DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, on January 27, 1986, from 9:00 a.m. to adjournment at approximately 5:00 p.m. This meeting will be open to the public to discuss:

Scientific issues in human somatic-cell gene therapy;
Containment for retroviruses;
Exchange list for gram positive bacteria;
Amendment of Guidelines; and
Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such opportunity at the discretion of the Chair.

Dr. William J. Gartland, Jr., Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 3B10, telephone (301) 496–6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

Dated: December 2, 1985.

Betty Beverdige,

Committee Management Officer, NIH.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR Doc. 85–30115 Filed 12–19–85; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Actions Under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. After consideration of these proposals and comments by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on January 27, 1986, the Director of the National Institutes of Health will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments must be received by January 21, 1986.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland 20892. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m. Comments received by close of business January 21, 1986, will be reproduced and distributed to the RAC for consideration at its January 27, 1986, meeting.

FOR FURTHER INFORMATION: Background documentation and additional information can be obtained from Drs. Stanley Barban and Elizabeth Milewski, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following actions under the Guidelines for Research Involving Recombinant DNA Molecules.

I. Proposal to Modify the NIH Guidelines to Specifically Refer to Recombinant RNA

The Recombinant DNA Advisory Committee (RAC) has discussed whether the NIH Guidelines should explicitly state that recombinant RNA (e.g., retroviral vectors) is covered by the NIH Guidelines, particularly in the case of human gene therapy protocols. Accordingly, a RAC working group has composed a proposal to modify Section III–A–4, Section III–B–3, and Section III–B–4–a of the NIH Guidelines to specifically refer to recombinant RNA. That proposal would modify these sections n the following manner:

A. Section III–A–4 of Section III–A, *Experiments that Require RAC Review and NIH and IBC approval Before Initiation*, currently reads as follows:

III–A–4. Deliberate transfer of recombinant DNA or DNA derived from recombinant DNA into human subjects (21). The requirement for RAC review should not be considered to preempt any other required review of experiments with human subjects. Institutional Review Board (IRB) review of the proposal should be completed before submission to NIH.

Under the working group proposal, Section III–A–4 would be modified to read as follows:

III–A–4. Deliberate transfer of recombinant DNA or DNA or RAN derived from recombinant DNA into human subjects (21). The requirement for RAC review should not be considered to preempt any other required review of experiments with human subjects. Institutional Review Board (IRB) review of the proposal should be completed before submission to NIH.

B. Section III–B–3 of Section III–B, *Experiments that Require IBC Approval Before Initiation*, currently reads as follows:

III–B–3. *Experiments Involving the Use of Infectious Animal or Plant Viruses or Defective Animal or Plant Viruses in the Presence of Helper Virus in Tissue Culture Systems.*

Caution: Special care should be used in the evaluation of containment levels for experiments which are likely to either enhance the pathogenicity (e.g., insertion of host oncogene) or to extend the host range (e.g., introduction of novel control elements) of viral vectors under conditions which permit a productive infection. In such cases, serious consideration should be given to raising the physical containment by at least one level.

Note.—Recombinant DNA molecules which contain less than two-thirds of the genome of any eukaryotic virus (all virus from a single Family (17) being considered identical (19)) may be considered defective and can be used in the absence of helper under the conditions specified in Section III–C.

Under the working group proposal, Section III–B–3 would be modified to read as follows:

III–B–3. *Experiments Involving the Use of Infectious Animal or Plant DNA or RNA Viruses or Defective Animal or Plant DNA or RNA Viruses in the Presence of Helper Virus in Tissue Culture Systems.*

Caution: Special care should be used in the evaluation of containment levels for experiments which are likely to either enhance the pathogenicity (e.g., insertion of a host oncogene) or to extend the host range (e.g., introduction of novel control elements) of viral vectors under conditions which permit a productive infection. In such cases, serious consideration should be given to raising the physical containment by at least one level.

Note.—Recombinant DNA molecules or RNA molecules derived therefrom which contain less than two-thirds of the genome of any eukaryotic virus (all virus from a single Family (17) being considered identical (19)) may be considered defective and can be used in the absence of helper under the conditions specified in Section III–C.

C. Section III–B–4–a of Section III–B, *Experiments that Require IBC Approval Before Initiation*, currently reads as follows:

III–B–4–a. DNA from any sources except for greater than two-thirds of a eukaryotic viral genome may be transferred to any non-human vertebrate organism and propagated under conditions of physical containment comparable to BL1 and appropriate to the organism under study (2). It is important that the investigator demonstrate that the fraction of the viral genome being tuilized does not lead to productive infection. A USDA permit is required for work with Class 5 agents (18, 20).

Under the working group proposal, Section III–B–4–a would be modified to read as follows:

III–B–4–a. Recombinant DNA or RNA molecules derived therefrom from any source except for greater than two-thirds of a eukaryotic viral genome may be transferred to any non-human vertebrate organism and propagated under conditions of physical containment comparable to BL1 and appropriate to the organism under study (2). It is important that the investigator demonstrate that the fraction of the viral genome being utilized does not lead to productive infection. A USDA permit is required for work with Class 5 agents (18, 20)."

II. Proposal to Modify Appendix C of the NIH Guidelines

Section III–D–5 of the NIH Guidelines states that certain classes of recombinant DNA molecules are exempt ". . . if the Director, NIH, with advice of the RAC, after appropriate notice and opportunity for public comment, finds that they do not present a significant risk to health or the environment. . . ." These classes of experiments are listed in Appendix C.

A RAC Working Group on Gram Positive Bacteria has now suggested that a new section be added to Appendix C. That new section would be entitled Appendix C–V, *Extrachromosomal Elements of Gram Positive Organisms.* The current Appendix C–V, *Footnotes and References of Appendix C*, would be renumbered Appendix C–VI under the proposal.

The Working Group on Gram Positive Bacteria has suggested proposed Appendix C–V read as follows:

Recombinant DNA molecules derived entirely from extrachromosomal elements of the organisms listed below (including shuttle vectors constructed from vectors described in Appendix C), propagated and maintained in organisms listed below are exempt from these Guidelines.

Bacillus subtilis
Bacillus pumilus
Bacillus licheniformis
Bacillus thuringiensis
Bacillus cereus
Bacillus amyloliquefaciens
Bacillus brevis
Bacillus natto
Bacillus niger
Bacillus aterrimus
Bacillus amylosacchariticus
Bacillus anthracis
Bacillus globigii
Bacillus megaterium
Staphylococous aureus
Staphylococous epidermindis
Staphylococous carnosus
Clostridium acetobutylicum
Pediococcus damnosus
Pediococcus pentosaceus
Pediococcus acidilactici
Listeria grayi
Listeria murrayi
Listeria monocytogenes
Streptococcus pyogenes
Streptococcus agalactiae
Streptococcus sanguis
Streptococcus salivarious
Streptococcus cremoris
Streptococcus pneumoniae
Streptococcus avium
Streptococcus faecalis
Streptococcus anginosus
Streptococcus sobrinus
Streptococcus lactis
Streptococcus mutans
Streptococcus equisimilis
Streptococcus thermophylus
Streptococcus milleri
Streptococcus durans
Streptococcus mitior
Streptococcus ferus

Exceptions.

Experiments described in Section III–A which require specific RAC review and NIH approval before initiation of the experiment.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval (see section III–B–5).

Experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

The Working Group on Gram Positive Bacteria also suggested the first paragraph of Appendix C–IV, *Experiments involving Bacillus subtilis Host-Vector Systems*, be modified. That paragraph currently reads as follows:

Any asporogenic *Bacillus subtilis* strain which does not revert to a sporeformer with a frequency greater than 10^{-7} can be used for cloning DNA with the exception of those experiments listed below. Indigenous *Bacillus* plasmids and phages whose host-range does not include *Bacillus cereus* or *Bacillus anthracis* may be used as vectors.

The second sentence of that paragraph would be deleted and the paragraph would read as follows:

Any asporogenic *Bacillus subtilis* strain which does not revert to a sporeformer with a frequency greater than 10^{-7} can be used for cloning DNA with the exception of those experiments listed below.

III. Proposed Revision of Appendix C–I

Dr. Robert Simpson, Chair of the NIH Institutional Biosafety Committee, has requested a modification of Appendix C–I, *Exemptions Under section III–D–5. In proposing this modification, Dr. Simpson said:*

A great number of experiments are currently carried out which involve the use of 'shuttle' vectors containing small amounts of eukaryotic viral DNA together with bacterial plasmid sequences; such recombinant DNA constructions can replicate in either bacteria or tissue culture cells. These vectors are used for cloning and for expression studies. Examples of the types of viral sequences utilized are the SV40 origin of replication, splice junction, polyadenylation signal, herpes thymidylate kinase gene, etc. Such recombinant molecules are not capable of generating infectious virus.

