estimated future debt service is based on the following allowances and assumptions:

- 30-year maturities
- 6.0 percent interest rate
- Capitalized interest for the OMP and WGP
- No capitalized interest for the CIP
- Funding of the Debt Service Reserve Fund
- Debt service coverage of 1.10 times debt service
- Allowances for costs of issuance (underwriters' discount, bond insurance, and other costs)

Estimated savings from future refundings and restructurings are based on the following allowances and assumptions:

- 30-year maturities with amortization beginning January 1, 2019
- 6.0 percent interest rate
- No capitalized interest
- Surety for the Debt Service Reserve Fund
- Allowances for the costs of issuance (underwriters' discount, bond insurance, and other costs)

Net Debt Service Requirements are allocated to CRCs on the basis of the project costs financed with such bonds.

7.4.4 Operation and Maintenance Expenses

O&M Expenses are the costs associated with operating and maintaining the Airport. O&M Expenses are categorized into multiple expense categories as follows:

- *Personnel Expenses* – Salaries, wages, and employee benefits for Airport staff as well as an allocation of personnel costs from other City departments that support Airport operations such as Purchasing, Finance, and Corporation Counsel.
- *Repairs and Maintenance* – Costs for outside contractors that provide ramp repair, taxiway painting, outside janitorial for terminals, heating and air conditioning, trash removal, escalator/elevator maintenance, and other miscellaneous repairs.
- *Energy* – Gas, water, electricity, and fuel oil required to operate the Airport.
- *Materials and Supplies* – Deicing fluid, office supplies, cleaning supplies, keys and locks, and other general maintenance supplies for the Airport.
- *Engineering and Professional Services* – Fees for specialized engineering, legal, and other technical services.
- *Other Operating Expenses* – Equipment and property rental; machinery, vehicles, and equipment; and miscellaneous (administrative expenses, telephone, and bad debt expenses).

Table VII-7 presents projected O&M Expenses by category for the planning horizon. As shown in Appendix D, future O&M Expenses are projected based on the type of expense, and are based on an analysis of historical O&M Expenses, projections of future inflation rates, and impacts related to the future capital development programs and ensuing increase in operations. Increases due to additional operations include maintenance of new runways, taxiways, and facilities associated with the OMP, and maintenance of new terminal facilities associated with the WGP. From 1993 to 2002, O&M Expenses increased at a compounded annual growth rate of 4.7 percent. For the 20-year planning horizon, the assumed O&M compounded annual growth rate is 6.4 percent, due to the aforementioned impacts from inflation (approximately five percent in aggregate), capital development programs, and increased operations.

7.4.5 Fund Deposits

One of the components of the fees, rentals, and charges paid by the Airline Parties under the Airport Use Agreements and the ITAPs under the International Terminal Use Agreements are annual required deposits into the O&M Reserve Fund, the Maintenance Reserve Fund, and the Special Capital Projects Fund. The O&M Reserve Fund deposit requirement is the amount necessary to increase the amount on deposit to three months of estimated O&M Expenses for the fiscal year. The Maintenance Reserve Fund deposit requirement is an amount equal to the lesser or $1.5 million or the amount required to bring the deposit therein to $3.0 million. Moneys in the Special Capital Projects Fund shall be used only as a source for Special Capital Projects Expenditures approved by an MII.

7.4.6 Non-Airline Revenues

Non-Airline Revenues are those revenues generated at the Airport other than by airline fees and charges. Revenues from concessions include revenues derived from restaurants and gift shops in the terminal buildings and all other Airport associated businesses outside the main terminals that cater to

the Airport such as automobile parking, automobile rental, and bus service. The majority of Non-Airline Revenues are comprised of revenues from automobile parking, restaurant, and automobile rental.

Table VII-7

Projected Operation and Maintenance Expenses ($000s)

	Short Term					Intermediate Term	Long Term
	Budget 2003[1/]	Budget 2004	Projected 2005	Projected 2006	Projected 2007	Projected 2012	Projected 2022
Personnel Expenses	$168,140	$172,437	$185,127	$195,446	$209,737	$292,348	$570,943
Repairs and Maintenance	33,393	33,846	35,708	37,672	40,406	57,819	120,705
Energy	22,386	22,903	23,934	25,011	26,337	35,271	67,597
Materials and Supplies	11,762	11,706	11,940	12,179	12,863	15,856	24,905
Engineering and Professional Services	33,131	35,377	37,323	39,376	41,524	54,949	97,907
Other Operating Expenses	58,196	61,364	64,444	67,679	71,983	97,478	184,248
Subtotal O&M Expenses[2/]	$327,008	$337,634	$358,476	$377,362	$402,851	$553,720	$1,066,305
Less: Land Support Area	5,158	4,883	5,038	5,308	5,573	7,120	11,617
Total O&M Expenses Less Land Support Area[2/]	$321,851	$332,751	$353,438	$372,054	$397,278	$546,600	$1,054,688

1/ Budget as adjusted as of September 1, 2003.

2/ Totals may not add due to rounding.

Source: 2003 – City of Chicago, 2004-2022 – Ricondo & Associates, Inc.
Prepared by: Ricondo & Associates, Inc.

Projections of Non-Airline Revenues are presented in **Table VII-8**. Projections of future Airport revenues are based upon a review of historical trends, future activity levels, and inflationary impacts. As shown in Appendix VII-1, revenue projections are created by applying growth rates specific to each revenue category. From 1993 to 2002, the compounded annual growth rate of non-airline concession revenues (which represent approximately 90 percent of Non-Airline Revenues) was 6.1 percent. For the 20-year planning horizon, the assumed compounded annual growth rate is 6.5 percent, due to the aforementioned inflation and increase in enplanements.

7.4.7 Airline Revenues

Signatory Airline Revenues are revenues generated from fees, rentals, and charges under the Airport Use Agreements and the International Terminal Use Agreements including landing fees, terminal rentals, terminal use charges, and fueling system fees. Non-Signatory Airline Revenues represent revenues from airlines that are not parties to an Airport Use Agreement or an International Terminal Use Agreement. These revenues are derived as a function of rentals, fees, and charges of the Airline Parties, based on O&M Expenses, Debt Service, and Fund Deposits.

O'Hare International Airport

Table VII-8

Projected Non-Airline Revenues ($000s)[1/]

	Short Term					Intermediate Term	Long Term
	Budget 2003[2/]	Budget 2004	Projected 2005	Projected 2006	Projected 2007	Projected 2012	Projected 2022
Non-Airline Revenues:							
CICA-TEC and Other Rentals	$8,611	$8,123	$7,272	$6,392	$6,488	$6,990	$8,112
Concessions:							
Auto Parking–Net of Tax	$80,819	$79,536	$94,943	$102,487	$110,548	$159,833	$321,476
Auto Rental	15,510	16,267	19,048	20,170	21,342	28,028	46,511
Restaurant	19,740	22,426	26,260	27,807	29,423	38,640	64,120
News and Gifts	7,792	8,288	9,705	10,277	10,874	14,281	23,698
Other[3/]	22,073	25,132	27,758	29,125	30,550	38,615	60,538
Subtotal[4/]	$145,935	$151,648	$177,714	$189,866	$202,737	$273,396	$516,343
Reimbursements and Other	7,397	7,769	7,717	7,944	8,177	9,453	12,635
Total Non-Airline Revenues[4/]	$161,942	$167,541	$192,703	$204,202	$217,403	$295,839	$537,090

1/ Excludes Land Support Area per the Airport Use Agreements.

2/ Budget as amended as of September 1, 2003.

3/ Includes rentals and fees from other concessions such as hotel rental, bus service, display advertising, public pay phones, other specialty shops, and duty free.

4/ Totals may not add due to rounding.

Source: 2003 – City of Chicago, 2004-2022 – Ricondo & Associates, Inc.
Prepared by: Ricondo & Associates, Inc.

7.4.8 Airline Cost per Enplaned Passenger

Table VII-9 presents the average airline cost per enplaned passenger for the three planning periods. The airline cost per enplaned passenger is calculated by dividing the Total Airline Requirement by the number of enplaned passengers at the Airport. Based on information as of September 1, 2003, the estimated airline cost per enplaned passenger at the Airport in 2003 is $9.24 in 2003 dollars. By the end of the planning period in 2022, the airline cost per enplaned passenger at the Airport is projected to be $15.53 in 2003 dollars.

7.4.9 Summary

It is difficult to compare the Airport's comprehensive capital development program for the next 20 years to that of other airports, because the information about a specific airport's development program may not be readily available nor at the same level of detail as is available for the Airport. To place the magnitude of the Airport's development program in context, the following list represents information available about selected airports and their respective planned capital development. In many cases, the duration of the capital development is shorter than the Airport's timeframe for the construction of OMP and WGP. As the following descriptions represent, many large-hub airports are anticipating undertaking capital development in excess of $1 billion each. For comparative purposes, the Airport's capital development related to expansion and/or capacity-related projects (i.e., including OMP and WGP but excluding CIP) better reflects the type of capital

development that is comparable to development programs identified for these other large-hub airports. The Airport's capital development cost per enplaned passenger is shown on **Exhibit VII-10** and represents the ratio of the cost of the OMP and WGP to fiscal year 2002 enplaned passengers.

Table VII-9

Projected Airline Cost Per Enplaned Passenger ($000s) for Fiscal Years Ending December 31

	Short Term					Intermediate Term	Long Term
	Estimated	Estimated	Projected			Projected	Projected
	2003	2004	2005	2006	2007	2012	2022
Net Signatory Airline Requirement	$292,669	$325,501	$367,775	$383,302	$421,201	$914,764	$1,519,556
Non-Signatory Airline Requirement	8,931	9,844	9,764	10,378	12,045	23,241	42,014
Total Airline Requirement	$301,600	$335,345	$377,539	$393,680	$433,246	$938,005	$1,561,570
Total Projected Enplaned Passengers	32,628	37,735	38,825	39,914	41,003	46,450	57,356
Total Airline Cost Per Enplaned Passenger	$9.24	$8.89	$9.72	$9.86	$10.57	$20.19	$27.23
2003 Constant Dollars[1/]	$9.24	$8.63	$9.17	$9.03	$9.39	$15.48	$15.53

1/ Inflation rate assumed at 3.0 percent.

Source: 2003 Total Projected Enplaned Passengers – Ricondo & Associates, Inc.; 2004-2015 Total Projected Enplaned Passengers – FAA, 2001 Terminal Area Forecast; and 2016-2022 Total Projected Enplaned Passengers – Ricondo & Associates, Inc. as extrapolated from the FAA, 2001 Terminal Area Forecast. All FAA TAF enplaned passengers stated in FFY (ending September 30) have been converted to enplaned passengers stated in Airport Fiscal Years (ending December 31).
Prepared by: Ricondo & Associates, Inc.

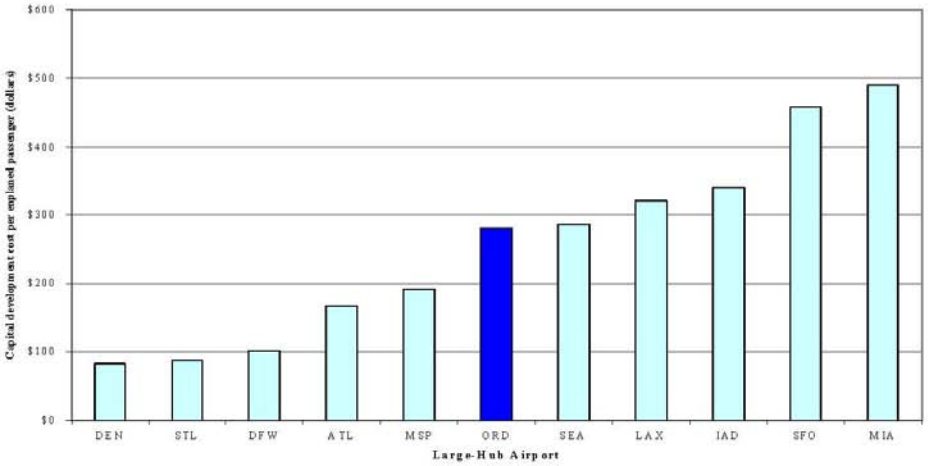
As published primarily in Official Statements, certain information regarding planned capital development programs (CDP) and an airport's fiscal year 2002 enplanement levels at several large-hub airports is presented below. The capital development cost per enplaned passenger for each airport has been calculated using these CDP amounts and enplanement levels and is shown in Exhibit VII-10. Again, it must be emphasized that these other development programs do not necessarily reflect the master planning level of detail as is presented in the Airport's capital development program.

Hartsfield-Jackson Atlanta International Airport

- 38.6 million enplaned passengers
- CDP (through 2010) cost: $6.4 billion
- Capital development cost per enplaned passenger: $166
- Projects: Fifth runway, other airfield projects, and terminal-related projects
- Source: Official Statement dated October 11, 2002

Exhibit VII-10

Capital Development Cost per Enplaned Passenger



Source: Various Airport Documents.
Prepared by: Ricondo & Associates, Inc.

Los Angeles International Airport

- 28.1 million enplaned passengers
- CDP (through 2015) cost: $9.0 billion
- Capital development cost per enplaned passenger: $320
- Projects: Roadway and circulation improvements and safety enhancements, new ground transportation facilities including an automated people mover, and realignment of runways for increased runway separation
- Source: Official Statement dated February 18, 2003 and www.laxmasterplan.org

Dallas/Fort Worth International Airport

- 25.8 million enplaned passengers
- CDP (2000 to 2005) cost: $2.6 billion
- Capital development cost per enplaned passenger: $101
- Projects: New international terminal, runway extensions, other airfield projects, and terminal projects - Other future "demand driven" projects, such as an eighth runway, are to follow.
- Source: Official Statement dated April 30, 2003

Denver International Airport

- 17.8 million enplaned passengers
- CDP (2003 through 2008) cost: $352.6 million in planned projects.
- In addition, approximately $1.1 billion of "demand responsive" projects.
- Capital development cost per enplaned passenger: $82

- Projects: Construction of sixth runway, replacement of aircraft loading bridges, construction of an additional parking structure, and other road, parking, ground transportation, terminal, and concourse improvements
- Source: Official Statement dated April 24, 2003

Minneapolis-St. Paul International Airport

- 15.6 million enplaned passengers
- CDP (through 2010) cost: $3.0 billion
- Capital development cost per enplaned passenger: $192
- Projects: New north-south runway and construction and expansion of terminal buildings and associated projects
- Source: Official Statement dated June 19, 2003

San Francisco International Airport

- 15.5 million enplaned passengers
- CDP (Near-term master plan plus 1995 to 2005 CIP): $7.1 billion ($2.4 billion near-term master plan plus $4.7 billion CIP)
- Capital development cost per enplaned passenger: $458
- Projects: New international terminal complex with near-term master plan and other 1995-2005 CIP projects
- Source: FitchRatings, "U.S. Airports Debt 2002-2006: A Post September 11 Survey," April 2002

Miami International Airport

- 14.7 million enplaned passengers
- CDP (1995 to 2005) cost: $7.2 billion comprised of $4.8 billion for Phase 1 and $2.4 billion for Phase 2
- Capital development cost per enplaned passenger: $490
- Projects: Construction of a fourth runway, terminal expansion project, and other terminal projects
- Phase 2 projects are triggered by demand
- Source: Official Statement dated May 16, 2003

Seattle-Tacoma International Airport

- 13.3 million enplaned passengers
- CDP (2003-2012) cost: $3.8 billion
- Capital development cost per enplaned passenger: $286
- Projects: Construction of a third runway and terminal projects
- Source: Official Statement dated July 30, 2003

Lambert-St. Louis International Airport

- 12.6 million enplaned passengers
- CDP cost: $1.1 billion
- Capital development cost per enplaned passenger: $87
- Projects: New parallel runway
- Source: Official Statement dated February 5, 2003

Washington Dulles International Airport

- 8.5 million enplaned passengers

- CDP (2001 through 2011): $2.9 billion
- Capital development cost per enplaned passenger: $341
- Projects: Terminal-related projects, passenger conveyance, and a new fourth runway
- Source: Official Statement dated August 15, 2002

Although it is difficult to compare details of each airport's capital development program, the cost of O'Hare's expansion and capacity-related capital development program appears reasonable on a capital cost per enplaned passenger basis compared to other large-hub airports undertaking large capital development programs.

The financial analysis presented in this section incorporates numerous assumptions with regards to the availability of various funding sources to undertake the planned capital development at the Airport. Achievement of the projected costs per enplaned passenger presented in this analysis is contingent on, in part, the ability of the sponsor to generate the levels of funding sources identified in this section and on continued support for capital development from the airlines serving the Airport.

ATTACHMENT A-3

FAA ORDER LIMITING SCHEDULED OPERATIONS AT O'HARE

(1/21/04)

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Department of Transportation
Federal Aviation Administration

)
) OPERATING LIMITATIONS AT
) CHICAGO O'HARE INTERNATIONAL AIRPORT
)

Docket FAA-2004-16944 ~/

ORDER LIMITING SCHEDULED OPERATIONS

Introduction

Delays at Chicago O'Hare International Airport (O'Hare) have risen to record levels since November 2003, largely as the result of an increase in flights as well as the compression of schedules by the two largest operators at the airport. In recent weeks, to deal with schedule peaking and congestion, the FAA has imposed traffic management programs, including ground delays at other airports, on aircraft destined for O'Hare. Published airline schedules for February 2004, which call for additional operations at the airport, have the potential to cause further gridlock during peak afternoon hours and, given the ripple effect of delays at O'Hare, degrade the operation of the National Airspace System (NAS) as a whole.

The FAA's new reauthorization bill contained a provision (49 U.S.C. 41722) permitting the Department to convene a public delay reduction meeting of all scheduled airlines at a severely congested airport, such as O'Hare, on a determination of a serious transportation need or important public benefit. In light of the delays at O'Hare and the substantial inconvenience to the traveling public, earlier this month the Department and the FAA determined that a delay-reduction meeting concerning O'Hare would be necessary.

The FAA separately contacted the two air carriers with the most operations at O'Hare to discuss the impact of their schedules on operations and delays at the airport and to ascertain whether each carrier contacted would accept the FAA's imposition of a temporary limit on that carrier's operations during peak hours. Because each carrier independently will reduce its scheduled operations, the Department and the FAA are deferring a schedule-reduction meeting until further notice. Instead, and with the consent of each carrier, the FAA is ordering a five percent reduction in their scheduled operations during the hours of 1:00 p.m. through 7:59 p.m. for a six-month period beginning no later than March 4, 2004.

Even as it issues this Order, the FAA is actively pursuing comprehensive programs to increase capacity at airports critical to the NAS, such as O'Hare.

The FAA also has increased focus on O'Hare operations through on-going, daily operational conference calls with air carriers and other users to maximize throughput and mitigate delays. Additionally, the FAA is evaluating system operations in the O'Hare airspace area, including controller staffing and training, air traffic procedures, and airspace utilization. The agency will actively pursue opportunities for increased capacity or gains in efficiency. The agency disfavors short-term operational caps and similar measures except where they are essential to preserve the efficiency of the system or safety.

We emphasize, therefore, that this Order is designed to deal with a highly unusual situation, one that is unlikely to be replicated except at O'Hare. Moreover, each of the affected carriers recognized that immediate action was required to mitigate substantial inconvenience for their customers and millions of other airline passengers across the country, and each acquiesced in the FAA's exercise of its authority to limit the carrier's operations. Although the FAA will continue to examine *all* its alternatives for O'Hare, by this Order we are not establishing a practice that delays will be addressed in the short-term by restricting scheduled operations.

Background

O'Hare enjoys a unique status within the NAS. O'Hare serves as a network hub for two of the largest domestic airlines, an origin and destination for many international flights by both U.S. and foreign air carriers, and given its location a logical connecting point for significant passenger flows across the United States. In 2003, as cited in FAA's OPSNET[1], O'Hare handled 931,422 operations, making it the busiest airport in the world. Delays at O'Hare can cause significant disruption to the efficiency of the NAS and substantial inconvenience to the traveling public.

Under the High Density Rule (HDR), operations at the airport were limited to 145 scheduled air carrier and commuter operations per hour.[2] This set the scheduled hourly limits below the level feasible under optimal weather conditions but above the level allowable in instrument meteorological conditions. The phase-out of the HDR began on May 1, 2000, with the remaining slot requirements ultimately eliminated in July 2002. During the phase-out carriers serving O'Hare added a significant number of operations overall and retimed other flights, causing congestion during the peak hours of the day.

[1] The FAA's Air Traffic Operations Network (OPSNET) collects data on air traffic activity counts and delays.

[2] This figure excludes a number of exemption slots that were created for various purposes and ten additional reservations per hour for unscheduled operations. 49 U.S.C. 41715 provided for the phase-out of the HDR (Subparts K and S of 14 C.F.R. Part 93) at O'Hare beginning in May 2000 and the elimination of this rule with respect to O'Hare in July 2002.

Since November 3, 2003, air traffic operations at O'Hare have increased still further as a result of new and retimed service at the airport, principally by the two largest operators at the airport, American Airlines, Inc., and its commuter affiliates ("American") and United Airlines, Inc., and its commuter affiliates ("United").[3] These two airlines now account for 88 percent of all scheduled operations at O'Hare. The airlines have not only been adding flights, but as importantly, compressing their existing operations to peak hours as opposed to spreading them out evenly throughout the operating day. In particular, a significant percentage of flights previously scheduled before 7:00 a.m. or after 8:00 p.m. have been shifted to the middle of the day. Since the carriers have filled in any otherwise slower periods during peak afternoon hours, current schedules create high volumes of traffic throughout much of the day.

All these factors have combined to cause a substantial increase in both total delays and average lengths of delays at O'Hare, particularly during the peak period of 1:00 p.m. to 8:00 p.m. FAA Aviation System Performance Metrics (ASPM) data[4] show that on a daily basis, from November 1 through December 31, 2003, 39 percent of O'Hare arrivals were delayed, with an average of 492 delays per day and an average of 57 minutes delay per delayed aircraft. The percentage of on-time arrivals fell from 85 percent for October 2003 to 62 and 65 percent for November and December 2003, respectively. In November, delays at the airport more than doubled from the prior year period, resulting in the most delays ever reported at any airport in FAA's OPSNET in a single month since the FAA has been compiling daily statistics: over 15,000 delayed arrivals with an average delay of 62 minutes per aircraft. In November and December 2003, arriving passengers experienced a total of 1.7 million delay minutes at O'Hare.

Recent data from the Department's Bureau of Transportation Statistics (BTS) confirm the FAA's findings and illustrate the impact on consumers. According to the BTS data[5] only 57 percent of flights arriving at O'Hare in November were on

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[3] Although American has recently increased its service more than United at O'Hare, overall since April 2000, American has increased operations by 4 percent and United has increased by 14 percent.

[4] Aviation System Performance Metrics (ASPM) provides information on individual flight performance and airport efficiency. The data is updated daily. Metrics computed in ASPM are developed by comparing actual time to scheduled time, excluding taxi metrics, which are computed by comparing actual time to an unimpeded time. No attempt is made to attribute causality of delay. ASPM provides statistics for 21 airports. Flight performance data is derived from Out Off On In (OOOI) data provided by participating carriers, Official Airline Guide (OAG) data, the FAA's Enhanced Traffic Management System, and DOT's On-time file. A flight is counted as "on time" when it departs or arrives within 15 minutes of its posted schedule.

[5] The Department's Air Travel Consumer Report publishes detailed on-time statistics for 31 reportable airports. This report is based on data collected by the Department of Transportation's BTS. (Although the BTS data is derived from a different data set from ASPM, there is a strong

time, compared to 82 and 84 percent in September and October 2003, respectively and 82 percent in November 2002. Similarly, only 60 percent of flights arriving at other airports from O'Hare in November 2003 were on time, compared to 81 and 83 percent in September and October 2003, respectively and 86 percent in November 2002. In addition, of the 60 scheduled flights listed in the November 2003 Air Travel Consumer Report as arriving late 80 percent of the time or more, 50 of them involved O'Hare.

The levels of delays that have become routine at O'Hare, with 39 percent of arrivals delayed for as much as an hour per flight, are comparable to the levels experienced at Newark International Airport and LaGuardia Airport during the most congested time periods in the summer and fall of 2000. Thus, by comparison, from May through August 2000, 31.27 percent of Newark arrivals were delayed, with an average of 172 delays per day with an average delay of 66.79 minutes per delayed aircraft; and from September through November 2000, 58.12 percent of LaGuardia arrivals were delayed with an average of 329 delays per day with an average delay of 59.75 minutes per delayed aircraft.

Schedules in the Official Airline Guide (OAG) for February 2004 show that American and United each plan to add a number of operations. For purposes of demonstration, preliminary analyses indicate that adding 100 operations per day to the November schedules for O'Hare increases delays exponentially regardless of whether the operations are added to peak periods or spread throughout the normal operating day. (For example, on November 6, 2003, with 2,715 OAG scheduled operations, there were approximately 29,000 total delay minutes recorded; 100 more operations, equivalent to a 3.7 percent increase, would result in 52,000 delay minutes, a 43 percent increase.)

Because of O'Hare's unique status, this level of congestion at O'Hare has a detrimental effect on the operational efficiency of the NAS. Air traffic management procedures typically keep aircraft destined for O'Hare on the ground at the originating airport until they can be accommodated. Such ground delays have resulted in gate and ramp congestion at other affected airports, especially those airports with limited aircraft holding areas, which ripples throughout the entire system.

Authority

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correlation in trends and summary level analysis.) On-time numbers are reported each month to BTS by U.S. air carriers that have at least 1 percent of total domestic scheduled-service passenger revenues. In November 2003, there were 16 U.S. air carriers that were required to report plus two other carriers that reported voluntarily. The reports cover nonstop scheduled-service flights between points within the United States (including territories) as described in 14 CFR Part 234 of DOT's regulations. A flight is counted as "on time" if it arrived within 15 minutes of the scheduled time. Arrival performance is based on arrival at the gate. Departure performance is based on departure from the gate.

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The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitation as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.[6] The FAA has employed its authority to regulate the use of the airspace by adopting, among other regulations, the HDR.[7]

In addition, the Congress recently granted the FAA new authority to conduct public schedule-reduction meetings with air carriers serving congested airports. This authority was contained in the delay reduction provisions of the aviation reauthorization bill, *Vision 100* (Public Law 108-176). Section 422 of that statute, now codified at 49 U.S.C. 47122 ("Section 422"), authorizes the Secretary of Transportation to ask U.S. airlines to meet with the Administrator to discuss flight reductions at severely congested airports to reduce overscheduling and flight delays during peak hours.

Agency Action

As soon as it became clear that the increases in scheduled service during peak hours at O'Hare were resulting in an unacceptable level of delays and adversely affecting the efficiency of the NAS, officials from the FAA's Air Traffic Services unit acted to ameliorate the congestion at O'Hare. Their activities included ongoing daily conference calls by FAA officials with operational personnel at various air carriers to maximize the airport's throughput and reduce delays during peak periods. User meetings were also conducted at the FAA's Command Center in Herndon, Virginia, on November 19, 2003, and December 11, 2003, to illustrate graphically for industry participants the scheduling problem at O'Hare and its effect on the system as a whole.

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[6] In City of Burbank v. Lockheed Air Terminal, 411 U.S. 624 (1973), the Supreme Court found that a local ordinance setting an airport curfew interfered with the FAA's broad authority under the Federal Aviation Act to manage the navigable airspace, including operations on the ground that affect the efficiency of the national air transportation system. "'Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls.'" Id., at 633-634 (quoting concurring opinion in Northwest Airlines, Inc. v. Minnesota, 322 U.S. 292, 303).

[7] See 33 Fed. Reg. 17896; (December 3, 1968) and DOT Order Granting Discussion Authority, Order 88-12-12 (December 7, 1988).

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Such informational meetings occur frequently and provide air carriers with the data needed to adjust their operations so as to alleviate congestion and improve their own schedule reliability. The current level of overscheduling at O'Hare, however, has rendered the airport so severely congested during peak hours that additional action is now required. In particular, the FAA has concluded that there must be a reduction in the total number of air carrier arrivals and departures during the hours of 1:00 p.m. to 8:00 p.m. Although the peak period at O'Hare begins as early as 9 a.m., lowering the volume of traffic in the afternoon is especially critical because doing so may allow air traffic control to respond to delays that build up throughout the morning.

On January 8, 2004, the FAA determined that it would be necessary to convene a schedule-reduction meeting under Section 422 of Vision 100 with respect to O'Hare to pursue flight reductions at that airport during peak hours. On January 16, 2004, the Secretary of Transportation advised the FAA of his determination that such a meeting was necessary to meet a serious transportation need or other public benefit.

The public interest and the FAA's mandate to ensure the efficient use of the navigable airspace require that the FAA act promptly to alleviate congestion at O'Hare and reduce the level of delays currently being experienced at that airport particularly before the busy summer season. The problem is not merely congestion at O'Hare and the delays encountered by passengers at that airport, but, as noted earlier, the impact on the entire system due to the critical role of O'Hare. Congestion at O'Hare, however, presents a unique problem because it can be mitigated only by the actions of two principal operators who are also primary competitors. These two carriers account for the majority of the increase in operations and the retiming of existing operations and as such, primarily account for the congestion at O'Hare.

Starting even prior to any announcement of a schedule-reduction meeting, the FAA thus decided to ascertain whether the two principal operators at O'Hare would simply accept a reduction in their operations temporarily during the critical afternoon hours. Such reductions could obviate the need for a costly industry-wide meeting and, more importantly, bring about a prompt resolution to an urgent problem while allowing the FAA and the industry to focus on longer-term solutions.

The FAA separately contacted operational officials at American and United to discuss the agency's concerns about the increasing congestion at O'Hare, and the public interest in obtaining a prompt reduction in operations at the airport.[8] As a result of these separate discussions, the FAA has determined to issue an order, having the independent consent of each carrier, limiting the total number of operations each carrier may schedule at O'Hare during the hours of 1:00 p.m.

[8] These discussions did not address particular flights, destinations or markets and were strictly limited to operational capacity during the peak afternoon periods.

through 7:59 p.m. The limitation will require a five percent reduction by each carrier from its published OAG schedule for February 2004. Each carrier is required to observe this limitation beginning no later than March 4, 2004, through September 1, 2004, except as otherwise ordered by the Administrator.

It remains to be seen whether the reductions required by the Order will reduce delays to the extent required. The reductions will not be effective if they are spread unevenly throughout the peak period (that is, not in proportion to the five percent target or without commensurate reductions in both arrivals and departures) or if there is a substantial increase during the peak period by air carriers not subject to this Order. Such circumstances would constitute good cause for modification or withdrawal of this Order.

The Department and the FAA will defer convening a schedule-reduction meeting under Section 422, in order to allow the operational limitations described above to take effect in March 2004. The FAA will continue to monitor closely the level of scheduled operations at O'Hare by all air carriers. The Department and the FAA retain authority to convene a delay-reduction meeting at any time and will consider doing so promptly should this Order not result in a substantial reduction of delays at O'Hare.

ACCORDINGLY,

1. This Order shall apply only to the following parties:

    a. American Airlines, Inc., and its affiliates, including any air carrier under its control and any other air carrier conducting code share operations primarily marketed as American/American Eagle, including but not limited to American Eagle ("American"); and

    b. United Airlines, Inc., and its affiliates, including any air carrier under its control and any other air carrier conducting code share operations primarily marketed as United/United Express, including but not limited to United Express carriers, Atlantic Coast Airlines, Air Wisconsin Airlines Corporation (AWAC), Mesa Air Group Inc., SkyWest Airlines, and Trans States Airlines, Inc. ("United").

2. Under the authority provided to me by 49 U.S.C. §§ 40103 and 40113, I hereby order that:

    a. American shall not conduct more than 505 scheduled operations at O'Hare during the hours of 1:00 p.m. through 7:59 p.m. (local time) daily; and

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b. United shall not conduct more than 655 scheduled operations at O'Hare during the hours of 1:00 p.m. through 7:59 p.m. (local time) daily.

3. The limit on operations specified under Paragraph 2 shall take effect no later than 1:00 p.m. March 4, 2004 and shall expire as of 8:00 p.m. (local time), September 1, 2004.

4. Any party may apply to the FAA on good cause shown for modification or withdrawal of this Order.

Issued in Washington, DC, on January 21, 2004.

Marion C. Blakey
Administrator

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ATTACHMENT A-4

FAA ORDER LIMITING SCHEDULED OPERATIONS AT O'HARE

AMENDMENT #1

(4/21/04)

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Department of Transportation
Federal Aviation Administration

DEPT. OF TRANSPORTATION
DOCKETS

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)
) OPERATING LIMITATIONS AT
) CHICAGO O'HARE INTERNATIONAL AIRPORT
)

Docket FAA-2004-16944-3

ORDER LIMITING SCHEDULED OPERATIONS
Amendment No. 1

Introduction

On January 21, 2004, the Federal Aviation Administration (FAA) ordered American Airlines, Inc. (American) and United Air Lines, Inc. (United), and their respective affiliated commuter/regional operators, to limit their individual total scheduled operations during the hours of 1:00 p.m. through 7:59 p.m. (local) at Chicago O'Hare International Airport (O'Hare). The Order responded to record delay levels at the airport since November 2003, primarily due to increases in flights and compression of schedules by the two largest operators at the airport. The Order limited the number of operations of the two carriers beginning no later than March 4, 2004, and continuing through September 1, 2004.

This amendment requires, beginning no later than June 10, 2004: (1) an additional schedule reduction of 2.5 percent of each carrier's total operations in the 1:00 p.m. through 7:59 p.m. hours including arrival reductions in specific times; (2) a reduction in the number of scheduled arrivals in the 12:00 p.m. hour; and (3) reductions to continue through October 30, 2004.

Background

The FAA continually reviews the operational performance of the National Airspace System to improve efficiency and maximize system capacity. We have reviewed O'Hare's performance during March 2004, in light of the recent schedule reductions. Our analysis shows the airport has benefited from the schedule changes, but that demand continues to exceed capacity in some periods.

O'Hare delay levels for March 2004 remain higher than historical levels. During March 2004, the FAA's Air Traffic Operations Network (OPSNET)[1] shows that O'Hare recorded 37 percent of total National Airspace System delays. O'Hare in

[1] OPSNET collects data on air traffic activity counts and delays. Additionally, air traffic control delays of 15 minutes or more are listed separately at 35 of the busiest U.S. airports.

1

March 2004, recorded 889,135 ground delay minutes, an increase of 127 percent over March 2003. FAA Aviation System Performance Metrics (ASPM) data[2] indicate on-time arrivals fell almost 12 percent and on-time departures fell approximately 16 percent. During March 2004, airport capacity at O'Hare was reduced for many days by adverse weather including unusually high winds and above average periods of reduced ceiling and visibility. While weather accounted for much of the March delay, O'Hare continues to be an airport scheduled at or beyond maximum capacity during peak periods, which leaves little room for recovery when capacity is reduced.

