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FEDERAL AVIATION ADMINISTRATION

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OPERATING LIMITATIONS AT CHICAGO O'HARE INTERNATIONAL AIRPORT	)	Docket FAA-2004-16944-55

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.[1] 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,[2] O'Hare is, in its own right, a major origin and destination airport for the domestic and

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[1] 49 U.S.C. § 41722.

[2] Ranking Tables for Metropolitan Areas (PHC-T-3), Table 3--Metropolitan Areas Ranked by Population: 2000 (U.S. Census Bureau Apr. 2, 2001).

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.[3] 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.[4]

The U.S. Government has exclusive sovereignty over the airspace of the United States.[5] 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.[6]

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[3] FAA Air Traffic Operations Network, Traffic Movements 2003.
[4] National Transportation Statistics 2003, Table 1-41--Passengers Boarded at Top 50 U.S. Airports (Bureau of Transp. Statistics Mar. 2004).
[5] 49 U.S.C. § 40103(a).
[6] 49 U.S.C. § 40103(b)(1).

The Administrator may modify or revoke an assignment when required in the public interest.[7] 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.[8]

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

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[7] Id.
[8] 49 U.S.C. § 40101(d)(4).

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.[9] 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.[10] 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.[11]

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.[12] As these rules ended at O'Hare, the two air carriers operating hubs at O'Hare, American Airlines ("American") and

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[9] 33 Fed. Reg. 17896 (1968). The FAA codified the rules for operating at high density traffic airports in 14 C.F.R. part 93, subpart K.

[10] See, e.g., 14 C.F.R. § 93.125 (2004).

[11] 14 C.F.R. § 93.123(a)(2004). Through the issuance of regulatory exemptions, the Secretary of Transportation permitted additional flight operations to serve various purposes.

[12] 49 U.S.C. § 41715(a).

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.[13] 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.[14] 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

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[13] The U.S. Department of Transportation considers a flight tc be on time if it arrives or departs no later than 15 minutes after its scheduled arrival or departure time. Arrival performance is based on arrival at the gate. Departure performance is based on departure from the gate.

[14] Airline On-time Tables--Nov. 2003, Table 3—Ranking of Major Airport On-time Arrival Performance in Nov. 2003 (Bureau of Transp. Statistics).

time.[15] 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.[16] 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."[17] 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

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[15] Airline On-time Tables--Nov. 2003, Table 5--Ranking of Major Airport On-time Departure Performance in Nov. 2003 (Bureau of Transp. Statistics).

[16] Airline On-time Tables--Dec. 2003, Table 3--Ranking of Major Airport On-time Arrival Performance in Dec. 2003 & Table 5--Ranking of Major Airport On-time Departure Performance in Dec. 2003 (Bureau of Transp. Statistics).

[17] 49 U.S.C. § 41715(b).

during peak operating hours.[18] 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.

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[18] 49 U.S.C. § 41722.

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.[19] 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.

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[19] Unscheduled operations include such operations as general aviation flights, military flights, and charter flights.

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.[20]

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

[20] The Administrator has not yet formally adjourned the meeting. It is anticipated that this may occur closer to the November 1, 2004, effective date of this order.

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.[21] If this order were not issued, we model a 23% increase in delay from current delays to those that would occur given

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[21] To understand the delay impact of various schedules at O'Hare, an airport queuing simulation model was utilized. Modeling the delay impact involved a two-step process. The first step was to develop a schedule that met the proposed constraints on arrivals. The constraints were then applied to the August 19, 2004 schedule for O'Hare. Flights were removed from the baseline schedule as necessary to meet the constraints and then added back to times where capacity was available. In addition to adding back scheduled traffic, a specified number of unscheduled arrivals were added to develop the overall constrained schedule for O'Hare.