Currently the Guidelines require registration of any experiment in which any eukaryotic viral sequences are propagated in tissue culture cells. [The NIH IBC feels] this is not necessary and would like to propose . . . revision to Appendix C–I. . . .

Appendix C–I currently reads:

Appendix C–I. *Recombinant DNAs in Tissue Culture.* Pecombinant DNA molecules derived entirely from non-viral components (that is, no component is derived from a eukaryotic virsus) that are propagated and maintained in cells in tissue culture are exempt from these Guideline with the exceptions listed below.

Exceptions.

Experiments described in section III–A which require specific RAC review and NIH approval before initiation of the experiment.

Experiments involving DNA from Class 3, 4 or 5 organisms (1) or cells known to be infected with these agents.

Experiments involving the deliberate introduction of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

Dr. Simpson suggested Appendix C–I be modified to read as follows:

Appendix C–I. *Recombinant DNAs in Tissue Culture.* Recombinant DNA molecules that are propagated and maintained in cells in tissue culture are exempt from these Guidelines with the exceptions listed below.

Exceptions

Experiments described in section III–A which require specific RAC review and NIH approval before initiation of the experiment.

Experiments involving DNA from Class 3, 4, or 5 organisms (1) or cells known to be infected with these agents.

Experiments involving the deliberate introduction of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

Experiments involving DNA molecules which contain more than two-thirds of a primate retroviral genome.

IV. Proposal to Modify Appendix J, Federal Interagency Advisory Committee on Recombinant DNA Research, of the NIH Guidelines

In a memorandum dated November 25, 1985, Dr. Bernard Talbot, Deputy Director of the National Institute of Allergy and Infectious Diseases, noted that the NIH Guidelines for Research Involving Recombinant DNA Molecules (49 FR 46266) devotes Appendix J to a description of the Federal Interagency Advisory Committee on Recombinant DNA Research. Appendix J lists those departments and agencies which had representation on this committee as of December 1980.

Dr. Talbot said this committee met from 1976 to 1980 but has not met since 1980. Recently another interagency committee, the Biotechnology Science Coordinating Committee, was established to provide for interagency science policy coordination and guidance and for exchange of information as announced in a **Federal Register** notice on November 14, 1985 (50 FR 47174).

Dr. Talbot suggested Appendix J be modified to reflect the current situation. He requested the following change in the NIH Guidelines be issued for public comment and placed on the agenda for the next meeting of the NIH Recombinant DNA Advisory Committee.

Dr. Talbot proposed that current Appendix J be deleted from the NIH Guidelines and the following language be substituted:

Appendix J. Biotechnology Science Coordinating Committee

The following excerpts from its charter (signed October 30, 1985) describe the Biotechnology Science Coordinating Committee:

Purpose

The Domestic Policy Working Group on Biotechnology has determined that in the area of biotechnology with its rapid growth of scientific discovery, scientific issues of interagency concern will arise frequently and need to be communicated among the various agencies involved with reviews of biotechnology applications. The Federal Coordinating Council for Science, Engineering, and Technology (FCCSET) established by 42 U.S.C. 6651 is an interagency science committee chaired by the Director of the Office of Science and Technology Policy with the mission of coordinating science activities affecting more than one agency. Committees may be established under FCCSET for addressing particular science issues. Thus, the Biotechnology Science Coordinating Committee (BSCC) is established to provide formally an opportunity for interagency science policy coordination and guidance and for the exchange of information regarding the scientific aspects of biotechnology applications submitted to federal research and regulatory agencies for approval.

Functions

The BSCC will coordinate interagency review of scientific issues related to the assessment and approval of biotechnology research applications and biotechnology product applications and postmarketing surveillance when they involve the use of recombinant RNA, recombinant DNA, cell fusion or similar techniques. The BSCC will:

(a) Serve as a coordinating forum for addressing scientific problems, sharing information, and developing consensus;

(b) Promote consistency in the development of Federal agencies' review procedures and assessments;

(c) Facilitate continuing cooperation among Federal agencies on emerging scientific issues; and

(d) Identify gaps in scientific knowledge.

Authority

To accomplish these functions the BSCC is authorized to:

(a) Receive documentation from agencies necessary for the performance of its function;

(b) Conduct analyses of broad scientific issues that extend beyond those of any one agency;

(c) Develop generic scientific recommendations that can be applied to similar, recurring applications;

(d) Convene workshops, symposia, and generic research projects related to scientific issues in biotechnology; and

(e) Hold periodic public meetings.

Members and Chairman

The BSCC includes the following initial members:

Department of Agriculture
Assistant Secretary for Marketing and Inspection Services
Assistant Secretary for Science and Education
Department of Health and Human Services
Commissioner, Food and Drug Administration
Director, National Institutes of Health
Environmental Protection Agency
Assistant Administrator for Pesticides and Toxic Substances
Assistant Administrator for Research and Development National Science Foundation
Assistant Director for Biological, Behavioral & Social Sciences

The BSCC is chaired by the Assistant Director for Biological, Behavioral and Social Sciences of the National Science Foundation and the Director of the National Institutes of Health on a rotating basis.

Administrative Provisions

(a) The BSCC will report to the FCCSET through the Chair.

(b) Meetings of the BSCC shall be held periodically. Some public meetings will be held.

(c) Confidential business information and proprietary information shall be protected under the confidentiality requirements of each member agency.

(d) Subcommittees and working groups, with participation not restricted to BSCC members or full-time Federal employees, may be formed to assist the BSCC in its work.

(e) All BSCC members will be full-time Federal employees whose compensation, reimbursement for travel expenses and other costs shall be borne by their respective agencies.

(f) Each member of the BSCC shall provide such agency support and resources as may be available and necessary for the operation of the BSCC including undertaking special studies as come within the functions assigned herein.

(g) An Office of Science and Technology Policy staff member will serve as BSCC Executive Secretary.

Dated: December 16, 1985.

Bernard Talbot, M.D., Ph.D.,

Acting Director, National Institute of Allergy and Infectious Diseases.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR Doc. 85–30116 Filed 12–19–85; 8:45 am]

BILLING CODE 4140–01–M

federal register

Friday
December 20, 1985

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11 and 93

High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule

14 CFR Part 93

Slot Allocation; Initial Withdrawal and Redistribution of Slots; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11 and 93

[Docket No. 24105; Amdts. Nos. 11-28 and 93-49]

High Density Traffic Airports; Slot Allocation and Transfer Methods

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

ACTION: Final rule; request for comments.

SUMMARY: This action will permit air carrier and commuter operator slots (i.e., allocated instrument flight rules (IFR) takeoff and landing reservations) at Kennedy International Airport, LaGuardia Airport, O'Hare International Airport, and Washington National Airport to be transferred for any consideration. This amendment also adopts certain procedures for the allocation and use of slots including a use-or-lose provision at these airports. In addition, a procedure is adopted to allocate unused slots. Special procedures are provided for international flights and flights which fulfill obligations under the Essential Air Service Program, to assure that a sufficient number of slots will be available for these operations.

DATES:

Effective Date: The prohibition against trading slots on other than a one-for-one basis at the same airport until April 1, 1986 (§ 93.221(d)) is effective upon publication of this rule.

The other provisions are effective 30 days after publication. Existing slot allocations are established in reference to conditions in effect on the date of publication of this rule (see § 93.215(a)).

Comment Date: Comments must be received on or before January 24, 1986.

Hearing Date: A public hearing will be held on January 21 and 22, 1986.

ADDRESS: Comments on this final rule may be mailed in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24105, 800 Independence Avenue, SW., Washington, DC 20591.

or delivered in duplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC.

Comments may be examined in the Rules Docket weekdays, except Federal Holidays, between 8:30 a.m. and 5:00 p.m.

The public hearing will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the Third Floor Auditorium.

FOR FURTHER INFORMATION CONTACT:

Edward P. Faberman, Deputy Chief Counsel, Telephone: (202) 426-3775, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Even though this action is a final rule, interested persons are invited to comment on the rule by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24105." The postcard will be date/time stamped and returned to the commenter. Also, this rule may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date of comments.

In addition to seeking comments on this amendment, the FAA will hold a public hearing to allow public input and to answer questions on the administration of the rule adopted. The hearing will be held on January 21-22, 1986, at the Federal Aviation Administration, 800 Independence Avenue, SW., Third Floor Auditorium. This meeting will maximize the ability of those affected by the amendment to familiarize themselves with its implementation.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 426-8058. Communications must identify the amendment number of the document.

Meeting Procedures

Persons who plan to attend the hearing should be aware of the following procedures to be followed:

(a) The hearing will be informal in nature and will be conducted by the designated representative of the Administrator under 14 CFR 11.33. Each participant will be given an opportunity to make a presentation. Questions may be asked of each presenter by other participants or by representatives of the Administrator.