Despite these delay levels, the benefits from the schedule reductions and de-peaking are encouraging. Simulation models of operations at O'Hare suggest that the total delay minutes could have been as much as 30 percent higher had flight schedules remained at the January-February 2004 levels. Further simulations based on March operations and the experienced airport arrival rates show that removing only 18 flights from peak hours could reduce the total minutes of aircraft delay at O'Hare by 24 percent.

Agency Action

The FAA separately discussed recent on-time performance with American and United. The FAA and both carriers recognized that despite the current schedule reduction and de-peaking efforts, some hours were scheduled beyond airport capacity and further changes were needed. Absent this action, delays would likely increase with the onset of summer weather and traffic patterns.

Our review placed particular emphasis on the peak arrival demand during the 1:00 p.m. through 7:59 p.m. period. In some time periods, the current number of scheduled arrivals continues to exceed airport capacity and cannot be safely accommodated without delays. Our review further shows that current scheduled arrivals during the 12:00 p.m. hour have increased and compressed beyond the January-February 2004 levels, as flights were shifted from the 1:00 p.m. hour.

To address these concerns, additional reductions will be required beginning no later than June 10, 2004. American and United each will be required to reduce their scheduled arrivals and departures in the 1:00 p.m. through 7:59 p.m. period

[2] Aviation System Performance Metrics (ASPM) provides information on individual flight performance and airport efficiency. The data are updated daily. Metrics computed in ASPM are developed by comparing actual time to scheduled time, excluding taxi metrics, which are computed by comparing actual time to an unimpeded time. No attempt is made to attribute causality of delay. ASPM provides statistics for 21 airports. Flight performance is derived from Out Off On In (OOOI) data provided by participating carriers, Official Airline Guide (OAG) data, the FAA's Enhanced Traffic Management System, and the Department of Transportation's Bureau of Transportation Statistics (BTS) on-time performance data. A flight is counted as "on time" if it arrived/departed within 15 minutes of scheduled time. Arrival performance is based on aircraft arrival at the gate. Departure performance is based on departure from the gate. There is a strong correlation in trends and summary level analysis between ASPM and BTS data but some differences are expected due to different metrics.

by an additional 2.5 percent. Moreover, each carrier specifically will be required to reduce scheduled arrivals during the 1:45 p.m. to 2:14 p.m. and 6:00 p.m. to 6:59 p.m. times. Absent increases by any other carriers, the reductions by American and United will return the scheduled arrivals at those times to levels below the maximum airport [arrival] acceptance rate.

This Amendment also establishes new limits on the number of arrivals scheduled by American and United from 12:00 p.m. through 12:59 p.m. A total of 14 scheduled arrivals, approximately 18 percent, will be rescheduled from the 12:00 p.m. hour. There is sufficient room during the 11:00 a.m. hour to accommodate the rescheduling of these arrivals without creating new peaks. Reducing the peak arrival demand during the 12:00 p.m. hour is expected to reduce overall delays since the FAA may not need to impose traffic management programs as early in the day as otherwise may be necessary. During this hour, we are not specifically requiring that departures be reduced since both carriers predominantly schedule arriving flight banks. Finally, this Amendment extends the duration of this Order through the end of the summer scheduling season (October 30, 2004).

The FAA notes there have been some increases in scheduled flights at O'Hare by other carriers during the 1:00 p.m. through 7:59 p.m. period. There is limited capacity at the airport to accept new flights without further increasing delays. The FAA is encouraging all operators to carefully review current or planned flights during these peak hours and to consider operating flights during other hours or at alternative airports.

The FAA recognizes that there will still be some delays, especially under adverse weather or operating conditions, which reduce capacity. The schedule reductions provide an opportunity for the airport to accommodate the demand with less delay without unduly restricting operations and underutilizing airport capacity during good weather conditions. We will continue to monitor closely the level of scheduled operations at O'Hare by all operators and may propose additional modifications as needed. The FAA is encouraged by the cooperative efforts of American and United to improve the operational performance at O'Hare. The actions by the carriers under this Order, along with initiatives by the FAA to address peak summer traffic throughout the National Airspace System, represent efforts to reduce delays and accommodate demand within safe limits.

ACCORDINGLY,

This Amendment incorporates all other terms, authority, and conditions from the Order dated January 21, 2004, except as amended below:

1. This Order shall apply only to the following parties:

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a. American Airlines, Inc., and its affiliates, including any air carrier under its control and any other air carrier conducting code share operations primarily marketed as American/American Eagle, including but not limited to American Eagle ("American"); and

b. United Air Lines, Inc., and its affiliates, including any air carrier under its control and any other air carrier conducting code share operations primarily marketed as United/United Express, including but not limited to Ted and United Express carriers, Air Wisconsin Airlines Corporation (AWAC), Atlantic Coast Airlines, Chautauqua Airlines, Mesa Air Group, Inc., Republic Airlines, Shuttle America, SkyWest Airlines, and Trans States Airlines, Inc. ("United").

2. Under the authority provided to me by 49 U.S.C. §§ 40103 and 40113, I hereby order that the limit on operations specified in subparagraphs a and b below are effective no later than 1:00 p.m., March 4, 2004, and shall terminate at 8:00 p.m. (local time), June 10, 2004:

   a. American shall not conduct more than 505 scheduled operations at O'Hare during the hours of 1:00 p.m. through 7:59 p.m. (local time) daily; and

   b. United shall not conduct more than 655 scheduled operations at O'Hare during the hours of 1:00 p.m. through 7:59 p.m. (local time) daily.

3. Under the authority provided to me by 49 U.S.C. §§ 40103 and 40113, I hereby order that the limit on operations specified in subparagraphs a through h below are effective no later than June 10, 2004, and shall terminate as of 11:59 p.m. (local time), October 30, 2004.

   a. American shall not conduct more than 493 scheduled operations at O'Hare during the hours of 1:00 p.m. through 7:59 p.m. (local time) daily, including approximately 250 scheduled arrivals and 243 scheduled departures.

   b. United shall not conduct more than 638 scheduled operations at O'Hare during the hours of 1:00 p.m. through 7:59 p.m. (local time) daily, including approximately 309 scheduled arrivals and 329 scheduled departures.

   c. American shall not conduct more than 38 scheduled arrivals at O'Hare during the 12:00 p.m. through 12:59 p.m. (local time) daily;

4

d. United shall not conduct more than 42 scheduled arrivals at O'Hare during the 12:00 p.m. through 12:59 p.m. (local time) daily.

e. American shall not conduct more than 18 scheduled arrivals at O'Hare during the 1:45 p.m. through 2:14 p.m. (local time) daily.

f. United shall not conduct more than 31 scheduled arrivals at O'Hare during the 1:45 p.m. through 2:14 p.m. (local time) daily.

g. American shall not conduct more than 41 scheduled arrivals at O'Hare during the 6:00 p.m. through 6:59 p.m. (local time) daily.

h. United shall not conduct more than 46 scheduled arrivals at O'Hare during the 6:00 p.m. through 6:59 p.m. (local time) daily.

4. Any party may apply to the FAA on good cause shown for modification or withdrawal of this Order.

Issued in Washington, D.C., on April 21, 2004.

Marion C. Blakey

Marion C. Blakey
Administrator

5

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ATTACHMENT A-5
DELAY REDUCTION DETERMINATION
(7/16/04)

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DEPT. OF TRANSPORTATION
DOCKETS
2004 AUG 12 P 2:53

Determination by the Administrator
Pursuant to 49 U.S.C. 41722

Subject: Delay Reduction Actions at Chicago O'Hare International Airport

By the authority vested in me by pursuant to Section 422 of Public Law 108-176 (Vision 100—Century of Aviation Reauthorization Act, 49 U.S.C. 41722), I hereby determine that it is necessary to convene a meeting of air carriers with the Administrator to discuss flight reductions at Chicago O'Hare International Airport, such airport being severely congested, to reduce overscheduling and flight delays during peak hours of operation at that airport.

Marion Blakey

Dated: July 16, 2004

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ATTACHMENT A-6

LETTER FROM FAA STEINBERG TO DEPARTMENT OF JUSTICE

(7/14/04)

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U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Avenue, S.W.
Washington, D.C. 20591

JUL 14 2004

R. Hewitt Pate
Assistant Attorney General
Antitrust Division, Room 3109
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Pate:

We anticipate that the Secretary of Transportation will soon determine, pursuant to 49 U.S.C. § 41722,[1] that it is necessary to convene a meeting of air carriers with the Administrator of the Federal Aviation Administration (FAA) to discuss flight reductions at Chicago O'Hare International Airport (O'Hare) in an effort to reduce overscheduling and flight delays during peak hours of operation. Because of severe congestion at that airport and the resulting delays and inconvenience to the traveling public, the Administrator intends to convene such a meeting in the immediate future. The purpose of this letter is to describe the format and procedures for the meeting and to ensure that, provided the meeting is conducted in accordance with this memorandum, the Department of Justice would not seek to challenge as a violation of the U.S. antitrust laws any air carrier's attendance at or participation in the meeting or an air carrier's actions taken to comply with an Order of the Administrator issued as a result of the meeting.

---

[1] In particular, 49 U.S.C. § 41722 provides:

§ 41722. Delay reduction actions
(a) Scheduling reduction meetings.—The Secretary of Transportation may request that air carriers meet with the Administrator of the Federal Aviation Administration to discuss flight reductions at severely congested airports to reduce overscheduling and flight delays during hours of peak operation if—
(1) the Administrator determines that it is necessary to convene such a meeting; and
(2) the Secretary determines that the meeting is necessary to meet a serious transportation need or achieve an important public benefit.
(b) Meeting conditions.—Any meeting under subsection (a)—
(1) shall be chaired by the Administrator;
(2) shall be open to all scheduled air carriers; and
(3) shall be limited to discussions involving the airports and time periods described in the Administrator's determination.
(c) Flight reduction targets.—Before any such meeting is held, the Administrator shall establish flight reduction targets for the meeting and notify the attending air carriers of those targets not less than 48 hours before the meeting.
(d) Delay reduction offers.—An air carrier attending the meeting shall make any offer to meet a flight reduction target to the Administrator rather than to another air carrier.
(e) Transcript.—The Administrator shall ensure that a transcript of the meeting is kept and made available to the public not later than 3 business days after the conclusion of the meeting.

Meeting Procedures:

1. Notice to Air Carriers and Other Interested Parties

To assist the Administrator in formulating flight reduction targets, as contemplated by 49 U.S.C. § 41722, and to identify the air carriers that will attend the meeting, the Administrator will send a letter notifying the O'Hare airport operator and each scheduled air carrier serving O'Hare of the meeting. The letter will describe the necessity for the meeting and will identify the periods during a representative business day that the Administrator considers severely congested. The letter will establish the date and time for the meeting and will designate Washington, DC, as the meeting's location. The letter will advise that the meeting and all preparations for it are subject to the antitrust laws and that communications among air carriers regarding competitively sensitive information, such as markets served, prices charged, and marketing plans, could result in a violation of the antitrust laws. Copies of the letter will be sent to the Antitrust Division, as well as to the Air Transport Association, Regional Airline Association, and Air Carrier Association of America.

The FAA Air Traffic Organization will separately provide the O'Hare airport operator and each air carrier serving O'Hare with a summary showing the FAA's current information as to scheduled arrivals and departures at O'Hare (including code-share flights) for each air carrier during each 15 minute period from 6 a.m. to 11 p.m. on a representative business day. A letter enclosed with this summary will request that each air carrier confirm the FAA's current information as to that air carrier's scheduled operations at O'Hare, respond as to whether the air carrier will attend the schedule reduction meeting, and if the air carrier will attend, identify whom its representative will be.

The FAA also will publish in the Federal Register a notice of the meeting that identifies the basis for the meeting, when and where the meeting will take place, and the manner in which the meeting will be conducted. The Federal Register notice will invite all scheduled air carriers to attend and will specify that a transcript of the meeting will be available for inspection in a public docket opened within three business days after the Administrator formally adjourns the flight reduction meeting.

2. Establishment and Notice of Flight Reduction Targets

The Administrator shall establish flight reduction targets, based on the number of flight operations scheduled for a representative business day. As required by the statute, at least 48 hours prior to the meeting, the Administrator will publish notice of these targets on the FAA's website. The notice will specify the total number of reductions sought from the total number of flight operations conducted. The notice will not include carrier-specific limitations, targets, or suggested reductions.

3. Conduct of the Meeting

The meeting will be conducted under the following procedures:

a. The meeting will be chaired by the Administrator or by a delegate of the Administrator.
b. The meeting will be open to attendance by the O'Hare airport operator and all scheduled air carriers, and the FAA will transcribe the meeting.
c. Representatives of the Department of Justice will be invited to attend.
d. At the beginning of the meeting, the FAA will announce that, pursuant to advice from the Department of Justice, no communication will be permitted by any air carrier representative in the presence of any representative of another air carrier regarding the subject of flight reductions at O'Hare or regarding any other competitively sensitive information, including but not limited to markets served, prices charged, and marketing plans.
e. The Administrator will then distribute to the meeting's attendees a list of the number of flights, not specific as to air carrier, during each 15-minute period from 6 a.m. until 11 p.m. on a representative business day, and she will identify any periods that she considers severely congested, as well as general targets for flight reductions during those periods.
f. Each air carrier serving O'Hare and attending the meeting will then be invited into a separate and confidential session with representatives of the FAA Air Traffic Organization, at which the air carrier will be asked to offer flight reductions or schedule modifications. Only representatives of that air carrier and the U.S. government will be permitted to attend the offer sessions; however, the sessions will be transcribed.
g. Any offer of flights reductions should specify the precise number of arrivals and departures, if any, the submitting air carrier is willing to remove from each of the severely congested periods identified by the Administrator, indicating whether the flight operation(s) would be cancelled or moved to another time period. The offer may not be explicitly contingent on specific flight reductions by other air carriers but may be conditioned on the Administrator's implementation of an overall reduction of specified numbers of flight operations toward the target during the periods in question. The offer may not contain information from the air carrier on markets served, prices charged, marketing plans or other competitively sensitive matters.
h. After the completion of all such sessions, the FAA Air Traffic Organization: will review the offers made; will revise, in light of the offers made, the list of the number of flights, not specific as to air carrier, during each 15-minute period from 6 a.m. until 11 p.m. on a representative business day; and will consult with the Administrator. The Administrator will distribute to the meeting's attendees the carrier non-specific list of the number of flights on a representative business day, and she will identify any periods that she continues to consider severely congested and identify targets for flight reductions during those periods.
i. At her discretion, the Administrator or her delegate may repeat steps (f) through (h), and she may continue the schedule reduction meeting as she deems necessary.
j. If the Administrator determines that identifying carrier-specific targets would facilitate voluntary flight reductions and schedule modifications, the Administrator may advise each air carrier separately and confidentially of flight reduction targets specific to that air carrier. No carrier-specific information will be provided to any air carrier other than information regarding that air carrier; however, the Administrator may make general assurances with respect to the overall proportionality of the flight reductions among the air carriers serving O'Hare.

k. Following the Administrator's identification of further flight reduction targets, each air carrier attending the meeting that serves O'Hare will be invited to a separate and confidential session with representatives of the FAA Air Traffic Organization, at which the air carrier will be given the opportunity to submit a new or revised offer of flight reductions or schedule modifications.
l. At her discretion, the Administrator or her delegate may repeat steps (j) and (k), and she may continue the schedule reduction meeting as she deems necessary.
m. The Administrator may terminate the schedule reduction meeting at her discretion.

4. Order of the Administrator Concerning Delays at O'Hare

The FAA Air Traffic Organization will review the final offers of each air carrier attendee of the meeting and recommend a proposed flight reduction plan to the Administrator. After the Administrator's review and approval of the plan, the resulting schedule reductions, including carrier-specific limitations, will be published in the Federal Register as a final order of the Administrator. The final order of the Administrator will be in effect for no more than twelve months and will specify a method by which air carriers adversely affected by the order may be relieved of its effect. The order will also be subject to modification by the Administrator.

Please inform me if these procedures are acceptable to you.

Sincerely,

Andrew B. Steinberg
Chief Counsel

ATTACHMENT A-7
DEPARTMENT OF JUSTICE LETTER TO
FAA STEINBERG
(7/15/04)

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FROM (FRI) 7. 16' 04 14:57/ST. 14:57/NO. 4860019896 P 2

DEPARTMENT OF JUSTICE
Antitrust Division

R. HEWITT PATE
Assistant Attorney General

Main Justice Building - Room 3109
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
(202) 514-2401 / (202) 616-2645 (Fax)
hew.pate@usdoj.gov

July 15, 2004

Andrew B. Steinberg, Esq.
Chief Counsel
U.S. Department of Transportation
Federal Aviation Administration
800 Independence Ave, S.W.
Washington, DC 20591

Re: O'Hare Delay Reduction Meeting

Dear Mr. Steinberg:

This letter is written in response to your July 14, 2004 letter describing the planned format of a meeting of air carriers with the Administrator of the Federal Aviation Administration ("FAA") to discuss flight reductions at Chicago's O'Hare International Airport ("O'Hare"). The meeting is being called in light of a determination by the Secretary of Transportation, pursuant to 49 U.S.C. § 41722, that the meeting is necessary to reduce flight delays during peak hours of operation. You anticipate that such a meeting would be followed by an Order of the Administrator limiting flight operations at O'Hare. You seek assurances that, provided the meeting and related activities are conducted as described in your letter, the Department of Justice would not seek to challenge as a violation of the antitrust laws any air carrier's attendance at or participation in the meeting or any carrier's unilateral actions taken to comply with an Order of the Administrator issued as a result of the meeting.

According to your letter, all carriers participating in the meeting will be advised that the meeting and all preparations for it are subject to the antitrust laws and that communications among carriers regarding competitively sensitive information, such as markets served, prices charged, and marketing plans, could result in a violation of the antitrust laws and lead to civil or criminal liability. At the beginning of the meeting, the Administrator (or her delegee) will announce that, pursuant to advice from the Department of Justice, no communication will be permitted by any air carrier representative in the presence of any representative of another air carrier regarding flight reductions at O'Hare or any other competitively sensitive subject, including but not limited to markets served, prices charged, and marketing plans.

FROM (FRI) 7. 16' 04 14:58/ST. 14:57/NO. 4860019896 P 3

Andrew B. Steinberg, Esq.
July 14, 2004
2

At the meeting, the Administrator will distribute a list of the number of flights, not specific as to air carrier, currently scheduled each 15-minute period from 6 a.m. to 11 p.m., indicate any periods that she considers to be severely congested, and provide general targets for flight reductions during those periods, which will not identify which carriers' flights are targeted to be moved or eliminated. Each carrier will then be invited into a separate, confidential discussion with the Administrator during which the carrier will be asked to offer specific flight reductions or schedule changes, which shall not be made explicitly contingent on specific reductions offered by another carrier or carriers. During such discussions the Administrator may provide general assurances with respect to the overall proportionality of the flight reductions being sought by the FAA from carriers serving O'Hare

After completion of the individual carrier sessions, the Administrator will revise the list of flights to reflect the individual discussions with the carriers. The carriers will again be given this list, which will not identify flights by carrier. If the Administrator believes that severely congested time periods still exist, she may set revised targets and repeat the individual sessions with carriers.

If the Administrator determines that identifying carrier-specific targets is necessary to facilitate voluntary flight reductions and schedule modifications, she may advise each carrier separately and confidentially of flight reduction targets specific to that carrier, which information will not be given to any other carrier or carriers.

The Administrator will develop and approve a proposed flight reduction plan and schedule reduction, which will be published in the Federal Register as a final order. A transcript of the meeting will not be available until three business days after the Administrator formally adjourns the flight reduction meeting.

Importantly, the procedures do not provide for any meetings among the carriers without the FAA present. The procedures will not allow any discussion or negotiation among carriers about flight reductions, prices charged, or markets served. During the course of the meetings, carriers will not be told schedule reductions or modifications other carriers are offering or being asked to offer.

For these reasons, the Department has no current intention to initiate antitrust enforcement action against any carrier that participates in the FAA's flight reduction meeting and conducts itself in the manner described in your letter. This expresses the Department's current enforcement intention regarding the carriers' participation in the flight reduction meeting. The Department reserves the right to bring an enforcement action against any conduct that violates the antitrust laws.

Yours sincerely,

R. Hewitt Pate

ATTACHMENT A-8
UNITED AIRLINES COMMENTS ON DELAY REDUCTION
(8/13/04)

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BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

Operating Limitations at Chicago O'Hare International Airport	)	Docket FAA-2004-16944

COMMENTS OF UNITED AIR LINES, INC.

Communications with respect to this document should be sent to:

JULIE OETTINGER
Director-Regulatory Affairs
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Counsel for
UNITED AIR LINES, INC.

DATED: August 13, 2004

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BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

Operating Limitations at Chicago O'Hare International Airport	)	Docket FAA-2004-16944

DATED: August 13, 2004

COMMENTS OF UNITED AIR LINES, INC.

United Air Lines, Inc. ("United") submits the following comments in response to the FAA's July 28, 2004 Notice in the above docket.[1/] United shares the FAA's concerns about operating delays at Chicago O'Hare International Airport ("ORD") during peak travel times; indeed, United, in an effort to ensure that its customers enjoy safe, reliable, on-time service, has been working with the FAA to manage the problem and has already taken significant steps to adjust its schedule in response to those concerns. To the extent it may serve the interests of its customers, United is willing to continue those efforts and submits these comments in that same cooperative spirit.[2/]

While United supports the FAA's efforts to address current delay problems at ORD, in the long term service reductions are not a viable solution. United fully supports

[1/] 69 Fed. Reg. 46201 (Aug. 2, 2004).

[2/] These comments respond to the schedule reduction parameters the FAA outlined in the July 28 Notice and do not reflect the dialogue that has been on-going between United and the FAA looking to achieve voluntary changes in ORD operations to ameliorate the FAA's concerns about ORD flight delays. Notwithstanding United's strongly held belief that the schedule reduction targets outlined below would achieve a material improvement in the on-time performance rate of scheduled flights at ORD, United intends to continue discussing with the FAA possible voluntary changes in its flight schedules that would help form the basis for a temporary industry-wide agreement to bring peak-period flight schedules in line with operating limits necessary to achieve an acceptable level of on-time performance. Any proposal to extend such temporary limitations on a longer-term basis, however, would have to be subject to further discussions, including consideration of ways to increase capacity at ORD.

the ongoing effort to expand the airport's capacity through the O'Hare Modernization Plan and is participating in these discussions on the understanding that the FAA and other parties remain fully committed to moving forward with that plan, which will modernize and expand airside capacity at ORD to meet the increasing demand for air travel generally and the needs of United's customers in particular.

In these comments, United: i) briefly describes the critical importance of its ORD flight schedule to the company, ii) summarizes the concessions that it has already made to address schedule concerns at ORD, iii) identifies three core principles to which the FAA should adhere in devising and implementing any operational limitations at ORD, iv) addresses the key elements necessary to ensure that any temporary schedule reduction scheme achieves its objectives in the most effective and equitable manner, and v) identifies other measures that need to be taken, in the short run, to address capacity problems at ORD.

I. United Has More at Stake at ORD Than Any Other Carrier Because It Has Made a More Substantial Investment in Establishing ORD as the Primary Hub For Its Global Network.

It has taken United years and an investment of billions of dollars to develop its ORD hub as the backbone of its global network, both domestically and internationally. United's current schedules reflect the critical importance of the airport to its competitive position and overall economic performance. Consequently, operating changes at ORD have a greater impact on United than on any other carrier. If United were forced to further reduce service significantly at ORD, or to undertake significant additional rescheduling of flights from peak periods, the economic damage to United could be substantial—especially if such service changes were to have a disproportionate impact on

the company. Given the importance of ORD to United's network, United is committed to working with the FAA to find solutions to the temporary congestion problems from which the airport is suffering, even though United is concerned that any further service reductions or rescheduling by United could have a serious adverse impact on its customers and ability to compete effectively.

Demand for United's services at ORD remains strong: United is operating at the highest load factors in its history. Consequently, further substantial schedule changes, even if voluntary, would force United to turn away an increasing number of passengers—an opportunity cost that United can scarcely afford to incur. Substantial flight reductions might also undermine United's ability to maintain service to the many small and mid-size communities it serves from ORD, reducing these communities' access to United's global network and reducing the service options available to local air travelers. United (and United Express) currently operate a total of 218 daily nonstop frequencies between ORD and 50 U.S. airports categorized by the FAA as small and non-hub airports.[3/]

While ORD is United's primary hub and the key to the company's long-term economic well being, the same cannot be said of other carriers that, as discussed further in section II below, elected to add service at ORD after United announced schedule reductions and adjustments earlier this year. Not only did these competitors'

[3/] Some have suggested that even if limits are imposed on the number of flights operated at ORD during peak hours, the airport's overall capacity could be maintained if carriers were to operate larger aircraft. That approach, however, would jeopardize United's service between ORD and these smaller communities, most of which would be unable to support service with larger aircraft. Even for mid-size communities where overall demand might suggest an ability to support larger aircraft, such substitution would require a substantial reduction in daily frequencies and, consequently, the quality of the service available.

opportunism undermine United's efforts to reduce peak-period flight delays by adding flights at ORD, but some also added service at their principal domestic hubs in response to the increasing demand for air travel.[4] Faced with these moves by competitors, United's ability to reduce or modify its ORD services further without seriously undermining its competitive position is limited.

II. United Has Already Taken Steps to Reduce Delays at ORD, But Other Carriers, By Adding Flights in Response, Have Exacerbated the Problem.

United has already implemented a number of significant schedule changes during 2004 in an effort to reduce delays at ORD:

- In February, United depeaked its operations at ORD by shifting some flights from peak to off-peak operating hours and reducing the number of flights scheduled in any half-hour period. Consequently, the number of times during the day when the rate of scheduled arrivals exceeded the airport's operating capability was significantly reduced.
- In March, United agreed to reduce its planned peak period operations by an additional 5%.
- In June, United agreed to another 2.5% voluntary reduction in planned peak period operations.
- In total, the three schedule changes United made in February, March, and June resulted in the retiming of hundreds of daily flights, and the schedule reductions United made in March and June reduced the number of flights

[4] Because ORD is United's principal network hub, its flights to and from ORD carry both local passengers traveling between Chicago and the 124 cities United serves from ORD and connecting passengers traveling via ORD to and from the hundreds of domestic and international cities served by United's global network. Capacity constraints imposed on United at ORD therefore limit United's ability not only to accommodate an increasing demand for service in Chicago local markets, but also to compete for passengers traveling in connecting markets. Because the caps under consideration at ORD are not being considered at other domestic airports United's network competitors use as their principal domestic hubs, the imposition of such caps at ORD will have a disproportionate effect on United's competitive position: while United's ORD schedule will be frozen during peak periods, other industry participants will continue to be free to add service at their principal hubs in response to the increasing demand for air travel.

to be operated in peak travel periods by a total of 52 daily flights, a greater number of schedule reductions than any other carrier operating at ORD.

- To further ease congestion, United also accepted limits on the number of flights it would schedule during certain critical periods, which resulted in a reduction in planned arrivals by more than 15% between 12:00 noon and 12:59 p.m., by more than 18% between 1:45 p.m. and 2:14 p.m. and by almost 20% between 6:00 p.m. and 6:59 p.m.

United undertook these voluntary schedule adjustments even though the increased number of delays at ORD starting in November 2003 was precipitated by other carriers that reallocated capacity and increased service at ORD after the airport had reached its operating capacity.[5] In considering the FAA's request for further voluntary reductions in service, it is important to note at the outset that the continuing delay problems at ORD are directly attributable to the fact that, after United depeaked its schedule in February, and United (and American) implemented substantial schedule changes in March and June, other carriers instituted new service at ORD, looking to gain a competitive advantage from United's (and American's) actions. Such gamesmanship by other carriers directly undermined the intended beneficial impact of the sacrifices United (and American) made.

III. Any Scheme to Manage Delays By Mandatory Service Reductions Must Satisfy Three Guiding Principles: Proportionality, Nondiscrimination, and Flexibility.

Any program developed by the FAA in this proceeding to reduce ORD flight delays must satisfy three core principles: Proportionality, nondiscrimination, and flexibility. In addition, any longer-term program to relieve ORD congestion pending full implementation of the Modernization Plan must reflect the competitive landscape created by market forces prior to regulatory intervention.

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[5] Between October 2003 and December 2003, other carriers added 128 daily operations at ORD.

Comments of United
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A. Proportionality of Impact Among Carriers.

Simply put, the proportionality principle is one of fundamental fairness: the FAA must ensure that the impact of any schedule reduction scheme or cap on the number of flight arrivals during peak hours impacts carriers in a proportionate manner. For example, if United is to be required to reduce its flight schedule to help bring industry arrivals at ORD below an FAA-prescribed cap, other carriers should be required to reduce their ORD schedules proportionately, such that competition between carriers during any given period would remain the same as before. A cap or other schedule reduction mechanism cannot be allowed to alter the relative competitive position of carriers operating at ORD. United operates more flights at ORD than any other carrier because it has invested more resources and has more extensive property interests -- in terms of gates, terminal and other facilities, and its flight schedule -- at the airport than any other carrier. If a cap or other schedule reduction mechanism would constrain United's ability to utilize fully all of those assets for a limited time, then other carriers should be subject to a similar constraint in proportion to the scope of their operations and property interests at ORD. In other words, if hourly or half-hourly caps are to be imposed on arrivals at ORD during peak operating periods, each carrier operating at ORD during such periods must have its operations capped in proportion to the number of flights it operates during the capped hourly or half-hourly periods. Any other outcome would be fundamentally unfair and, as explained below, contrary to law.

B. Nondiscrimination Among Carriers.

1. The FAA's Decision Must Not Afford Any Carrier, Including New Entrants and Limited Incumbents, Favorable Treatment.

This proceeding is focused on achieving voluntary reductions in peak period flight schedules at ORD to improve the airport's on-time performance—an exercise with respect to which Congress has given the FAA specific, narrowly-defined statutory authority. Absent agreement, the FAA's authority to impose schedule reductions on the industry is limited and does not contemplate intruding upon market forces any more than is absolutely necessary to achieve the specific goal of delay reduction. The FAA has no authority to manage or manipulate market forces to favor any competitor over another (and, indeed, should have no interest in doing so). That would be fundamentally incompatible with the FAA's (and DOT's) role in the post-deregulation era. Nonetheless, some carriers may regard this proceeding as an opportunity to seek the FAA's assistance in gaining a competitive advantage. Any such effort would be illegitimate and should neither be tolerated by the FAA in this proceeding nor rewarded by preservation in any extension of the regulatory limitations that may be imposed as a result of this proceeding.

As discussed above, it is imperative that the FAA ensure that any schedule reductions impact carriers on a proportionate basis. That principle should apply equally

to carriers operating at ORD.[6] If United is to be required to reduce the number of flights that it operates during peak hours, other carriers cannot be permitted to substitute new flights in United's place. Recent experience has demonstrated that United (and American) have already taken specific steps to reduce their schedules, but that other carriers, far from exercising any such discipline, have actually been allowed to exploit United's (and American's) service reductions for competitive purposes, thereby undermining the goal of delay reduction. The lesson of that experience is clear: the FAA must ensure that any schedule reduction scheme that it may adopt will not enable any carrier to gain a competitive advantage from the process. In particular, it would be fundamentally unfair and contrary to applicable law for the FAA to impose any arrangement that would afford any so-called new entrant or limited incumbent a competitive advantage.[7]

United, through its huge investment over decades in its hub at ORD, has acquired property rights in various assets at the airport, including its flight schedule, which essentially is a proprietary tool for utilizing other assets in which United has a property

[6] Even though United believes the proportionality principle is fundamental to ensuring that any cap imposed on operations at ORD is fair and equitable, United would not oppose a voluntary capacity reduction program which excluded carriers that were operating only a *de minimis* number of arrivals during the period covered by the caps, providing those carriers were subject to the same prospective limitations on service expansion as other carriers serving ORD. United, however, makes no commitment here as to the position it may take regarding any longer-term program that may be developed to address congestion at ORD.

[7] It should be self-evident that if the FAA imposes a limit on the number of flights that may be operated at ORD, thereby requiring carriers to reschedule or suspend certain flights, then other carriers that do not currently operate at the airport during the restricted period must not be allowed to introduce new service during that period. Even assuming *arguendo* that it may be consistent with the FAA's statutory authority to restrict incumbent carriers from exercising certain of their operating rights in order to reduce delays, the FAA has no authority to manage competition by conferring on any other carrier (directly or indirectly) any right or opportunity to introduce service during restricted hours. Such an outcome would undermine the FAA's delay-reduction objective and, as explained in footnote 9 below, could violate incumbent carriers' property rights.

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interest (*e.g.*, aircraft, gates, terminal and other facilities). Even assuming the statute authorizes the FAA to order nondiscriminatory, proportional schedule reductions at ORD that limit carriers' ability to exercise their property rights under specific circumstances, that authority cannot be used (directly or indirectly) to handicap competition among carriers. Moreover, if the FAA were to issue an order that resulted in the taking of any carrier's property[8/] and its reallocation, directly or indirectly, to another carrier, such action could be considered by the courts to be an unconstitutional "taking" of a property right.[9/]

[8/] The Supreme Court has held that intangible property constitutes a form of "private property" that is entitled to protection under the Fifth Amendment's Takings Clause (see footnote 9 below). Ruckelshaus v. Monsanto, 467 U.S. 986, 1003-04 (1984) ("[t]hat intangible property rights . . . are deserving of the protection of the Taking Clause has long been implicit in the thinking of this Court"); see also id., quoting United States v. Gen. Motors Corp., 323 U.S. 373, 377-78 (1945) (the term "property," as used in the Takings Clause, denotes not only tangible, physical property, but also intangible property, including "the group of rights inhering in the citizen's relation to . . . physical [property], as the right to possess, use and dispose of [physical property]"). A carrier's flight schedule falls within this definition of intangible property in that it is an intangible, proprietary reflection of a carrier's right to use other, tangible property, such as aircraft, gates, terminal and other facilities, in order to provide air transportation services, as held out and advertised in its flight schedule.