The second step was to apply the queuing model to the constrained O'Hare schedule and estimate the resulting delay statistics. Delay from this model is accumulated for each minute of delay not just delays greater than 15 minutes. The resulting delay measures are sensitive to a number of factors; therefore, the model was run one hundred times for each weekday from November 2003 to May 2004 to account for stochastic variations.

Trends observed from the model results follow the theory of queuing delay and are consistent with the trends from observed delay data. Differences between actual and modeled delays would be expected due to factors such as airport weather, enroute weather, airport fix loading, and traffic flow management actions. The model results can be used to evaluate the trends and relative differences of delay impacts of constrained schedules for O'Hare. Because the behavior of the model tracks what is observed in real data, with the proposed schedule constraint and over the long run, we expect an average decrease of 20% in queuing delays at O'Hare.

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%.[22]

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

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[22] This study incorporated the use of a national airspace system-wide discrete event simulation model. The model simulates system-wide traffic given demand (i.e., airline schedules and GA traffic) and capacity inputs. Output of the model is a set of statistical data which is analyzed to determine changes in system performance. This model was used to determine likely changes in performance given various airline schedules for O'Hare.

In order to evaluate the O'Hare delay propagation impact, March 2003 was used as the system-wide baseline. Then four alternate schedules for O'Hare were modeled (December 18, 2003, April 22, 2004, August 19, 2004, and November 18, 2004) while all other airport schedules remained the same. The model results measure the trends and relative system-wide delay impacts of schedule changes at O'Hare; these results should be used to compare only relative changes in delay statistics.

Given the 20% average delay reduction of the proposed schedule constraint at O'Hare, we expect an average decrease of 4.9% in system-wide schedule delays.

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.[23] 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.

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[23] Another Congressional goal has been the promotion of small community service. For example, the legislation authorizing additional slot exemptions at LaGuardia and other slot-controlled airports removed the limitations from service operated with regional jets to communities that had little or no service to the slot-controlled airport. One reviewing court summarily stated that maintaining service to small communities is a goal that the FAA should consider. City of Houston v. FAA, 679 F.2d 1184, 1191 (5th Cir. 1982). The Department is concerned that size-based limitations on the use of aircraft could have the inadvertent effect of reducing the service via regional jets to small communities.

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.[24]

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

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[24] 49 U.S.C. § 41717. We do not agree with America West's assertion that AIR-21 *mandates* 15 arrivals per day for a new entrant or limited incumbent. Inasmuch as AIR-21 rescinded the slot rules at O'Hare, 49 U.S.C. § 41715(a), any exemptions from those rules also cease to have legal effect. In short, the interim exemption requirement expired with the expiration of the slot rules.

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.[25]

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[25] The Supreme Court considers three factors in determining whether government action constitutes a taking: the action's character, its economic impact, and the extent to which the action interferes with investment-backed expectations. Connolly v. Pension Benefit Guaranty Corp., 475 U.S. 211, 224-225 (1986); Concrete Pipe & Products v. Construction Laborers Pension Trust, 508 U.S. 602 (1993). These standards do not support a Takings Clause claim.

First, the FAA order, like many regulatory programs, adjusts the benefits and burdens of economic life in order to promote the common good. This order adjusts schedules at O'Hare in order to relieve the congestion choking the heart of the nation's airspace and to facilitate the movement of air traffic, thereby benefiting the air transportation industry in particular and the national economy in general. Compliance by carriers with the terms of this order will reduce delays by at least 20 percent from today's levels. Further, this order will be in effect for a relatively short period of time so as not to unduly interfere with the marketplace more so than necessary. That type of regulation is not normally deemed a taking of property. Connolly, 475 U.S. at 225. And, unlike the governmental action in Eastern Enterprises v. Apfel, 524 U.S. 498 (1998), the FAA is not unfairly singling out a company based on its conduct far in the past and unrelated to any future commitments or injury they caused. Rather, the dominant O'Hare air carriers significantly increased their flights since late-2003, causing overscheduling and delay conditions.