(b) The hearing will begin at 9:00 a.m. (local time). There will be no admission fee or other charge to attend and participate. All sessions will be open to all persons on a space available basis. The presiding officer may accelerate the schedule if possible. The second day of the hearing will be held only if all speakers cannot be accommodated during the first scheduled day.

(c) All meeting sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be distributed. Participants submitting handout materials must present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by DOT participants at the hearing should not be taken as expressing a final DOT position.

Public Hearing Schedule

The schedule for the meeting is as follows:

Tuesday, January 21, 1986

9:00 a.m.—Hearing is opened
9:15 a.m.—Summary of Rule
9:30 a.m.—Questions
10:00-12:00—Formal presentations
1:00-5:00—Formal presentations

A continuation of the hearing can be held on Wednesday, January 22, if necessary.

Anyone interested in making a presentation at the hearing must contact Pam Trebbe, (202) 426-3773, with the name of the individual making the presentation and the name of the group represented. Presentations should be limited to 10 minutes.

Related Rulemaking

In this issue of the **Federal Register**, there is a Notice of Proposed Rulemaking which proposes to amend

the provisions adopted in this rule by withdrawing and redistributing a percentage of slots at each of the covered airports.

Background

The FAA has broad authority under the Federal Aviation Act (FAAct) of 1958, as amended, to regulate and control the use of navigable airspace of the United States. Under section 307(a) of the FAAct (49 U.S.C. 1348(a)), 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 limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of such airspace. Under section 307(c) of the FAAct (49 U.S.C. 1348(c)), the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

Federal Aviation Regulations (FAR) Amendment No. 93–13, effective April 27, 1969 (33 FR 17896, December 3, 1968), designated Kennedy, O'Hare, LaGuardia, Washington National, and Newark Airports as high density airports and prescribed special air traffic rules, known as the "High Density Rule," that apply to operations at those airports. The High Density Rule (FAR Part 93, Subpart K) was made permanent in 1973 (38 FR 29463, October 25, 1973). The rule establishes limitations (quotas) on the number of Instrument Flight Rule (IFR) reservations per hour that would be accepted at those airports and allocated the hourly reservations among the three classes of users: air carriers except air taxis, scheduled air taxis (commuter airlines), and all other operators—primarily general aviation operators but also charter operators. The hourly quotas are set at the predominant IFR capacity for each airport, as determined by the FAA. The predominant IFR capacity is the airport's capacity under the circumstances and configurations most frequently encountered when weather conditions preclude Visual Flight Rule (VFR) operation. The limitations in the rule are predominantly determined by groundside restraints.

The entire quota for Newark International Airport was suspended indefinitely, although the airport was retained in the rule as a high density airport.

On March 1, 1984, the FAA issued an Interim Final Rule (49 FR 8237, March 6, 1984) which amended the limitations on operations at Kennedy, LaGuardia, and O'Hare Airports and continued the suspension of operational quotas at Newark Airport. The Interim Final Rule was effective on April 1, 1984.

The current rule provides hourly and half-hourly quotas for classes of operators, but does not specifically provide for the means by which particular slots are allocated to individual operators within the hourly or half-hourly limits of the rule. For certificated air carriers and commuter carriers, slots at each of the four airports generally have been allocated by eight scheduling committees composed of the incumbent carriers and interested new entrant carriers in each category at each airport. Each committee meets and operates under a limited grant of antitrust immunity issued under section 414 of the Federal Aviation Act. The functions and responsibilities of the Civil Aeronautics Board for the administration of Title IV of the Federal Aviation Act, including grants of antitrust immunity, were transferred to the Department of Transportation on January 1, 1985.

The agreements under which the four air carrier scheduling committees operate require unanimous agreement on carrier schedules and contain no provisions for resolving deadlocks if agreement cannot be reached. The air carrier agreements also have no use-or-lose provisions which would require the return of unused slots. As a result of the unanimity requirement and the lack of deadlock-breaking provisions, the air carrier scheduling committees have found it difficult in recent years to reach agreement on a schedule in full compliance with the High Density Rule. The committees have been able to avoid deadlocks in some situations due in large part to the FAA's flexibility in accommodating certain schedule adjustments if within the overall limits of the rule and when consistent with air traffic control resources and objectives. However, the National Airport Scheduling Committee has been deadlocked for some time and others have also deadlocked at times. Overall, the scheduling committees are not currently functioning in a manner which provides for the efficient allocation of slots, for rapid adjustment to market conditions and shifting carrier needs and preferences, for adequate opportunity for expansion of operations, or for new carriers to serve high density airports.

The committee agreements under which the commuter carriers operate contain both deadlock breaking mechanisms and use-or-lose provisions. For example, a commuter carrier at O'Hare Airport which fails to operate its slots 5 days per week at least 80 percent of the time during a particular scheduling period will surrender those slots to the O'Hare Regional Carrier Scheduling Committee for reallocation. If the committee members cannot reach agreement on the allocation of newly available slots, a lottery is held to de'ermine which carriers will obtain each of the available slots. As a result of these procedures, the committees do not encounter formal deadlocks in the allocation of slots. However, procedures at the four airports are not uniform, and there have been difficulties in interpretation of the use-or-lose and other provisions of the agreements. Also, the commuter agreements do not contain clear provisions for the transfer of slots among carriers.

When the scheduling committees fail to agree on an allocation in compliance with High Density Rule quotas, the responsibility for accomplishing allocation falls to the Government. The slot allocation alternatives available to the Government without additional regulatory authority are limited, however, and administrative procedures for allocation have proven to have significant drawbacks. For these reasons, the DOT has issued three regulatory proposals over the past five years to further the public discussion of alternative methods of allocating and exchanging slots among carriers.

On October 21, 1980, the Department issued Notice No. 80–16 (45 FR 71236; October 27, 1980) which proposed alternative procedures for slot allocation at National Airport. The alternatives proposed included administrative allocation, slot auctions and variations thereof. In addition, the notice solicited comments on the continued use of the airline scheduling committees. The notice also proposed variations of each alternative to assure that small- and medium-sized communities do not lose nonstop service to the airport. Comments submitted on that NPRM are in the Docket of the Office of the Secretary (Docket No. 70, Office of the General Counsel, Room 4107, 400 Seventh Street, SW., Washington, DC 20590).

On June 1, 1984, the FAA issued two notices proposing alternate procedures for the allocation and exchange of slots. Notice No. 80–16 was superseded by these two later notices. The first notice, Notice 84–6, Slot Transfer Methods (49 FR 23788, June 7, 1984), proposed that air carrier slots could be exchanged for any consideration. Under the proposal, air carrier slots could only be exchanged and held by air carriers, and slots obtained through any deadlock breaking

mechanism could not be transferred until used for at least 90 days. The second notice, Notice 84–7, Slot Allocation Alternative Methods (49 FR 23806, June 7, 1984), proposed deadlock breaking and use-or-lose provisions for air carrier and commuter slots. The notice proposed to preserve the scheduling committee system of allocation and to provide a regulatory allocation mechanism if a committee reached an impasse. Existing slots would continue to be used by the operator holding them. The notice proposed the use of a lottery to allocate newly created slots and slots that were not used. The lottery provided for a 15 percent set-aside of available slots for new entrants, a set-aside of Essential Air Service (EAS) program slots at O'Hare Airport, and a lottery procedure weighted in accordance with the approximate number of slots already held by carriers. Slots obtained through the lottery could not be transferred until they had been used for at least 90 days. Under the NPRM, it was proposed that a slot not used at least 71 percent of the time (approximately 5 days out of 7) in any 2-month period would be withdrawn by the FAA.

Slot Transfer and Allocation Rules Adopted: Overview

On consideration of the issues and proposals presented in both Notices 84–6 and 84–7, and public comment thereon, the DOT is adopting a new Subpart S to Part 93 of the Federal Aviation Regulations, 14 CFR Part 93, to establish regulatory procedures and rules for the allocation and transfer of high density slots. In summary form, the amendment provides as follows:

—Separate slot pools for air carrier, commuter, and other operators are retained. The numbers contained in the High Density Rule are not changed by this amendment.
—Air carriers and commuters holding permanent slots which are in use on December 16, 1985 will be allocated those slots.
—Beginning on April 1, 1986, any person may purchase, sell, trade, or lease air carrier or commuter slots (except for international and EAS slots) in any number at any of the high density airports.
—International and essential air service slots are treated specially and transfer of such slots is restricted.
—All slots are "tagged" with a priority number, assigned by lottery, to determine the order of withdrawal if necessary.
—Slots not used 65 percent of the time in a 2-month period must be returned to the FAA (use-or-lose).
—A lottery procedure is provided for the allocation of newly available slots and slots returned under the use-or-lose provision.
—The use-or-lose provision does not apply to slots allocated by lottery until 60 days after allocation (180 days after allocation to a new entrant awaiting a Part 121 or Part 135 certificate, and 90 days after allocation to any other new entrant).
—Slots will be made available for additional EAS operations, as requested and approved by OST, by taking slots from incumbent operators if not otherwise available.
—Slots will be made available for new international operations at O'Hare and John F. Kennedy Airports, as requested, by taking slots from incumbent operators if not otherwise available.
—Slots utilized for general aviation operations are not affected by this amendment.
—This amendment does not create proprietary rights in slots.
—Slots may be recalled or eliminated by the agency for operational reasons.