[9/] As stated above, incumbent carriers have legitimate property interests in their assets at ORD, including their flight schedules and the right to continue operating them. The Fifth Amendment prohibits the government from "taking" private property unless it is for "public use" and "just compensation" is provided. The U.S. Supreme Court has adopted a three-part "justice and fairness" test for determining the constitutionality of regulatory takings. The test focuses on: (1) the economic impact of the regulatory action, (2) its "interference with reasonable investment-backed expectations," and (3) "the character of the government action." Eastern Enterprises v. Apfel, 524 U.S. 498, 523-24 (1998) (O'Connor, J., plurality opinion), citing Connolly v. Pension Benefit Guar. Corp., 475 U.S. 211, 224-25 (1986). If the FAA were to issue an order prohibiting an incumbent carrier from continuing to operate an established schedule and, in conjunction therewith, either directly or indirectly, conferred on a competitor the right to operate in its place, that order could be found to violate the Fifth Amendment as inconsistent with this three-part test. Unquestionably, the economic impact on any incumbent, but particularly United, of an order requiring it to pare back its schedule during peak hours while affording a competitor the opportunity to operate in United's place would be highly adverse to United and would interfere with United's reasonable commercial expectations backed by the investment of billions of dollars at ORD. Moreover, the "character" of such regulatory action, depriving United of the right to operate flights that are an established part of its existing ORD schedule and enabling other carriers to add service in United's place, thereby handicapping competition among carriers without statutory authority to do so, would lend further support to the argument that the FAA's action would fail the three-part test and violate the Takings Clause. Cf. County of Wayne v. Hathcock, (Mich. Sup. Ct. Docket Nos. 124070-78), decision filed July 30, 2004 (interpreting the Takings Clause of the Michigan Constitution, which contains the same "public use" language as the Fifth

In short, if the FAA decides to require a schedule reduction at ORD, it cannot thereafter allow new entrants or an arbitrarily-defined class of limited incumbents to add service at the airport while such schedule reductions are in force consistent with its statutory authority and the limitations of the Fifth Amendment. The FAA's intent clearly is to act expeditiously to address existing delay problems at ORD. The effectiveness of such action, however, (indeed, the FAA's ability successfully to implement such action) would be jeopardized if the FAA were to exceed its statutory authority by adopting a discriminatory scheme—particularly one that would involve the actual or effective taking of the property of any carrier for reallocation to another carrier.

2. The FAA's Decision Must Not Discriminate in Favor or Against Foreign Carriers.

If the FAA decides to impose a flight schedule-reduction scheme, the scheme must not discriminate in favor of foreign carriers that operate at ORD at the expense of U.S. carriers. The United States has an obligation under bilateral and multilateral air transport service agreements not to discriminate against foreign carriers in terms of

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Amendment) (the meaning of "public use" is limited and does not include the reallocation of property from one private party to another simply because the latter's use of the property might be deemed to be more economically efficient or beneficial to the public). In any event, federal agencies are not empowered to take private property in a manner Congress has not authorized (see Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 698 (D.C. Cir. 1988)), and, as stated above in text, the FAA has no statutory authority to limit operations at an airport by one carrier in order to permit another carrier to serve the airport. Even assuming *arguendo* that the FAA's statutory authority to manage the efficient use of navigable air space (49 U.S.C. § 40103) includes the authority to order a carrier to reduce its schedule at a particular airport to reduce flight delays, nowhere in the Transportation Code has Congress authorized the FAA to order one carrier to reduce service so that another might expand operations. That, however, would be the practical effect of an order reducing incumbent carriers' peak-period operations at ORD to fit below an FAA-imposed cap, but excluding from the cap new entrants or an arbitrarily-defined class of limited incumbents. In short, if incumbents' operations must be reduced to fit current schedules below an FAA-prescribed cap on arrivals, the FAA, in order to avoid the risk of an unconstitutional taking of property or of exceeding the scope of its relevant statutory authority, must impose a simple cap that applies uniformly to all carriers operating, or intending to operate, at the airport during peak periods.

access to U.S. airports such as ORD,[10] but neither those agreements nor any other law requires the FAA to afford foreign carriers preferential treatment relative to U.S. carriers. Moreover, there is no policy justification for favoring foreign carriers over U.S. carriers. Accordingly, the FAA must structure schedule restrictions at ORD to avoid any discrimination between U.S. and foreign carriers.

The best way to satisfy this nondiscrimination requirement would be for the FAA to exempt all international service from any schedule-reduction requirements, regardless of whether such service is operated by U.S. or foreign-flag carriers.[11] If, however, the FAA decides to make international services subject to a cap along with domestic services, then foreign carriers as well as U.S. carriers should be prohibited from increasing their frequency of service during restricted hours.[12] In establishing a baseline of existing international services permitted within the cap, the FAA should include not only U.S. and foreign-flag carriers' current international service schedules, but also any international services that carriers plan to introduce at ORD during the forthcoming IATA winter 2004/2005 season.

C. Flexibility.

If the FAA requires carriers to reduce their schedules or imposes a cap on the number of arrivals during peak hours, it should not otherwise restrict carriers' ability to

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[10] See, e.g., Model Open Skies Agreement Text, art. 11, updated Apr. 13, 2004, available at <http://www.state.gov/e/eb/rls/othr/19514pf.htm>.

[11] By exempting all international service from the cap -- whether operated by U.S. or foreign-flag incumbents or by U.S. or foreign-flag new entrants -- the FAA also would avoid the problem of an unconstitutional taking of property.

[12] The imposition of such a restriction on foreign-flag carriers' operations at ORD would not be unprecedented internationally; in fact, it is not unusual for U.S. carriers to be unable to gain access to foreign airports where capacity is limited.

change or modify their schedules on condition that such changes would not result in a breach of any FAA-imposed cap. Such flexibility necessarily would include the right of carriers to negotiate arrangements between and among themselves in an effort to improve the competitiveness and efficiency of their services, including the right to trade operating opportunities during a restricted period. The FAA's focus in imposing and enforcing a cap should be to limit the total number of arrivals during peak periods, but it should have no other interest in how carriers schedule their flights and compete with each other.

D. Recognition of Competitive Forces

Whether in the context of a short or longer-term plan to address ORD congestion, the core principles discussed above must be respected. In addition, any longer-term program to relieve congestion pending full implementation of the Modernization Plan must reflect the competitive landscape that market forces created prior to regulatory intervention. Although United may be willing to accept a capacity regime in the short run that does not require an equal sacrifice by all market participants in order to achieve an immediate improvement in ORD's operating performance as a form of essentially "emergency-style" relief to improve the services available to its customers, any regulatory action that would cap operations over a longer period must strive to reflect more closely market conditions that would prevail in a free-market environment.

IV. Key Elements of an Effective and Equitable Schedule Reduction Scheme.

A. Operating Restrictions Should Not Apply Before 12:00 Noon or After 7:59 P.M.

United does not support imposing a cap on operations before 12:00 noon or after 7:59 p.m. Prior to 12:00 noon, the airport has produced acceptable performance. For the

most recent 12 months, the Arrival 14 performance for the industry at ORD during these hours has averaged 85%. As for operations after 8:00 p.m., flight delays generally are self-correcting as the number of operations scheduled thereafter declines rapidly, allowing the airport to recover without artificial operating restrictions.

Once caps are imposed, the FAA must ensure that no carrier is allowed to schedule any additional flight during peak hours that would result in total flight operations exceeding an applicable cap. Moreover, if the total number of flights during a given restricted period were to fall below the applicable cap (*e.g.*, because a carrier currently operating at ORD during peak hours reschedules, reduces or discontinues service at ORD or if new capacity becomes available due to operational changes), then first priority for purposes of scheduling additional flights within the cap or utilizing newly-available capacity should be given to carriers that reduced their flight schedules in order to enable successful implementation of the cap in the first place. If those carriers elect not to exercise that prerogative, then the available capacity should be allocated to other carriers on a nondiscriminatory basis.

B. ORD Can Accommodate 92 Arrivals Per Hour During Peak Hours.

In considering what additional changes might be appropriate, United believes the FAA's stated target of 86 operations per hour is too low. The FAA's July 28 Notice indicates this target is based on the number of flights scheduled over 145 weekdays between November 3, 2003 and May 15, 2004. United, however, believes this is too short a time frame on which to benchmark the airport. Had the FAA reviewed historical operating data for a longer period, it would have concluded that higher acceptance rates are achievable. For the period July 2001 through July 2004, the airport had an average

acceptance rate of 92 arrivals per hour.[13] This would be a more appropriate and realistic target for the FAA to achieve for the term of this agreement.[14]

C. 30-Minute Scheduling Intervals Would Enhance Carriers' Flexibility Without Increasing Delays.

United believes the apparent plan to develop maximum arrival rates based on 15-minute intervals is too restrictive. More than 30-years' experience under the High-Density Rule ("HDR") indicates that it is not necessary to restrict carriers' scheduling flexibility so narrowly in order to achieve acceptable operating performance.[15] United knows of no reason why the 30-minute scheduling intervals used in the past at ORD and other HDR airports would not be successful if now used at ORD.

D. Any Schedule Reduction Requirement Should Be Of Strictly Limited Duration.

If the FAA decides to impose a cap or other schedule reduction requirement, it should do so for a strictly limited period of time. Any such measure should be nothing more than a short-term response to current circumstances, not a prelude to a long-term restriction on flights at ORD. The FAA, by making clear that its final order will be effective only for the short term, will increase the incentive of carriers to cooperate with the process. Moreover, any attempt to extend such a restriction beyond the short term might undermine efforts to develop long-term solutions to capacity problems at ORD. At

[13] This figure is based on the posted arrival rate at ORD between July 2001 and July 2004.

[14] Even though, as noted in the text, United is firmly persuaded that flight delays at ORD would be brought within acceptable levels if operations were capped at 92 arrivals per hour, it has, as the FAA knows, been prepared to accept a slightly lower target if an acceptable overall reduction program could, thereby, be achieved voluntarily.

[15] As a practical matter, it is highly questionable whether a scheme based on 15-minute scheduling intervals could be administered effectively and, consequently, whether it would deliver concomitant improvements in on-time performance.

best, the type of schedule restrictions contemplated in this proceeding would do no more than treat the symptoms, but achieving a cure will require implementation of measures to facilitate long-term increases in capacity, as opposed to reliance on government-mandated reductions in the number of flights that carriers may schedule in response to the demands and preferences of the traveling public.

V. Other Measures to Address Capacity Restrictions at ORD.

In the longer term, service reductions are not a viable solution to airport capacity problems. ORD is a vital link in the nation's air transport system. The public interest will neither be served by limiting service at ORD, nor by restricting carriers' ability to add to or revise their ORD schedules to respond to changes in the public's demand for service. United fully supports the ongoing effort to increase capacity through the O'Hare Modernization Plan as the best way to modernize and expand airside capacity at ORD as quickly as possible. United also strongly favors expediting the timetable for implementing the ORD runway expansion program to the maximum extent feasible.

In the short run, meanwhile, the FAA should act to increase capacity by expediting implementation of fully Intersecting Runway Operations at ORD. The first phase of implementation has proven to be successful and United is looking forward to the next phase. This would increase the airport's ability to accommodate a higher number of arrivals per hour without increasing delays or compromising safety. Other steps the FAA should take immediately to improve operating performance at ORD include:

(1) utilizing existing and creating additional RNAV approach and departure procedures;

(2) introducing idle descent procedures whenever conditions permit;

(3) excluding ORD departures from "miles-in-trail" procedures and adding appropriate traffic initiatives to reduce taxi-out delays;

(4) implementing the Chicago-area airspace changes identified in the RTCA FAA/Industry Midwest Airspace Working group (including airspace changes in the Cleveland Center area to achieve more efficient ORD arrival flows);

(5) adding a minimum of 2 new Eastbound departure routes, which should effectively double the number of available routes;

(6) increasing the number of Southbound departure tracks from three to five and modifying departure procedures to improve traffic flow; and

(7) installing, no later than 2005, Multilateration (ASDE-X) radar to cover the entire airfield, including movement and non-movement areas.

VI. Conclusion

United shares the FAA's concerns about delays at ORD and has taken significant voluntary steps to adjust its schedule to address those concerns in order to help ensure that its customers receive safe, reliable, on-time service. United is willing to continue to work with the FAA to achieve a balance between scheduled operations and runway capacity that would reduce peak period delays to more acceptable levels. However, fundamental fairness requires that the FAA ensure that carriers bear a proportionate share of the schedule reduction burden. To date, United's disproportionate sacrifice in terms of already-implemented schedule reductions has been exploited by other carriers that have added flights, thereby negating the positive effect of United's efforts and exacerbating delays at ORD. Nonetheless, United continues to be willing to play its part in achieving a solution on condition that the FAA requires other carriers to do the same and any schedule-reduction scheme is narrowly tailored, nondiscriminatory, and proportionate in its impact on carriers.

Comments of United
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Respectfully submitted,

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Counsel for
UNITED AIR LINES, INC.

DATED: August 13, 2004

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ATTACHMENT A-9
AMERICAN AIRLINES COMMENTS ON DELAY REDUCTION
(8/13/04)

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BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D. C.

Operating Limitations at Chicago O'Hare International Airport	:	OST-2004-16944

COMMENTS OF AMERICAN AIRLINES, INC.

Communications with respect to this document should be sent to:

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August 13, 2004

BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D. C.

Operating Limitations at Chicago O'Hare International Airport	:	OST-2004-16944

COMMENTS OF AMERICAN AIRLINES, INC.

American Airlines, Inc. hereby submits the following comments for the public record with respect to operating limitations at Chicago O'Hare International Airport (ORD).

1. American supports the efforts by the Department of Transportation and the Federal Aviation Administration to achieve an equitable solution on a temporary basis to the current problems of congestion and delays at O'Hare. American has already participated in two rounds of reductions of its ORD operations in 2004, and is an active participant in the third round.

2. Any long term solution should focus on increasing capacity at O'Hare instead of restricting schedules, particularly the schedules of a hub carrier such as American. American relies on O'Hare to support a major portion of its domestic and international route network, including service operated by American Eagle to smaller communities which are not being served by new entrant carriers. Reductions by American at

O'Hare adversely affect numerous cities throughout the United States which depend on O'Hare for their access to the national air transportation system.

3. American stresses the importance that the FAA not unduly restrict capacity at ORD even on an interim basis. The FAA's delay reduction order should set operations at the maximum level that still allows all involved to achieve the goal of more dependable ORD operations. As part of maximizing capacity at ORD for scheduled services, the FAA should also consider new limits on general aviation. Undue limits on scheduled operations at ORD will unnecessarily jeopardize service to smaller communities, reduce choice for consumers, and impose additional hardship on our ORD-based employees.

4. Once an airport such as O'Hare has been declared congested by DOT/FAA, then service increases by any carrier at that airport should be restricted. There should not be a system which expects a hub carrier such as American to reduce its O'Hare schedules but at the same allows other carriers to increase their schedules. Such a system would threaten the continuing status of O'Hare as one of the Nation's most important hub airports by unduly favoring point-to-point services over hub operations. Indeed, American has already shouldered

much of the burden of the FAA's two previous orders by reducing its service at ORD, only to see the FAA allow other airlines to grow. American views this as neither fair nor equitable.

5. As a short term solution, American would support hourly limits for O'Hare arrivals, provided that whatever temporary reductions may be necessary are distributed fairly and with explicit recognition of O'Hare as a hub airport, as well as recognition that the goal is not to redistribute capacity from some carriers to others, but rather to provide meaningful relief from delays at ORD.

6. Consistent with the foregoing, the FAA should not reserve capacity for limited incumbents (defined as carriers with eight or fewer arrivals between 0700 and 2059 based on current schedules) or new entrants to expand service, while asking American once again to significantly reduce its own ORD operations.

7. Under a temporary cap, carriers should be allowed to trade or transfer arrival hours between one another, including transactions involving monetary consideration.

- 4 -

8. DOT/FAA should state that any temporary measures put in place at ORD are not a precedent for actions at other airports experiencing congestion and delays, but that each such situation is unique and will be addressed based on its own particular facts and circumstances.

Respectfully submitted,

Walter J. Aue CAN

WALTER J. AUE
Vice President, Capacity Planning
American Airlines, Inc.

August 13, 2004

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ATTACHMENT A-10

CITY OF CHICAGO LETTER TO FAA RELATED TO DELAY REDUCTION

(8/13/04)

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8-13-04; 5:29PM; ;3127422440 # 2/ 4

City of Chicago
Richard M. Daley, Mayor

Department of Aviation

John A. Roberson
Commissioner

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www.flychicago.com

August 13, 2004

Ms. Marion C. Blakey
Federal Administration Administrator
In care of:
Docket Management System
U.S. Department of Transportation
400 Seventh Street, SW
Nassif Building
Room PL-401
Washington, DC 20590-001

Dear Ms. Blakey:

The City of Chicago's Department of Aviation wishes to submit for the public record our comments related to the FAA's proposed action for resolving O'Hare Airport's delays and congestion.

We want to work in collaboration and partnership with the FAA and the Airlines to identify a voluntary, equitable, balanced and temporary solution to the issue of delays and congestion at O'Hare International. The City of Chicago believes and supports a voluntary approach as the best solution. The City of Chicago agrees with you and Secretary Mineta that the O'Hare Modernization Program (OMP) is the ultimate solution to resolving the issue of delays and congestion at O'Hare is the. We recognize, however that the levels of delays and congestion have reached unacceptable levels and that a short term, temporary solution must be implemented.

As I requested during our meeting, I would appreciate the opportunity to review the underlying assumptions, including any modeling and or data, which support the 86-arrival rate. All of the modeling that the City has done thus far for the O'Hare Modernization Program, in furtherance of the EIS, which has been done with controller oversight and the FAA's own contractors, as well as other airport data, suggests that the airport can support an arrival rate higher than the target arrival rate of 86.

The information mentioned in the Federal Registrar notice states that the timeframe used in the FAA modeling to develop the 86 scheduled arrival rate was November 2003-May 2004. This timeframe understates the current capacity of the airfield due to the use of two new configurations that have recently come into existence at O'Hare. The New Plan B (Arrive 14R 22R 22L) allows for reduced separation between 14R arrivals

CHICAGO Airport System

CHICAGO O'HARE
BEST AIRPORT IN NORTH AMERICA
1998 1999 2000 2001 2002 2003

CHICAGO WORKS

DEPARTMENT OF AVIATION

and 27L departures. The New Plan B allows for an increased arrival rate and significantly increased departure rate when compared to what existed during the timeframe the FAA modeled. The O'Hare Delay Task Force estimated that departure delays with reduced separation between 14R arrivals and 27L departures would reduce departure delays by 58% (anecdotally the number may be higher based on actual experience operating in the New Plan B configuration). The New IFR-1 plan (Arriving the 14s with no conflict with the Midway 13C approach) is now available and will have a significant impact on bad weather delay. During the FAA modeling timeframe the IFR-1 plan had an arrival rate of 58-60. Under the New IFR-1 plan the arrival rate will be between 72-78.

The current configurations allow for O'Hare to be between a 96 - 100 arrival rate for 72.3% of the year. The New Plan B is at a 94-arrival rate now but may be increased to 96 in the near future. This effectively makes the arrival rate 94 or above 87.8% of the year.

In all three of the primary VFR configurations (87.8% of the time) the actual arrival rate routinely comes in above 100 arrivals per hour. The IFR configurations now have an arrival rate range of 72-80 verses the 58-80 that existed during the FAA's modeling timeframe.

In the near future arrival rates may increase. The 94 and 96 arrival rates mentioned above are lower than 100 based on the need for extra space to sort arrival traffic on their ability to participate in LASHO operations. There is currently a request with the FAA to reexamine the MD 80's ability to participate in LASHO at O'Hare based on a higher flap setting than was modeled to come up with the MD 80's current LASHO category. If the new modeling shows that MD 80's can participate in LASHO in the Plan W configuration the arrival rate should increase to 100 per hour. Also, there is a new configuration, identified in the O'Hare Delay task Force as Hybrid Plan B that will make possible 4 configurations at O'Hare with arrival rates in the High 90's to 100. Hybrid Plan B is awaiting the results of the MD 80 reevaluation before it is implemented. There was also a request for modeling put in for 14R arrivals to LASHO 27L based on Twy M6 departures. When this modeling is done and if it comes back that LASHO can be performed the arrival rate in New Plan B and Hybrid Plan B should rise to 100 per hour.

8-13-04; 5:29PM; ;3127422440 # 4/ 4

DEPARTMENT OF AVIATION

The City also feels that any regulatory cap number be flexible in order to effectively use the capacity of the airport. A fixed number may result in excess capacity on good weather days. We would be happy to meet with you and your staff to review this information with you and discuss the details of the data in our modeling.

We are also concerned that any changes in flight scheduling could have an adverse impact on operations. A reduction in operations can mean a reduction in airport revenue, including PFC's. Another adverse impact could be the broader regional economic impact, which could force the airlines to reduce their workforce through layoffs. We don't believe that is the spirit of these discussions. But we want to ensure that everyone is sensitive to the human impact that these reductions may have. In addition, any temporary reductions can have a disproportionate impact on the service to smaller rural markets.

As you and Secretary Mineta have accurately stated, this temporary solution is not the answer to the problems facing O'Hare. The real solution to the delay problem is to increase capacity by adding new infrastructure. We again encourage the FAA to expedite the issuance of the Record of Decision so we can break ground immediately on the O'Hare Modernization Program and realize its benefits of additional capacity and reduction in delays.

As the FAA/DOT continues to develop its plan, we strongly encourage that we continue the partnership and collaboration that started this process. The City will continue to work with you to ensure that the final solution that is crafted is fair, balanced, temporary and equitable to all parties involved and are not counter-productive or detrimental to O'Hare Airport or the implementation of capacity enhancements.

Thank you for your efforts and leadership. I am confident that we will achieve a solution that will prove to be beneficial to all parties involved.

Sincerely,

John A. Roberson
Commissioner

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ATTACHMENT A-11

THIRD FAA ORDER LIMITING SCHEDULED OPERATIONS AT O'HARE

(8/18/04)

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THE U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

OPERATING LIMITATIONS AT CHICAGO
O'HARE INTERNATIONAL AIRPORT
Docket FAA-2004-16944

ORDER LIMITING SCHEDULED OPERATIONS
AT O'HARE INTERNATIONAL AIRPORT

I. Introduction:
This order establishes a temporary limitation on the number of scheduled operations at O'Hare International Airport (O'Hare). The Administrator of the Federal Aviation Administration (FAA) is issuing this order as a result of persistent overscheduling of flights at O'Hare during peak hours. The order is intended to relieve the substantial inconvenience to the traveling public caused by flight delays and congestion at that airport, which spread through the national airspace. Among other things, this order will reduce delays and provide for the efficient use of the airspace. This order takes effect as of 7:00 a.m., Central Time, November 1, 2004, and will expire at 9:00 p.m., Central Time, April 30, 2005.

This order follows the successful commencement of a scheduling reduction meeting conducted by the FAA with air carriers and the City of Chicago under the authority provided to it in the FAA's 2003 reauthorization law, Vision 100. The 15 air carriers that attended the meeting also met privately with the FAA to review their schedules. Based on the discussions that occurred between the FAA and each of the participants, this order requires the two largest operators at the airport to reschedule and reduce flight arrivals by approximately 5% during peak hours, freezes the level of arrivals operated by other large incumbent air carriers (while requiring them to reschedule certain flights), and permits a small number of additional flights by limited incumbent air carriers and new entrant air carriers. Although the product of voluntary action by various air carriers, this order is enforceable under the Administrator's civil penalty authority.

II. Background:
O'Hare serves an important and essential role within the U.S. National Airspace System. It is a major network hub for the two largest domestic air carriers, American Airlines and United Airlines, making it a connecting point for flights throughout their domestic and international systems. In addition, because it serves the country's third most populous metropolitan area, O'Hare is, in its own right, a major origin and destination airport for the domestic and international flights of both U.S. and foreign air carriers. Moreover, given its central location, O'Hare is a logical connecting point for significant passenger flows across the U.S.

In 2003, O'Hare accommodated 928,691 flight operations, which made it the busiest airport in the world in terms of aircraft arrivals and departures. According to the FAA's Air Traffic Operations Network, which collects data on air traffic activity counts, during the first six months of 2004, 490,987 flights arrived at and departed O'Hare. From January through July 2004, the total airport operations at O'Hare increased approximately 8.7% over the same period in 2003. The total number of enplaned passengers at O'Hare in 2003--at 30,797,513--was ranked second in the U.S.

The U.S. Government has exclusive sovereignty over the airspace of the United States. 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. The Administrator may modify or revoke an assignment when required in the public interest. The FAA

interprets the statutory command to act in the public interest as implicitly applying to any decision by the FAA to assign the efficient use of the navigable airspace. Furthermore, in carrying out the Administrator's safety responsibilities under the statute, the Administrator must consider, as being in the public interest, controlling the use of the navigable airspace and regulating civil operations in that airspace in the interest of the safety and efficiency of those operations.

The FAA interprets its broad statutory authority to manage "the efficient use of airspace" to encompass management of the nationwide system of air commerce and air traffic control. On a daily basis, that system transports millions of passengers, thousands of tons of cargo, and millions of pieces of mail. The FAA believes that ensuring the efficient use of the airspace means that it must take all necessary steps to prevent extreme congestion at an airport from disrupting or adversely affecting the overall air traffic system for which FAA is responsible. Inordinate delays at a single airport of the sort experienced at O'Hare can have a crippling effect on other parts of the system, causing untold losses in time and money for individuals and businesses, as well as the air carriers at O'Hare and throughout the country.

In 1968, under this statutory authority, the FAA designated O'Hare as a high density traffic airport and limited the number of takeoffs and landings at the airport, effective April 27, 1969. The FAA required air carriers to hold a reservation, which came to be known as a "slot," for each instrument flight rules takeoff or landing at a high density traffic airport. The rules related to high density traffic airports remained in effect at O'Hare for over three decades. Near the end of that period, the FAA limited O'Hare's scheduled peak-hour air carrier and commuter operations--including both arrivals and departures--to 145 per hour, with ten additional reservations available for unscheduled operations.

In April 2000, Congress began phasing out the high density traffic airport rules at certain airports, including--effective July 1, 2002--the specific rules then governing O'Hare. As these rules ended at O'Hare, the two air carriers operating hubs at O'Hare, American Airlines ("American") and United Air Lines ("United") added a significant number of operations and retimed other flights, resulting in congestion during peak hours of the day. From April 2000 through November 2003, American Airlines increased its scheduled operations at O'Hare between 12:00 p.m. and 7:59 p.m. by over 10.4%. Over the same period, United Airlines increased by over 41% percent its scheduled operations at O'Hare between 12:00 p.m. and 7:59 p.m. All other air carriers serving O'Hare collectively increased their scheduled operations between 12:00 p.m. and 7:59 p.m. by approximately 3.25%

According to flight delay information compiled by the Department's Bureau of Transportation Statistics, system performance suffered at O'Hare as the air carriers increased scheduled operations. In November 2003, O'Hare ranked last among the thirty-one major airports reported for on-time arrival performance, delivering on-time arrivals just 57.26% of the time. This performance compares poorly with the FAA's stated goal of achieving an average on-time arrival rate of 82.1%. O'Hare also ranked last in on-time departures during November 2003, yielding on-time departures 66.94% of the time. The Bureau of Transportation Statistics' data for December 2003 reflected a similarly discouraging performance by O'Hare during that month--ranked last with 60.06% of arrivals on time and 67.23% of departures on time. FAA statistical analyses showed that at least part of the decline in on-time performance can be attributed to a scheduled volume of air traffic that exceeded the available airport capacity. Despite the high proportion of delayed flights, however, when the air carriers published their January and February 2004 schedules in the Official Airline Guide, they revealed their intention to add still more operations to the encumbered O'Hare schedule.

When Congress began phasing out the specific high density traffic airport rules at O'Hare in 2000, Congress emphasized that it did not intend the move to affect the FAA's overall authority, including its authority over "the movement of air traffic." More recently, in December 2003, Congress authorized the Secretary of Transportation to ask air carriers to meet with the FAA to discuss flight reductions at

severely congested airports to reduce overscheduling and flight delays during peak operating hours. Under the authority to request a scheduling reduction meeting, the Administrator found in January 2004 that such a meeting was necessary with respect to O'Hare and the Secretary of Transportation determined that such a meeting was necessary to meet a serious transportation need or achieve an important public benefit.

Before the FAA could convene the scheduling reduction meeting, however, American and United, which together accounted for approximately 88% of the operations at O'Hare, individually agreed to temporary reductions of 5% of their proposed O'Hare schedules between 1:00 p.m. and 7:59 p.m. The FAA ordered the 5% schedule reductions on January 21, 2004, with the schedule reductions to begin no later than March 4. When the reduced schedules by these carriers failed sufficiently to relieve O'Hare's flight delays, the two airlines each agreed to further flight reductions of 2.5% of proposed flights between 1:00 p.m. and 7:59 p.m. and to reschedule some flights concentrated between 12:00 p.m. to 12:59 p.m. The FAA ordered the revised schedule reductions on April 21, 2004, and required the schedule reductions to take effect no later than June 10, 2004. The FAA reserved the right to convene a scheduling reduction meeting if the order did not result in a substantial reduction in flight delays. The amended schedule reduction order will expire on October 30, 2004.

At the time of the prior order the Administrator recognized that the effectiveness of the order might depend on the responses of other carriers. The order provided that American and United could seek to have the restrictions on them withdrawn or modified for good cause, which included a "substantial increase" in peak period flights by other carriers not subject to the order. Thus, although the FAA discouraged other air carriers from adding to scheduled operations at O'Hare during peak hours while the schedule reduction order is in effect, the order did not limit the operations of air carriers other than American and United, and their regional air carrier affiliates. As it happened, other air carriers added a net total of 14 scheduled operations at O'Hare from 1:00 p.m. through 7:59 p.m., the hours covered by the FAA schedule reduction orders. These additional flight operations together offset some of the anticipated delay reduction benefits of the schedule adjustments by American Airlines and United Airlines.

The Bureau of Transportation Statistics' data on flight delays and on-time performance for June 2004 reflect only modest overall improvement at O'Hare, while problems associated with congestion persisted, particularly in the late afternoon and early evening when on-time performance is at its lowest. Under the circumstances, the FAA concluded that it would be neither practical nor equitable to issue an additional order governing two air carriers while all other air carriers remained free to add flight operations during hours in which there is not adequate capacity to accommodate them.

Consequently, in the absence of measures to control scheduling beyond capacity at O'Hare, the FAA expects even the modest gains achieved in O'Hare's June 2004 on-time performance to evaporate when the schedule reduction order expires. Highlighting the FAA's concern, the industry's published schedules for November, as reported in the Official Airline Guide in late-July 2004, reveal that the number of scheduled arrivals during several hours approaches or exceeds the airport's highest possible arrival capacity. During one hour, the number of scheduled arrivals exceeds the airport's capacity under ideal conditions by 32%, virtually ensuring daily delays even when the weather and airport operating conditions are optimal and contributing to potential gridlock when they are not.

In light of the lead time necessary for air carriers to revise and implement their schedules, the Administrator determined once again on July 16, 2004, that it was necessary to convene a meeting of air carriers to discuss flight reductions at O'Hare, as a severely congested airport, to reduce overscheduling and flight delays during peak hours of operation. On July 19, 2004, the Secretary of Transportation determined that a scheduling reduction meeting regarding O'Hare was necessary to meet a serious

transportation need or achieve an important public benefit.

Through a notice issued July 28, 2004, and published in the Federal Register, the Administrator invited all scheduled air carriers to attend the scheduling reduction meeting, commencing on August 4. The Administrator also invited all interested persons to submit information on the subject of flight reductions at O'Hare, including any data and their views, to a public docket for the FAA's and Department of Transportation's consideration in issuing this order. The original deadline for submitting written information was August 11. However, when it became apparent that the FAA's discussions with the air carriers would extend past that date, the FAA extended until 12:00 p.m. on August 13 the deadline for submitting written information to the public docket.

III. Determination of Operational Targets:
The statute authorizing the Administrator to conduct a scheduling reduction meeting requires that the FAA establish operational targets for the efficient scheduling of the airport. To simplify the analysis of the proposed solution and to limit the FAA's intervention in air carrier scheduling, the FAA has focused on establishing a realistic rate of scheduled arrivals at O'Hare that is sustainable under most operating conditions, rather than scheduled departures or combined arrivals and departures. The number of arrivals in a period naturally correlates closely to the number and timing of departures. Moreover, in the FAA's experience, arrival delays tend to be more disruptive to the system and can delay later flights if the aircraft is not available for an on-time departure.

During 140 weekdays from November 3, 2003, through May 14, 2004, O'Hare averaged in all weather conditions a total of 90 actual arrivals per hour, including both scheduled and unscheduled flights, during the peak hours of 12:00 p.m. through 6:59 p.m., Central Time. These hours reflected a period when demand for the airport was at or above the airport's capacity and therefore indicate the average capacity of the airport under various weather, runway, and operating conditions. The average number of arrivals also correlates closely to the average airport acceptance rate for this period, indicating that there was little or no unused hourly capacity.

Therefore, as the preliminary target for schedule reduction at O'Hare, the Administrator used an arrival rate of 86 scheduled operations per hour, anticipating the historical average of four additional unscheduled arrivals per hour. Within each affected hour, the FAA targeted an arrival rate not to exceed 22 scheduled arrivals within any fifteen minute period to reduce some of the peaks in the current November schedules. The FAA expressed its intention to apply the targeted arrival rates daily from 7:00 a.m. through 8:59 p.m., Central Time, to address current peak hours and to avoid the creation of new peak times if arrivals are simply shifted from other hours.

At the FAA's request, MITRE Corporation conducted computer modeling to simulate the effect of the FAA's proposed schedule reductions on the number of delayed flights experienced at O'Hare. In the past, the FAA has evaluated the computer model that MITRE Corporation employs to project delays against actual flight delay statistics. In the FAA's experience, the computer model's predictions equate very closely to the flight delays actually experienced. With respect to the operational targets that the FAA proposed, the computer model predicted a 36% reduction in the daily average minutes of delay when compared to the air carriers' published August schedules.

IV. The Scheduling Reduction Meeting:
The FAA convened the scheduling reduction meeting with air carrier participants and representatives of the operator of O'Hare on August 4 and continued the meeting on August 5, after which the FAA excused the attendees from further in-person sessions. Telephonic sessions on the subject of schedule reductions thereafter continued with individual air carriers. Representatives of the Department of Justice's Antitrust Division monitored the joint and individual sessions of the scheduling reduction

meeting. In addition, all the in-person and telephonic sessions were transcribed.

At the individual air carrier sessions, only American Airlines and United Airlines, which together now account for approximately 86% of all scheduled operations at O'Hare, offered to reduce their scheduled arrivals. Most other participants were agreeable to retiming some scheduled arrivals to reduce scheduling peaks and to produce a more efficient overall schedule. Two incumbent air carriers initially indicated their intention to add arrivals during the peak hours, each noting that it was operating below the schedule that it operated before September 11, 2001. These incumbent air carriers withdrew their requests to add scheduled arrivals during later individual sessions. Three incumbents providing fewer than eight scheduled arrivals during the peak hours reported that they planned to add at least one arrival during peak hours. Potential new entrants to O'Hare also attended the meeting, but none disclosed immediate plans to begin scheduled service to O'Hare.