The second element of the Court's standard involves the order's economic impact. There is no evidence that restricting O'Hare flights will have an unduly harmful impact on any air carrier. To the extent there is an economic impact by virtue of this order, it may be mitigated and moderated by the following factors. First, the schedule reductions are proportionate with the market shares of United and American, the dominant carriers. Connolly, at 225-226. Second, the order is a temporary, stop-gap measure that will not "continue for many years." Cf. Apfel, 524 U.S. 531.

The third element of the Court's standard concerns whether the FAA order will interfere with a firm's investment expectations. Cf. Connolly, 475 U.S. at 226-227. The order will not do so. The FAA relied on its authority in 49 U.S.C. § 40103(b)(1) for many years to administer slot restrictions that limited flights at O'Hare and three other major airports, the FAA more recently imposed additional restrictions at LaGuardia because of increased delays at that airport, and the FAA from time to time has taken other steps to cause airlines to reduce flights in order to prevent unacceptable levels of delays. Further, even though the Airline Deregulation Act of 1978 terminated the Government's regulation of air carriers' rates, routes, and services, the Department and the FAA nonetheless have extensive regulatory authority over domestic airline operations. The Department and the FAA, for example, regulate in the areas of certificates, compliance, handicapped discrimination, records on the movement of traffic, carrier management, unfair and deceptive practices, unfair methods of competition, and airline safety. 49 U.S.C., Subtitle VII—

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.

Aviation Programs, Part A--Air Commerce and Safety, subparts I - IV. The OST/FAA's regulation of airport development and noise also affect an airline's investment expectations. 49 U.S.C. Subtitle VII, Part B--Airport Development and Noise.

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.[26]

This order terminates on April 30, 2005. The Summer 2005 scheduling season for international operations begins on April 3, 2005.[27] 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.[28] 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

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[26] Given the necessity to adhere to an hourly cap of 88 scheduled arrivals and the lack of any requirement that domestic carriers use arrival times for any particular market, we think it would be ill-advised as requested by United to permit domestic air carriers providing international services to add arrivals for such services in response to schedule additions by foreign air carriers.

[27] The IATA's Northern Summer 2005 scheduling season begins on March 27, 2005. There is a one week difference between the IATA date and the U.S. date due to differences in the introduction of daylight savings time.

[28] See IATA Worldwide Scheduling Guidelines, 10th Edition, July 2004, Section 4.

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.

g. any air carrier rescheduling an arrival such that it would increase or decrease the total number of scheduled arrivals for the air carrier in any quarter hour from 7:00 a.m. through 7: 59 p.m., Central Time, as listed in the appendix to this order, shall first provide, via a designated representative of the air carrier, written notification of the proposed schedule change to the FAA Slot Administration Office, facsimile (202) 267-7277 or e-mail 7-AWA-Slotadmin@faa.gov.

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.

Marion C. Blakey

Administrator of the FAA

APPENDIX

Air Canada

	Hour	Qtr	Arrivals
	8	3	2
	9	1	1
	10	3	1
	11	2	1
	12	4	1
	13	3	1
	14	4	2
	16	4	1
	17	4	1
	18	3	1
	18	4	1
	19	1	1
Total:			14

Alaska Airlines

	Hour	Qtr	Arrivals
	14	3	1
	18	2	1
Total:			2

America West

	Hour	Qtr	Arrivals
	12	3	1
	14	4	1
	15	3	1
	17	1	1
	17	3	1
	20	2	1
Total:			6

American/American Eagle

Hour	Qtr	Arrivals
7	1	13
7	2	9
7	3	12
7	4	7
8	1	9
8	2	9
8	3	8
8	4	6
9	1	9
9	2	9
9	3	9
9	4	4
10	1	9
10	2	9
10	3	8
10	4	10
11	1	9
11	2	10
11	3	13
11	4	13
12	1	4
12	2	8
12	3	10
12	4	13
13	1	6
13	2	8
13	3	3
13	4	13
14	1	5
14	2	9
14	3	10
14	4	11
15	1	5
15	2	10
15	3	5
15	4	13
16	1	5
16	2	9
16	3	8
16	4	10
17	1	10
17	2	7
17	3	8
17	4	7
18	1	12
18	2	7
18	3	10
18	4	7
19	1	11
19	2	11
19	3	9