All comments were thoroughly reviewed prior to the issuance of this amendment. Numerous comments were submitted and various options were proposed. There was not any consensus among commenters on an approach to take. In fact, most commenters suggested their own version of a deadlock/allocation mechanism. In selecting a procedure to be utilized, the Department had to be mindful of statutory responsibilities including the need to place maximum reliance on competitive market forces, the maintenance of air service to small communities, honoring international air service treaty obligations, avoiding immediate disruption of the existing air service patterns at the affected airports, and maximizing scheduling flexibility for the air carriers and for the public. The Department believes that this amendment is the one alternative which best meets these objectives.

This amendment basically adopts Notice 84–6, slot transfer methods, as proposed. It does not adopt a deadlock breaking mechanism as proposed in Notice 84–7 although a number of the provisions set forth in that document are adopted.

As a result of this amendment, the role of the scheduling committees in the allocation of slots is eliminated. However, the FAA, as discussed below, suggests that there may be a role for the committees in keeping track of slot holdings and facilitating slot transfers.

The following is a brief summary of this amendment. A more detailed section-by-section description appears later in this preamble.

Summary of the Rule

Applicability of Rules. This amendment applies to the allocation and transfer of air carrier and commuter slots. It does not apply to the category of "other" slots which includes general aviation operations. Those slots are not allocated on a permanent basis and, therefore, will not be made subject to this amendment. The use of slots for general aviation is governed by FAA Advisory Circular 90–43F, "Operations Reservations for High Density Traffic Airports." Operations by general aviation at high density airports are required to have slot reservations under the high density rule and the procedures described in AC 90–43F.

Initial Allocation. The first step in the allocation process will be to continue the assignment of all previously allocated slots to the carriers and commuters utilizing them. (Each air carrier or commuter operator holding a permanent slot on December 16, 1985 as evidenced by the records of the appropriate scheduling committee, shall be allocated those slots.)

In order to consider further the reallocation of some permanently held slots, a NPRM was issued and is published in today's **Federal Register**. The NPRM (Notice No. 85–25) proposes to withdraw up to 5 percent of the slots used by air carriers and commuter operators and to redistribute those slots by lottery.

Purchase and Sale of Slots. This amendment allows air carriers, commuters or other persons, effective April 1, 1986, to buy, sell or lease slots for any consideration and any time period and allows the trading of slots in any combination for slots at the same airport or any other high density airport.

Use-or-Lose. The Amendment provides that slots which are not used at least 65 percent of the time in a 2-month period shall be returned to the FAA. This provision does not apply during a strike or bankruptcy proceeding, or for the following periods after slots are awarded in a lottery: 60 days for incumbents; 180 days for uncertificated new entrants who have made substantial progress toward FAA certification; and 90 days for all other new entrants.

EAS Operations. Slots will be made available for service as provided under the Essential Air Service (EAS) program. The Department may assign slots to carriers if necessary to provide EAS service and may recall non-EAS slots for that purpose if unallocated slots are not

available. The rule restricts transfer of all slots used for EAS operations. The rule further provides that a slot awarded for EAS purposes under the rule may not be sold or traded except on a one-for-one basis at the same airport.

International Operations. Slots will be made available for certain international service at Kennedy and O'Hare airports. If slots are not available, they will be withdrawn from incumbent operators. The rule further provides that international slots shall not be sold or leased. Further, international slots may only be traded on a one-for-one basis at the same airport.

Procedural rules. This amendment establishes minimal regulations for the allocation and transfer of high density airport slots. As such, the rule contains specific procedures for the acquisition, use, and transfer of slots. Among the areas covered are: reporting requirements; allocation of newly available slots by lottery; special procedures applicable to EAS and international slots; use-or-lose provisions; exceptions to the use-or-lose rules during the start-up of operations and in strikes or bankruptcy situations; eligibility to buy and sell slots; identification of the recall priority of each slot; slot recall procedures; and penalties for noncompliance. Each of the above provisions is discussed in the response to comments immediately below.

ATC Services

The rule will provide for the allocation of existing ATC capacity among individual operators. The rule will have no affect on the provision of ATC services or on FAA's determination of the capacity of the air traffic control system at the four high density airports. The priorities and operating rights provided by the rule do not preclude the expansion, limitation, or modification of ATC services as deemed necessary by the FAA for purposes or the safe and efficient movement of air traffic. In addition, ATC will not give special consideration to any operator because it has a slot, special slot number or has a use-or-lose problem.

Comments received in response to Notice 84–6 and Notice 84–7

The FAA has received a significant number of comments to Dockets 24105 and 24110 in response to Notices 84–6 and 84–7. Comments were submitted by air carriers and commuter carriers, other Federal agencies, state and local government agencies including airport operators, and aviation-related organizations and industry associations as well as consumer groups. Supporting and opposing comments were received on virtually every aspect of the two proposals, and a wide range of alternative courses of action was suggested by various commenters. Supporters of the buy-sell proposal included American, Continental, Eastern, Flying Tigers, Northwest, Pan Am, People Express, Piedmont, TWA, United and Western Air Lines ("Joint Commenters"); the Regional Airline Association (RAA), (representing commuter airlines); and three government agencies, the Council of Economic Advisers (CEA), the Department of Justice (DOJ), and the Bureaus of Economics, Competition, and Consumer Protection of the Federal Trade Commission (FTC) as well as the Office of Management and Budget (OMB). Commenters opposed to a buy-sell rule included USAir, Delta, Midwestern, Jet America, Muse Air, and PSA; the National Association of State Aviation Officials (NASAO) and the National Air Carrier Association (NACA), as well as a number of state agencies and airport operators.

The comments tended to focus on several issues. The comments and the Departmental response to each of these issues are discussed below by general subject area.

Applicability of Rules. Notice 84–6 proposed that only air carrier slots be subject to these provisions. The agency solicited comments on whether the proposal should extend to commuters as well as to air carriers. A large majority of commenters agreed that the provisions should apply to both types of operation. RAA supported the right of commuters to buy and sell slots. The RAA stated, "the scheduling committee process employed over the past sixteen years to allocate access at the "high density airports no longer works."

The Department agrees that the rules should apply to both air carrier and commuter operators. Therefore, this amendment applies to both air carrier and commuter opreations at the high density airports. In order to provide for continued service from smaller communities to the high density airports, the amendment does not allow air carriers (as defined in 14 CFR 93.123(c)(1) as operator using aircraft having a certificated maximum seating capacity of 56 or more) to use commuter slots (as defined in 14 CFR 93.123(c)(2) as operators using aircraft having a certificated maximum seating capacity of less than 56 or if used for cargo service in air transportation, with aircraft having a maximum payload capacity of less than 18,000 pounds.) The rule allows the use of air carrier slots with smaller aircraft.

Initial allocation. Notice 84–6 did not specifically address the rights of incumbent operators to hold onto existing slots. The primary alternatives suggested for this initial allocation were to "grandfather" the existing allocation; to distribute all or some percentage of slots by lottery, with the remaining slots to be grandfathered; or to auction all slots or some percentage of slots.

Notice 84–7 did propose that the first step in an allocation process would be to continue the assignment of all previously allocated slots to the air carriers and commuters currently utilizing them. That proposal is adopted in this amendment. A slot is not permanent if it has been allocated for a short period of time and is to be returned to the appropriate scheduling committee. The issue of "permanent" slots will primarily apply to commuter slots. For example, the commuter scheduling committees reallocate returned slots for short periods of time until the next scheduled permanent allocation. As part of this reallocation, the committee advises the participating commuters that these slots will be reallocated at a certain date. Slots which have been temporarily allocated, such as by the commuter committee, are not permanent and are not allocated under this rule. Instead, those slots will be permanently allocated under the lottery provisions of this amendment. Representatives of the FAA will meet with each scheduling committee to decide upon a complete list of permanent slots. The Chief Counsel of the FAA will make the final determination on all matters relating to initial slot allocations to individual carriers, including which slots are permanent and which slots shall be allocated under the lottery provisions. The slots to be permanently allocated will be in accordance with the 30-minute and 60-minute limitations contained in § 93.123(a).