Air carriers and other interested parties were invited by Federal Register notice and otherwise, including personally by FAA officials during the carrier sessions, to provide whatever information and opinions they deemed relevant to the Administrator's ultimate decision. During these sessions and otherwise FAA officials made clear the intention of the Administrator to take prompt action immediately following the sessions to incorporate any offered schedule reductions or adjustments into a binding, and final, order of the Administrator. Participating carriers explained that because schedules for November, 2004, were in the process of being finalized, any delay in the issuance of an order that postponed the finalization of their November schedules (or required further adjustments beyond those contemplated in the meetings) would impose extra burden and costs on the airlines involved. Time is also of the essence, because if the published OAG schedules for November were allowed to take effect without change, FAA projections show that the flying public would suffer great inconvenience with a substantial worsening of delays.

Having considered the results of these sessions, and the extensive information received during them and through the public docket (summarized below), the Administrator has determined that it is now in the public interest to take immediate action to codify the various scheduling reductions and adjustments offered to the FAA.

V. Summary of Information Received:
A. Revised Schedule Limitations
During the individual air carrier sessions of the scheduling reduction meeting, the air carrier participants commonly stated that the target of 86 scheduled arrivals within the identified hours was too low and would result in unused airport capacity under many conditions. They also stated that the use of a 15-minute limitation on arrivals was overly restrictive and would unnecessarily hamper the carriers' scheduling flexibility. The participants proposed that the FAA consider allowing a scheduled arrival rate of at least 90 flights per hour and constrain operations by no longer than 30-minute periods.

During the sessions, the FAA agreed to reexamine the expected reduction in delays based on various other rates and assumptions. After further interaction with the airlines and extensive internal analyses backed by schedule modeling of different scenarios, the Administrator has determined to use a scheduled arrival rate of 88 flights for the period between 0700 and 1959 local and 98 arrivals in the 2000 hour (which is the end of the "service day," when the effect of any delays on later operations is most limited). The Administrator also determined that the use of a "rolling" constraint over any 30 minute period of no more than 50 arrivals (with the exception of the 2000 hour) will achieve a significant level of delay reduction. Forecasting by MITRE Corporation and the FAA shows that such an arrival rate and constraints will produce a 20% reduction in O'Hare delays against the base case of August 19, 2004. If this order were not issued, we model a 23% increase in delay from current delays to those that would occur given the published November OAG schedule. Additional forecasting by MITRE also showed that the proposed schedule limits at O'Hare would lessen delays in the entire national

airspace system by nearly 5%.

The FAA then contacted each of the participants at the scheduling reduction meeting who had met individually with FAA representatives. During these sessions the FAA reviewed the proposed restrictions on each carrier's schedule as well as the parameters of an order that would implement these restrictions. While preserving certain points raised in their prior sessions and in the docket in this matter, each of these participants indicated that it would voluntarily comply with or consent to an FAA order containing the restrictions outlined.

B. Limited Incumbent and New Entrant Air Carriers

At the August 4, 2004, scheduling reduction meeting in Washington, the Administrator provided notice to the public that any scheduling limitation order was likely to contain a mechanism that would allow some flight additions by new entrants to the airport and carriers with only a limited presence. She explained the consistency of this potential approach with regimes employed at airports subject to the High Density Rule in which, by statute or regulation, the Department made slot exemptions available to new entrants and limited incumbents. She said it was the FAA's intention to define a limited incumbent as a carrier having eight or fewer scheduled arrivals during the peak period of the day and to allow a new entrant or limited incumbent the right to add arrivals such that they did not exceed a total of eight. During their individual discussions with the FAA and in their filings on the docket, several of the meeting participants questioned the proposed treatment of new entrants and limited incumbents. In this regard, the carriers generally fell into two categories.

The largest incumbents at the airport, American and United, argued that the Department's decision must not afford favorable treatment to new entrants and limited incumbents. American and United pointed out that they bore the brunt of the schedule reductions ordered by the FAA (to which they consented) in January and April. Each complained that the effectiveness of these reductions was impaired by the addition of flights by Independence Air and others in the industry; United characterized these additions as "gamesmanship" designed to take competitive advantage of the constraints imposed on the two hub operators. Both operators said that additional cuts would not be justified without some assurance that competitors could not add flights in response, and noted that the proposed cap on O'Hare would constrain competition between hub airports. United also contended that requiring it to reduce flights during peak hours while allowing rivals to add service would amount to an unconstitutional taking of United's intangible property consisting of its flight schedules and associated economic interests.

Those carriers with relatively fewer operations at the airport, including America West, Spirit and Atlantic Coast Airlines (d/b/a Independence Air), as well as the Air Carrier Association of America (ACAA), urged the Department to preserve low-fare competition at O'Hare by protecting the rights of smaller carriers to add arrivals. They cited data purporting to show that even the minor presence of such carriers at the airport has materially constrained the hub operators from increasing prices. They claimed that the principal causes of congestion at O'Hare were the addition of flights by American and United, as well as their increased utilization of smaller, regional jets. They argued that the Administrator's proposed limit of eight arrivals per new entrant or limited incumbent was unreasonably low. America West cited provisions of the 2000 FAA authorization (the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, or AIR-21) and called for an allowance of up to 15 arrivals (30 flight operations) per such carrier. ACAA stated that the allowance should be 10 arrivals and that smaller carriers should be able to add arrivals up to this limit incrementally over the six month period of the order. Independence Air asserted that its current schedule at O'Hare of 12 arrivals per day represents a 90 percent reduction from the operational levels previously conducted by Atlantic Coast Airlines as a codeshare partner of United.

Having found that the efficient management of the airspace requires some reduction and retiming of

flight arrivals at O'Hare during peak hours, we must decide how to allocate such adjustments among air carriers. After consideration of the Department's various statutory goals and the written submission filed in the public docket, which are consistent with the information conveyed to the FAA during the scheduling reduction meetings, we believe an appropriate balance can be struck here between competing policy goals of protecting competition and maintaining the efficiency of the navigable airspace. Thus, this order requires the two airlines who have added the most flights since Congress phased out the high density traffic airport rules at O'Hare to reduce their schedules. It also permits minor growth by limited incumbents and new entrants while strictly limiting such growth in the afternoon hours when American and United will cut the most flights, and it freezes the level of arrivals throughout the day scheduled by other airlines.

Under 49 U.S.C. § 40103(b)(1), "[t]he Administrator . . . shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The Administrator may modify or revoke an assignment when required in the public interest." In other contexts, the Secretary of Transportation considers a number of matters in the public interest when carrying out the Department's functions, including "placing maximum reliance on competitive market forces and competition." 49 U.S.C. § 40101(a)(6).

While FAA's statutory provisions do not expressly require the consideration of such factors in adopting and administering limits on arrivals at a congested airport, we look to overall Congressional policy as a guide. See, e.g., Delta Air Lines v. CAB, 674 F.2d 1 (D.C. Cir. 1982). Congress has broadly adopted deregulatory, pro-competitive policies for the airline industry. In addition to the Airline Deregulation Act of 1978 and later legislation further reducing the regulation of domestic and international transportation, Congress authorized slot exemptions at the slot-controlled airports with a preference for awarding them to airlines that had few, if any, operations at the airport. 49 U.S.C. §§ 41714(c), (h), 41716(b), 41717(c), 41718(b)(1). Congress has added provisions to the statutes governing airport grants and passenger facilities charges to encourage airports to adopt policies that will promote competition. 49 U.S.C. §§ 40117(k), 47106(f), and 47107(s).

Past Department and FAA rules and orders restricting flights at the slot-controlled airports also took into account the need to promote competition. See, e.g., 14 C.F.R. § 93.225 (lottery of available slots); High Density Airports: Notice of Extension of the Lottery Allocation and Notice of Lottery for Limited Slot Exemptions at LaGuardia Airport 66 Fed. Reg. 41294 (Aug. 7, 2001)(expanding the scope of new entrants eligible to participate in the lottery to those that did not participate in the Dec. 4, 2000, including those that had not applied for the AIR-21 slot exemptions by Dec. 4, 2000); High Density Airports, 67 Fed. Reg. 65826 (Oct. 28, 2002)(adopting the new entrant preference procedure for reallocating withdrawn or returned lottery slots at LaGuardia).

Furthermore, given the need to impose some limit on the number of flights at O'Hare, the allocation of flights should maximize public benefits. To that end, we may take into account the allocation's potential impact on competition, in view of the existing position of United and American at O'Hare. In Northwest Airlines v. Goldschmidt, 645 F.2d 1309 (8th Cir. 1980), the court affirmed the Secretary's decision allocating slots among the airlines that wished to serve Washington National Airport. The Secretary had allocated a large block of slots to New York Air, a new entrant airline, which planned to use the slots to begin a competitive Washington National-LaGuardia-Boston shuttle service. The Secretary took this action by withdrawing slots from several large incumbents, requiring incumbents to slide one slot each, and allocating the yielded slots among new entrant and other carriers. The court held that the Secretary's allocation was reasonable, because he had based it on an agreement tentatively reached by almost all of the airlines serving the airport, and because the allocation would cause the least amount of disruption to the airlines' schedules. 645 F.2d at 1318. The court also agreed with the Secretary that an allocation that

increased low-fare service would be consistent with the pro-competitive policy established by the Airline Deregulation Act of 1978. 645 F.2d at 1318-1319.

We emphasize that, by issuing this order, we are not deciding that at congested airports hub operators are expected to yield arrival times to smaller carriers. Nor are we necessarily determining that the use of regional jets is disfavored versus the use of larger aircraft. Although deregulation favors competition, it does not favor promoting one group of competitors over another. Our decision to permit limited entry by smaller carriers and to allow larger incumbents other than American and United to maintain their current level of operations, however, is consistent with the equities of the situation at O'Hare. United and American have added a very large number of flights in the last three years. While this build up was legal, it also can be seen as contributing to congestion at O'Hare. As stated earlier, American increased scheduled operations during the peak hours of 12:00 p.m. through 7:59 p.m. by 56 (over 10.4%) from April 2000 to November 2003, and United increased scheduled operations during those hours by 225 (over 41%) over the same period.

The net increase of all other air carriers was six scheduled operations during peak hours over this period. Several of these carriers are still operating at O'Hare at levels that are below those they maintained before the events of September 11, 2001. Even under this order, American and United will operate the vast majority of flights at O'Hare, and thus the two airlines will have a substantial ability and greater flexibility than rivals to shift flights in response to consumer demand and initiatives taken by competitors.

There is no bright line test for limited incumbency; we believe that allowing up to eight arrivals is consistent with the pro-competition goals of the Act and that it is not necessary to create a more generous exception for such carriers, such as that suggested by America West or ACAA. The threshold for determining limited incumbency--at least for purposes of slot exemptions at airports subject to the high density traffic airport rules--has varied over time. The buy-sell rule as first promulgated in December 1985 protected from FAA withdrawal the slots of air carriers holding 8 or fewer slots, or the equivalent of 4 or fewer arrivals. In August 1992, when the FAA codified the definition of limited incumbent in the rule, it referred to air carriers or commuter operators holding or operating fewer than 12 slots at any particular airport; assuming an equal split between departures and arrivals, this meant a limited incumbent had 6 or fewer arrivals. AIR-21 modified the definition of limited incumbent by increasing the threshold to 20 slots; again, assuming an even split, this would mean 10 or fewer arrivals. While America West is correct that AIR-21 directed the Secretary to grant 30 slot exemptions from the high density traffic airport rule to any new entrant or limited incumbent to service O'Hare, it did this as an "interim application" of the slot rules at O'Hare.

United contends that the Takings Clause of the Constitution's Fifth Amendment applies if the FAA does not freeze the service of other airlines when requiring United to reduce its service. United asserts that it has a property interest in its flight schedule and that its schedule is needed for the use of its airport assets (that is, its leasehold or other interests in aircraft gates, terminal space, and other facilities). It claims that permitting a competitor the opportunity to operate during these periods would interfere with its reasonable commercial expectations backed by "billions of dollars" of investment at O'Hare.

The Takings Clause argument is mistaken here. No airline owns the airspace at O'Hare and no airline has a license to operate a specific number of flights at the airport. The argument is contrary to Takings Clause precedent, because at most, the argument is premised on a claimed regulatory taking, not a taking of physical property. See, e.g., Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002). The Takings Clause does not require compensation whenever the Government requires a business to make some changes in its operation. For example, requiring an airline to continue operating service for several months that the airline wishes to terminate is not a taking, even if the

airline obtains no compensation for maintaining the service. Continental Air Lines v. Dole, 784 F.2d 1245 (5th Cir. 1986). The Continental decision quoted Justice Holmes' statement, "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." 784 F.2d at 1252 (quoting Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 413 (1922)). Further, the FAA action will not affect any carrier's leasehold interests at O'Hare, because the FAA is not requiring any recapture of these leasehold interests by the airport nor directing a sale, lease, assignment or other type of transfer of them.

Reducing congestion and the resulting delays at O'Hare arguably most benefit the airport's two hub air carriers, as their use of O'Hare as a hub gives them the greatest interest in reducing the operating inefficiencies and consumer dissatisfaction caused by serious delays at that airport. We do not agree with America West, however, that no action is necessary now because the hub air carriers' economic incentives will in time cause them to reduce their own schedules to eliminate excessive delays. The delay problem has persisted at O'Hare since last year, and we think the public interest requires that the congestion at the airport be reduced now.

C. Operational Flexibility

Several air carriers asserted an anticipated need to modify their schedules for competitive or operational reasons while this order is in effect. We acknowledge that this order should provide a mechanism through which air carriers can modify their schedules. However, given the relative saturation of the peak hours of operation, it also is essential that any schedule change preserves the stabilizing effect of the operational limits in this order. Therefore, this order establishes two means through which air carriers can move an arrival scheduled within the period from 7:00 a.m. through 8:59 p.m.

First, because it is necessary to evaluate the effect of any proposed schedule change, an air carrier must obtain the Administrator's written approval before making a schedule change that introduces a scheduled arrival to any half-hour period from 7:00 a.m. through 8:59 p.m. and that has the effect of increasing the number of authorized arrival operations by that carrier during the period in question. If we determine that the schedule change will not adversely affect congestion at O'Hare, the FAA will approve it.

Second, if the FAA is unable to approve a proposed schedule change, the air carrier may still accomplish the change under a procedure to trade a scheduled peak hour arrival on a one-for-one basis with another air carrier. In order to accomplish such a trade, the air carriers must obtain the Administrator's written approval. Once again, if the Administrator or her delegate determines that the trade will not increase congestion at O'Hare, the FAA will approve it.

In addition to allowing the transfer of scheduled arrival times among air carriers, American proposed in its written submission to the public docket that we permit air carriers to transfer a scheduled arrival for monetary consideration, along the lines of the "buy-sell rule" codified in 14 C.F.R. part 93, subpart S. When we consider intermediate solutions that can serve until O'Hare's capacity more closely matches air carrier demand, the FAA may entertain whether any aspect of the buy-sell rule or a newly conceived secondary market has a place in the intermediate solution. For the purpose of this order, however, which addresses in the short term the flight delays that O'Hare has generated, we believe that one-for-one trading of scheduled arrivals provides air carriers with adequate flexibility during the peak hours of operation.

D. Foreign Air Carriers and Unscheduled Arrivals

Most foreign air carriers provide very limited service into Chicago. Of the 22 foreign air carriers operating into Chicago as of August 19, 2004, 15 offer a single daily roundtrip. (See FAA-04-16944-27.) Of the remaining seven foreign carriers, only two offer as many as three daily roundtrips. As of August 19, 2004, foreign air carrier operations only account for 63 of 2,510 total operations, or about

2.5%, conducted between the hours of 7 a.m. and 9 p.m. In contrast to the 15% growth in daily operations at Chicago between April 13, 2000 and August 19, 2004, foreign air carriers had a slight reduction.

Given the small number of flights offered by any given foreign air carrier, a reduction of even one frequency could impair that carrier's ability to mount a viable service. Such a reduction also would have a disproportionate impact on that carrier vis-à-vis its U.S. competitor, because the schedule reduction order does not affect whether a U.S. carrier conducts domestic or foreign operations at the time periods controlled by this order. Therefore, in light of the small number of foreign air carrier operations at Chicago and for reasons of comity, we have decided to exempt foreign air carrier operations from this schedule reduction order.

This order terminates on April 30, 2005. The Summer 2005 scheduling season for international operations begins on April 3, 2005. Foreign flag carriers' winter schedules are set and generally reflected in published schedules. There are approximately four weeks during which the order will be in effect when foreign air carriers will be operating their summer schedules. Foreign air carriers currently are planning their summer schedules. To facilitate this process, the Administrator expects to list O'Hare as a Schedules Facilitated Airport, Level 2 (SFA), as specified under the IATA Guidelines. An SFA is an airport where there is potential for congestion at some period of the day, week, or season that is likely to be resolved by voluntary cooperation between carriers. Under IATA Guidelines, air carriers operating to, or intending to operate to a Level 2 airport should submit their proposed schedules in advance, so that voluntary solutions to capacity problems can be addressed. If the Administrator makes this election, foreign carriers would provide advance notification to the FAA of their intended operations and the FAA could request carriers to consider scheduling operations at less congested periods, if necessary.

Additionally, American Airlines commented that the schedule reduction order should set operations at the maximum level that still allows all involved to achieve the goal of more dependable operations at O'Hare. American also contends that new limits on unscheduled operations, including general aviation, should be considered as part of maximizing capacity at the airport. This order addresses scheduled operation only. The FAA will review operational data from unscheduled operations and determine whether it is necessary to consider the impacts of general aviation in the future.

E. Usage Requirement

The FAA has considered whether the schedule reduction order should include a usage requirement such as the "use or lose" requirement under the high density traffic airport rule, 14 C.F.R. § 93.227. We have determined not to institute any such requirement in this context. While such a requirement would ensure the maximum utilization of the operating times and might be considered in a future rulemaking context, it is not the intent or purpose of this order to establish a reallocation mechanism for the duration of this order. For delay reduction purposes, we consider it acceptable in the near term to have fewer operations than the maximum permitted. Moreover, this order encompasses the winter scheduling season and the first several weeks of the summer. Most air carrier winter schedules will be finalized in the immediate future. We do not expect significant modification of those schedules over the next six months. The FAA is accommodating modifications that result in a one-for one exchange for operational purposes.

F. O'Hare Expansion, the O'Hare Modernization Plan, and Other Alternatives

Several submissions to the public docket expressed favorable or negative views on the expansion of O'Hare or on the airport operator's proposed O'Hare Modernization Program (OMP). Some submitters expressed their view that air traffic currently serving O'Hare should instead serve the region via other regional airports, either existing or proposed. The FAA convened the scheduling reduction meeting and solicited views and data from interested persons solely to determine a short-term limitation on the number of scheduled arrivals that will maximize the efficient operation of O'Hare for the six-month

duration of this order.

This order is not intended to evaluate or to prescribe any particular long-term avenue for increasing capacity and reducing delays at O'Hare. Independently of the scheduling reduction meeting and this public docket, the FAA is preparing an environmental impact statement evaluating the City of Chicago's proposal to build new runways at O'Hare and reasonable alternatives. The use of other existing and proposed airports will be considered in the environmental impact statement, consistent with the federal policy of increasing airport capacity and imposing artificial restrictions on capacity to alleviate delays only after other reasonably available and less burdensome alternatives have been tried. The FAA has announced a streamlined environmental review process that calls for an FAA decision by September 2005.

In its public submission to the docket United suggests several modifications of air traffic procedures and other activities that, it states, could alleviate congestion at O'Hare. Although several of these proposals may have merit, a few are not technically achievable in the manner United suggests, others present environmental concerns that must be assessed, and some of them require funding that is not currently available. As a result, although these proposals warrant further consideration, the Administrator has determined that none of them present a reasonably achievable alternative for reducing the delays that are present today and would worsen materially in November 2004, should published OAG schedules be permitted to take effect.

In its public submission to the docket US Airways requests that the FAA include Chicago's Midway Airport (MDW) as part of the analysis of the congestion problem. US Airways points out that MDW traffic has grown significantly since 2001 and can affect overall air space constraints in the Chicago region. The company requests that any carrier serving O'Hare that faces a changed competitive environment because of a rival's service addition at MDW be permitted to respond on a one-to-one basis with new operations at O'Hare. While we acknowledge that congestion at MDW can spill over to O'Hare because of shared air space, our July Federal Register notice implementing the scheduling meeting authority granted to the Secretary and the Administrator, and the guidelines approved by the U.S. Department of Justice citing that authority, do not permit discussion of conditions at airports other than O'Hare; thus, we have considered issues concerning Midway to be outside the scope of the formal meeting. Nevertheless, the Department is mindful of the competitive environment in the airline industry and will consider appropriate measures should schedule additions at MDW undermine the effectiveness of this order.

G. Enforcement of This Order

The FAA may enforce this order through an enforcement action seeking a civil penalty under 49 U.S.C. § 46301(a). An air carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. § 632, is liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in this order. An air carrier that is a small business as defined in the Small Business Act is liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in this order. The FAA also may file a civil action in U.S. District Court, under 49 U.S.C. §§ 46106, 46107, seeking to enjoin any air carrier from violating the terms of this order.

H. Intermediate- and Long-Term Solutions

While this order imposes a limitation on the number of scheduled operations at O'Hare, its duration is temporary, and it is not the FAA's preferred alternative to addressing capacity shortfalls. In the FAA's view, the long-term priority is to expand airport and airway system capacity and to increase the efficient use of existing resources. This is by far the most effective way to serve the traveling public and promote a strong airport and airway system. Over the next few months, the FAA will be actively engaged in public discussions regarding the capacity shortfall at O'Hare. These discussions are expected to yield

significant insight into what intermediate measures are appropriate after this order expires.

ACCORDINGLY, with respect to scheduled flight operations at O'Hare, it is ordered that:

1. This order applies to the following:

a. all air carriers conducting scheduled operations at O'Hare as of the date of this order, any air carrier that operates under the same designator code as such an air carrier, and any air carrier that has or enters into a codeshare agreement with such an air carrier.

b. all air carriers initiating scheduled service to O'Hare from 7:00 a.m. through 8:59 p.m., Central Time, while this order remains in effect.

2. Under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. §§ 40101, 40103, and 40113, we hereby order that:

a. from 7:00 a.m. through 7:59 p.m., Central Time, scheduled air carrier and foreign air carrier arrivals will not exceed 88 per hour, except as prescribed in this order.

b. from 8:00 p.m. through 8:59 p.m., Central Time, scheduled arrivals will not exceed 98.

c. from 8:00 p.m. through 8:29 p.m., Central Time, scheduled arrivals will not exceed 73.

d. of the 88 scheduled arrivals per hour from 7:00 a.m. through 7:59 p.m., Central Time, scheduled arrivals will not exceed 50 within any rolling 30-minute period.

e. during the first half of each hour from 7:00 a.m. through 8:59 p.m., the number of scheduled arrivals that each air carrier may conduct will not exceed the sum of the first and second quarters of each hour, as listed for each air carrier and its affiliates in the appendix to this order.

f. during the second half of each hour from 7:00 a.m. through 8:59 p.m., the number of scheduled arrivals that each air carrier may conduct will not exceed the sum of the third and fourth quarters of each hour, as listed for each air carrier and its affiliates in the appendix to this order.

3. For the purpose of this order, any air carrier conducting eight or fewer scheduled arrivals at O'Hare from 7:00 a.m. though 8:59 p.m., Central Time, as of the date of this order, including the scheduled arrivals of any affiliate of the air carrier, is designated a Limited Incumbent Air Carrier.

a. a Limited Incumbent Air Carrier may schedule additional arrivals, as long as its total number of arrivals does not exceed eight from 7:00 a.m. through 8:59 p.m., Central Time.

b. in scheduling additional arrivals, a Limited Incumbent Air Carrier shall not add more than one scheduled arrival from 12:00 p.m. through 8:59 p.m.

c. in scheduling additional arrivals, a Limited Incumbent Air Carrier shall not add an arrival that will cause the total number of scheduled arrivals for the hour to exceed 90.

4. For the purpose of this order, any air carrier that initiates scheduled service to O'Hare from 7:00 a.m. through 8:59 p.m., Central Time, while this order remains in effect, excluding service to be marketed as an affiliate of another air carrier serving O'Hare, is designated a New Entrant Air Carrier. Subject to the approval of the Administrator:

a. a New Entrant Air Carrier may schedule arrivals from 7:00 a.m. through 8:59 p.m., Central Time, up to a total of eight arrivals.

b. in scheduling additional arrivals, a New Entrant Air Carrier shall not schedule more than one arrival from 12:00 p.m. through 8:59 p.m.

c. in scheduling additional arrivals, a New Entrant Air Carrier shall not schedule an arrival that will cause the total number of scheduled arrivals for the hour to exceed 90.

5. An air carrier may request the Administrator's approval to move any arrival scheduled from 7:00 a.m. through 8:59 p.m. to another half hour within that period. The air carrier must receive the written approval of the Administrator, or her delegate, prior to conducting any scheduled arrival that is not listed in the appendix to this order. All requests to move a scheduled arrival must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267-7277 or e-mail 7-AWA-Slotadmin@faa.gov, and must come from a designated representative of the air carrier. If the FAA cannot approve an air carrier's request to move a scheduled arrival, the air carrier may then apply for a trade in accordance with ordering paragraph six.

6. An air carrier may trade any scheduled arrival from 7:00 a.m. through 8:59 p.m. and identified in the appendix to this order for a scheduled arrival conducted by another air carrier or may transfer such an arrival; however, an air carrier shall not sell, lease, or otherwise transfer any scheduled arrival to any other air carrier or to any person except on a one-for-one basis. The air carrier must receive the written approval of the Administrator, or her delegate, prior to conducting any scheduled arrival that is not listed in the appendix to this order. All requests to trade a scheduled arrival must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267-7277 or e-mail 7-AWA-Slotadmin@faa.gov, and must come from a designated representative of the air carrier.

7. The limits on scheduled operations specified in this order shall take effect no later than 7:00 a.m. on November 1, 2004 and shall expire at 9:00 p.m. on April 30, 2005.

8. The FAA may modify or withdraw any provision in this order on its own or on application by any air carrier for good cause shown.

Issued in Washington, DC, on August 18, 2004.

_____
Administrator of the FAA

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ATTACHMENT A-12
FAA LETTER TO GARY, IN
(8/24/04)

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U.S. Department
of Transportation
Federal Aviation Administration

Office of the Associate
Administrator for Airports

800 Independence Ave., SW.
Washington, DC 20591

AUG 24 2005

The Honorable Scott L. King
Mayor of Gary
401 Broadway
Gary, IN 46402

Dear Mayor King:

Secretary Mineta has asked me to respond to your letter of August 5 about reaching solutions to the problem of unacceptable congestion and delays at Chicago O'Hare International Airport (ORD). Your letter suggests that Gary/Chicago International Airport (GYY) can provide immediate help in mitigating congestion and delay at ORD.

Problems related to congestion and delays at ORD are significant and growing as we move through the peak summer travel season. Delays at ORD have a ripple effect throughout the country, costing airlines and their passengers millions of dollars. As Administrator Blakey has said, "As Chicago goes, so goes the system." The problem at ORD is twofold: the airlines' overscheduling of flights and the airport's capacity. We held recent meetings in Washington, DC, with airlines providing service at ORD. We have now reached an agreement with those airlines on ways to address the scheduling problems at ORD. The capacity issue requires an examination of potential long-term solutions at ORD and other airports in the area including GYY.

The airlines themselves make airline business decisions on routes and destinations based on many criteria including demand, capacity, revenue potential, and accessibility. In 1978, Congress eliminated the Federal Government's role in decisions on airline destinations. While the Federal Aviation Administration (FAA) does not have the authority to divide demand between airports, we would support an airline's decision to consider beginning operations at GYY.

Because the FAA cannot assign demand between airports, we suggest that you continue working directly with the airlines. Meanwhile, as we continue to examine capacity issues and potential solutions, we will consider the potential roles and interaction of airports throughout the region, including GYY.

It will be a pleasure to discuss this matter with you further the next time you are in Washington, DC. As you may be aware, in the last five years, the FAA awarded more than $5.7 million in Airport Improvement Program grants to GYY. In addition, since 1996, FAA has approved the use of $11.2 million in Passenger Facility Charge

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funds from ORD to be used at GYY. We look forward to continuing to support safe and efficient airport operations at GYY.

If I can be of further help, please let me know.

Sincerely,

Original Signed by:
Woodie Woodward

Woodie Woodward
Associate Administrator
for Airports

ATTACHMENT A-13
FAA LETTER TO ROCKFORD, IL
(8/24/04)

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U.S. Department
of Transportation
Federal Aviation Administration

Office of the Associate
Administrator for Airports

800 Independence Ave., SW.
Washington, DC 20591

8/24/04

The Honorable Douglas P. Scott
Mayor of Rockford
425 East State Street
Rockford, IL 61104

Dear Mayor Scott:

Administrator Blakey has asked me to respond to your letter of August 5 about airport capacity at Chicago O'Hare International Airport (ORD).

Problems related to congestion and delays at ORD are significant and growing as we move through the peak summer travel season. Delays at ORD have a ripple effect throughout the country, costing airlines and their passengers millions of dollars. As Administrator Blakey has said, "As Chicago goes, so goes the system." The problem at ORD is twofold: the airlines' overscheduling of flights and the airport's capacity. We held recent meetings in Washington, DC, with those airlines providing service at ORD, intending to address the scheduling problems at ORD. We have now reached an agreement with those airlines on ways to address the scheduling problems at ORD. The capacity issue requires an examination of potential long-term solutions at ORD and other airports in the area including Greater Rockford Airport (RFD).

The airlines themselves make airline business decisions on routes and destinations based on many criteria including demand, capacity, revenue potential, and accessibility. In 1978, Congress eliminated the Federal Government's role in decisions on airline destinations. While the Federal Aviation Administration (FAA) does not have the authority to divide demand between airports, we would support an airline's decision to consider beginning operations at RFD.

Because the FAA cannot assign demand between airports, we suggest that you continue working directly with the airlines. Meanwhile, as we continue to examine capacity issues and potential solutions, we will consider the potential roles and interaction of airports throughout the region, including RFD.

As you may be aware, in the last five years the FAA has awarded more than $21.3 million in Airport Improvement Program grants to RFD, including $6.4 million in the last two fiscal years alone. We look forward to continuing to support safe and efficient airport operations at RFD.

If I can be of further help, please let me know.

Sincerely,

Original Signed by:
Woodie Woodward

Woodie Woodward
Associate Administrator
for Airports

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ATTACHMENT A-14
EXCERPTS FROM 1993-1997 NPIAS

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National Plan of Integrated Airport Systems (NPIAS) 1993-1997

Report of the Secretary of Transportation to the United States Congress pursuant to Section 47103 of Title 49 of United States Code

U.S. Department of Transportation
Federal Aviation Administration

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590
April 7, 1995

The Honorable Albert Gore, Jr.
President of the Senate
Washington, DC 20510

Dear Mr. President:

I am pleased to transmit to you the National Plan of Integrated Airport Systems (NPIAS), 1993-97, as required by Section 47103 of Title 49 of United States Code. The NPIAS estimates the costs associated with establishing a system of airports adequate to meet the needs of civil aviation and to support the Department of Defense and the Postal Service. It draws selectively from local, regional, and State planning studies. The estimates represent the total cost of airport development items which are eligible for Federal aid under the Airport and Airway Improvement Act of 1982.

As you know, as part of our restructuring of the Department of Transportation, we are currently reviewing all of our infrastructure investment programs, including the Airport Improvement Program. The information in the NPIAS will be taken into consideration during our review.

A report has also been sent to the Speaker of the House of Representatives.

Sincerely,

Federico Peña

Enclosure

Capacity

A major concern in airport system planning is the adequacy of runways to handle anticipated aircraft operations. If runway capacity is inadequate, air traffic is delayed causing expense to airlines, inconvenience to passengers, and a major workload for the FAA.

Most airports are uncongested because a single runway is able to handle over 200,000 operations annually, which is approximately the amount of activity that would be generated by a city with 350,000 inhabitants. More runways are one means to provide more capacity. Other means are described in the section on non-capital alternatives. As traffic increases, it can also be divided among a system of airports. Reliever airports are developed to serve general aviation, allowing commercial service airports to concentrate on air carrier operations.

When a city becomes so large that it generates more than 10 to 12 million originating passengers per year, a second commercial service airport may be warranted. There are few cities this large: London, Paris, and Tokyo fit the example, as well as New York, Los Angeles, San Francisco, Chicago, Miami, and Washington in the United States, with Dallas and Boston approaching this level of activity.

The concentration of traffic at an airport can result in congestion and delay. Delay is defined as the difference between the time an operation actually takes and the time that it would have taken under uncongested conditions without interference from other aircraft. Delay is reported in a number of ways. Air traffic controllers identify instances where aircraft are delayed 15 minutes or more, and this information is used by the FAA to monitor the day to day operation of the air traffic control system. The number of airline arrivals and departures that are delayed 15 minutes or more is compiled by the Department of Transportation for busy airports and is reported regularly as information for consumers. Airport planners and designers use, the average delay per aircraft operation as a measure for congestion. This measure is directly related to demand and capacity, it can be forecast, and it can be translated into dollars. Experience shows that delay increases gradually with rising levels of traffic until the practical capacity of an airport is reached, at which point the average delay per aircraft operation is in the range of 4 to 6 minutes. Delays increase rapidly if traffic demand increases beyond this level. An airport is considered to be severely congested when average delays exceed 9 minutes per operation. Beyond this point delays are extremely volatile, and a small increase in traffic, adverse weather conditions, or other disruptions can result in lengthy delays that disrupt flight schedules and impose a heavy workload on the air traffic control system.

The seven airports with average delays in excess of 9 minutes accounted for most of the severe air traffic delays in the United States during 1992.

If demand increases as is now forecast, and no new runways are added to major airports, congestion will worsen to the point that 17 airports will be severely congested by the year 2002. However, if all of the new runways included in the NPIAS are built, the number of severely congested airports will only increase to 10 (Denver will drop off the list, and Bradley International, Honolulu, Los Angeles, and San Francisco will be added). The NPIAS is limited usually to runways that have significant local support. Further improvement is possible if runways now under consideration in Boston, Honolulu, Chicago, and San Francisco receive local acceptance.