	Hour	Qtr	Arrivals
	19	4	6
	20	1	14
	20	2	6
	20	3	5
	20	4	12
TOTAL			492

Atlantic Coast Airlines d.b.a. Independence Air

	Hour	Qtr	Arrivals
	7	3	1
	8	4	1
	10	2	1
	11	4	1
	13	4	1
	15	2	1
	16	4	1
	17	4	1
	19	1	1
	20	3	1
Total:			10

Continental/Continental Express

	Hour	Qtr	Arrivals
	7	4	2
	9	4	1
	10	2	2
	12	1	2
	13	1	1
	13	2	1
	14	2	1
	14	3	1
	15	1	1
	15	3	1
	16	1	2
	17	1	1
	17	2	1
	18	2	2
	19	2	1
	20	2	2
Total:			22

Delta/Delta Connection

	Hour	Qtr	Arrivals
	7	2	1
	8	1	1
	9	1	1
	9	3	1
	11	1	1
	11	4	1
	12	1	1
	12	4	2
	13	4	1
	14	2	1
	14	4	1
	15	4	1
	16	3	1
	16	4	1
	18	2	1
	18	3	1
	19	2	1
	19	4	1
	20	1	1
	20	4	1
Total:			21

Kalitta Airlines

	Hour	Qtr	Arrivals
	17	1	1
Total:			1

Northwest/Northwest Airlink

	Hour	Qtr	Arrivals
	7	1	1
	8	1	1
	9	2	2
	10	2	2
	12	1	1
	12	2	1
	14	2	1
	15	2	2
	15	4	1
	16	2	1
	17	2	1
	17	2	1
	18	2	1
	19	1	2
	20	2	2
Total:			20

Polar Air Cargo

	Hour	Qtr	Arrivals
	11	2	1
	14	3	1
	19	1	1
Total:			3

Spirit Airlines

	Hour	Qtr	Arrivals
	9	3	1
	9	4	1
	12	3	1
	13	2	1
	16	4	1
	17	3	1
	19	4	1
	20	3	1
Total:			8

United/United Express

Hour	Qtr	Arrivals
7	1	21
7	2	7
7	3	4
7	4	8
8	1	11
8	2	8
8	3	6
8	4	20
9	1	15
9	2	10
9	3	3
9	4	17
10	1	5
10	2	9
10	3	11
10	4	17
11	1	11
11	2	7
11	3	6
11	4	11
12	1	4
12	2	16
12	3	12
12	4	6
13	1	7
13	2	11
13	3	11
13	4	16
14	1	9
14	2	13
14	3	3
14	4	16
15	1	9
15	2	7
15	3	9
15	4	16
16	1	8
16	2	15
16	3	9
16	4	12
17	1	8
17	2	16
17	3	4
17	4	14
18	1	6
18	2	11
18	3	10
18	4	12
19	1	15
19	2	6
19	3	12

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	Hour	Qtr	Arrivals
	19	4	7
	20	1	31
	20	2	15
	20	3	4
	20	4	1
Total:			588

US Airways

	Hour	Qtr	Arrivals
	7	4	1
	8	1	1
	8	4	1
	9	1	1
	9	3	1
	10	1	1
	11	3	1
	12	2	1
	13	2	1
	13	4	1
	15	2	2
	16	2	1
	16	4	1
	17	1	1
	18	2	1
	18	4	1
Total:			17

USA3000 Airlines

	Hour	Qtr	Arrivals
	15	4	1
Total:			1