The auction mechanism was not proposed in Notice 84–6 because legislation would be required for the collection and disposition of the proceeds. DOJ noted that several unresolved legal questions make it impractical to use auctions, citing in particular the Independent Offices Appropriations Act, 31 U.S.C. 9701 as an example. This is particulary so if these proceeds were to be applied for airport improvements as suggested by some commenters. Further, several commenters, including the Joint Commenters and RAA, noted their opposition to the concept of an auction

on the basis of service disruptions and the lack of recognition of existing carrier investments.

The grandfathering of the existing slot allocation was supported by the Joint Commenters and the RAA, as well as by OMB, DOJ, and FTC. A number of commenters opposed the grandfathering of existing slot allocations, primarily because of concern that such an allocation, in conjunction with the ability to sell slots, would confer a financial windfall on the incumbent carriers. A second major concern was the adverse effect on new entrants.

The Department recognizes the benefit to incumbent carriers inherent in the ability to sell the slots now assigned to each of those carriers. However, the Department believes that this one-time benefit is necessary, in the implementation of the buy-sell system, in order to minimize disruption of existing service patterns.

Allocation of slots to carriers currently holding them will avoid immediate disruption of air service to the public. A comprehensive reallocation of slots could leave carriers that now have a large investment in airport assets without the operating rights to utilize those assets. This approach recognizes the investments and commitments in personnel, equipment, terminal development, and planning by existing carriers. The investments noted in the preamble to the NPRM, which have been made at O'Hare, are evidence of this need. As part of this, carriers and commuters have made large investments in hub/spoke operations at the high density airports. Further, other airports have made corresponding commitments. The Department believes that this one-time allocation is necessary for near-term stability in the services provided to the public.

According to many commenters, the windfall to incumbent carriers may be exaggerated. As noted in the comments of OMB, incumbent carriers are already entitled to use the slots, and, therefore, have already received the value of the slots at no cost. The ability to sell the slots only marginally increases that value. Most air carriers and commuters have expended large amounts of resources to establish existing service and facilities. This provision recognizes that investment.

With respect to the effect of "grandfathering" on new entrants, several other provisions of the rule mitigate the initial effects and will act to eliminate these effects over time. First, the adoption of the buy-sell rule itself permits new entrants to acquire slots on the same basis as incumbents seeking additional slots. This would allow new entrants (some of which have waited for some time) to obtain immediate access at a high density airport. Second, the lottery mechanism adopted for the allocation of new, returned, or otherwise unallocated slots provides a set-aside of 15 percent of the available slots for new entrants.

As previously mentioned, Notice 85–25, published on this date, further addresses the issue of comprehensive "grandfathering" of slots by proposing to withdraw up to five percent of the slots initially assigned to incumbents, for distribution by a lottery in which new entrants would be given a preference.

Purchase and sale of slots. Notice 84–6 proposed to allow incumbent or new entrant carriers to obtain additional slots for any mutually agreed consideration. The Department has decided to adopt the "buy-sell" proposal to permit maximum reliance on market forces to determine slot distribution following the initial allocation of slots. The Department believes that the rule minimizes the need for government intervention in the continuing allocation and distribution of slots. Because carrier agreement on schedules, as the scheduling committees now operate, is not required, there will no longer be deadlocks in the allocation process. Finally, the Department believes that a market in slots will permit long-range stability in carrier planning and marketing that would not be availabe if slots were periodically reallocated using another mechanism such as lotteries or auctions.

Notice 84–6, which proposed in principle the buy-sell rule adopted here, generated substantial public comment. Many commenters expressed opinions that the purchase and sale of slots would have various anticompetitive or other effect adverse to the public interest. Particular concerns were that a buy-sell regulation would result in the concentration of slots held by large affluent carriers; that slots would tend to be used for large, high-volume markets to the detriment of smaller cities; that the initial allocation to incumbents unfairly constituted a substantial financial windfall on incumbents; that fares would be raised to cover the costs of slots purchased; that the cost of slots would raise a new barrier to market entry; and that buy-sell would create proprietary rights in slots which would complicate the carriers' dealings with airport proprietors and bankruptcy coiurts. Each of these concerns is addressed in detail in the response to comments below. The Department of Transportation believes that most of the problems anticipated will not result from the specific rule adopted, and that in consideration of all of the effects of the rule that the net costs of the amendment will be outweighed by its benefits.

Effect on Air Fares. Several commenters opposed to a buy-sell rule, including the National Association of State Aviation Officials (NASAO) and the National Air Carrier Association (NACA), cited the objection that the cost of purchasing slots at high density airports would be passed on to consumers in the form of higher air fares. The price paid for a slot purchased under the rule would represent an additional one-time cost for the purchasing carrier. However, there are a number of factors other than cost which determine pricing, and DOT does not believe that the cost of purchasing a slot will necessarily be passed on to the consumer.

FTC, on the basis of economic theory and the actual past pricing policies of carriers at the high density airports, concluded that fares would not increase as a result of the market in slots. FTC noted that the scarcity of slots causes fares to increase and not the fact that they can be bought and sold. Because the hourly limits at high density airports are unaffected by this rule, the scarcity of high density slots remains unchanged. The scarcity value of the slots will therefore be the same after adoption of the buy-sell rule as before. On the basis of economic theory, FTC predicts that fares in the slot-constrained markets currently reflect this scarcity value, and, therefore, that fares will not increase even if the value of the slots must be paid.

As an example, FTC cites from an FTC staff report which found that in the first quarter of 1981, fares in slot-constrained markets were two to five percent higher than in other markets. FTC concluded that even if carriers were to acquire those slots at their market value (rather than for free, as under the existing rule), that the average fare level would not rise. If a carrier's fare in a slot-constrained market did rise, it would indicate that the carrier had not been charging a profit-maximizing fare prior to buy-sell, which is unlikely. FTC further noted that the above conclusion applied to the average of all fares, and that there were circumstances which could result in the increase in fares in some markets and the decrease of fares in others.

DOJ, responding to the question of whether the sale of slots would lead to higher fares to cover the purchase costs,

stated that the current level of fares is not reduced to reflect the availability of slots at no charge. Rather fares are determined by marginal costs and demand, and cover the economic cost of slots as well as the costs of other resources used in providing service. The fact that slots currently are provided without cost accrues to the carriers and not to consumers in the form of lower fares. On this basis, DOJ concludes that fares will not increase and predicts that, as a result of allowing slots to be utilized more productively, airline fares in slot-constrained markets actually be lowered.

Amercian Airlines commented that fares are not always directly related to costs. American also noted that fares might actually be lowered as a result of buy-sell, because the market in slots would increase economic efficiency and allow a more productive use of slots. Other comments pointed out that since the expenditures for slots would only be a small part of overall costs, those expenditures would not have a significant effect on ticket prices.

For all the above reasons, the Department does not believe that "buy-sell" will significantly affect fares.

Barriers to Entry/Market Concentration. Several commenters objected in a buy-sell rule on the basis that it would be anticompetitive, either as a result of the barriers it would raise to new entrants or because of the unfair advantage it would provide to larger, more affluent carriers.

USAir, Republic, Jet America, Muse Air, and Midwestern, among others, commented that a buy-sell rule would tend to exclude new entrants from high density airport markets as a result of the high cost of purchasing operating authority. However, because the buy-sell rule permits a new entrant to obtain slots in the same manner and for the same costs as an incumbent carrier, it is the market price of the slots themselves and not the method of allocation which constitutes the alleged barrier to new entry in a slot market.

DOJ in their comments stated that both the Airline Deregulation Act and the Federal Aviation Act require DOT to rely, to the maximum extent possible, on market mechanisms to create an efficient procompetitive system for allocating slots. They further stated that a market approach (such as adopted in this amendment) is the only way to accomplish that mandate.

FTC responded to the concern of barriers to market entry with the observation that it is the absence of a slot market which poses the barrier to entry, because there exists no competitive means for entry in a slot-constrained market. FTC stated that an entry barrier exists when a incumbent can maintain price above average cost (including a reasonable return on investment) in the long run, without inducing potential new entrants to start serving the market. Any restriction on slot transfers enables an incumbent carrier to maintain fares above average per-passenger costs in a slot-constrained market, without inducing entry. The existing system, which permits slot trades, allows some entry by slot holding carriers willing to abandon another market, but does not adequately provide for entry by carriers not holding any slots. An unrestricted market in slots will permit a new entrant to obtain marginally profitable slots from one carrier at a price which will allow the new entrant to compete in a market in which another carrier is maintaining a price above average cost.

CEA notes that cost-related barriers to entry (as opposed to prohibitions on entry) result because an entrant is putting its money at risk to enter the market. If the new entrant subsequently decides to leave the market, it cannot recoup its sunk costs, such as the depreciation of its assets. The price paid for a slot under a buy-sell rule is not a sunk cost, however. Because the slot does not depreciate, a carrier can recover the money paid for the slot on leaving the market. FTC concludes that the purchase of slots does not put a new entrant's money at risk and, therefore, is not a barrier to entry.