TABLE 2-1

SEVERELY CONGESTED AIRPORTS
(AVERAGE DELAY EXCEEDS 9 MINUTES/PER OPERATION) 1/

1992	2002 (Without New Runways)	2002 (With New Runways In NPIAS)
BOSTON LOGAN	ATLANTA HARTSFIELD	BRADLEY INT'L
DENVER STAPLETON	BRADLEY INT'L	BOSTON LOGAN
DALLAS-FT.WORTH	BOSTON LOGAN	DALLAS-FT. WORTH
NEWARK	DALLAS-FT. WORTH	NEWARK INT'L
JOHN F. KENNEDY	DETROIT METRO.	HONOLULU INT'L
LA GUARDIA	NEWARK INT'L	JOHN F. KENNEDY
CHICAGO O'HARE	HONOLULU INT'L	LOS ANGELES INT'L
TOTAL 7	JOHN F. KENNEDY	LA GUARDIA
	LOS ANGELES INT'L	CHICAGO O'HARE
	LA GUARDIA	SAN FRANCISCO
	ORLANDO INT'L	TOTAL 10
	MIAMI INT'L	
	MINNEAPOLIS-ST. PAUL	
	CHICAGO O'HARE	
	PHILADELPHIA INT'L	
	SAN FRANCISCO INT'L	
	ST. LOUIS INT'L	
	TOTAL 17	

1/ A related indicator is the number of airports where delays to airline aircraft exceed 20,000 hours per year. There were 23 airports with this level of delay in 1992 and the number is forecast to increase to 33 in 2002 if capacity is not increased.

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ATTACHMENT A-15
EXCERPTS FROM 1998-2002 NPIAS

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National Plan of Integrated Airport Systems (NPIAS) (1998-2002)

U.S. Department of Transportation
Federal Aviation Administration

Report of the Secretary of Transportation to the United States Congress Pursuant to Section 47103 Of Title 49, United States Code

Available on world wide web at: www.faa.gov/arp/410home.htm

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

March 12, 1999

The Honorable Dennis Hastert
Speaker of the House of
Representatives
Washington, DC 20515

Dear Mr. Speaker:

I am pleased to transmit to you the National Plan of Integrated Airport Systems (NPIAS), 1998-2002, as required by Section 47103 of Title 49 of United States Code.

The NPIAS estimates the costs associated with establishing a system of airports adequate to meet the needs of civil aviation and to support the Department of Defense and the United States Postal Service. It draws selectively from local, regional, and state planning studies. The estimates represent the total cost of airport development items that are eligible for Federal aid under the Airport and Airway Improvement Act 1982.

A report has also been sent to the President of the Senate.

Sincerely,

Rodney E. Slater

Enclosure

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

March 12, 1999

The Honorable Albert Gore, Jr.
President of the Senate
Washington, DC 20510

Dear Mr. President:

I am pleased to transmit to you the National Plan of Integrated Airport Systems (NPIAS), 1998-2002, as required by Section 47103 of Title 49 of United States Code.

The NPIAS estimates the costs associated with establishing a system of airports adequate to meet the needs of civil aviation and to support the Department of Defense and the United States Postal Service. It draws selectively from local, regional, and state planning studies. The estimates represent the total cost of airport development items that are eligible for Federal aid under the Airport and Airway Improvement Act 1982.

A report has also been sent to the Speaker of the House of Representatives.

Sincerely,

Rodney E. Slater

Enclosure

CAPACITY

The performance of the airport system is affected by many factors, including the layout of individual airports, the manner in which airspace is organized and used, operating procedures, and application of technology.

A major concern in airport system planning is the adequacy of runways to handle anticipated aircraft operations. If air traffic demand exceeds runway capacity, air traffic is delayed, causing expense to airlines, inconvenience to passengers, and increased workload for the FAA air traffic control system.

Most airports are uncongested because they serve small communities and a single runway is able to handle over 200,000 operations annually, which is approximately the amount of activity that would be generated by a city with 350,000 inhabitants. More runways are one means to provide more capacity. Other means are described in the section of this report on noncapital alternatives. As traffic increases, it can also be divided among airports within a system. Reliever airports are developed to serve general aviation, allowing commercial service airports to concentrate on air carrier operations.

When a city becomes so large that it generates more than 10 to 12 million originating passengers per year, a second commercial service airport may be warranted. There are few cities this large: London, Paris, and Tokyo fit the example, as well as New York, Los Angeles, San Francisco, Chicago, Miami, and Washington in the United States.

The concentration of traffic at an airport can result in congestion and delay. Delay is defined as the difference between the time an operation actually takes and the time that it would have taken under uncongested conditions without interference from other aircraft. Delay is reported in a number of ways. Air traffic controllers identify instances where aircraft are delayed 15 minutes or more in a given flight segment, and this information is used by the FAA to monitor the day-to-day operation of the air traffic control system. The number of airline arrivals and departures that are delayed 15 minutes or more is compiled by the Department of Transportation for busy airports and is reported regularly as information for consumers. Airport planners and designers use the average delay per aircraft operation as a measure of congestion. This measure is directly related to demand and capacity, it can be forecast, and it can be translated into a dollar cost of delay.

Experience shows that delay increases gradually with rising levels of traffic until the practical capacity of an airport is reached, at which point the average delay per aircraft operation is in the range of 3 to 5 minutes. Delays increase rapidly once traffic demand increases beyond this level. An airport is considered to be congested when average delay exceeds 5 minutes per operation. Beyond this point delays are extremely volatile, and a small increase in traffic, adverse weather conditions, or other disruptions can result in lengthy delays that upset flight schedules and impose a heavy workload on the air traffic control system.

There were 13 airports with average delay in excess of 5 minutes per operation that accounted for most of the severe air traffic delays in the United States during 1997.

Airports with Average Delay In Excess of 5 Minutes Per Operation In 1997
✈ Newark International
✈ Atlanta Hartsfield
✈ LaGuardia
✈ Philadelphia International
✈ Dallas-Fort Worth International
✈ Detroit Metropolitan
✈ St. Louis International
✈ Minneapolis-Saint Paul International
✈ John F. Kennedy International
✈ Boston Logan
✈ Cincinnati-Hopkins International
✈ Chicago O'Hare International
✈ San Francisco International

Table 2 Congested Airports

The trend toward greater air traffic delays was temporarily arrested from 1991 through 1995, in part through measures like the construction of new runways and more efficient use of existing capacity. However, in 1996, air traffic delays rose again, apparently due to the introduction of new separation standards which increased the distance between certain types of aircraft. A more gradual increase in delays is expected in the future, and major airfield improvements together with enhanced technology are planned to help mitigate those delays.

ALTERNATIVE MEASURES

The construction of new runways is not the only response to airfield congestion. The continued application of certain measures, termed alternative measures, will help to limit delay without substantial investment.

Delays can be reduced, in part, by modifying air traffic control procedures to improve the flow of aircraft en route and in the terminal area. The FAA is developing more flexible en route procedures. Long-term goals for operational procedures focus on free flight, in which air traffic controllers will intervene only to prevent conflicts. The FAA is

ATTACHMENT A-16
EXCERPTS FROM 2001-2005 NPIAS

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U.S. Department of Transportation
Federal Aviation Administration

National Plan of Integrated Airport Systems (NPIAS) (2001-2005)

Report of the Secretary of Transportation to the
United States Congress Pursuant to Section 47103
Of Title 49, United States Code

Available on world wide web at: www.faa.gov/arp/planning/npias/

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

August 28, 2002

The Honorable Richard Cheney
President of the Senate
Washington, DC 20510

Dear Mr. President:

I am pleased to transmit to you the National Plan of Integrated Airport Systems (NPIAS), 2001-2005.

The NPIAS estimates the costs associated with establishing a system of airports adequate to meet the needs of civil aviation and to support the Department of Defense and the Postal Service. It draws selectively from local, regional, and State planning studies. The estimates incorporate requirements imposed by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21).

A report has also been sent to the Speaker of the House of Representatives.

Sincerely yours,

Norman Y. Mineta

Enclosure

CAPACITY

The performance of the airport system is affected by many factors, including the layout of individual airports, the manner in which airspace is organized and used, operating procedures, and application of technology.

A major concern in airport system planning is the adequacy of runways to handle anticipated aircraft operations. If air traffic demand exceeds runway capacity, air traffic is delayed, causing expense to airlines, inconvenience to passengers, and increased workload for the FAA air traffic control system.

Most airports are uncongested because they serve small communities and a single runway is able to handle over 200,000 operations annually, which is approximately the amount of activity that would be generated by a city with 350,000 inhabitants. More runways are one means to provide more capacity. Other means are described in the section of this report on noncapital alternatives. As traffic increases, it can also be divided among airports within a system. Reliever airports are developed to serve general aviation, allowing commercial service airports to concentrate on air carrier operations.

When a city becomes so large that it generates more than 10 to 12 million originating passengers per year, a second commercial service airport may be warranted. There are few cities this large: London, Paris, and Tokyo fit the example, as well as New York, Los Angeles, San Francisco, Chicago, Miami, Houston, Dallas-Ft. Worth, Boston, and Washington in the United States.

The concentration of traffic at an airport can result in congestion and delay. In 2001, the DOT developed a standard definition for delay as an instance when an aircraft arrives at the gate 15 minutes or more after its scheduled arrival time. The number of airline arrivals and departures that are delayed 15 minutes or more is compiled by DOT for busy airports and is available monthly for consumers. Other delay statistics are collected and used for specific purposes. For example, air traffic controllers identify instances where aircraft are delayed 15 minutes or more in a given flight segment, and the FAA uses this information to monitor the day-to-day operation of the air traffic control system. Airport planners and designers use the average delay per aircraft operation as a measure of congestion which is related to demand and capacity, it can be forecast, and it can be translated into a dollar cost of delay.

Experience shows that delay increases gradually with rising levels of traffic until the practical capacity of an airport is reached, at which point the average delay per aircraft operation is in the range of 3 to 5 minutes. Delays increase rapidly once traffic demand increases beyond this level. An airport is considered to be congested when average delay exceeds 5 minutes per operation. Beyond this point delays are extremely volatile, and a small increase in traffic, adverse weather conditions, or other disruptions can result in

lengthy delays that upset flight schedules and impose a heavy workload on the air traffic control system.

There were 18 airports with average delay in excess of 5 minutes per operation that accounted for most of the severe air traffic delays in the United States during 2000.

Airports with Average Delay In Excess of 5 Minutes Per Operation In 2000

✈ New York LaGuardia
✈ Newark International
✈ Philadelphia International
✈ Atlanta Hartsfield
✈ Boston Logan
✈ New York John F. Kennedy International
✈ Detroit Metropolitan
✈ Chicago O'Hare International
✈ Dallas-Fort Worth International
✈ Washington Dulles International
✈ Minneapolis-Saint Paul International
✈ St. Louis International
✈ Los Angeles International
✈ San Francisco International
✈ Phoenix Sky Harbor International
✈ Miami International
✈ Houston George Bush Intercontinental
✈ Cincinnati-Northern Kentucky International

Table 2 Congested Airports

After several years of stability air traffic delays began to rise in 1996, apparently because of the introduction of new separation standards which increased the distance between certain types of aircraft, steady growth in traffic, and reduced use of land and hold short operations that allow independent arrivals for specific aircraft types on intersecting runways, where airport geometries permit. A more gradual increase in delays is expected in the future, and major airfield improvements together with enhanced technology are planned to help mitigate those delays.

The FAA addressed the current and future capacity of major airports in the Airport Capacity Benchmark Report 2001. The report indicates that technology improvements

ATTACHMENT A-17
EXCERPTS FROM 2005-2009 NPIAS

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U.S. Department of Transportation
Federal Aviation Administration

National Plan of Integrated Airport Systems (NPIAS) (2005-2009)

Report of the Secretary of Transportation to the United States Congress
Pursuant to Section 47103 of Title 49, United States Code

The NPIAS 2005-2009 report is available online at: http://www.faa.gov/arp/planning/npias/

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

September 30, 2004

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20510

Dear Mr. President:

I am pleased to transmit to you the National Plan of Integrated Airport Systems (NPIAS) 2005-2009 Report to Congress.

The NPIAS report estimates the costs associated with establishing a system of airports adequate to meet the needs of civil aviation and to support the Department of Defense and the Postal Service. It draws selectively from local, regional, and State planning studies. The estimates incorporate requirements imposed by Vision 100—Century of Aviation Reauthorization Act.

An identical letter has been sent to the Speaker of the House of Representatives.

Sincerely yours,

Norman Y. Mineta

Enclosure

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

September 30, 2004

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

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Sincerely yours,

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Enclosure

Chapter 2: System Performance

OVERVIEW

The Federal role in airport development is largely concerned with optimizing system performance. The primary purpose of this chapter is to describe how well the airport system is operating and to highlight any trends that are apparent. Six key factors have been selected to gauge the level of system performance: capacity, safety, noise, pavement condition, surface accessibility, and financial performance.

APPLYING THE SIX KEY FACTORS

Each of the six factors is relevant to the quality of air transportation and, taken together, they provide a good indication of system performance. The six factors are not equally sensitive to capital improvements, and increased investment is not necessarily the most effective way to improve performance.

For instance, airport investment is only one of several measures that must be combined to reduce the already low rate of accidents. Communications, navigation, and surveillance systems, airport inspection, pilot training, avionics, human factors, and aircraft and engine technology also contribute to the gradual improvement of aviation safety. Federal aid to airports can be particularly useful in focusing on specific issues, such as the provision for aircraft rescue and fire fighting equipment, development of safety areas around runways, and removal of obstructions in runway approach zones.

Noise problems can inhibit the ability to expand some capacity constrained airports. The principal factor in reducing the number of people exposed to high noise levels is the expanded use of quieter aircraft, and the Federal Government has actively encouraged new technology in this area. However, Federal aid is very useful in addressing problems that would otherwise persist despite the use of quieter aircraft. Federal aid for planning and implementing noise compatibility measures has fostered a more cooperative relationship between airports and surrounding communities, helping to relieve a serious and complex societal issue.

A section on monitoring the performance of terminal buildings will be added to future reports, when a suitable monitoring technique is developed. The FAA is working with industry to develop suitable guidelines to assist in planning airport terminal buildings. However, a report is not possible at this time because there is no consensus about which aspects to measure and how to measure them.

CAPACITY

The capacity of the airport system is affected by many factors, including the layout of individual airports, the manner in which airspace is organized and used, operating procedures, and application of technology.

A major concern in airport planning is the adequacy of runways to handle anticipated aircraft operations. If airfield capacity is inadequate, air traffic is delayed causing expense to airlines, inconvenience to passengers, and increased workload for the FAA air traffic control system. A single runway with a parallel taxiway normally can accommodate 200,000 annual aircraft operations. The airfield capacity at most airports is more than sufficient to handle existing and forecast activity. For those airports that need additional capacity, runways are one means to provide more capacity. Non-capital means are described in the next section, entitled Alternative Capacity Enhancement Measures. As traffic increases, growth can also be divided among airports within a system. Reliever airports are developed to serve general aviation, allowing commercial service airports to more effectively serve air carrier operations.

The concentration of traffic at an airport can result in congestion and delay. DOT defines a delayed operation as an aircraft arriving at or departing from a gate 15 minutes or more after its scheduled time. The number of arrivals and departures that are delayed 15 minutes or more is compiled by DOT for busy airports and is reported monthly. In 2003, the 17 airlines reporting data posted an on-time arrival record of 82 percent, which is slightly under the all-time best mark of 82.1 percent reached in 2002.

Other delay statistics are collected and used for specific purposes. For example, air traffic controllers identify instances where aircraft are delayed 15 minutes or more in a given flight segment. The FAA uses this information to monitor the day-to-day operation of the air traffic control system. Airport planners and designers use the average delay per aircraft operation as a measure of congestion, which is related to demand and capacity. This statistic can be forecast and it can be translated into a dollar cost of delay.

Airport sponsors often seek to reduce the cost of airfield delay by improving runways and taxiways. FAA provides guidance to help airport sponsors in deciding when airfield capacity improvements should be considered. Current FAA guidance recommends that capacity planning start when aircraft activity reaches 60 to 75 percent of an airport's airfield capacity. Since major airfield improvements often take 10 or more years from concept to opening, the recommendation allows adequate lead-time so that the needed improvement can be completed before a problem becomes critical.

The Annual Service Volume (ASV), at a particular level of delay, is used to measure airfield capacity at individual airports. Traditionally, a delay of four to six minutes per aircraft operation is used in ASV calculations. The relationship between aircraft operations and delay is non-linear, and often exponential. Experience shows that airfield delay increases gradually with rising levels of traffic until a certain level is reached. Thereafter, the delay rises more rapidly with increased traffic. For larger airports, it is our observation that the onset of the more rapid growth in delay often occurs when delay is between 4 and 6 minutes per aircraft operation. In 2002, 17 airports had an average delay in excess of 6 minutes per operation.

The process that is used to evaluate airfield improvements is comprehensive. It includes: airport master planning; FAA airspace studies; environmental analysis and documentation; airfield modeling and delay analysis as well as benefit-cost assessments for larger projects. Airfield simulation models are employed to estimate the level of delay associated with current and forecast

operations for both the existing airfield and for airfield improvements. Benefit-cost assessments are applied to determine the value of the airfield improvements in relation to the cost of improvements.

The FAA must assess potential environmental impacts that may result from airport development projects before any development can occur. Vision 100-Century of Aviation Authorization Act of 2003 (Public Law 108-176) directed the FAA to implement a process for expedited and coordinated environmental reviews of airport capacity, safety, and security projects. In addition, the FAA is continuing to work closely with large hub primary airports to ensure environmental studies for major runway projects are completed on schedule. FAA establishes environmental impact statement teams, maximizes available resources and utilizes best or recommended practices for accomplishing its environmental work in a timely manner. At a minimum, monthly reviews are conducted to monitor milestones and completion dates. In most cases reviews are accomplished on a weekly basis.

The largest airport capacity increases can be achieved through new runway construction. Generally, new runways increase an airport's capacity by 30 to 60 percent. In the last five years, eight new runways have opened (shown in Table 2) at airports identified in the FAA's OEP. New runways have provided these airports with the ability to accommodate one million additional operations per year, increasing capacity of the 35 OEP airports by 5.4 percent. The OEP is an ongoing 10-year plan developed by the FAA to increase the capacity and efficiency of the NAS, while at the same time enhancing safety and security. The first plan was released in 2001 and is updated annually. There are 35 airports contained in the OEP (31 large hub airports, plus 4 medium hub airports: Memphis, Cleveland, Ronald Reagan Washington National, and Portland, Oregon).

The new runways that have opened in the last five years as shown below are keeping the FAA on track to achieve the ASV goal of increasing capacity at the 35 OEP airports by at least one percent per year through 2008.

Table 2: New Runways Opened in Prior Five Years at OEP Airports

Airport	Date New Runway Opened	Runway Identifier	Runway Length (Feet)
Philadelphia	December 1999	8/26	5,000
Phoenix	October 2000	7R/25L	7,800
Detroit	December 2001	4L/22R	10,000
Cleveland	December 2002 (6L/24R Phase 1)	6L/24R	7,145
Denver	September 2003	16R/24L	16,000
Miami	September 2003	8/26	8,600
Houston	October 2003	8L/26R	9,000
Orlando	December 2003	17L/35R	9,000

Currently, there are 8 runway projects (7 new runways and 1 runway extension) under construction or in the pre-construction stage as shown in Table 3. These improvements are anticipated to provide

these airports with the ability to accommodate 892,000 additional operations per year, increasing capacity of the 35 OEP airports by about nine percent. In addition, there are 16 runway projects under consideration at OEP airports that are currently in the planning or environmental stage.

Table 3: OEP Runways and Runway Extensions Under Construction (as of May 2003)

Airport	Anticipated Runway Opening Date	Status
Minneapolis-St. Paul	October 2005	Under construction
Cincinnati/Northern Kentucky	December 2005	Under construction
Lambert-St. Louis	April 2006	Under construction
Atlanta Hartsfield	June 2006	Under construction
Boston Logan	November 2006	Pre-construction
Seattle-Tacoma	November 2008	Under construction
Cleveland	November 2004 (6L/24R Phase 2)	Under construction
Charlotte-Douglas	January 2007	Pre-construction

There are a number of measures that can be used to evaluate the capacity of major airports where even moderate improvements in delay have the potential for large cost savings. Table 4 contains factors for the 35 major airports contained in the OEP that can be examined to determine their performance. These factors are the aircraft mix, percentage of originating and transfer traffic, percentage of international enplanements, number of runways, average enplanements per departure, and the average minutes of delay per operation. Future editions of the NPIAS will update these metrics, which will allow comparisons among airports as well as provide a baseline for comparisons over time.

Table 4 lists the average minutes of delay per operation for 35 airports contained in the FAA's OEP. Several things become evident from the data in Table 4. Most of the airports are served largely by air carrier aircraft (more than 60 seats), most have limited GA and military operations, about two-thirds (23) of the airports serve largely originating passengers, and most of the airports have three or more runways. There are several figures that illustrate the data contained in Table 4.

Figure 5 shows the share of commuter and air carrier operations by airport. There are only four airports where commuter aircraft (aircraft with 60 or fewer seats) operations are greater than air carrier operations: Cincinnati, Pittsburgh, Washington Dulles, and Salt Lake City.

Figure 6 illustrates that the majority of passengers at 24 of the OEP airports are originating passengers (share greater than 50 percent). Eleven airports have connecting passenger levels greater than their originating passenger levels, and of those eleven, only two (Cincinnati and Charlotte) have more than 70 percent of their passengers connecting to other flights.

Table 4: Selected Demand and Capacity Measures for 35 OEP Airports (2002 Data Ranked by Enplanements)

Locid	Airport	Hub Size	Enpl Rank	Ops Rank	Air Carrier Ops of Total Ops	Commuter & Air Taxi Ops of Total Ops	GA and Military Ops of Total	Avg Enpl Per Dep	Avg Minutes of Delay	Est. Orig Pax (%)*	Est. Conn Pax (%)*	% Dom	% Intl	Number of Existing Runways
ATL	Atlanta	L	1	2	73%	25%	2%	87	9	33%	67%	92%	8%	4
ORD	Chicago O'Hare	L	2	1	68%	29%	3%	72	7	43%	57%	86%	14%	6
LAX	Los Angeles	L	3	4	61%	23%	16%	87	5	58%	42%	74%	26%	4
DFW	Dallas/Ft. Worth	L	4	3	65%	32%	3%	67	7	39%	61%	92%	8%	7
PHX	Phoenix	L	5	5	64%	19%	17%	72	6	59%	41%	97%	3%	3
DEN	Denver	L	6	8	67%	30%	3%	71	5	53%	47%	96%	4%	6
LAS	Las Vegas	L	7	9	65%	17%	18%	83	4	81%	19%	97%	3%	4
IAH	Houston	L	8	14	58%	37%	5%	73	7	37%	63%	83%	17%	5
MSP	Minneapolis/St. Paul	L	9	7	69%	17%	14%	73	8	44%	56%	93%	7%	3
DTW	Detroit	L	10	10	69%	26%	5%	67	8	45%	55%	90%	10%	5
SFO	San Francisco	L	11	32	74%	20%	6%	89	5	62%	38%	77%	23%	4
EWR	Newark	L	12	19	69%	28%	3%	74	9	67%	33%	75%	25%	3
JFK	New York JFK	L	13	40	84%	13%	3%	103	8	53%	47%	50%	50%	4
MIA	Miami	L	14	16	69%	16%	15%	75	6	43%	57%	52%	48%	3
SEA	Seattle	L	15	27	60%	39%	1%	72	5	70%	30%	92%	8%	2
MCO	Orlando	L	16	38	66%	23%	11%	96	4	85%	15%	94%	6%	4
STL	St. Louis	L	17	15	65%	29%	6%	59	8	41%	59%	98%	2%	5
PHL	Philadelphia	L	18	12	57%	27%	16%	61	10	62%	38%	88%	12%	4
CLT	Charlotte	L	19	13	51%	38%	11%	56	7	26%	74%	96%	4%	3
BOS	Boston	L	20	20	51%	44%	5%	57	7	80%	20%	84%	16%	5
LGA	LaGuardia	L	21	30	59%	38%	3%	64	10	92%	8%	94%	6%	2
CVG	Cinncinnati	L	22	11	32%	62%	6%	46	7	23%	77%	95%	5%	3
HNL	Honolulu	L	23	35	55%	14%	31%	86	3	66%	34%	77%	23%	4
BWI	Baltimore/Washington	L	24	36	68%	21%	11%	68	6	81%	19%	97%	3%	4
SLC	Salt Lake City	L	25	22	38%	40%	22%	58	5	57%	43%	99%	1%	4
PIT	Pittsburgh	L	26	17	43%	50%	7%	44	5	42%	58%	97%	3%	4
FLL	Ft. Lauderdale	L	27	45	54%	23%	23%	78	5	89%	11%	94%	6%	3
MDW	Chicago Midway	L	28	39	55%	26%	19%	66	7	67%	33%	99%	1%	5
IAD	Dulles	L	29	21	33%	47%	20%	49	7	64%	36%	75%	25%	3
TPA	Tampa	L	30	53	59%	24%	17%	76	4	89%	11%	98%	2%	3
SAN	San Diego	L	31	82	71%	21%	8%	80	4	91%	9%	98%	2%	1
DCA	Washington National	M	32	96	67%	30%	3%	70	4	91%	9%	98%	2%	3
PDX	Portland	M	34	43	44%	39%	17%	52	3	83%	17%	98%	2%	3
MEM	Memphis	M	36	24	60%	27%	13%	30	8	38%	62%	97%	3%	4
CLE	Cleveland	M	38	48	56%	35%	9%	43	6	68%	32%	97%	3%	4

*These are only estimates of Origin and Destination and transfer passenger activity based on U.S. DOT T-100 data for Calendar Year 2002.

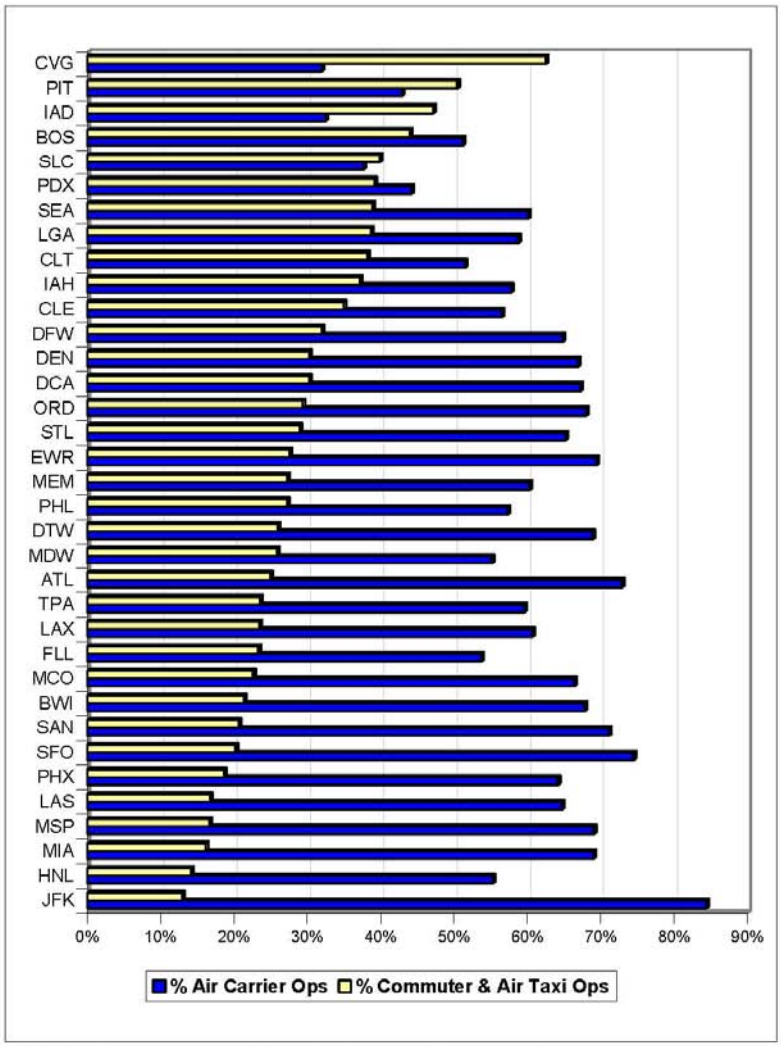
Abbreviation	Meaning
Avg:	Average
Conn:	Connecting
Dep:	Departures
Dom:	Domestic

Abbreviation	Meaning
Enpl:	Enplanements
Est:	Estimated
Intl:	International
Ops:	Operations

Abbreviation	Meaning
Orig:	Originating
Pax:	Passengers
Intl:	International

National Plan of Integrated Airport Systems (2005-2009) **15**

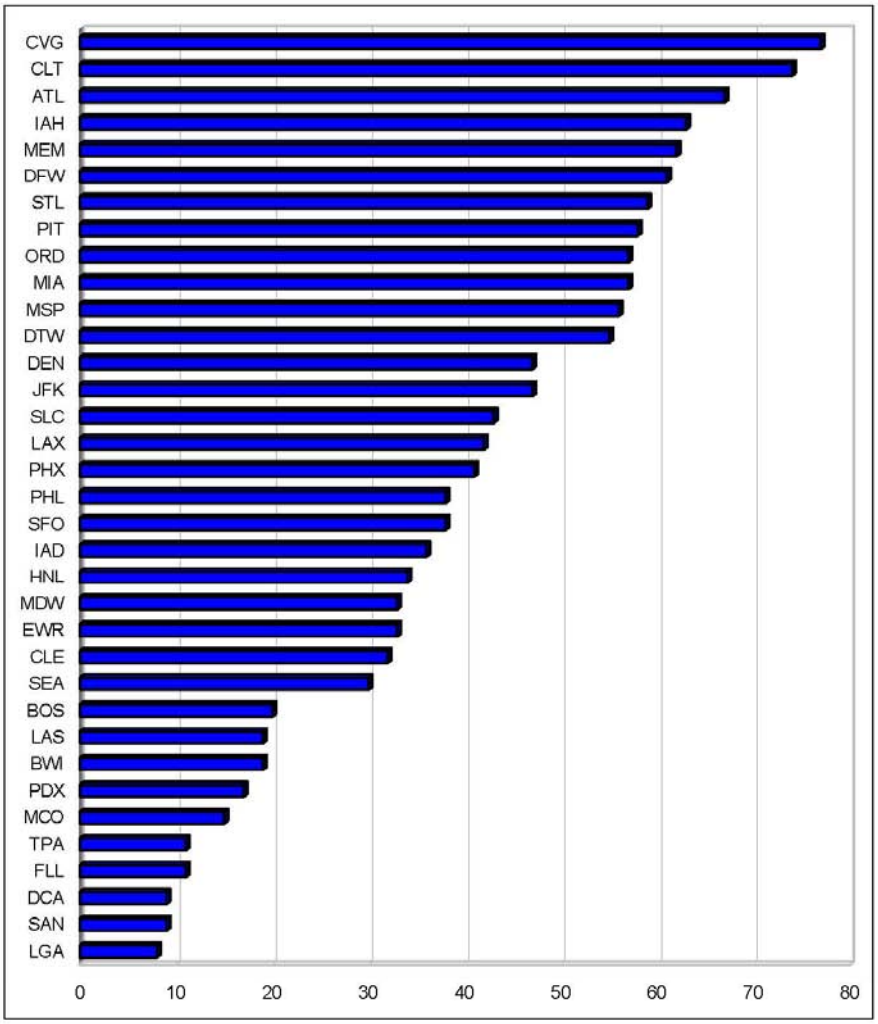
Figure 5: Percentage of Commuter and Air Carrier Operations at 35 OEP Airports in 2002
(Ranked by highest share of commuter/air taxi operations)



Air Carrier operations are those by aircraft with more than 60 passenger seats; general aviation and industry operators not shown.

Source: FAA Terminal Area Forecast

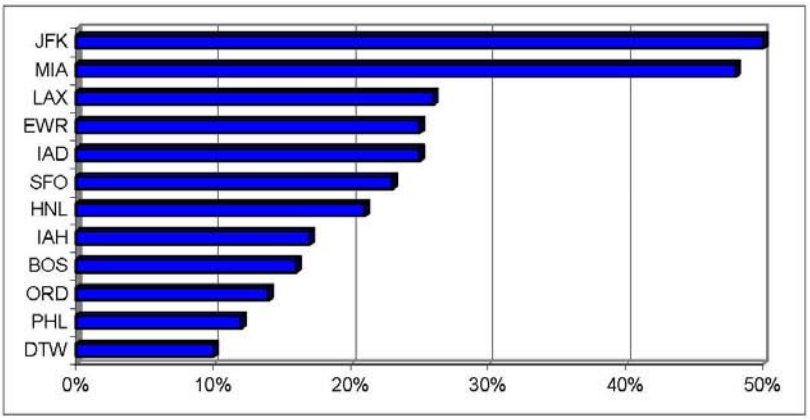
Figure 6: Percentage of Connecting Passengers (at 35 OEP Airports in 2002)



Note: These are only estimates of connecting passenger activity based on U.S. DOT, Bureau of Transportation Statistics T-100 data for Calendar Year 2002.

International passenger service is concentrated at 45 U.S. airports (31 large hubs, 11 medium hubs, and 3 small hubs). Most U.S. airports serve domestic markets. As shown in Figure 7, only 12 airports have international enplanements accounting for 10 percent or more of their activity and these 12 airports account for seventy percent of the passengers who boarded international flights in the United States.

Figure 7: Airports with 10 Percent or More International Enplanements



In June 2004, the FAA released a report on airport capacity titled "*Capacity Needs in the National Airspace System: An Analysis of Airport and Metropolitan Area Demand and Operational Capacity in the Future.*" The goal of this study was to determine which airports might need additional capacity in the future and why. In addition to identifying the airports, any constraints and limitations to enhancing their capacity were also examined. The initial focus of this effort concentrated on the 35 OEP airports. This analysis was expanded to include nearly 300 commercial service airports in more than 200 metropolitan areas across the country. The idea of looking beyond the 35 OEP airports was to identify those airports and metropolitan areas where demand for air transportation is growing quickly enough to potentially result in the need for additional capacity.

The study concluded that air traffic levels will continue to grow over time and will place additional demands and strain capacity of the national airspace system. Based upon this study, it is expected that approximately 5 percent of the nearly 300 airports analyzed will need additional capacity by 2013 or 2020. Included socio-economic and other demographic trend data growth will continue to affect many of the same metropolitan areas that historically have had a need for additional capacity. This study indicated that the predominant trend over the next two decades largely will be the expansion of existing airports to meet forecast demand. At the same time, new metropolitan areas have emerged as needing additional capacity in the future. These metropolitan areas are mostly in the south and southwest.

The study showed that while there is a need for future capacity, there are airports that need additional capacity now. Five airports have been identified where additional capacity is necessary today and one metropolitan area was also identified as needing additional capacity. By 2013, 15 airports and seven metropolitan areas are identified as needing additional capacity by 2013. By 2020, 18 airports and eight metropolitan areas are identified as likely needing additional capacity. These airports and metropolitan areas are shown in the Table 5.

Table 5: Airports and Metropolitan Areas Identified as Needing Capacity Today, By 2013, and By 2020

Airports Today		*Airports by 2013*		*Airports by 2020*	
ATL	Atlanta			ATL	Atlanta
EWR	Newark	EWR	Newark	EWR	Newark
LGA	New York LaGuardia	LGA	New York LaGuardia	LGA	New York LaGuardia
ORD	Chicago O'Hare	ORD	Chicago O'Hare		
PHL	Philadelphia	PHL	Philadelphia		
		JFK	New York JFK		
		OAK	Oakland	OAK	Oakland
		BUR	Burbank	BUR	Burbank
		LGB	Long Beach	LGB	Long Beach
		SNA	Orange County	SNA	Orange County
		TUS	Tucson	TUS	Tucson
		ABQ	Albuquerque	ABQ	Albuquerque
		SAT	San Antonio	SAT	San Antonio
		HOU	Houston Hobby	HOU	Houston Hobby
		PBI	Palm Beach		
		FLL	Ft. Lauderdale		
				ONT	Ontario
				LAS	Las Vegas
				MDW	Chicago Midway
				BHM	Birmingham
				BDL	Bradley
				PVD	Providence
				ISP	Long Island

Metro Areas Today	*Metro Areas by 2013*	*Metro Areas by 2020*
Atlanta Metro		Atlanta Metro
	San Francisco Bay	San Francisco Bay
	Los Angeles Basin	Los Angeles Basin
	Tucson	Tucson
	Austin-San Antonio	Austin-San Antonio
	Chicago	
	New York Metro	New York Metro
	South Florida	
		Las Vegas
		Birmingham

The follow-up to this study will evaluate whether the OEP needs to be expanded to include the non-OEP airports identified in this report. This evaluation will examine those airports in a manner similar to the benchmark effort conducted in 2001. The other initiative will be to perform a peer review of this study and its methodology with the airport sponsors, consultants, and affected stakeholders. The peer review will examine the methodology used for this study and when the next study should be done. Based on the results of these two initiatives, a determination will be made on how to proceed.

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ATTACHMENT A-18

STATUS OF POTENTIAL DELAY REDUCTION ALTERNATIVES FROM O'HARE DELAY REDUCTION TASK FORCES

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2001/2002 O'Hare Delay Task Force – Status of Potential Delay Reduction Alternatives - As of June 20, 2004

Alternative Number	Alternative Description	Implementation Timeframe	Status of Delay Reduction Alternative
Plan-B Initiatives			
26	Taxiway M6 Departures With Runway 14R LAHSO	Short	Not implemented due to the air traffic Runway 14R/27L intersecting runway separation waiver issued in June 2004. It is believed that the operation with the implemented waiver may perform as well as, if not better than the delay reduction alternative.
27	Modified Plan B (Arrival Runways 14R/9R/22R)	Short	Implemented, although April 2003 guidance on LAHSO restricts its use.
56	Full Length Rwy 27L Departures with Rwy 14R LAHSO	Short	Not implemented as the configuration did not meet Rejected Landing Procedure requirements. The June 2004 air traffic waiver referenced above mitigates some of the operational efficiency lost without LAHSO procedures.
60	Plan B/Plan W Hybrid	Short	Procedures have been developed. Although some MD-80 models are now included in the LAHSO Order Appendix, a major carrier's policy still prohibits them from conducting LAHSO operations at ORD.
IFR Delay Reduction Initiatives			
1	Upgrade Runways 27R/27L to CAT II/III Capability	Short	Upgrade in progress; planned Implementation date October 2005.
2	Local Area Augmentation System (LAAS) CAT II/III	Mid	Technology is being developed. Implementation delayed due to budget constraints.
6 & 62	Triple Converging Instrument Approach	Long	CRDA models and configurations are continuously being evaluated to determine operational benefits.
57 & 58	IFR-1 with Area Navigation (RNAV) Procedures	Short	Current technology and cockpit equipment standardization have delayed pursuing procedures.
81	IFR-1 with Runway 14L High-Speed Exit	Short	Currently being reviewed to determine need for high speed turnoff in this area.
82	High-Speed Snow Removal During IFR Conditions	Short	Implemented.
Revised ATC Procedures Initiatives			
4	RNAV Departure Procedures	Mid	RNAV fixes have been identified through the airspace redesign effort; however, enroute constraints currently limit effectiveness of this option.
21	Plan X w/ LAHSO	Short	Implemented
55	Northbound Departure Procedures	Short	Implemented. Procedures have been utilized and facility is taking steps to expand usage when operationally beneficial.
77	Expand TRACON 3 NM Separation Criteria	Short	Air Traffic is nationally evaluating the feasibility of using reduced longitudinal separation outside of 40 nautical miles.
78	Expansion of 2.5 NM In-Trail Separations	Short	Current national procedures do not allow use of reduced longitudinal separation outside of 10 nautical miles.
Equipment/Technology Initiatives			
3	Supplemental Radar System at O'Hare	Short	FAA has determined that an additional site at ORD is necessary; current assets are in the process of being redeployed to ORD.
7	AWOS	Short	O'Hare has ASOS, a model of AWOS, which is a state of the art system. O'Hare continuously receives and implements upgrades to this system as they become available.
9	NASA AILS - Full ADS-B	Mid	Technology is being developed.
19	Use of MLS Terps for LAAS	Mid	Technology is being evaluated.
69	AMASS Enhancements	Mid	Implemented. O'Hare continuously receives and implements upgrades to this system as they become available.
System-Wide Initiatives			
8	Wake Vortex Technologies	Long	Technology is being evaluated.
10-14 & 78	Free Flight Phase I	Short	Completed to the extent of the national free flight program.
15	Free Flight Phase II	Long	Completed to the extent of the national free flight program.
16	Safe Flight 21	Mid	City of Chicago, Stakeholders, and FAA were considering options. Implementation delayed due to budget constraints.
18	Relaxation/Removal of 250 kt Rule Below 10,000 MSL	Mid	Current national policy prevents implementation of this alternative.
20	Digital Data Link for Collaboration of Pilots and ATC	Mid	Technology is being developed and evaluated.
52	TAAP Procedures	Short	Implemented and utilized on a tactical basis.
54	National Airspace Review (Redesign)	Long	Multi-layered initiative project that is on-going.
64 & 68	Improved Processing Rate Procedures	Short	Various options are being examined through national CDM efforts.
65 & 66	Collaborative Convective Forecast Product (CCFP)	Mid	Implemented.
67	Data Link System Improvements	Short	Implemented. Data link improvements are being made on a continual basis through national procedural development.
70	Pre-Departure Clearance (PDC) Enhancements	Mid	Implemented. O'Hare continuously receives and implements upgrades to this system.
71	Coordination of Seasonal Flight Schedule Changes	Short	On-going effort through CDM.
72	Controller Pilot Data Link (Ground Based)	Short	Implemented. Data link improvements are being made on a continual basis through national procedural development.
73	Involve Local Player in CDM	Short	On-going effort through CDM.
76	Domestic Reduced Vertical Separation Minima	Short	Implemented January 20, 2005
79	Decrease IFR In-Trail Separation to 2.25 or 2.0 nm	Short	Current national policy prevents implementation of this alternative.
80	Controller Pilot Data Link (Airborne)	Long	Implemented. Data link improvements are being made on a continual basis through national procedure development.

Prepared by the Federal Aviation Administration Updated on June 20, 2005

1991 O'Hare Delay Task Force

Status of Potential Delay Reduction Alternatives Relative to ORD or the System

As of June 20, 2005

	O'Hare Recommendations	Status
1	Independent Triple IFR Approach Procedures	CRDA models and configurations are continuously being evaluated to determine operational benefits.
2	Triple Converging Instrument Approach Procedures	CRDA models and configurations are continuously being evaluated to determine operational benefits.
3	Intersecting Wet Runway Operations on Runway 14L	LAHSO changes since this study have made these operations not feasible.
4	Runway 9R/27L Parallel Taxiway	Deferred by the City and Airlines. A portion of the expected delay reduction benefits of this project was realized upon implementation of the Runway 22L hold pad, which was a more cost effective way of enhancing aircraft maneuvering flexibility than relocating the South Detention Basin.
5	Extension to Runway 22L	Not feasible due to location of Mannheim Road.
6	New Runways 14/32 and 9/27	Subsequently, the City began evaluating other options.
7	Relocation of Runways 9L/27R and 4L/22R	Deferred by the City and Airlines because the operational and capital costs associated with relocating two runways outweighed the benefits expected at the time based on the projected demand.
8	Extension to Runway 14L	Deferred by the City and Airlines. This project was intended to enhance LAHSO procedures for B-747 aircraft. However, in recent years, these procedures have not been fully utilized at O'Hare, and therefore, the expected delay benefit did not exceed the implementation cost.
9	CAT II/III Approach Capability	Upgrade in progress; planned implementation date October 2005.
10	Runway 4R Angled Exit	Implemented.
11	Aircraft Holding Areas	Implemented.

	System Improvements	Status
1	Examine Chicago Airspace Organization	On-going under the National Airspace Redesign effort.
2	Examine Flow Control Procedures	On-going under Collaborative Decision Making.
3	Reduce Aircraft Separation Criteria	Current national policy does not allow use of reduced separation.
4	Reduce/Eliminate Miles-In Trail Restrictions	Traffic management tools such as Expected Departure Clearance Time (EDCT), Enroute Spacing Plan (ESP), the establishment of a traffic management unit at O'Hare, and oceanic sector improvements have been implemented. O'Hare continuously evaluates and implements tools that provide operational benefits to the Airport.

ATTACHMENT A-19

CONGESTION, DELAY REDUCTION, AND OPERATING LIMITATIONS AT CHICAGO O'HARE INTERNATIONAL AIRPORT, PROPOSED RULE AND NOTICE

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Federal Register

Friday,
March 25, 2005

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 93
Congestion, Delay Reduction and Operating Limitations at Chicago O'Hare International Airport; Proposed Rule and Notice

15520 Federal Register / Vol. 70, No. 57 / Friday, March 25, 2005 / Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2005–20704; Notice No. 05–03]

RIN 2120–AI51

Congestion and Delay Reduction at Chicago O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing this rule to address persistent flight delays related to over-scheduling at O'Hare International Airport (O'Hare). This proposed rule is intended as an interim measure, because the FAA anticipates that the rule would yield to longer term solutions to traffic congestion at the airport. Such solutions include an application by the City of Chicago that, if approved, would modernize the airport and reduce levels of delay, both in the medium term and long term. For this reason, the proposed rule includes provisions allowing for the limits it imposes to be gradually relaxed and in any event would sunset in 2008.

DATES: Send your comments on or before May 24, 2005.

ADDRESSES: You may send comments (identified by Docket Number FAA–2005–20704) using the following method:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Wharff, Office of Policy and Plans, APO–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3274.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment 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 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

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.gpoaccess.gov/fr/index.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 docket number, notice number, or amendment number of this rulemaking.

Background

The High Density Traffic Airports Rule at O'Hare

Until July 2002, the FAA managed congestion and delay at O'Hare by means of the High Density Rule (HDR), which was codified in 14 CFR part 93, subpart K. The FAA's predecessor agency adopted the HDR under its broad authority to ensure the efficient use of the nation's navigable airspace. 49 U.S.C. 40103. The HDR took effect in 1969, and while it originally was a temporary rule, it became permanent in 1973.

The HDR established limits on the number of all take-offs and landings during certain hours at five airports, including O'Hare. In order to operate a flight during the restricted hours, an airline needed a reservation, commonly known as a slot. Slots were initially allocated through scheduling committees, operating under then-authorized antitrust immunity, where all the airlines would agree to the allocation. But after the Airline Deregulation Act in 1978, new entrant airlines formed and the pre-existing, or legacy carriers, sought to expand. This made it increasingly difficult for airlines to reach agreement and the scheduling committees began to deadlock.

In 1984, the FAA amended the HDR to increase the hours in which limitations at O'Hare Airport would apply and to increase the number of take-offs and landings permitted at that airport (49 FR 8237, March 6, 1984). The

next year, a new subpart S was added to part 93 that established allocation procedures for slots including use-or-lose provisions and permission to buy and sell slots in a secondary market (50 FR 52195, December 20, 1985). These procedures replaced the scheduling committees.

Statutory Changes Ending the High Density Rule at O'Hare

In 2000 Congress relaxed the slot rules at the high density airports and phased out the slot rules entirely at three of them including O'Hare. 49 U.S.C. 41715, 41717. With respect to O'Hare, Congress directed that:

(1) Beginning July 1, 2001, the slot control restrictions be limited to the period between 2:45 p.m. and 8:14 p.m.;

(2) Beginning May 1, 2000, exemptions be granted to airlines to provide air service to small airports with 70-seat or smaller aircraft;

(3) 30 slot exemptions be granted to new entrant or limited incumbent air carriers;

(4) After May 1, 2000, slots no longer be required to provide international air service; and

(5) Slot restrictions be lifted entirely after July 1, 2002.

In phasing out the HDR, Congress recognized the possibility that there could be an increase in congestion and delays at the affected airports. Therefore, in the section that phased out the rule, it made clear that "[n]othing in this section * * * shall be construed * * * as affecting the Federal Aviation Administration's authority for safety and the movement of air traffic." 49 U.S.C. 41715(b).

Resurgence of Unacceptable Levels of Congestion

As a result of the 2000 legislation, the slot restrictions of the HDR ceased to exist at O'Hare as of July 1, 2002. While lifting all slot restrictions at O'Hare after July 1, 2002, did not affect air safety, it did eventually lead to a dramatic increase in airline delays, which reverberated throughout the national air transportation system.

Initially, lifting the HDR had a minimal impact on delays due to the lingering effects on airline passenger traffic of the 9/11 terrorist attacks. But by 2003, the two air carriers operating hubs at O'Hare, American Airlines ("American") and United Airlines ("United") had added a large number of operations and retimed other flights, resulting in congestion during peak hours of the day. From April 2000 through November 2003, American increased its scheduled operations at O'Hare between the hours of 12 p.m. and 7:59 p.m. by nearly 10.5 percent. Over the same period, United increased its scheduled operations at O'Hare by over 41 percent.

The increases in operations by American and United did not result in a corresponding increase in seat capacity. During the peak period, these two carriers added 375 regional jet operations per day. Overall, American and United added over 600 regional jet operations per day. At the same time as they added regional jet operations, they reduced mainline jet operations. The result was a decrease in seat capacity by each carrier at O'Hare of more than 5.5 percent from April 2000 to November 2003. In November 2003, more than 40 percent of American's and United's O'Hare flights were operated with regional jets, many to large and medium hubs. The significant increases in scheduled operations during this time period resulted in excessive delays and congestion at O'Hare.

By November 2003, O'Hare had the worst on-time performance of any major airport. O'Hare arrivals were on time only 57 percent of the time, well below the FAA goal of 82 percent. Departures were little better. They were on time only 67 percent of the time, well below the average of 85 percent at other major airports. These delays averaged about an hour in duration. Published schedules for February 2004 indicated that the problem would be exacerbated by the addition of even more flights.

Recognizing congestion was again becoming a significant issue, Congress enacted legislation that included a mechanism to help reduce delays and improve the movement of air traffic at congested airports. 49 U.S.C. 41722. That statutory provision authorized the Secretary of Transportation (Secretary) to request that scheduled airlines meet with the FAA to discuss flight reductions at severely congested airports to reduce over-scheduling and flight delays during hours of peak operation, if the FAA determines that it is necessary to convene such a meeting and the Secretary determines that the meeting is necessary to meet a serious transportation need or achieve an important public benefit.

In early 2004, the Secretary of Transportation and the FAA Administrator determined that a schedule reduction meeting was necessary to deal with congestion-related delays at O'Hare. Before such a meeting could be convened, however, United and American each agreed to reduce their scheduled flights voluntarily. Accordingly, the schedule reduction meeting was deferred. Instead, the FAA issued an order implementing the voluntary agreement of the two air carriers, Docket FAA–2004–16944–55; 69 FR 5650 (2004). The FAA order required a 5 percent reduction in the two carriers' scheduled operations. This reduction was to be effective between 1 p.m. and 8 p.m. for six-months, beginning no later than March 4, 2004.

The FAA again reviewed O'Hare's on-time performance in March 2004 in light of the ordered schedule reductions. That review showed that the total delay minutes could have been as much as 30 percent higher without the reductions but that delays still remained more than double the level of a year earlier and represented more than a third of the total delays in the United States.

In light of the continued problems at O'Hare, the FAA again discussed the situation with American and United. As a result, on April 21, 2004, the FAA issued an amendment to the previous order in Docket FAA–2004–16944. This amendment required additional flight reductions. Specifically, beginning no later than June 10, 2004, it required (1) an additional schedule reduction of 2.5 percent of each carrier's total operations in the 1 p.m. through 7:59 p.m. hours including arrival reductions during specific times; (2) a reduction in the number of scheduled arrivals in the 12 p.m. hour; and (3) reductions to continue through October 30, 2004.

Prior to the implementation of the June flight reductions, delays at O'Hare continued. In May, there were a record 14,495 total delays. While the numbers in June and July improved, as the last round of cutbacks by American and United took effect, the FAA determined that the overall trend of delays remained unacceptably high. Meanwhile, some airlines that were not party to the agreement involving American and United continued to add flights, making it unlikely that the hub carriers would extend their voluntary schedule reductions without similar commitments by other carriers. Published schedules for November indicated that during several times of the day scheduled arrivals would approach or exceed the airport's highest possible arrival capacity. Accordingly, in July, the Secretary of Transportation and FAA Administrator determined that the scheduling reduction meeting that had previously been deferred now needed to be held (69 FR 46201, August 2, 2004).

The meeting between DOT and the carriers convened on August 4, 2004, and was followed by meetings between Federal officials and individual airlines. As a result, United and American agreed to reschedule and reduce scheduled

arrivals by about 5 percent during peak hours and other airlines agreed not to increase the number of their scheduled arrivals. New entrants and limited incumbents were permitted to add a small number of scheduled flights. Based on the information provided through the meetings and submissions filed in the docket, the FAA issued a comprehensive order on scheduled arrivals at O'Hare on August 18, 2004, limiting arrivals by domestic carriers to 88 during most hours of the day and implementing the above agreement (August 2004 Order). The Order took effect November 1, 2004, and will expire on April 30, 2005. On February 10, 2005, the FAA issued an order proposing to extend the August 2004 Order's effect through October 2005. The FAA sought the views of interested persons on the advisability of extending the August 2004 Order in Docket FAA–2004–16944.

The FAA is reviewing a proposal by the City of Chicago to reconfigure O'Hare and expand its capacity to accommodate existing and future aviation operating demands. However, such a solution, if approved, would yield modest benefits in the near term (2007) and require many years (2013) to be fully realized. The FAA also considered whether any near-term air traffic procedural changes, airspace redesign, or equipage upgrades could provide sufficient capacity or efficiency gains to meet the level of airport demand experienced in late 2003 and much of 2004. Greater utilization of higher capacity runway configurations, some of which are dependent on weather and other operating conditions, could increase O'Hare's average arrival rate. The FAA will continue to monitor the actual and predicted airport operations to ensure that capacity does not routinely go unused. The FAA is reviewing the possibility that additional aircraft might be able to utilize land and hold short operations under more runway configurations, and if approved, this could provide operational arrival and departure benefits. New category II and category III instrumental landing systems for runways 27L and 27R are expected to be operational during fall 2005 and would increase arrival capacity in adverse weather conditions. The FAA is also considering airspace redesign as part of the Midwest Airspace Capacity Enhancement (MACE) plan, including new routes and sectors in the Chicago, Cleveland, and Indianapolis Air Route Traffic Control Centers, as well as departure and arrival routes in the Chicago airspace area that could increase capacity at O'Hare. Environmental review for these proposed changes is expected to be complete by late 2005. In addition, on January 20, 2005, the FAA implemented reduced vertical separation minima that added six new flight levels between 29,000 and 41,000 feet. The new flight levels increase overall efficiency in the national airspace system. In the future, this may provide alternatives to address the cumulative impact of aircraft departing from O'Hare and other Midwest airports.

The NPRM, as proposed, would allow the FAA to recognize any capacity increases realized before the proposed sunset of the rule by allocating additional arrival authorizations. However, the short-term air traffic control changes will not, in themselves, result in sufficient capacity to meet historic demand. Accordingly, the FAA is now faced with the question of what to do when the August 2004 Order expires. Several courses of action have been considered.

One possibility is to allow the August 2004 Order to expire and to let events run their course without FAA intervention. This would leave no administrative mechanism to prevent each individual airline from increasing its own flights. Air traffic control procedures and traffic management initiatives such as ground delay programs, miles-in-trail restrictions, and aircraft re-routing, would ensure that any additional flights did not affect air safety. The FAA's recent experience with this option is characterized by the congestion-related delays that O'Hare experienced in late 2003. Therefore, the likely outcome of this approach is a renewed, significant increase in total airline flights at O'Hare. Because the cost of the resulting delays is not fully internalized by any individual air carrier, both experience and theory suggest that without any constraint, each carrier would, at least initially, continue adding flights despite an unacceptable level of congestion and delay. It was such a situation that caused the FAA to intervene at O'Hare in early 2004. It has been argued that air carriers could eventually find equilibrium at O'Hare if given enough time. We invite comments on the option of allowing the August 2004 Order to expire and taking no action with respect to air carrier scheduling at O'Hare.

Alternatively, the FAA could extend the August 2004 Order or renegotiate with air carriers for a voluntary schedule over a longer term than the August 2004 Order. As previously noted, the FAA on February 10, 2005, issued an order to show cause, which invites interested parties to comment on the FAA's proposal to extend the August 2004 Order until October 31, 2005. Nevertheless, an extension of the current order may not be desirable for any period longer than is necessary to complete this rulemaking. As the problems faced by air carrier scheduling committees in the 1980s demonstrate, a growing economy will continue to boost passenger demand. In the face of such market pressures, not all carriers may accept the FAA's proposal to extend the August 2004 Order or the issuance of a new order supplanting the August 2004 Order. Additionally, this NPRM raises issues that are not likely to be resolved in the context of a scheduling reduction meeting, including limitations on foreign air carriers and the creation of a blind buy/sell procedure.

The FAA and Office of the Secretary of Transportation (OST) are also considering various administrative and market-based mechanisms that may improve on prior methods of allocating available capacity at an airport where capacity is not able to meet aviation demand. The FAA and OST have contracted with the National Center of Excellence for Aviation Operations Research (NEXTOR) to conduct research on various proposals to implement at LaGuardia airport upon the expiration of the HDR. The market-based mechanisms being researched for LaGuardia airport are among several measures that could be implemented at O'Hare, if capacity improvements are inadequate to achieve delay reduction. However, the research and FAA and OST policy evaluations will not be completed until the latter half of 2005. In addition, while market-based mechanisms are among those being evaluated, they raise many issues, including the most practical implementation of such a regime, the effect of any such program on airfares, consideration of applicable legal requirements, the consistency of such a program with international agreements, the use of any "surplus" revenue, as well as the impact on new entrants, small airlines, competition, and service to small communities. An immediate approach is needed to manage the congestion and delays at O'Hare in the interim.

Accordingly, the FAA is proposing a rule to manage congestion and delay at O'Hare until April 6, 2008, by which time one of three possibilities will have presented itself: (1) The first phase of an FAA-approved O'Hare Modernization Plan (OMP) yields enough capacity to obviate the need for government action to address congestion; (2) the first phase of an approved OMP does not yield enough capacity in the medium-term

and continued action is necessary until enough long-term capacity comes on-line; or (3) the OMP is not approved and further action is needed over the medium and long term.

Authority

The FAA has broad authority under 49 U.S.C. 40103 to regulate the use of the navigable airspace of the United States. This section authorizes the FAA to develop plans and policy for the use of navigable airspace and to assign the use that the FAA deems necessary to its safe and efficient utilization. It further directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace. The FAA interprets its broad statutory authority to ensure the efficient use of the navigable airspace to encompass management of the nationwide system of air commerce and air traffic control.

In addition to FAA's authority and responsibilities with respect to the efficient use of airspace, the Secretary of Transportation is required to consider several other objectives as being in the public interest, including: Keeping available a variety of adequate, economic, efficient, and low-priced air services; placing maximum reliance on competitive market forces and on actual and potential competition; avoiding airline industry conditions that would tend to allow at least one air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation; encouraging, developing, and maintaining an air transportation system relying on actual and potential competition; encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry; maintaining a complete and convenient system of scheduled air transportation for small communities; ensuring that consumers in all regions of the United States, including those in small communities and rural and remote areas, have access to affordable, regularly scheduled air service; and acting consistently with obligations of the U.S. Government under international agreements. See 49 U.S.C. 40101(a)(4), (6), (10)–(13) and (16), and 40105(b).

The Proposal

Limit on O'Hare Arrivals During Peak Periods

Under the proposed rule, the FAA would limit the number of scheduled flight arrivals at O'Hare from 7 a.m. and 8:59 p.m. local time Monday through Friday and from noon to 8:59 p.m. on Sunday. Scheduled arrivals would be limited to 88 per hour (and to 50 in any half hour) between 7 a.m. and 7:59 p.m.;[1] however, from 8 p.m. to 8:59 the limit on scheduled arrivals would increase to 98. Arrival times would be assigned according to the procedures described elsewhere in this document. Unscheduled flight arrivals (such as, arrivals by general aviation, the military, and certain charter services) would be restricted to four (4) per hour, under an advance reservation system described in proposed Special Federal Aviation Regulation (SFAR) No. 105 Proposed Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport, published by the FAA on October 20, 2004 (69 FR 61708), which after adoption would be replaced by this proposed rule. Thus, arrivals in total would be limited to 92 per hour during all regulated periods (except for the 8 p.m. to 8:59 p.m. hour).

The proposed hourly arrival limits are based on the analysis originally done as part of the delay-reduction proceedings that resulted in the August 2004 Order, the FAA's confidence in the general reliability of its delay-projection models, and the FAA's actual experience with operations at O'Hare following the implementation of the Order. In establishing a target (as required by 49 U.S.C. 41722) for the delay-reduction proceedings, the FAA examined the airport's operations over 140 weekdays from November 3, 2003, through May 14, 2004, and found that it had accommodated an average of 90 arrivals per hour in all weather conditions, including an average of 86 scheduled and four (4) unscheduled flights, during the peak period of noon through 6:59 p.m. Because demand for access to O'Hare is highest at these hours, the arrival rate experienced over this period would tend to indicate the maximum average capacity of the airport under various weather, runway, and operating conditions. The figure also correlated closely to the reported average airport acceptance rate for this period,[2] suggesting that there was little or no unused capacity during these times.

In the delay-reduction proceedings the Administrator had initially set a rate of 86 scheduled arrivals per hour and 22 arrivals for each rolling 15-minute period as a target for industry agreement; this assumed that the historical average of four additional unscheduled arrivals per hour by general aviation, military, cargo, and charter flights would continue. In ultimately deciding to use a somewhat higher arrival rate of 88 scheduled operations per hour in the Order, the Administrator considered information provided by air carriers during the scheduling reduction discussions. These carriers maintained that such a limitation would result in unused airport capacity under many conditions and that the use of a 15-minute limitation on arrivals was overly restrictive and would unnecessarily hamper the carriers' scheduling flexibility. The participants proposed that the FAA consider allowing a scheduled arrival rate of at least 90 flights per hour and constrain operations by no longer than 30-minute periods. The airlines also requested that the FAA allow more flights toward the end of the service day in order to allow them to complete connections and reposition their fleets for the following day.

After consideration of these arguments and the results forecast by the agency's delay-reduction models, the Administrator decided to use a scheduled arrival rate of approximately 88 flights for the period between 7 a.m. and 7:59 p.m. and 98 arrivals in the 8 p.m. hour (which is the end of the "service day," when the effect of any delays on later operations is most limited). The Administrator also determined that the use of a "rolling" constraint over each 30-minute period of no more than 50 arrivals (with the exception of the 8 p.m. hour) would achieve a desirable level of delay reduction. The proposed rule, if adopted, would set similar 30-minute limits as were imposed by the Order but would not establish a regulatory process for a "rolling" limit. Recognizing that schedule peaking within a short time period significantly increases delays, the FAA intends to closely monitor scheduling practices, and as at other airports, we will encourage carriers to schedule realistically within O'Hare's capacity.

As was the case with the August 2004 Order, the FAA is now proposing to restrict arrivals only, rather than both arrivals and departures, as had been the case under the High Density Rule. Limiting the cap to only arrivals is simpler and lessens the government's intervention in airline scheduling. The number and timing of arrivals usually

[1] The Order provides for 89 arrivals during certain hours to accommodate planned schedule increases by certain limited incumbent carriers. The proposed rule would permit similar exceptions above 88 arrivals per hour in order to account for existing schedules and foreign air carriers.

[2] The airport acceptance rate or airport arrival rate is the number of arrivals an airport is capable of accepting each hour. The rate changes to reflect the impact of weather or other operating conditions on the arrival capacity.

closely correlates to the number and timing of departures. Moreover, in the FAA's experience, arrival delays tend to be more disruptive to the system and cause delays in later flights since a late-arriving aircraft is not available for an on time departure.

In setting the hourly arrival caps in the Order, and proposing the same caps for use in this rule, the Administrator has also relied on analyses performed at the FAA's request by MITRE Corporation,[3] which ran computer modeling to simulate the effect of hypothetical schedule reductions on the level of flight delays at O'Hare. In the FAA's experience, these models are highly reliable in forecasting the effect of various schedules on airport delays. To assess the impact of potential reductions, the FAA and MITRE selected several different O'Hare schedules for air carriers publishing their flights in the Official Airline Guide (OAG) and analyzed them to simulate the resulting delays in arrival queues. For each scenario, MITRE assumed a total of four (4) unscheduled flights per hour; because the exact times these flights arrive are unknown, they were randomly assigned arrival times during each hour. Because arrival queuing delays also depend on available capacity at ORD (which can change with runway, weather and operating conditions), actual hourly arrival capacity was included for each weekday in the model.

The models predicted that constraints used in the August 2004 Order (that is, an arrival rate of approximately 88 scheduled and four unscheduled operations per hour, together with the 30-minute constraints discussed above) would reduce O'Hare delays by approximately 20 percent from the levels then attributable to schedules in effect at the time of the August 2004 Order. The FAA also simulated the results of a completely unconstrained schedule—using the industry's then-proposed November 2004 schedules—and calculated that delays under the Order would be approximately 43 percent less severe than would be experienced if no action were taken and those November 2004 schedules were allowed to take effect.

Preliminary results of the Order, as reflected in FAA's calculated O'Hare on-time performance statistics for the month of November, 2004, confirm that the arrival limitations adopted in the Order have materially reduced delays and thus support adopting identical limitations in the proposed rule. Although the reduction in delays has somewhat exceeded the FAA's forecast, the Administrator believes that there is insufficient data to support a relaxation of those limits. During this rulemaking proceeding, however, the FAA will continue to review the proposed limitations and, if justified by the models and actual delay statistics, consider whether the limitations should be modified in response to changing conditions at O'Hare. In addition, as described below, the proposed rule provides for the FAA periodically to reevaluate the available capacity at O'Hare and to make adjustments in the arrival limits as warranted.

As proposed, the rule would maintain the limitations on arrivals assignments established in the August 2004 Order. Until a final rule is adopted in this rulemaking, the cumulative delay statistics and modeling results may demonstrate to the Administrator that increasing the number of arrivals above what is proposed in this notice will still allow for acceptable operational performance. If so, the arrival cap on scheduled operations may be raised in a final rule, if adopted.

It is also possible that air traffic procedural changes or other enhancements will result in a limited increase in arrival capacity over the duration of the proposed rule. Therefore, the FAA will periodically reexamine the level of available capacity at O'Hare. Under the proposed rule, every six months, the FAA would review the level and length of delays, operating conditions at the airport and other relevant factors to determine whether more arrivals can be allowed. The FAA estimates for the purposes of this proposal that such a review would, in no event, result in hourly arrivals in excess of O'Hare's current capacity under optimal conditions, which is 100 arrivals per hour.

The FAA also is considering whether the final rule should provide a mechanism through which the level of available capacity would be adjusted based on considerations other than delays and efficiency concerns. Specifically, we seek comment on whether the hourly limits on Arrival Authorizations should be adjustable based on broader public interest concerns as set forth in 49 U.S.C. 40101 (a) (including keeping available low-priced air services, maintaining a system relying on actual and potential competition, and encouraging new entry), and if so, which concerns. Further, we seek comment on whether the process to make such adjustments shall be established in the rule or whether standing exemption authority should be relied upon.

Initial Assignment of Arrival Authorizations

Under the proposal, the FAA would initially assign Arrival Authorizations[4] based on the terms of August 2004 Order, as amended. The FAA would first look to the scheduled arrivals for each affected domestic carrier in effect from November 1, 2004 through November 7, 2004.[5] Thus, if a carrier published a daily scheduled arrival at 1 pm in the first week of November, it would retain that arrival time by receiving the assignment of an Arrival Authorization for that operation. In this manner, the arrivals permitted under the August 2004 Order would be preserved. The FAA would rely on its records to determine when an arrival had been scheduled during the first week of November and which carrier held the appropriate authorization. Each initial Arrival Authorization would be for the corresponding 30-minute period indicated by the FAA's records. In the event that a carrier had not published a scheduled arrival during the first week of November to which it was entitled under the August 2004 Order, the terms of the Order would control.

The FAA would publish its proposed initial assignment of scheduled Arrival Authorizations 14 days before the effective date of the rule. The FAA Vice President, System Operations Services for the Air Traffic Organization would be the final decision-maker with respect to the initial assignment of scheduled Arrival Authorizations.

By assigning Arrival Authorizations to each carrier in a manner that corresponds with the arrivals actually scheduled by such carrier during the first week of November 2004, the FAA intends to minimize any operational or economic disruption to the airline industry upon implementation of the proposed rule. Assignment of Arrival Authorizations to carriers currently holding them would avoid immediate disruption of air service to the public.

Additionally, the schedules flown during that seven-day period reflect an

[3] MITRE is a not-for-profit corporation working with government clients. It addresses issues of critical national importance, combining systems engineering and information technology to develop innovative solutions. MITRE's work is focused within three Federally Funded Research and Development Centers, one of which performs systems research and development work for the Federal Aviation Administration and other civil aviation authorities.

[4] An Arrival Authorization is the operational authority assigned to an air carrier or foreign air carrier by the FAA to conduct one scheduled IFR arrival operation each week on a specific day of the week during a specific 30-minute period at O'Hare.

[5] We chose the first week of November because that was the first seven-day period during which the August 2004 Order was effective.

agreement reached between each domestic and Canadian air carrier and the FAA as part of the voluntary schedule reduction discussions that occurred in August 2004 under the auspices of section 41722 of Title 49. Each carrier thus would be able to maintain the schedule it put in place when the August 2004 Order was adopted and which it accepted after negotiation. The FAA is concerned that other assignment methods—such as a random lottery of authorizations—would not be consistent with the results of the voluntary discussions.

The proposed assignment method is also consistent with the FAA's handling of similar issues in the past, such as the slot allocation and transfer methods under the High Density Rule, 50 FR 52180, December 20, 1985. Concerns were expressed in the context of that rule that grandfathering existing slot allocations would confer a financial windfall on incumbent carriers and adversely effect new entrants. While acknowledging the benefit to incumbent carriers, the Department believed there, as here, that this effect was necessary in order to minimize disruption of existing service patterns.