CEA cites the examples of new entrants being able to gain access during the limited buy-sell experiment conducted with interim operations plan slots in 1982. They cite the example in which one carrier acquired 26 slots at that time. The price of the slots did not constitute a barrier to entry or to subsequent profitable operation.

On this issue, DOJ stated that a "buy/sell" market would enable the incumbents and new entrants with the lowest costs and greatest passenger demand to obtain slots. They pointed out that the existing scheduling committee system provides little opportunity for such new entry or growth.

While the Department believes that an unrestricted slot market may represent the most effective opportunity for new entry at high density airports, special consideration has been provided in this amendment for new entrants. In the first selection sequence in the lottery mechanism for distribution of newly available slots, 15 percent of slots will be set aside for new entrants, and new entrants will be able to select 4 slots instead of 2. New entrants will otherwise compete on an equal basis with incumbent carriers for the remainder of the available slots.

The Department believes that the ability to buy and sell slots also removes existing artificial barriers to entry into high density airport markets. The elimination of barriers to entry is essential for the optimal operation of a competitive market. The rule accomplishes this by placing new entrants in the same position as incumbent carriers desiring additional slots. One additional point is that in the case of each airport, there is at least one other airport in the area that can be utilized by all operators including new entrants.

In a related objection, Midway, PSA, Republic, USAir and others commented that the buy-sell rule discriminates against smaller carriers or those carriers using smaller aircraft in secondary markets. The commenters believes that the greater economic power of the larger carriers would result in the entrenchment of those carriers and the concentration rather than diversification of the industry.

The FTC observed that the motivation to purchase in a slot market will be the expectation of providing relatively high-value flights and not simply the availability of cash on hand. If a smaller carrier can obtain higher profitability from an additional operation than can a larger carrier, the smaller carrier should be able to offer a higher purchase price and obtain the slot, even if financing is required. The size of a carrier is not necessarily related to the ability to finance purchases. FTC notes that smaller carriers such as People Express have been able to finance large equipment purchases and should have no more trouble financing slot purchases. Financing should be facilitated by the fact that slots are non-depreciating and readily transferable.

Inherent in the concern that a buy-sell rule will result in market concentration is the notion that larger carriers will use their resources to dominate markets. The Department does not believe that such anticompetitive behavior will be a problem, because of the lack of business incentives to do so and because of the impracticality of obtaining any monopoly control of slot-constrained markets. A carrier will not have the incentive to acquire and use a slot merely to prevent other carriers from using it. For example, if another carrier could offer more valuable service, then the slot is worth more to that carrier than to the holding carrier. The Department believes that the holding carrier can maximize profits only by

selling the slot to another carrier offering more highly valued service.

Nor would there by any practical purpose in accumulating slots in quantity for the possible monopoly value of a dominant slot block at a high density airport. FTC lists several reasons why such a strategy would not be effective in a buy-sell system. First, in each case, a carrier or group of carriers attempting to monopolize markets would face competition from other airports in the same metropolitan area, such as Midway in Chicago and Washington Dulles International and Baltimore/Washington International in the Washington area. Therefore, the opportunity for monopoly pricing would be extremely limited.

Second, successful monopolization of a market would require control of a massive number of slots. Since at each airport any slot may be used in any city-pair market, an attempt to charge monopoly prices in that market would induce other carriers to enter the market unless the monopolizing carrier or carriers controlled virtually all available slots. FTC believes that even if a carrier attempted this, which is unlikely given the financial incentives not to hold slots unnecessarily, the size of the purchasing activity would enable antitrust authorities to detect the attempt and intervene to stop it. FTC concludes, and the Department agrees, that the use-or-lose provisions of the rule, in conjunction with existing antitrust laws, will be sufficient to deter anticompetitive behavior.

As to possible anticompetitive behavior, DOJ notes that, in a market context, interdependent behavior would almost certainly require an explicit agreement among the holders of slots to boycott potential purchases. They pointed out that such an agreement would be a felony violation of the Sherman Act.

Effect on Service to Small Communities. Notice 84–6 specifically solicited comments on the effects a buy-sell rule would have on levels of service to smaller communities. In its comments, FTC pointed out that current non-market slot allocation methods give slots to airlines which can use those slots to serve any city-pair market they choose. If it is more profitable to serve large cities, the current slot allocation system will not preserve service to small cities. CEA commented that deregulation has resulted in an increase in service to small communities. Since such service can be profitable for air carriers, CEA sees no reason to assume that a slot market will result in a decline in service to smaller communities. FTC also commented that other policies, such as the Essential Air Service program, and reservations of certain numbers of slots for commuter carriers, tend to maintain levels of service to smaller communities. Both of those policies are retained in the current rule.

DOJ commented that smaller communities may act on their own to preserve air service by entering into contractual agreements with carriers holding slots or by purchasing slots and leasing them to carriers. This rule would allow such arrangements.

The majority of commenters felt that a pure buy-sell rule would not detract from service to small communities, but many felt otherwise. USAir theorized that buy-sell would result in a shift in service to longer haul, higher density markets served by large airplanes because the profit potential of a large airplane is always greater than that of a small airplane. Thus, said USAir, smaller markets would not generate passengers or revenue to justify the use of a slot.

The FTC in their comments stated that service to small communities is not affected by this rule. They stated that service to small communities will work equally well with marketable slots as they now do under non-market slot allocation. The Joint Commenters stated that the fear is unfounded that a buy/sell rule would result in shifting of service to small communities from the high density airports, or that slots would be used only with large aircraft. They cite numerous examples of carriers serving small communities and suggest that that will continue. In fact, they suggest that "without buy/sell some small and medium community services might be adversely affected." American Airlines pointed out that an efficient hub-spoke system requires short-haul routes from the hub. American cites the recent expansion of service to smaller communities as proof that new service will be directed towards small communities to "tap" new markets and feed the established long-haul routes.

The retention of separate slot markets for air carrier and commuter operator categories preserves slots for service to smaller communities by aircraft suited to short-haul, lower passenger volume markets. Therefore, the rule will continue to limit the use of commuter slots to aircraft defined in § 93.123(c)(2), having a certificated maximum passenger seating capacity of less than 56 or a maximum cargo payload capacity of less than 18,000 pounds. However, the rule adopted will now permit the use of any aircraft in an air carrier slot. The policy reasons for maintaining separate operator categories require the protection only of commuter slots and not of air carrier slots, so the use restrictions on air carrier slots have been removed to provide maximum carrier flexibility. Therefore, additional slots may be available to commuters for service to such communities.

Protection and development of service to smaller communities is also achieved by the provision for separate treatment of slots used for service to certain communities under the Essential Air Service (EAS) Program. The Airline Deregulation Act of 1978 (ADA) included provisions for the continuation of service to small communities after deregulation of air carrier routes. (49 U.S.C. 1389). Carriers serving communities identified under the EAS program have certain obligations before suspending that service and may be eligible for subsidies to provide continued service. Under the rule adopted, the Office of the Secretary may decide that slots should be assigned to carriers if necessary to provide EAS service. This may necessitate the recall of other non-EAS slots for that purpose if unallocated slots are not available, although this is not anticipated to occur often. The rule further provides restrictions on the transfer of EAS slots. This restriction will be closely monitored by the Office of the Secretary of Transportation.

The Department of Transportation believes that the above provisions will preserve and enhance the protection of air service under the EAS program and the the adoption of the buy-sell rule will not adversely impact the present level of service to eligible communities.

International Operations. In Notice 84–6, comments were solicited on whether the rule should apply to international operations.

Six foreign airlines and the International Air Transport Association (IATA) favored the exclusion of any international operations from the buy-sell rule. Japan Airlines commented that a rule allowing international slots to be bought and sold had the potential for seriously disrupting the international scheduling framework. International carriers, according to Japan Airlines, are subject to different scheduling seasons, and different lead times for schedule planning, than those applicable to domestic services. Air Canada's comments pointed out the possible conflicts between a buy-sell rule (with or without an accompanying lottery) and bilateral agreements between the U.S. and respective foreign countries. American Airlines, on the other hand, argued that exclusion of foreign operations would reduce the supply of

domestic slots, thus, driving up the price with the result that domestic carriers would be subsidizing foreign carriers. DOJ's comments agreed with American Airlines, further stating that a buy-sell rule would not interfere with bilateral air service agreements.

The Department of State commented that bilateral agreements would probably not be violated if foreign carriers were given a fair and equal opportunity to compete with domestic carriers for available slots. DOS was concerned, however, that the larger scale of activity of domestic carriers at the high density airports might give them at least an initial unfair advantage. DOS recommended that the buy/sell approach be confined at first to domestic operations to gain experience and to make any needed adjustments before adapting the rule to include international operations.