Code-Sharing Arrangements

The FAA proposes that, with a limited exception explained below, each Arrival Authorization would be allocated solely to the carrier that actually operated the flight, regardless of any code-sharing agreements. We acknowledge that in other proceedings, the Department has determined whether there is an affiliate relationship by looking to the designator code or other code-sharing arrangement.[6] We are concerned that this approach would artificially restrict the growth opportunities of limited incumbents at O'Hare. Although code-sharing agreements are common in parent-subsidiary type relationships, they are also increasingly present in marketing arrangements between carriers that are essentially independent and largely control their own sales. If the FAA were to deem an affiliate relationship to exist by virtue of code-sharing agreements alone, code-share partners like American and Alaska would become affiliated carriers for purposes of this rule. This would have the effect of denying Alaska the opportunities afforded other limited incumbents not involved in code-sharing agreements.

At the same time, in making our initial Arrival Authorization determinations, the FAA does not intend to assign Arrival Authorizations to a carrier that is essentially operating its service as a contractor for another carrier and does not market its services independently and in its own name. If we were to treat these contract carriers as independent carriers, a carrier with a significant number of incumbent Arrival Authorizations could take advantage of preferences for new entrants and incumbents by entering into affiliate relationships with the sole purpose of increasing their number of Arrival Authorizations. Thus, under the proposal, where the operating carrier conducts the flight solely under the control of another carrier, the carrier controlling the inventory of the flight would receive the assignment.

Treatment of Foreign Carriers

The FAA proposes assigning Arrival Authorizations to foreign carriers based on seasonal usage. (Canadian carriers are treated differently from other foreign carriers under this rule as discussed in detail below.) Because there is more seasonal variation in international service some foreign carriers could be excluded from the initial assignment or be assigned Arrival Authorizations that do not match their scheduled summer operating times if assignments were based only on November 2004 schedules. Accordingly, we propose establishing a seasonal assignment procedure whereby a foreign carrier's initial assignment of Arrival Authorizations would be based on its published schedules for the winter season that began October 2004 and for the summer season that began April 2004. The FAA Vice President, Systems Operations Services for the Air Traffic Organization would be the final decision-maker with respect to the initial assignment of scheduled Arrival Authorizations.

Categories of Operators

Upon the initial assignment, all carriers would fall into one of three following categories: incumbent, limited incumbent or new entrant. A new entrant would be a carrier that does not operate any Arrival Authorizations at O'Hare and, has never held an Arrival Authorization. A limited incumbent carrier would be a carrier that operates eight or fewer Arrival Authorizations at O'Hare and has never sold or given up an Arrival Authorization. All other carriers would be treated as incumbent carriers.

We recognize that canceling limited incumbent status for a carrier that chooses to sell an Arrival Authorization could discourage legitimate business choices. The practical impact, however, is merely the loss of a preference for future Arrival Authorization assignments; the carrier also retains the ability to obtain Arrival Authorizations on the same basis as any other incumbent. We have tentatively determined that the approach toward limited incumbents presented here represents a fair treatment of carriers that are not new entrants but that should be afforded some additional consideration due to their limited presence at the airport. The proposed definition here is consistent with the August 2004 Order.

Treatment of New Entrants/Limited Incumbents and New Capacity

The competing policy considerations that the Administrator weighed in her August 2004 Order confront the agency again today, because demand for access to O'Hare still exceeds capacity.[7] Although the law directs the FAA to manage the safe and efficient use of the navigable airspace,[8] we also look to DOT's mandates, overall Congressional policy,[9] and the public interest for guidance.

Several factors here suggest that it would be appropriate to provide a preference to new entrants and limited incumbents at the airport. First, as we noted above, the Secretary of Transportation considers a number of matters in the public interest when carrying out the Department's functions, including "placing maximum reliance on competitive market forces and competition." [10] Second, the Airline Deregulation Act of 1978, which reduced the regulation of domestic and international air transportation, enunciated pro-competitive policies. When addressing airport access issues, Congress has frequently favored new entrants over incumbents.[11] Congress has added provisions to the statutes governing airport grants and passenger facility charges to encourage airports to adopt policies that will promote competition.[12] Third, past OST and FAA rules and orders relating to flight restrictions at the high density airports

[6] Cf. 49 U.S.C. 41714(k).

[7] Under the order, the two hubbing carriers at the airport were the only carriers that reduced operations and retimed a number of flights. These carriers also represent the largest carrier investment in operations and infrastructure at the airport. However, these carriers correspondingly have added a very large number of flights in the last three years. (During peak hours and from April 2000 to November 2003, American added 56 flights, United added 225 and the net increase of all other carriers at the airport was six.)

[8] 49 U.S.C. 40103(b).

[9] *See, e.g., Delta Air Lines* v. *CAB*, 674 F.2d 1 (D.C. Cir. 1982).

[10] 49 U.S.C. 40101(a)(6).

[11] 49 U.S.C. 41714(c), (h), 41716(b), 41717(c), 41718(b)(1).

[12] 49 U.S.C. 40117(k), 47106(f), and 47107(s).

also took into account the need to promote competition through new entry and expansion by limited incumbents.[13]

Thus, as capacity becomes available during the duration of the rule, the FAA proposes to establish a limited preference for new entrants and limited incumbents. If the capacity grows per hour from 88 up to 90 arrivals, any capacity not needed to accommodate foreign air carriers would be assigned by lottery to new entrants and limited incumbents. If Arrival Authorizations remain, they would be assigned to incumbent carriers on an interim basis until the next lottery, when they would again be made available first to new entrants and limited incumbents.

Once the capacity reaches 90 per hour, the preference for new entrants and limited incumbents would be suspended until these rules terminate. Any new capacity resulting in additional Arrival Authorizations would then be assigned by lottery with no preference based on carrier identity. At that point all carriers would be placed on an equal footing.

Our proposal to continue to favor new entrants and limited incumbents in the lottery process is consistent with the equities of the situation at O'Hare. The two largest airlines have added a very large number of flights in the last three years. While this build-up was lawful, it resulted in congestion at O'Hare, as stated earlier. Even under this proposal, American and United will still operate the vast majority of flights at O'Hare, with a greater percentage of Arrival Authorizations at O'Hare than they had slots under the HDR before its phase-out, and thus the two airlines will have a substantial ability and greater flexibility than rivals to shift flights in response to consumer demand and initiatives taken by competitors. We tentatively believe that this proposal represents a reasonable compromise between promoting competition and recognizing the substantial investments of existing carriers at O'Hare. We invite commenters to discuss whether the limited preference for new entrants and limited incumbents would promote competition (and if so, what form the competitive benefits might take), and whether the service benefits potentially obtainable from the hubbing airlines' networks argue against the preference in the allocation of arrival rights if the FAA determines that the airport's capacity will allow 89 or 90 scheduled hourly arrivals.

Blind Buy/Sell

The proposal does not create property rights in any assignment of Arrival Authorizations. However, the purchase and sale of Arrival Authorizations would be allowed, in order to advance the goals of promoting the most efficient use of the airspace and maximizing reliance on market forces. See for example, paragraphs (6) and (12) of section 40101(a) of Title 49 of the United States Code. Permitting such transactions will promote operating efficiency and minimize the need for on-going government intervention in the assignment and distribution of O'Hare Arrival Authorizations. There would be no further need for the FAA to engage in the lengthy negotiations with airlines, as it had to do throughout 2004. Nor will there be any risk that these negotiations would fail to bear fruit leaving some airlines dissatisfied or all airlines with a serious congestion and delay problem. Each airline will enjoy an equal opportunity to adjust its schedules though the purchase or sale of Arrival Authorizations.

Under the High Density Rule the Department received complaints about the buy/sell process as it was implemented. The rule permitted the buyer and seller to deal directly with each other and therefore the identity of the carriers were known to each other. Various parties complained to the Department that incumbent carriers would refuse to sell to a new entrant or other airline that could pose a competitive threat. Some airlines and other entities have complained that they were not even aware of opportunities to purchase slots.[14]

To prevent airlines from engaging in this sort of collusion or purposely not selling to a particular competitor, sales of Arrival Authorizations under this proposal would be permitted only through a blind market overseen by the FAA. This would ensure that new entrants and all other airlines have an equal opportunity to purchase Arrival Authorizations. The offer to sell an Arrival Authorization would be posted in a manner that would ensure notice to all airlines and give all airlines an equal opportunity to bid without disclosing the identity of the seller. Similarly, the identity of the bidders would not be disclosed until the highest bid is accepted and the transfer of the authorization is made.

The only consideration permitted for transactions in the blind market would be money. Use of real property such as gates, non-monetary assets or other services in lieu of cash would not be permitted. Also, under the proposal, Arrival Authorizations obtained by a carrier in a lottery by virtue of the carrier's status as a new entrant or limited incumbent could not be sold or leased until they had been used for at least twelve months, except that they could be sold or leased within that period to another new entrant or limited incumbent. Such a restriction is consistent with the approach taken by the agency under the HDR, which restricted new entrants and limited incumbents from selling or leasing slots obtained in a lottery for two years thereafter (unless transferred to another new entrant or limited incumbent). Our proposal would help ensure that airlines seeking an allocation of slots actually intend to use the slots they acquire while fulfilling an important policy objective with respect to competition at O'Hare.

An airline seeking to sell an Arrival Authorization would have to provide 30 days' notice to the FAA with the Arrival Authorization number, times, frequencies, and effective date. The FAA would post information about the proposed sale and closing date for bids. Information identifying the seller would not be posted. Offers to buy must be made by the closing date. The FAA would forward the highest bid to the seller without any identification of the proposed buyer. The seller would have three business days to make a decision. If the seller accepts the bid, the FAA would notify the winning bidder and require both airlines to submit the necessary information to transfer the Arrival Authorization. The buyer may not use the Arrival Authorization until the FAA has received written confirmation of the transfer. A record of each sale will be kept on file by the FAA and be made available to the public upon request. Only airlines would be allowed to participate in this market.

Although sales under the blind buy-sell would be allowed as described above, the proposed rule does not currently provide for leasing and sub-leasing of these authorizations.

[13] *See, e.g.*, 14 CFR 93.225 (lottery of available slots); High Density Airports: Notice of Extension of the Lottery Allocation and Notice of Lottery for Limited Slot Exemptions at LaGuardia Airport 66 FR 41294 (Aug. 7, 2001) (expanding the scope of new entrants eligible to participate in the lottery to those that did not participate in the Dec. 4, 2000, including those that had not applied for the AIR-21 slot exemptions by Dec. 4, 2000); High Density Airports, 67 FR 65826 (Oct. 28, 2002) (adopting the new entrant preference procedure for reallocating withdrawn or returned lottery slot exemptions at LaGuardia). In *Northwest Airlines* v. *Goldschmidt*, the court agreed that an allocation of slots to carriers that increased low-fare service would be consistent with the pro-competitive policy established by the Airline Deregulation Act of 1978. (645 F.2d 1309 (8th Cir. 1980)).

[14] The DOT has docketed three petitions on this subject in recent years. Dockets OST-2004-18586, OST-2002-13650, and FAA-2001-9156. The petitions are available for review on the DOT's Web site.

However, the FAA is considering allowing carriers to lease (and sublease) Arrival Authorizations, because leasing would provide carriers greater flexibility and promote the more efficient use of Arrival Authorizations. Leasing would allow carriers to adjust their schedules based on changing seasonal or market conditions, and it would make it easier for carriers to enter new markets and determine whether market conditions justified the purchase of Arrival Authorizations.

However, as explained above, we would require a blind market for the sale of any Arrival Authorization in order to prevent collusion and efforts by an Arrival Authorization holder to sell Arrival Authorizations to its weakest competitor rather than the carrier that could use the Arrival Authorizations most efficiently and profitably. A rule allowing the lease of Arrival Authorizations must similarly include conditions that would prevent collusion and deny the lessor carrier the ability to choose which competitor could lease its Arrival Authorizations. The FAA therefore believes that leases and subleases, if allowed, should be negotiated only through a process emulating the proposed blind market for the sale of Arrival Authorizations. A lessor thus would give the FAA notice of its intent to lease Arrival Authorizations, the FAA would invite other carriers to bid for the lease, no consideration other than cash could be offered by the lessee, the lease would not restrict the lessee's ability to use the Arrival Authorizations, and the lessor would determine at most the length of the lease (alternatively the rule could set a minimum length for all leases of Arrival Authorizations). The FAA invites comments on the potential impact of a rule allowing leases and subleases.

One-for-One Trades

In addition, the proposed rule would permit the one-for-one exchange of Arrival Authorizations between airlines so long as no additional consideration was provided. Under the proposal, these exchanges must be publicly disclosed and could take place outside of the blind market because many of these arrangements are for operational reasons and could be accomplished only through multi-carrier trades. Such exchanges would be an effective way to deal with variations in seasonal demand and airline business strategies. The authorizations could not be used until written confirmation of the transaction is received from the FAA.

Canadian Carriers

In 1995, the U.S. and Canadian governments entered into a bilateral agreement that phased in elements of an open trans border aviation regime between the two countries. At the time that the U.S. and Canada adopted the bilateral agreement, the HDR was still in effect at O'Hare. Annex II of the agreement specifically addressed access to O'Hare.

Annex II provided Canadian air carriers with a base level of 36 O'Hare arrival and departure slots during the summer season and 32 arrival and departure slots during the winter season. Under the agreement, the U.S. could not withdraw slots from a Canadian air carrier for reallocation to another air carrier for international operations or for reallocation to a new entrant air carrier if withdrawing the slot would reduce the Canadian air carriers below the base level. Nevertheless, all O'Hare slots operated by Canadian air carriers were subject to the minimum slot usage requirement in the HDR that governed the operations of U.S. air carriers.

Annex II also allowed Canadian air carriers to obtain slots at O'Hare under the same allocation system as U.S. air carriers. However, the FAA could withdraw any slots obtained by Canadian air carriers above the base level at any time for the FAA's operational need.

As a result of the 1995 bilateral agreement, the O'Hare slots of Canadian air carriers, which previously consisted of international slots, in effect converted to domestic slots. The bilateral agreement would likewise apply to the assignments of Arrival Authorizations at O'Hare under this proposed rule. Accordingly, the FAA proposes to treat Canadian air carriers identically to U.S. air carriers in this proposal, except that arrivals initially assigned to Canadian carriers will not be subject to withdrawal to accommodate other foreign carriers or new entrants.

Foreign Carriers

We propose to apply the rule described in this notice to foreign carriers in order to ensure a single regulatory framework governs all scheduled operations at O'Hare. While the August 2004 Order did not limit the number of foreign carrier flights (foreign air carriers could not participate in the scheduling-reduction discussions under 49 U.S.C. 41722), the Order did include these operations in determining the hourly limit of 88 arrivals per hour. The August 2004 Order also stated that the FAA planned to list O'Hare as a Schedules Facilitated Airport, Level 2, under the International Air Transport Association (IATA) guidelines. The FAA has made that designation for the summer 2005 scheduling season and foreign carriers were requested to submit their proposed schedules to the FAA in advance for review. The rule, as proposed, would mean that O'Hare is a Fully Coordinated Airport, Level 3, under IATA guidelines and the FAA would list it accordingly. The FAA would generally follow the IATA Worldwide Scheduling Guidelines to the extent they do not conflict with adopted rules and procedures.

The proposal would treat foreign carriers somewhat differently from U.S. and Canadian carriers because foreign airline services to the United States (and U.S. airline services to foreign countries) are subject to intergovernmental air services agreements imposing obligations on the United States and the foreign government. In addition, there are differences in the manner in which U.S. airlines and foreign airlines typically operate at O'Hare.

Each international air services agreement typically obligates the United States and the foreign government party to ensure that the flag carriers of each party have a fair and equal opportunity to compete in the market. The United States thus has some obligation to provide access to O'Hare for foreign airlines. U.S. carriers similarly need adequate access to slot-controlled airports overseas. Any rule governing Arrival Authorizations at O'Hare must allow the United States to comply with its obligations under international agreements and preserve reciprocal treatment on access to Arrival Authorizations and slots. Furthermore, as we stated in the August 2004 Order imposing temporary limits on O'Hare operations agreed upon by U.S. airlines, most foreign airlines operate only a few flights at O'Hare. Only three of the 22 non-Canadian foreign airlines serving O'Hare as of August 19, 2004, operated three or more daily roundtrips. Airlines serving a number of important international markets cannot, moreover, schedule flights throughout the day. Instead, operational and market demands require carriers to schedule their flights during a relatively small part of the day (the afternoon and evening for arriving transatlantic flights, for example). Foreign airlines are also more likely to operate seasonal services. Most of the U.S. airlines serving O'Hare, especially the two hubbing airlines, would hold a significant number of Arrival Authorizations and so would have some ability to shift flights

between domestic and foreign routes. In contrast, each foreign airline has been limited to serving its international routes and in any event would have few Arrival Authorizations.

With respect to the initial assignment of Arrival Authorizations, foreign airlines would be treated in a similar fashion to their domestic counterparts. However, in recognition of the greater seasonality in international operations, each foreign airline would be assigned Arrival Authorizations for the winter traffic season based on its published schedules for the winter season that began October 2004 and for the summer season that began April 2004. Moreover, foreign carriers, except Canadian carriers, would not be allowed to sell any of the Arrival Authorizations initially assigned to them. Also, these Arrival Authorizations would not be subject to any of the proposed minimum usage provisions described below. Nonetheless, an authorization initially assigned to a foreign airline would have to be returned to the FAA if not used during any fifteen-day period.

There are two options being considered with respect to the treatment of foreign carriers in the context of providing additional access to O'Hare beyond initial assignments or for new entry.

Under the first option (the administrative option), the FAA would accommodate requests by foreign carriers for new or additional access administratively. The FAA would provide these Arrival Authorizations out of any unused Arrival Authorizations that FAA may have or an Arrival Authorization may be withdrawn from a U.S. airline. Foreign air carriers would not be able to buy, sell or lease Arrival Authorizations or to participate in any lottery; however, they could participate in one-for-one trades as described above.

Under the second option (the elective option), to obtain Arrival Authorizations above their initial assignments, if any, foreign carriers could elect to request an Arrival Authorization administratively, as described above, or to be treated as U.S. and Canadian carriers are treated. In other words, a foreign carrier could decide that it would rather obtain arrivals for new entry or additional access through a lottery or blind market. With respect to arrivals obtained through those means, a carrier would be subjected to the same rules as U.S. and Canadian carriers, although foreign carriers would still not be able to buy, sell or lease their initial assignments

A foreign carrier pursuing the opportunity to be treated as U.S. and Canadian carriers under the elective option would not be allowed at a later point to seek access to Arrival Authorizations from the FAA as described in the administrative option. Similarly, any carrier that obtains an arrival reservation as described in the first option could not later decide that it wanted to be treated the same as U.S. and Canadian carriers. The election to be treated one way or the other would be made the first time a foreign carrier sought an Arrival Authorization above its initial assignment after the rule goes into effect.

These options should provide a transparent mechanism for foreign airlines to exercise the right to serve Chicago provided for in our bilateral air services agreements. Under any of these approaches, of course, the Department of Transportation would reserve the right to take action with respect to any foreign air carrier whose homeland was not providing to U.S. air carriers equivalent rights of access to its airports, as determined by the Secretary of Transportation.

We seek comments on the relative merits of these two options.

Minimum Usage Requirements

The FAA is considering whether the proposed rule should include a minimum usage requirement for Arrival Authorizations held by U.S. or Canadian air carriers and if so, what requirement to put in place. (As proposed, the rule would not impose any such requirement on foreign air carriers but would also limit the transferability of Arrival Authorizations held by them.) The FAA requests comments on the relative merits of (1) not imposing any minimum usage requirement, (2) requiring that each authorization be used at least 90 percent of the time (or be withdrawn), or (3) periodically requiring that least utilized Arrival Authorizations be withdrawn.

One alternative is not to impose any minimum usage requirement. Under this alternative, each air carrier would be free to use, or not use, its authorizations as it sees fit. Allowing each air carrier to determine the most efficient use of its Arrival Authorizations is arguably consistent with a free marketplace and would remove any incentive that may otherwise exist for airlines to operate flights solely to preserve their allotment of authorizations from the FAA. Because unnecessary flight operations only serve to worsen the problem of congestion at O'Hare, a use-or-lose scheme could undermine the effectiveness of the proposed rule. At the same time, however, in the absence of a minimum use requirement, air carriers who hold the largest positions at O'Hare and hence the most authorizations could hoard existing authorizations to increase the value of their holdings or simply to deprive competitors of greater access to the airport.

The second alternative is to adopt a "use-or-lose" provision that would require air carriers to utilize each authorization they hold at least 90 percent of the time over a two-month reporting period. Any Arrival Authorization used less frequently would be withdrawn after notice to the holder; we anticipate, however, that each carrier receiving such notice would first sell the affected authorizations on the secondary market. Under this alternative, the 90 percent usage requirement would apply only during the restricted hours (that is, Saturdays and Sunday mornings, as well as other non-regulated hours would be excluded from the usage requirement). The Thanksgiving, Christmas, and New Year's holiday periods would also be excluded. The use or lose requirement would also be waived initially for newly acquired authorizations, during a strike, or in other circumstances as determined by the FAA. In order to implement this provision, a periodic reporting requirement would be imposed.

Under the High Density Rule the FAA imposed a minimum usage requirement of 80 percent; the standard was criticized as too lax. Adopting a 90 percent use-or-lose requirement would ensure that a scarce public resource, arrival times at O'Hare, is exploited to the greatest possible extent. Requiring a utilization rate of 90 percent over a 2-month period also makes it more difficult for carriers holding authorizations to allocate cancellations among their base of holdings. In comments concerning the High Density Rule, the staff of the Bureau of Economics of the Federal Trade Commission (FTC) submitted a comprehensive analysis showing that most airlines slot usage met or exceeded the proposed 90 percent minimum for weekday slots in any event. Nevertheless, the FAA invites comments on whether a 90 percent threshold is so high that it may cause airlines to lose authorizations due to unforeseen scheduling conflicts that they could have used productively at a lower threshold.[15]

The third alternative is to periodically identify the least utilized Arrival Authorizations and require that they be

[15] The proposed use-or-lose requirement would include similar waivers that existed under the HDR's use-or-lose rule that would provide exceptions for exigencies such as bad weather or mechanical problems.

withdrawn for reassignment. Under this option, Arrival Authorizations ranking in the bottom one (1) percent in frequency of usage would be identified by the FAA, and each holder would be given notice that the authorizations would be withdrawn by a certain date. This option would provide a strong incentive to use this scarce resource to the maximum extent possible but would leave airlines unsure as to how much use is required in order to avoid losing the authorization. Since, the airlines generally would not have access to the usage statistics of their competitors, this option could leave authorization holders uncertain as to how much use is required in order to avoid losing the authorization.

The FAA is considering two methods for reassigning authorizations withdrawn as a result of usage requirements described above. Under either method the agency would consider foreign carrier needs before making a reassignment. Under the first method, the FAA would conduct a lottery, consisting of two rounds. In the first round, only new entrants and limited incumbents would be permitted to participate. In the second round any remaining Arrival Authorizations would be assigned by lottery to incumbent carriers at O'Hare.

Under the second method, carriers losing Arrival Authorizations would be required to sell them in the FAA's blind market. A carrier would be notified that it has failed to meet the usage requirement 45 days before the Arrival Authorization is to be withdrawn. It would then be posted for sale in the blind auction; however, new entrant and limited incumbent carriers would have preference in purchasing these withdrawn Arrival Authorizations. Incumbent carriers would have the chance to buy any Arrival Authorizations that were not purchased by new entrant or limited incumbent carriers, except that a carrier could not bid on an Arrival Authorization that had been withdrawn from it. Proceeds of a sale would go to the airline that lost the authorization and any unsold authorizations would be returned to the airline that lost them.

The FAA requests comments on the relative merits of these two reassignment methodologies for withdrawn Arrival Authorizations.

Reversion of Arrival Authorizations

As discussed above, Arrival Authorizations are not property rights but are temporary operating privileges. As such, they remain subject to FAA control. We propose allowing them to be bought and sold, subject to FAA restrictions, in order to promote their most efficient use. However, they may be withdrawn at any time to fulfill operational needs such as accommodating new entry by foreign carriers or to eliminate Arrival Authorizations due to reduced capacity. Arrival Authorizations would be withdrawn in accordance with the priority number originally assigned to each individual Arrival Authorization. A limited incumbent carrier would be protected from reversion of Arrival Authorizations. If the FAA determines that capacity must be reduced for a specified period of time, for example if a runway were temporarily closed, Arrival Authorizations would be withdrawn. Once the capacity is resumed, the withdrawn Arrival Authorizations would be returned to the carriers from which they were withdrawn.

The proposal also provides that all of the Arrival Authorizations held by any carrier would revert to the FAA if that carrier ceases all operations at O'Hare for any reason other than a strike or labor dispute.

The FAA proposes that for 12 months following a new entrant and limited incumbent lottery, an Arrival Authorization acquired by a new entrant or limited incumbent would be withdrawn by the FAA upon the sale, merger, or acquisition of more than 50 percent ownership or control of the carrier using the Arrival Authorization or one acquired by trade of that Arrival Authorization, if the resulting total of Arrival Authorizations assigned to the surviving entity would exceed eight.

Sunset Date

Although arrival caps are being proposed in this rule, imposing caps on the use of airport capacity does not meet aviation demand; rather, such caps artificially limit operations during certain hours to achieve the benefit of delay reduction. The FAA's preferred approach to reducing delay and congestion is to increase airport infrastructure so that capacity meets demand. Because a timely increase to airport capacity is not always feasible, alternative measures may be necessary to address congestion that adversely affects the efficiency of the national airspace system.

In light of the adverse impact that significant congestion-related delays at O'Hare have on airlines and passengers using that airport, and the collateral effect of such delays on the national airspace system, the FAA proposes in this notice to cap by regulation the number of arrivals at O'Hare during peak hours. The proposed rule includes a sunset date of April 6, 2008. If additional O'Hare capacity that is sufficient to abate the airport's significant delays does not become available within the period of this rule, the FAA may consider other congestion management techniques, such as market-based mechanisms. We would consider replacing this rule with such an alternative if doing so would be practical and otherwise comport with applicable policies and legal requirements.

The FAA proposed an April 2008 sunset date for a number of reasons. As previously noted, the City of Chicago has produced an O'Hare Modernization Program that the City of Chicago represents will adequately increase airport capacity and reduce levels of delay. A final FAA decision on the City's application is expected in September 2005. The first phase of the O'Hare Modernization Program, if approved, is expected to come on line in 2007. In addition, work is ongoing to improve the Instrument Landing Systems for runways 27L and 27R, which will improve their performance in adverse weather conditions. The proposed April 2008 sunset date for the FAA's proposed rule would address the present conditions at O'Hare until the benefits of any interim capacity enhancements are realized.

If the FAA does not approve the City of Chicago's O'Hare Modernization Program in 2005, the FAA would need to devise an alternative mechanism for limiting congestion and delay at O'Hare. Some of the market-based mechanisms under consideration require legislation and/or regulatory changes before they could be put into practice. An April 2008 sunset date for this proposed rule would provide the FAA with the time to develop and an alternate mechanism for use at O'Hare.

Despite the FAA's proposed sunset of this rule in April 2008, it is possible that an earlier sunset provision could be appropriate. If an alternative method to allocate capacity were identified, it might be possible to implement that method prior to 2008. It is also possible that changes in the airline industry could obviate the need for a congestion management rule at O'Hare before April 2008. In such an event, an earlier sunset would cause the FAA to revisit sooner the need to manage congestion at O'Hare. The FAA is specifically soliciting comments on whether this proposed rule should sunset before April 2008.

Small Community Air Service

In "grandfathering" the air carriers' existing schedules, the proposed rule

would enable airlines to continue operating all existing air service to small communities. Although the rule could provide for the withdrawal of Arrival Authorizations from air carriers in order to augment service to small communities, it does not do so. Nevertheless, the impact of this proposed rule on the quality of service to small communities will be monitored. If the quality of service to small communities is adversely affected, remedial action may be taken.

General Aviation and Other Unscheduled Operations

On October 20, 2004, the FAA published in the **Federal Register** proposed Special Federal Aviation Regulation No. 105 to address unscheduled operations at O'Hare (69 FR 61708). The proposal provided for a minimum of four arrivals per hour for unscheduled operators, including general aviation, military, cargo, and certain charter operations. The comment period for this proposal closed on November 1, 2004. The FAA intends to issue a final rule with respect to these operations. This final SFAR would subsequently be incorporated into this rule so that all operational limits on aircraft arrivals at O'Hare are in the same subpart.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Congestion and Delay Reduction at Chicago O'Hare International Airport.

Summary: The purpose of this rulemaking project is to adopt operational limits on the number of scheduled peak hour operations at O'Hare International Airport as an interim measure to manage congestion and delays. The rule would grant carriers at O'Hare the right to utilize the Arrival Authorizations until the rule sunsets on April 6, 2008. For the purpose of ensuring operational efficiency, the rule would permit one-for-one trades amongst the carriers, but the sale and lease of Arrival Authorizations would be conducted in a blind secondary market. In addition, the proposed rule incorporates provisions to modify the hourly operational limits if capacity at O'Hare expands.

Use of: Under this proposal, air carriers would be permitted to buy, sell and lease Arrival Authorizations in the blind secondary market. An airline seeking to sell an Arrival Authorization would have to provide 30 days' notice to the FAA with the Arrival Authorization number, times, frequencies, and effective date. The FAA will post information about the proposed sale and closing date for bids. Air carriers that participate in the blind market transaction would be required to submit their bid to the FAA. The only consideration permitted for transactions in the blind market would be money. Use of real property such as gates, non-monetary assets or other services in lieu of cash would not be permitted.

The proposed rule also permits the FAA to hold lotteries to allocate Arrival Authorizations to new entrants and existing air carriers at O'Hare. The FAA would publish a notice in the **Federal Register** announcing the lottery dates and any special procedures for the lotteries. Any air carrier, or foreign air carrier seeking to participate in any lottery must notify the FAA in writing, and such notification must be received by the FAA 15 days prior to the lottery date. The carrier must also disclose in its notification whether it has Common Ownership, as defined in this proposal, with any other carrier and, if so, identify such carrier.

Should a minimum usage requirement be adopted in this proposed rule, every scheduled U.S. air carrier and Canadian air carrier holding Arrival Authorizations would have to forward in writing to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1 and every 2 months thereafter. The report shall identify the aircraft identifier and flight number for which the Arrival Authorization was used and the scheduled arrival time. The report shall identify any Common Ownership or control of, by, or with any other carrier. A senior official of the carrier shall sign the report.

Respondents (including number of): The respondents to this proposed information requirement are operators of scheduled service at O'Hare, as well as any new entrant airline that intends to operate at O'Hare. FAA analysis indicates there may be as many as 50 operators participating in the blind secondary market transactions.

Frequency: The FAA anticipates conducting blind secondary market transactions whenever appropriate, depending upon whether any carriers indicate a desire to sell their Arrival Authorizations. The FAA would conduct lottery allocations as needed to allocate Arrival Authorizations as they become available. Under a Minimum Usage Requirement, U.S. and Canadian air carriers would be required to submit usage reports (as described above) every two months.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden as follows:

The FAA blind market is expected to operate at least twice a year, depending upon the desire of carriers' to sell Arrival Authorizations. For purposes of estimating the time burden of participation in the blind market, we assumed transactions would be conducted electronically. Since participants in the blind market could submit bids using an Internet web interface using electronic information technology, FAA does not expect the submission of bids to require new capital equipment. FAA would conduct lotteries as necessary to allocate available capacity. Similar to the blind market, lotteries could be conducted electronically. FAA analysis indicates there may be as many as 50 operators participating in each lottery and bi-annual blind market.

A proposed Minimum Usage reporting requirement would require U.S. and Canadian air carriers to submit reports on usage of their Arrival Authorizations every two months. If a minimum usage requirement is adopted, there are currently 12 domestic and Canadian air carriers that would be subject to the reporting requirement. Each reporting air carrier would be required to submit 6 annual reports; resulting in less than 20 reports over the term of the proposed rule.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of providing required information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by May 24, 2005, and should direct them to the address listed in the **ADDRESSES** section of this

document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

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 proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, And Unfunded Mandates Assessment

This section of the regulatory analysis provides a summary of the preliminary regulatory evaluation results, the initial regulatory flexibility determination, the trade impact assessment and the unfunded mandates impact assessment.

Introduction

Changes to Federal regulations must undergo several regulatory impact 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 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 4 §§ 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, to 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).

In conducting these analyses, FAA has determined this proposed rule (1) has benefits that justify its costs, is a major, economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is "significant" as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would not adversely affect international trade; and (4) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, set forth in this document, are summarized below.

Total Costs and Benefits of This Rulemaking

- FAA estimates that this proposed rule would result in a 42 percent reduction in delay at O'Hare, generating present value *benefits* of $741 million relative to November 2003 delays.
- The total cost of this proposed rule includes air carrier costs associated with a loss in schedule flexibility and reduction in flights, passenger inconvenience as a result of fewer choices and potentially higher fares, and direct administrative costs of $1.13 million.

Who is Potentially Affected by This Rulemaking

- Operators of scheduled flights at O'Hare.
- Commercial airlines (incumbents—more than 8 arrivals; limited incumbents—8 or fewer arrivals; new entrants—do not yet operate at O'Hare; foreign operators).
- All communities, including small communities with air service to O'Hare.
- Passengers of scheduled flights to O'Hare.
- Chicago, Department of Aviation—municipality of O'Hare.

Key Assumptions

Principal Key Assumptions

- Baseline Flight Operations and Delay—OAG Schedule November 20, 2003 (1,454 daily arrival flights).
- Constrained Flight Operations and Delay—OAG Schedule—November 18, 2004 (1,430 gross daily arrival flights/ 1387 net daily flights adjusted for 3 percent cancellation rate); constrained to 88 scheduled arrivals per hour plus 4 unscheduled arrivals per hour.
- Daily Flight Completion Factor: 97 percent Daily Flight Cancellation Factor: 3 percent.
- Unscheduled arrivals are constrained to 4 arrivals per hour.
- No lost revenue due to cancelled flights—All passengers are rebooked or rerouted to their destination.
- Delay improvement over the baseline schedule is 12 minutes per flight (17,887 total minutes per day)—equivalent to a 42 percent improvement in delay—This delay improvement estimate was derived from MITRE's Queuing Delay Model, which measures delays of 1-minute or more against the OAG flight schedule.
- Annual estimates are adjusted to reflect the 1.5 days per week when the limits are not in effect (all day Saturday and until noon on Sunday).