This rule adopts the approach recommended by the foreign commenters and by DOS. To ensure equal treatment, U.S. international operators are treated the same as foreign operators in most respects. International slots may not be bought or sold and may be traded only on a one-for-one basis for other international slots at the same airport.

Accordingly, the Office of the Secretary of Transportation has determined that as a matter of international aviation policy the allocation of new slots to international carriers at Kennedy and O'Hare Airports will be made by the FAA based on requests from foreign and U.S. operators conducting international operations. Kennedy and O'Hare handle the vast majority of international operations at the high density airports.

This amendment does not allow the sale or multiple trading of slots utilized for international operations. It does, however, require the government to provide slots to any carrier wishing to conduct international operations at either Kennedy or O'Hare airports.

Slots for international operations will be allocated administratively, upon request to the FAA by an appropriately authorized carrier, rather than being issued by lottery. In the event insufficient unallocated slots are available to meet valid requests for international operations, the FAA may recall allocated slots to meet the international demand. The Department believes that the above provisions will ensure sufficient capacity for international operations at Kennedy and O'Hare Airports.

The Department will closely monitor requests for international slots, and the use of those slots, to determine whether this section of the rule needs to be reviewed to avoid undue discrimination against domestic operations.

Future Allocation of Available Slots. The lottery procedures proposed in Notice 84–7 were intended for use as a supplemental allocation mechanism to resolve deadlocks in the scheduling committee negotiations. Because the initial allocation under the rule adopted is by "grandfathering" of the existing allocation, and because most future adjustments will be accommodated throught the purchase and sale of slots, the scheduling committees will not be used to allocate slots after December 16, 1985. However, from time to time, as a result of new system capacity or by operation of the use-or-lose provisions, unallocated slots will become available. The amendment provides for a period lottery mechanism to allocate those slots.

The majority of comments on Notice 84–7, "Slot Allocation Alternative Methods" favored adoption of the "deadlock" proposal. A few commenters qualified their support by emphasizing that the proposed rule should be adopted as a temporary measure only until such time as the High Density Rule (HDR) is rescinded. The Aviation Consumer Action Project (ACAP) urged adoption on an experimental basis only. Others, such as American Airlines and Federal Express, emphasized that the proposal should be adopted only in conjunction with the companion buy-sell rule, "Slot Transfer Methods."

Those who opposed the rule proposed in Notice 84–7, did so mainly on the grounds that it favored the incumbents, and would therefore act as an incentive for them to encourage deadlock. The original proposal involved use of the lottery as the backup allocation method in the event that the Airline Scheduling Committees failed to agree. The lottery mechanism set out in this rule is intended only as a supplementary allocation procedure for newly available slots. The mechanism eliminates the weighted allocations based on historical patterns of service. Therefore, it no longer favors incumbents. Furthermore, since deadlock is no longer the triggering event for the lottery, any objection on this basis is no longer applicable.

On the issue of eligibility requirements, McClain Airlines argued that new carriers without FAA operating authority, but who had obtained economic authority under section 401 of the Federal Aviation Act (or its equivalent), should be allowed to participate in the allocation sessions so that slots could be used to obtain financing. The final rule includes in the lottery those operators who have obtained apppropriate economic authority and made substantial progress toward obtaining FAA operating authority, as evidenced by the submission of three or more documents specifically listed in the rule, § 93.225(g)(1) throught (6). This is necessary to ensure that those who enter the lottery will be able to use the slots within a reasonable time and are not intent on just leasing the slots during the time they hold them for a quick profit. This would unnecessarily penalize carriers who are in the lottery to obtain slots for use rather than for speculative reasons.

Empire Airlines proposed that dual operators (those conducting air carrier and commuter operations) be allowed to use their slots for either type of operation, but that these slots should retain their original identity when traded. Empire would also allow cross-trading of slots (i.e.—commuter slots may be traded for air carrier slots and vice versa.) The final rule allows air carrier slots to be used for either air carrier or commuter operations, but limits the use of commuter slots to commuter operations only. this provides a measure of protection for short-haul routes and small community markets by insuring that the number of commuter slots will not be depleted by air carrier operations. The final rule also allows slots to be traded in any combination.

Procedural Requirements

A. *Weighting of New Slot Allocations Based on Historical Patterns of Service.* The proposal outlined an allocation scheme whereby larger operators would be given some additional selections during the first slot selection sequence in each session, as well as in the second sequence at O'Hare. American, Eastern, Delta, Western, and United Airlines all favored this provision, American asserting that any unfairness would be mitigated by the 15 percent set-aside and additional weighting in the allocation scheme for new entrants. Eastern objected to the different weighting schemes at O'Hare and the two New York Airports, arguing that all should be the same.

There were several comments filed in opposition to the weighting scheme. In answer to the argument that weighting would recognize the investments, commitments, and planning by existing carriers, Midway, Pacific Southwest, and Air One argued that incumbents could realize on their investments through other methods, such as leasing of terminal space. Other commenters

opposed were NACA, DOJ, Midwestern Airlines and Southwest Airlines. Midway stated that any preferential treatment should be considered on a case by case basis, in response to individual petitions. USAir suggested that incumbents be allowed to choose two slots, and new entrants four. Jet America suggested all carriers be allowed to choose four slots each, after 15 percent were set-aside for new entrants.

Since the final rule provides for grandfathering of virtually all existing slots and since investments by incumbents and historical patterns of service are recognized in the current distribution, the rationale for the weighting scheme initially proposed is not appropriate.

B. *Order of Slot Selection.* Under the proposal, every 30 days after an allocation session, the FAA would notify carriers of the availability of additional slots. They would then be offered to the next operator in the lottery sequence. Midwest Express expressed concern that carriers might manipulate the option to "pass" during the allocation session, thereby putting themselves in an advantageous position at the head of the list for additional slots, thereby encouraging subsequent deadlocks. Jet America suggested that carriers who either received slots or "passed" during the allocation session, be placed at the end of the list in a subsequent lottery.

Under the rule adopted, a random lottery will be held whenever the FAA determines that sufficient slots have become available for distribution. The order of slot selection will thus be determined anew for each slot allocation session, and there will be no opportunity to abuse the "pass" option. It must be noted that there is no certain date set for holding any lottery. That will be determined by the FAA at its discretion.

C. *Set-Aside for New Entrants.* No commenter opposed the 15 percent set-aside for new entrants, although three commenters felt the set-aside should be greater. The Department believes that a reservation of 15 percent of newly available slots to new entrants in the first selection sequence, in addition to the advantage given to new entrants to select 4 instead of 2 slots in the first selection sequence of the lottery session, will provide a sufficiently large slot pool for new entrants. This advantage is in addition to the provisions which would allow all operators including new entrants to purchase slots.

D. *60-Day Use Requirement for Lottery Slots.* Notice 84–7 provided that no slot obtained through the lottery mechanism could be transferred unless it had been used by the transferor carrier for at least 90 days. CEA opposed any such restriction on trade, and McClain favored reducing the time to 30 days. Accordingly, section 93.221(a)(5) modifies this provision, requiring only that slots obtained in a lottery be used 65 percent of the time during a 2-month period, before such slots can be sold or traded on other than a one-for-one basis. To avoid circumvention of this rule, any slot obtained in a one-for-one trade for a slot obtained in the lottery also may not be sold until it is used 65 percent of the time over a 2-month period.

Many commenters suggested that the 90-day use restriction apply only to *inter*-airport trades, and not to slot trades at the same airport. This, it was argued, would provide for needed flexibility and allow airlines to accommodate each other's individual needs when the initial allocation does not meet them, but would not encourage speculation, since speculators would presumably be interested only in *inter*-airport trades. This amendment prohibits *sale* of slots obtained in a lottery until such slots have been used for the requisite 65 percent of the time for a 2-month period. In addition, it limits trading of slots obtained in a lottery to one-for-one intra-airport trades until such slots have been used for the requisite time. This provision is necessary to maximize the ability of new entrant carriers and small carriers already operating at the airport to obtain slots by keeping certificated carriers from entering the lotteries only for the purpose of obtaining slots for later sale.

E. *60/90-Day Start Up Rule.* Under the proposed rule, slots obtained under the lottery mechanism would have to be utilized within 60 days of the lottery or the slot would be lost (90 days for new entrants). This provision received broad support, many commenting that the penalty was not harsh enough. It was suggested that the rule exclude circumstances beyond the carrier's control.

The final rule contains a 65 percent use-or-lose rule for all slots not used for international operations. An exception is made, however, in § 93.217 (c) and (d) for slots of an operator forced by a strike to cease operations using those slots and slots of an operator filing for bankruptcy during the first 60 days after filing.