Other Important Assumptions

- Discount Rate—7 percent.
- Period of Analysis—November 1, 2005 through April 6, 2008.
- Assumes 2005 Current Year Dollars.
- Rule Sunsets April 6, 2008.
- Operator Delay Cost Savings.
- Aircraft average variable costs per block hour—$1,935 per hour.
- Passenger Delay Cost Savings.
- Passenger Value of Time—$28.60 per hour.

Alternatives We Have Considered

- FAA considered four major alternatives to manage congestion and delays at O'Hare.
- Alternative #1—Let the August 18, 2004 order expire on April 30, 2005. Based on history, operators would likely continue to expand operations, further worsening airport delays.
- Alternative #2—Extend the August 18, 2004 order by issuing a show cause order as a bridge between the August 18th order and the proposals of this rulemaking action. It is difficult to obtain voluntary agreement and the operators would be unable to extend operations beyond the 88 arrivals per hour set by the order.
- Alternative #3—Implement a market-based solution such as an auction or congestion pricing. The FAA is exploring the feasibility of these solutions under a research project for LaGuardia airport. The results are not expected until later in 2005.
- Alternative #4—Implement this proposed rule, which would provide an interim solution.
- FAA is seeking comment on three options concerning minimum usage of Arrival Authorizations. The three options are:
- Option 1—No minimum usage requirements.

• Option 2–90 percent minimum usage required over a two-month period.

• Option 3—Bottom 1 percent utilized Arrival Authorizations over a six-month period could be withdrawn and reassigned through the blind market or lottery.

• FAA is seeking comments on two options concerning how foreign carriers might gain access to O'Hare, beyond the initial assignment of Arrival Authorizations. These two options are as follows:

• Administrative option—FAA could assign Arrival Authorizations out of any unused Arrival Authorizations or withdrawal an authorization from a U.S. carrier.

• Elective Option—Foreign carriers can elect to be treated the same as U.S. and Canadian operators and participate in assignment through lottery and blind market to gain additional access to O'Hare.

Benefits of This Rulemaking

• The primary benefits of this rule are derived from airline delay cost savings and passenger delay cost savings. Table 1 shows the annual benefits in present value dollars, which reflect the proration for the 5.5 days per week the operational caps are in effect, and the flight completion factor of 97 percent. The total benefits in present value dollars are $741 million.

TABLE 1.—TOTAL ANNUAL BENEFITS OF THE ORD NPRM

[present value dollars]

	Airline delay cost savings	Passenger delay cost savings	Total benefits
2005	$28,265,932	$28,316,101	$56,582,032
2006	154,726,729	156,263,982	310,990,711
2007	144,604,420	148,069,608	292,674,028
2008	39,789,877	41,304,825	81,094,702
Total:	367,386,958	373,954,516	741,341,474

• The major factors used to develop an estimate of annual airline delay cost savings are presented in Table 2 below. Given the total delay improvement of 17,887 minutes, and the average variable costs per block hour $1,935, airlines would save more than $367 million dollars (present value dollars), cumulatively over the life of the proposed rule.

TABLE 2.—AIRLINE DELAY COST SAVING

	Total daily arrivals	Average total delay (minutes) per day	Average total delay (hours) per day	Average variable operating costs per hour	Annual airline delay cost savings (nominal dollars)	Present value airline delay cost savings
2005	1,387	17,887	298	$1,935	$28,265,932	$28,265,932
2006	1,387	17,887	298	1,935	165,557,600	154,726,729
2007	1,387	17,887	298	1,935	165,557,600	144,604,420
2008	1,387	17,887	298	1,935	48,744,311	39,789,877
Total					408,125,443	367,386,958

• Table 3 below gives a breakdown of the factors used to compute the passenger delay benefits of this proposed rule. The right-hand column of the table contains the annual dollar amounts of the benefits. To estimate benefit, the hours of delay improvement are prorated for the days of the year the flight limits are in effect. The total passenger delay costs savings are $374 million in present value dollars.

TABLE 3.—PASSENGER DELAY COST SAVINGS

	Total daily arrivals	Average seats	Load factor	Passengers per flight	Passengers per day	Passengers' average delay per arrival	Annual delay hours	Passenger value of time	Annual passenger delay cost savings (nominal dollars)	Present value of passenger delay cost savings
2005	1387	103.9	0.701	73	101,028	12	990,073	$28.60	$28,316,101	$28,316,101
2006	1387	104.3	0.704	73	101,851	12	5,846,240	28.60	167,202,461	156,263,982
2007	1387	105.3	0.707	74	103,266	12	5,927,444	28.60	169,524,894	148,069,608
2008	1387	106.3	0.705	75	104,689	12	1,675,018	28.60	50,600,187	41,304,825
Total:									415,643,643	373,954,516

• The FAA expects additional benefits from the use of the blind market and lottery mechanisms. These provisions would allow airlines to efficiently allocate Arrival Authorizations to where they are valued the most. In making their scheduling choices, the market mechanism proposed in this rule should allow

airlines to more efficiently allocate resources in an effort to avoid higher than average delay costs or to serve passengers that have a higher than average value of their time, therefore improving the overall efficiency of the national airspace and leading to greater benefits than those estimated in this analysis using average cost. This provision also minimizes the need for on-going government intervention in the allocation and distribution of O'Hare Arrival Authorizations and ensures that new entrants and all other airlines have an equal opportunity to purchase authorizations.

• Additional delay cost savings are derived from national airspace system-wide delay improvements, which result from the delay improvements at O'Hare, as well as delay improvements from reduced departure delays at other airports impacted by delay from O'Hare. We have not included these delay benefits in the quantitative analysis.

Costs of This Rulemaking

• The total cost of this proposed rule includes air carrier costs associated with a loss in schedule flexibility and reduction in flights, passenger inconvenience as a result of fewer choices and possibly higher fares, and direct administrative costs.

• The direct administrative costs of this proposed rule cover the blind market costs incurred by buyers and sellers of the Arrivals Authorizations, the public costs of developing and managing the blind market, and other administrative and compliance costs.

• The direct administrative costs of this proposed rule are an estimated $1.134 million in present value dollars, as shown in the last column of Table 4. The largest costs are the E-Bid administration costs of $194,184, which covers FAA's costs for the semi-annual blind market operations, and the other administration costs of $601,894, which covers the costs for operating the lottery, and general compliance and reporting requirements of the rule.

• The costs associated with a loss in air carrier schedule flexibility and reduction in the number of flights are difficult to quantify. However, the FAA believes this impact is minimal since passenger demand could likely be accommodated through alternative routings and access to Chicago. We invite comments on this impact.

• FAA acknowledges that the proposed rule would limit arrivals at O'Hare and thus could reduce the number of airline operations below the number that would be operated if no cap were imposed on O'Hare arrivals. This effect has the possibility of limiting competition and allowing carriers to raise fares; however, FAA believes the impact on competition would not be significant given the competitive market pressures internal and external to O'Hare, and the short duration of this proposed rule.

TABLE 4.—PRESENT VALUE OF ANNUAL ADMINISTRATIVE COSTS

	FAA E-bid development costs	E-bid system operating costs	FAA E-bid admin costs	Other admin costs	Reporting costs	Total costs
2005	$150,000	$8,333	$53,578	$44,649	$28,760	$285,320
2006	.....	46,729	50,073	250,366	21,156	368,324
2007	.....	43,672	46,797	233,987	19,772	344,228
2008	.....	13,605	43,736	72,893	6,789	137,023
Total:	150,000	112,339	194,184	601,895	76,477	1,134,895

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 Act.

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 1980 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.

While there would be more than just a few small entities affected by this proposed rule, the FAA determined that it would not impose a significant economic impact on small entities. The FAA considered the economic impact on scheduled operators and small communities.

The proposed rule affects all scheduled operators at O'Hare, more than just a few of which are small entities (where "small entities" are firms with 1,500 or fewer employees). The arrivals of all carriers currently providing service at O'Hare would be grandfathered, thereby minimizing the impact on their schedules. For their given schedules, this proposed rule would lower their fuel burn costs substantially by reducing the delays experienced prior to the August 2004 order.

As capacity becomes available during the duration of the rule, the FAA proposes to establish a limited preference for new entrants and limited incumbents, many of which are likely to be small entities. If the capacity grows per hour from 88 to 89 or 90 arrivals, any capacity not needed to accommodate foreign carriers would be assigned by lottery to new entrants and limited incumbents. Therefore, this proposal favors small entity operators.

In "grandfathering" the air carriers" existing schedules, the proposed rule would enable airlines to continue operating all existing air service to airports of communities with populations less than 50,000. Consequently, we do not expect this proposed rule to negatively impact airports in small communities.

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

International Trade Impact Assessment

The Trade Agreement 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 is proposing to apply the rule to foreign operators to create a rule governing all scheduled and non-scheduled operations at O'Hare.

The FAA has assessed the potential effect of this proposed rule and determined that it would not adversely affect any trade-sensitive activity as discussed below. Thus, this proposed rule would not create unnecessary obstacles to the foreign commerce of the United States.

Under this proposed rule, foreign operators would be given an initial assignment of Arrival Authorizations based on past usage. Further, they may have some discretion in terms of gaining additional access to O'Hare beyond being accommodated administratively. One option for foreign carriers would include permitting the foreign carriers to be treated the same as U.S. operators in the allocation of additional arrivals at O'Hare and should provide a transparent mechanism for foreign airlines to exercise the right to serve O'Hare provided for in our bilateral air service agreements.

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 proposed rule does not contain such a mandate. Therefore, the-requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

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

Environmental Analysis

This NPRM is subject to an environmental review under the National Environmental Policy Act (NEPA) as described in FAA Order 1050.1E, Environmental Impacts: Policies and Procedures. It has been determined that the NPRM falls within a group of actions that the FAA has found, based on past experience with similar actions, do not normally require an Environmental Assessment (EA) or Environmental Impact Statement (EIS) because they do not individually or cumulatively have a significant effect on the human environment. This NPRM falls under Categorical Exclusion 312F. Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment). The NPRM proposes an interim solution to manage the immediate problem of congestion and delay at O'Hare by limiting the number of flight arrivals during certain hours. It has been determined that no extraordinary circumstances exist that may cause a significant impact and therefore no further environmental review is required.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM 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 Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to add subpart B to part 93 of chapter I of title 14, Code of Federal Regulations, as follows:

1. The authority citation for this amendment continues to read as follows:

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

PART 93—[AMENDED]

2. Subpart B is added to read as follows:

Subpart B—Congestion and Delay Reduction at Chicago O'Hare International Airport

Sec.
§ 93.21 Applicability.
§ 93.22 Definitions.
§ 93.23 Arrival Authorizations.
§ 93.24 [Reserved]
§ 93.25 Initial assignment of Arrival Authorizations to U.S. and Canadian air carriers.
§ 93.26 Withdrawal and reversion of Arrival Authorizations.
§ 93.27 Sale of Arrival Authorizations.
§ 93.28 One-for-one trade of Arrival Authorizations.
§ 93.29 Foreign air carriers.
§ 93.30 Lottery provisions.
§ 93.31 Minimum usage requirement.
§ 93.32 Administrative Provisions.
§ 93.33 New capacity.
§ 93.34 Sunset provision.

Subpart B—Congestion and Delay Reduction at Chicago O'Hare International Airport

§ 93.21 Applicability.

(a) This subpart prescribes the air traffic rules for the arrival of aircraft, other than helicopters, at Chicago's O'Hare International Airport (O'Hare).

(b) [Reserved]

(c) This subpart also prescribes procedures for the assignment, transfer, sale and withdrawal of Arrival Authorizations issued by the FAA for scheduled operations by air carriers, foreign air carriers and other operators at O'Hare.

(d) The provisions of this subpart apply to 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. No person shall operate any scheduled arrival IFR arrival into O'Hare during such hours without first obtaining an Arrival Authorization.

(e) No Arrival Authorization issued or assigned under this subpart shall constitute the property of any person regardless of any purchase, sale, or transfer thereof or any contract or agreement entered into by any person concerning an Arrival Reservation or Arrival Authorization.

(f) Carriers that have Common Ownership shall be considered to be a single air carrier or foreign air carrier for purposes of this rule.

§ 93.22 Definitions.

Arrival Authorization is the operational authority assigned to an air carrier or foreign air carrier by the FAA to conduct one scheduled IFR arrival operation each week on a specific day of the week during a specific 30-minute period at O'Hare.

Arrival Reservation is the operational authority to conduct one unscheduled IFR arrival on a specific day of week during a specific 30-minute period at O'Hare.

Common Ownership with respect to two or more air carriers or foreign air carriers means having in common at least 50 percent beneficial ownership or effective control by the same entity or entities.

Incumbent means any air carrier or foreign air carrier that is not a New Entrant or Limited Incumbent.

Limited Incumbent means any air carrier or foreign air carrier that has received 8 or fewer Arrival Authorizations from the FAA, none of which it has sold or otherwise transferred, other than one-for-one transfers permitted in this part. Any limited incumbent that sells or otherwise transfers an Arrival Authorization shall thereafter be treated as an Incumbent for purposes of this rule.

New Entrant means any air carrier and foreign air carrier that does not operate any Arrival Authorizations at O'Hare and has never held an Arrival Authorization.

Preferred Lottery means a lottery conducted by the FAA to assign Arrival Authorizations, with initial preference for new entrants and limited incumbents.

Scheduled Arrival is the arrival segment of any operation regularly conducted by a carrier between O'Hare and another point regularly served by that carrier.

Summer Scheduling Season is the period of time from the first Sunday in April until the last Sunday in October.

Winter Scheduling Season is the period of time from the last Sunday in October until the first Sunday in April.

§ 93.23 Arrival Authorizations.

(a) Except as otherwise established by the FAA Vice President, System Operations Services under § 93.33 of this subpart, the number of Arrival Authorizations shall be limited to:

(1) 88 per hour between the hours of 7 a.m. and 7:59 p.m. Monday through Friday and 12 p.m. and 7:59 p.m. Sunday, and

(i) Not to exceed 50 during each half-hour beginning at 7 a.m. and ending at 7:59 p.m.

(ii) Not to exceed 88 within any two consecutive 30-minute periods.

(2) 98 between 8 p.m. and 8:59 p.m. Monday through Friday, and Sunday, not to exceed 67 between 8 p.m. and 8:30 p.m.

(b) An Arrival Authorization is not a property right but rather a temporary operating privilege subject to absolute FAA control. Only certificated air carriers and foreign air carriers may hold Arrival Authorizations. Arrival Authorizations may not be used as collateral, pledged, assigned, transferred or hypothecated to another person, except as provided in the §§ 93.27 and 93.28 of this subpart.

(c) On January 1, 2006, and on each six-month anniversary thereafter, the FAA shall conduct a review of existing capacity at O'Hare, to determine whether to increase the number of Arrival Authorizations or Arrival Reservations. The FAA will consider the following factors:

(1) The number of delays;

(2) The length of delays;

(3) Weather conditions;

(4) On-time arrivals, and

(5) Other factors relating to the efficient management of the national air space system.

(d) The Administrator may increase the number of Arrival Authorizations based on the review conducted in paragraph (c) of this section.

§ 93.24 [Reserved]

§ 93.25 Initial assignment of Arrival Authorizations to U.S. and Canadian air carriers.

(a) The FAA shall assign to each U.S. and Canadian air carrier that published a scheduled arrival for any day during the 7-day period of November 1 through 7, 2004, as evidenced by the FAA's records, a corresponding Arrival Authorization for each scheduled arrival.

(b) If a U.S. or Canadian air carrier did not publish a scheduled arrival during the period of time referenced in paragraph (a) of this section, but was entitled to do so under the August 18, 2004, "Order Limiting Scheduled Operations at O'Hare International Airport" a corresponding Arrival Authorization shall be assigned for that arrival.

(c) Arrival Authorizations will be assigned to the carrier that actually operated the flight regardless of any codeshare or marketing arrangement unless such carrier did not market the flight under its own code and the inventory of the flight was, by contract, under the control of another air carrier. If inventory of the flight was under the control of another air carrier, the FAA shall assign the Arrival Authorization to that air carrier.

(d) The FAA Vice President, System Operations Services, shall be the final decision-maker for determinations under this section.

§ 93.26 Withdrawal and reversion of Arrival Authorizations.

(a) The FAA may withdraw or temporarily suspend Arrival Authorizations at any time to fulfill operational needs, such as to accommodate arrivals by foreign air carriers, or due to reduced airport capacity.

(b) An air carrier's Arrival Authorizations revert automatically to the FAA 30 days after the air carrier has ceased all operations at O'Hare for any reasons other than a strike or labor dispute.

(c) Any Arrival Authorization that is temporarily withdrawn under paragraph (a) will, if reassigned, be reassigned to the carrier from which it was withdrawn, provided that the carrier continues to conduct scheduled operations at O'Hare.

(d) The FAA shall not withdraw any Arrival Authorizations if the result would be to reduce an air carrier's total number of Arrival Authorizations below eight.

(e) Except as otherwise provided in paragraph (b) of this section, Arrival Authorizations will be withdrawn in accordance with the priority list established under § 93.32(a) of this subpart.

(f) Except as otherwise provided in paragraph (b) of this section, the FAA will notify the affected air carrier before withdrawing any Arrival Authorization and specify the date by which operations under the authorizations must cease. Except as otherwise required by operational needs, the FAA will provide at least 45 days' notice.

(g) If a New Entrant or Limited Incumbent carrier is assigned an Arrival Authorization in a Preferred Lottery conducted under § 93.30 of this subpart and within 12 months thereafter enters into a definitive agreement providing for the sale, merger, or acquisition by another person of more than 50 percent ownership or control of the carrier, the Arrival Authorizations assigned in the lottery shall revert to the FAA to the extent that the total number of Arrival Authorizations assigned to the surviving entity would exceed eight.

(h) No Arrival Authorizations may be withdrawn from a Canadian carrier to accommodate arrivals by other foreign air carriers or New Entrants if such withdrawal would reduce the number of Arrival Authorizations held by that Canadian carrier below the number assigned that carrier under § 93.25.

§ 93.27 Sale of Arrival Authorizations.

(a) No carrier may sell its Arrival Authorizations at O'Hare other than in accordance with the procedures in this section and in the manner prescribed by the Administrator.

(b) Only monetary consideration may be provided in any transaction conducted under this section.

(c) New Entrants and Limited Incumbents may not sell any Arrival Authorizations assigned through a Preferred Lottery within 12 months of such assignment, except to another new entrant or limited incumbent.

(d) A carrier seeking to sell an Arrival Authorization must provide the following information in writing to the FAA at least 30 days before the planned sale date:

(1) Arrival Authorization number and time,

(2) Frequencies available; and

(3) Planned effective date of transfer.

(e) The FAA will post a notice of the available Arrival Authorization and specific information concerning the transaction on the FAA Web site (insert address). The notice will provide a closing date and time by which bids must be received. Information identifying the carrier providing the Arrival Authorization for sale will not be posted or released by the FAA.

(f) The FAA must receive all bids by the closing date and time, and no extensions of time will be granted. Late bids will not be considered. All bids will be held confidential, with each bidder certifying in a form acceptable to the FAA that its bid has not been disclosed to any person not its agent.

(g) The FAA will forward the highest bid to the selling air carrier without identifying the bidder. The selling air carrier will have up to three business days to accept or reject the bid. The selling air carrier must notify the FAA of its acceptance no later than 5 p.m. eastern time on the third business day.

(h) Upon acceptance, the FAA will notify the winning carrier and request that the buyer and the seller submit to the FAA the written information (Arrival Authorization number, frequencies and effective date of transfer) required to transfer the Arrival Authorization.

(i) Written evidence of each carrier's consent to the transfer must be provided to the FAA in a form acceptable to the FAA, and each carrier must certify that only monetary consideration will be exchanged.

(j) The recipient carrier of the transfer may not use the Arrival Authorization until the conditions in paragraph (i) of this section have been met and FAA has approved the transfer.

(k) The FAA will keep a record of all bids received and of each Arrival Authorization transfer, including the identity of both air carriers' and the winning bid price, all of which will be made available to the public upon request.

§ 93.28 One-for-one trade of Arrival Authorizations.

(a) Any air carrier or foreign air carrier may exchange an Arrival Authorization it has been assigned with another carrier on a one-for-one basis for the purpose of conducting that operation in a different half-hour time period.

(b) Written evidence of each carrier's consent to the transfer must be provided to the FAA.

(c) The recipient of the transfer may not use the Arrival Authorization until written confirmation has been received from the FAA.

(d) A record of each Arrival Authorization exchange will be kept on file by the FAA and made available to the public upon request.

(e) Carriers participating in a one-for-one transfer must certify in a form acceptable to the Administrator that no other consideration will be or has been provided for the exchange.

§ 93.29 Foreign air carriers.

(a) This section applies to all foreign air carriers other than Canadian air carriers. The Department of Transportation reserves the right to withhold the assignment of any Arrival Authorization to any foreign air carrier of a country that does not provide equivalent rights of access to its airports for U.S. air carriers, as determined by the Secretary of Transportation.

(b) The FAA shall initially assign Arrival Authorizations to foreign air carriers for winter and summer scheduling seasons as follows:

(1) Winter Scheduling Season. The FAA shall assign to each foreign air carrier that published a scheduled arrival during the Winter Scheduling Season that began October 2004, as evidenced by the FAA's records, a corresponding Arrival Authorization for each arrival.

(2) Summer Scheduling Season. The FAA shall assign to each foreign air carrier that published a scheduled arrival during the Summer Scheduling Season that began April 2004, as evidenced by the FAA's records, a corresponding Arrival Authorization for each arrival.

(3) Arrival Authorizations will be assigned to the carrier that actually operated the flight regardless of any codeshare or marketing arrangement unless such carrier did not market the flight under its own code and the inventory of the flight was, by contract, under the control of another carrier. If inventory of the flight was under the control of another carrier, the FAA shall assign the Arrival Authorization to that carrier.

(4) The FAA Vice President, System Operations Services shall be the final decision-maker for determinations under this subsection.

[Option 1—Administrative Option]

(c) A foreign air carrier may request new or additional Arrival Authorizations for a Summer Scheduling Season or a Winter Scheduling Season pursuant to this section. Such requests shall be made at a time and in a manner prescribed by the Administrator. If the request is granted, the FAA shall withdraw Arrival Authorizations from air carriers under § 93.26 of this subpart if an Authorization Arrival is not otherwise available within one hour of the requested time.

(d) Each request for Arrival Authorizations under this section shall specify the days of the week and time of day of the preferred Arrival Authorization and the length of time the Arrival Authorizations are to be used. The request must be accompanied by a certified statement by an officer of the foreign air carrier stating that it possesses or has contracted for possession of an aircraft capable of being utilized in the Arrival Authorizations requested and that it has *bona fide* plans to use the requested Arrival Authorizations for operation. The FAA Vice President, System Operations Services shall be the final decision-maker for determinations under this subsection.

(e) Arrival Authorizations assigned under this section cannot be bought or sold under § 93.27, but may be traded on a one-for-one basis under § 93.28 of this subsection.

(f) Arrival Authorizations assigned under this section are not subject to minimum usage requirements under § 93.31 of this subpart but will revert to the FAA if not used for 15 consecutive days.

[Option 2—Elective Option]

(c) After the date of the initial assignments in subsection (b) of this section, a foreign air carrier may request new or additional Arrival Authorizations for a Summer Scheduling Season or a Winter Scheduling Season. Such requests shall be made at a time and in a manner prescribed by the Administrator. A foreign air carrier seeking new or additional Arrival Authorizations must elect to receive additional Arrival Authorizations under the assignment procedures of either paragraph(c)(1) or (c)(2) of this section:

(1) If a foreign air carrier requests a new or additional Arrival Authorization and an Arrival Authorization is not available within one hour of the requested time, and if the request is granted, an Arrival Authorization shall be withdrawn from an air carrier under § 93.26 of this subpart to accommodate the request if an Arrival Authorization is not otherwise available;

(i) Arrival Authorizations assigned under subsections (b) or (c)(1) cannot be bought or sold under § 93.27, but may be traded on a one-for-one basis under § 93.28 of this subpart, to meet the carriers' operational needs

(ii) Arrival Authorizations assigned under subsections (b) or (c)(1) are not subject to usage requirements under § 93.31 of this subpart but will revert to the FAA if not used for 15 consecutive days.

(2) Foreign air carriers seeking new or additional Arrival Authorizations may participate in any lotteries or transactions permitted under § 93.27 and shall be eligible to receive additional assignments of Arrival Authorizations under § 93.33 of this subpart.

(3) A foreign air carrier making an election between §§ 93.29(c)(1) and 93.29(c)(2) above must notify the FAA Slot Administration Office in writing of its election before first requesting Arrival Assignments in addition to those assigned in subsection (b) of this section.

§ 93.30 Lottery provisions.

(a) Whenever the FAA has determined that sufficient Arrival Authorizations have become available for reassignment, they will be assigned in accordance with this section.

(b) Any lottery of Arrival Authorizations that revert under § 93.26(b), or are withdrawn under § 93.31, shall be conducted as a Preferred Lottery as described in paragraph (i) of this section.

(c) Any lottery of Arrival Authorizations that become available as the result of an increase in the hourly limits under § 93.23(a) of this part from 88 Arrival Authorizations to 89 or 90 shall be conducted as a Preferred Lottery as described in paragraph (i) of this section. Arrival Authorizations remaining after all New Entrants and Limited Incumbents have been accommodated may be assigned to any other air carrier participating in the lottery on an interim basis until the next lottery, when such Arrival Authorizations would again be available on a preferred basis to New Entrants and Limited Incumbents.

(d) Any lottery of Arrival Authorizations that become available as the result of an increase above 90 in the hourly limits under § 93.33(b) of this subpart shall be open to all carriers otherwise eligible to participate in the lottery.

(e) The FAA will publish a notice in the **Federal Register** announcing the lottery dates and any special procedures for the lotteries.

(f) Any air carrier, or foreign air carrier seeking to participate in any lottery must notify the FAA in writing, and such notification must be received by the FAA 15 days prior to the lottery date. The carrier must also disclose in its notification whether it has Common Ownership with any other carrier and, if so, identify such carrier.

(g) Except as otherwise provided in paragraph (h) of this section, a random lottery shall be held to determine the order in which participating carriers shall select an Arrival Authorization.

(h) In any Preferred Lottery, each New Entrant and Limited Incumbent will have the opportunity to select Arrival Authorizations, if available, until it holds a total of eight Arrival Authorizations. Arrival Authorizations remaining after all New Entrants and Limited Incumbents have been accommodated may be assigned to any other carrier participating in the lottery.

(i) At the lottery, each carrier must make its selection within 5 minutes after being called or it shall lose its turn. If capacity still remains after each carrier has had an opportunity to select Arrival Authorizations, the assignment sequence will be repeated in the same order. A carrier may select one Arrival Authorization during each sequence, except that New Entrants may select two Arrival Authorizations, if available, in the first sequence.

(j) To select Arrival Authorizations during a lottery session, a carrier must have appropriate economic authority for scheduled passenger service under Title 49 of the U.S.C. and must hold FAA operating authority under parts 121, 129 (if appropriate) or 135 of this chapter.

§ 93.31 Minimum usage requirement.

[Option 1—90 Percent Usage]

[Sub-option A—Withdrawal]

(a) Except as provided in paragraphs (b) and (c) of this section, any Arrival Authorizations not used at least 90 percent of the time over a two-month period shall be withdrawn by the FAA upon 45 days' notice to the affected carrier by the FAA Slot Administration Office and held for reassignment by the FAA.

(b) Paragraph (a) of this section does not apply to Arrival Authorizations obtained under § 93.30 during:

(1) The first 90 days after they are allotted to a New Entrant; or

(2) The first 60 days after they are allotted to a Limited Incumbent or Incumbent carrier.

(c) Paragraph (a) of this section does not apply to Arrival Authorizations of an air carrier forced by a strike to cease operations using those Arrival Authorizations.

(d) Every air carrier and Canadian air carrier holding Arrival Authorizations shall forward in writing to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1 and every 2 months thereafter. The report shall identify the flight number for which the Arrival Authorization was used and the equipment used. The report shall identify any Common Ownership or control of, by, or with any other carrier. A senior official of the carrier shall sign the report.

(e) The Administrator may waive the requirements of paragraph (a) of this section in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which exists for a period of 9 or more days. Examples of conditions which could justify waiver under this paragraph are weather conditions that result in the restricted operation of an airport for an extended period of time or the grounding of any aircraft type.

(f) The FAA will treat as used any Arrival Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday in January.

[Sub-option B—Sale]

(a) Except as provided in paragraphs (b) and (c) of this section, any Arrival Authorizations not used at least 90 percent of the time over a 2-month

period shall be posted for sale, upon 45 days' notice to the affected carrier by the FAA Slot Administration Office, under § 93.27 of this subpart, except that each New Entrant and Limited Incumbent will have the opportunity to bid on Arrival Authorizations until it holds a total of eight Arrival Authorizations. Arrival Authorizations remaining after all New Entrants and Limited Incumbents have had an opportunity to bid may be auctioned to any other carriers otherwise eligible to bid.

(b) Paragraph (a) of this section does not apply to Arrival Authorizations obtained under § 93.30 of this subpart during:

(1) The first 90 days after they are allotted to a New Entrant; or

(2) The first 60 days after they are allotted to a Limited Incumbent or Incumbent carrier.

(c) Paragraph (a) of this section does not apply to Arrival Authorizations of a carrier forced by a strike to suspend the operations that use those Arrival Authorizations.

(d) Every air carrier and Canadian air carrier holding Arrival Authorizations shall forward in writing to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1 and every 2 months thereafter. The report shall identify the flight number for which the Arrival Authorization was used and the equipment used. The report shall identify any Common Ownership or control of, by, or with any other carrier. A senior official of the carrier shall sign the report.

(e) The Administrator may waive the requirements of paragraph (a) of this section in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which exists for a period of 9 or more days. Examples of conditions which could justify waiver under this paragraph are weather conditions which result in the restricted operation of an airport for an extended period of time or the grounding of any aircraft type.

(f) The FAA will treat as used any Arrival Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday in January.

(g) The affected carrier may not bid on any Arrival Authorization required to be posted for auction under this section and must accept the highest bid notwithstanding § 93.27(g) of this subpart. In the event no carrier offers to purchase an Arrival Authorization required to be posted for auction, the Arrival Authorization may continue to be used by the affected carrier.

[Option 2—Minimum Usage]

[Sub-option A—Withdrawal]

(a) Except as provided in paragraphs (b) and (c) of this section, over a six-month period, Arrival Authorizations ranking in the bottom one percent in their frequency of usage will be withdrawn upon 45 days' notice by the FAA Slot Administration Office to the affected carrier and held for reassignment by the FAA.

(b) Paragraph (a) of this section does not apply to Arrival Authorization obtained under § 93.30 during:

(1) The first 90 days after they are allotted to a New Entrant; or

(2) The first 60 days after they are allotted to a Limited Incumbent or Incumbent carrier.

(c) Paragraph (a) of this section does not apply to Arrival Authorizations of a carrier forced by a strike to suspend the operations that use those Arrival Authorizations.

(d) Every air carrier and Canadian air carrier holding Arrival Authorizations shall forward in writing, to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 6-month reporting period within 14 days after the last day of the 6-month reporting period beginning January 1, 2006. The report shall identify the aircraft identifier and flight number for which the Arrival Authorization was used and the scheduled arrival time. A senior official of the carrier shall sign the report.

(e) The Administrator may waive the requirements of paragraph (a) of this section in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which exists for a period of 9 or more days. Examples of conditions which could justify waiver under this paragraph are weather conditions which result in the restricted operation of an airport for an extended period of time or the grounding of any aircraft type.

(f) The FAA will treat as used any Arrival Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday in January.

[Sub-option B—Sale]

(a) Except as provided in paragraphs (b) and (c) of this section, over a six-month period, Arrival Authorizations ranking in the bottom one percent in their frequency of usage shall be posted for sale, upon 45 days' notice by the FAA Slot Administration Office to the affected carrier, under § 93.27 of this subpart, except that each New Entrant and Limited Incumbent will have the opportunity to bid on Arrival Authorizations until it holds a total of eight Arrival Authorizations. Arrival Authorizations remaining after all New Entrants and Limited Incumbents have had an opportunity to bid may be auctioned to any other carriers otherwise eligible to bid.

(b) Paragraph (a) of this section does not apply to Arrival Authorizations obtained under § 93.30 of this subpart during:

(1) The first 90 days after they are allotted to a New Entrant; or

(2) The first 60 days after they are allotted to a Limited Incumbent or Incumbent carrier.

(c) Paragraph (a) of this section does not apply to Arrival Authorizations of an air carrier forced by a strike to cease operations using those Arrival Authorizations.

(d) Every air carrier and Canadian air carrier holding Arrival Authorizations shall forward in writing to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1, 2006 and every 2 months thereafter. The report shall identify the aircraft identifier and flight number for which the Arrival Authorization was used and the scheduled arrival time. A senior official of the carrier shall sign the report.

(e) The FAA will treat as used any Arrival Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday in January.

(f) The affected carrier may not bid on any Arrival Authorization required to be placed up for auction under this section and must accept the highest bid notwithstanding § 93.27(g) of this subpart. In the event no air carriers offer to purchase an Arrival Authorization required to be placed up for auction, the Arrival Authorization may continue to be used by the affected carrier.

§ 93.32 Administrative provisions.

(a) The FAA will assign, by random lottery, withdrawal priority numbers for the recall priority of Arrival Authorizations at O'Hare. The lowest

numbered Arrival Authorization will be the last withdrawn. Newly created Arrival Authorizations will be assigned a priority withdrawal number and that number will be higher than any other Arrival Authorization withdrawal number previously assigned. Each Arrival Authorization will be assigned a designation consisting of the applicable withdrawal priority number, and the 30-minute time period for the Arrival Authorization. The designation will also indicate, as appropriate, if the Arrival Authorization is daily or for certain days of the week only; and is a summer or winter Arrival Authorization.

(b) Whenever Arrival Authorizations must be withdrawn, they will be withdrawn in accordance with the priority list established under paragraph (a) of this section.

(c) Whenever an Arrival Authorization is to be returned under this subpart, or is voluntarily returned by an air carrier, the air carrier must notify the FAA Slot Administration Office in writing.

§ 93.33 New capacity.

(a) If the hourly limit on Arrival Authorizations as specified in § 93.23(a) of this subpart increases to 89 or 90 per hour, new Arrival Authorizations will be assigned by lottery under § 93.30(c) of this subpart.

(b) If the hourly limit on Arrival Authorizations as specified in § 93.23(a) of this subpart should be increased to more than 90 per hour, new Arrival Authorizations will be assigned by lottery under § 93.30(d) of this subpart.

§ 93.34 Sunset provision.

This subpart terminates on April 6, 2008.

Issued in Washington, DC, on March 18, 2005.

Sharon L. Pinkerton,

Assistant Administrator for Aviation Policy, Planning, and Environment.

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