Two commenters, McClain Airlines and Northwestern, felt the 90-day use provision was unfair to new entrants. They urged that special provisions be made for them because of the inherent delays in commencing operations. The final rule, at § 93.217(b), provides for a 180-day grace period for new entrants who have not yet obtained operating authority. It retains the 90-day period for all other new entrants, and the 60-day period for all other operations. At the end of this period, the slots become subject to the 65 percent use-or-lose rule.

F. *50 Percent Ownership or Control Provision.* The proposed rule provided that if an air carrier or commuter operator has more than a 50 percent ownership or control of one or more air carriers, the air carrier or commuter shall be considered to be a single entity. The same rule would apply to two or more carriers or commuters owned or controlled (more than 50 percent) by a single company. There were few comments on this provision. However, Continental and New York Air, both of which are owned and controlled by the same company, argued that it was irrational to treat the two carriers as different in their operations, but the same for the purpose of slot lotteries. They argued that even if the provision was adopted, publicly held corporations should be exempt, since there is little danger that it would be merely a sham corporation set up to obtain slots. The National Air Carrier Association also felt that the provision discriminated against separate corporate entities.

The Department believes that the 50 percent ownership provision serves to prevent the use of business organizations to obtain advantages under slot withdrawal and lottery provisions. Therefore, the amendment incorporates the 50 percent ownership provision.

G. *Use or Lose Provisions.* Notice 84–7 proposed use-or-lose provisions for air carrier and commuter slots. The proposal would have required that any slot not utilized at least 71 percent of the time (approximately 5 days out of 7) in any 2-month period would be withdrawn by the FAA. Most commenters supported the use-or-lose provisions and the reasons for that support are equally applicable to this rule. The Department of Justice commented that a use-or-lose provision may be necessary to prevent large carriers or several large carriers from "hoarding" slots in an attempt to restrict service to drive up fares or to keep smaller competitors from entering into or expanding in certain markets. DOJ supported such a provision provided that it is not so restrictive that it forces carriers to sell slots they could use productively or to conduct near empty flights to hold slots for future use and

provided, further, that leasing and co-ownership of slots are permitted.

The use-or-lose provision in this rule prevents the holding of "pocket" slots for speculative purposes and serves to maximize utilization of airport capacity.

The Massachusetts Port Authority proposed that the term "use" include leasing of slots. The Department agrees that the ability to lease slots will help to ensure that all available slots are used, and the rule allows holders to lease their slots for any period.

The National Air Carrier Association (NACA), ATA and RAA commented that use-or-lose requirements should make exceptions for circumstances beyond the carriers' control, including strikes, and cancellations due to aircraft malfunction or weather. The Department recognizes this concern and has reduced the requirement to 65 percent. The 65 percent use requirement embodied in this rule permits a carrier to normally utilize a slot 5 days a week and still allows for a limited number of cancellations because of unforeseen circumstances. In addition, as previously stated, this rule specifically provides that slots which are unused due to a strike are not subject to loss.

The FAA will apply the use-or-lose provision in discrete 2-month periods to facilitate tracking and enforcement. The 2-month period begins on the first day of the first month after the rule is issued. The next 2-month period begins on the first day of the third month after the rule is issued, and so on.

RAA and ATA commented that any use-or-lose provision should accommodate those flights which are not scheduled on a daily basis. The rule provides that slots may be shared, that is, different carriers may operate a slot on different days of the week, so that the 65 percent rule would only apply to those days actually allocated to the carrier.

H. *Eligibility to Purchase Slots.* In Notice 84-6, it was proposed that only air carriers holding valid operating certificates be allowed to obtain or transfer slots. Comments were invited on this issue. A number of air carriers suggested that only carriers be allowed to purchase slots.

DOJ in their comments stated that slot ownership should not be restricted to aviation users but should be open to other entities including banks, communities, and brokers to ensure that slots go to their most productive use. DOJ further noted that allowing cities to purchase slots is one way to enable small communities to preserve service at the high density airports. According to DOJ, this would allow small communities to enter into contractual arrangements with carriers holding slots and would also allow communities to purchase slots to lease them for service to their airport. CEA made the same argument. The FTC suggested that allowing non-airlines to participate in the process might help enable small carriers to obtain financing.

DOT agrees with these comments. Even if non-carriers could not purchase slots, arrangements could be made with carriers to help finance slots. It seems to be an unnecessary step to require. Therefore, there will be no limitation on which organizations or persons can purchase slots. In this connection, as already noted, a use-or-lose provision is also contained in this amendment. Therefore, any group purchasing a slot must use it or it would be returned to the Government for reallocation. This rule, however, allows only carriers to participate in the lottery.

Rights of Local Airport Proprietors

A large group of commenters, including the Joint Commenters, Delta, People Express and Southern Jersey Airways were concerned that airport proprietors might misinterpret a buy-sell rule as granting them authority to sell slots on their own. The Massachusetts Port Authority and the Port Authority of New York and New Jersey asserted that proprietors should be able to regulate local resources through slot restrictions. The Department's position in this manner remains that the FAA retains sole jurisdiction over the Nation's airspace, and that nothing in this rule should be construed to authorize a sale of slots by any airport authority.

The authority for this amendment is contained in Section 307 of the Federal Aviation Act which gives the FAA exclusive jurisdiction to regulate the safety and efficiency of the Nation's airspace system. Moreover, with respect to non-high density rule airports, DOJ stated in its comments that the buy-sell rule does not set a precedent that local airport proprietors can use to restrict operations.

In its comments on this subject, DOJ also stated that proprietors of the high density airports are preempted from changing either FAA's hourly limitations or its slot allocations systems because FAA already has used its airspace management powers to "stake out its turf" at those airports.

Section-by-Section Description of the Rule

Set forth below is a section-by-section description of the more important provisions of the rule. Included in the discussion are reasons for adopting certain of the provisions and an explanation of how the provisions will be applied.

Section 93.211 Applicability.

This section describes, in general terms, the applicability of the new Subpart S of Part 93. The subpart prescribes rules applicable to the allocation, withdrawal and transfer of slots at the High Density Traffic Airports. The rules do not apply to Newark Airport since the High Density Rule—Subpart K of Part 93—is not currently in effect at that airport. Subpart S only applies to air carrier and commuter operator slots and not to those slots designated by Subpart K as general aviation slots. General aviation slots will continue to be allocated by the Air Traffic Control Reservation Office on a first-come first-served basis.

Section 93.213 Definitions and General Provisions.

The terms "new entrant carrier" and "slot" are specifically defined in this section. The definition of "new entrant carrier" is particularly important since those carriers will be provided a preference in any lotteries held to distribute slots in the future. "New entrant carrier" is defined as any commuter operator or air carrier that does not hold a slot at a particular airport and has never sold or given up a slot at that airport after December 16, 1985. The Department does not believe it would be appropriate to permit carriers that have sold or given up their slots at an airport to receive a preference in a lottery to reobtain slots at that airport.

A "slot" is defined as the authority to conduct one allocated IFR landing or takeoff operation during a specific hour or 30-minute period at one of the high density airports. Under Subpart K, each of the high density airports have slots allocated by the hour, except at O'Hare and LaGuardia Airports where the allocations are in 30-minute periods. The hours of the day during which slots are required for IFR operations at the high density airports are: 6:45 a.m. to 9:15 p.m. at O'Hare, 3:00 p.m. to 8:00 p.m. at Kennedy, and 6:00 a.m. to 12:00 a.m. at LaGuardia and National Airports. All parties are reminded that in accordance with Subpart K, scheduled operations at a high density airport must only be conducted with appropriate IFR reservations.

Section 93.213(b) makes it clear that the definitions contained in Subpart K of Part 93 also apply to Subpart S.

Paragraph (c) of § 93.213 includes a provision that was applied under the Interim Operations Plan, which was in effect as the air traffic control system

recovered from the 1981 controllers' walk-out. Under this provision, any air carrier, commuter operator, or other persons that owns or controls more than 50 percent of one or more other air carriers, commuter operators, or other persons is considered to be a single air carrier or commuter operator for purposes of Subpart S. Since any person [person is defined in 14 CFR Part 1 to include corporations] is allowed to buy or sell slots, it is necessary to apply the "co-ownership" provisions to them as well as to carriers and commuters. This provision applies for entry in any lottery held under § 93.225 or to slots withdrawn by the Government under § 93.223. Thus, a corporation owning two corporations and two carriers, all with slots, would only appear in a § 93.223 or § 93.225 lottery once.

The section also makes it clear that a single operator may be considered to be both an air carrier and a commuter operator for purposes of entering lotteries under this subpart. Thus, for example, a single operator that owns two commuter operators and two air carriers could enter lotteries for both the commuter operator class of user and air carrier class of user at a particular airport, but it could enter each lottery only once. This is no change from current procedures. For example, if Carrier A operates large and small aircraft at O'Hare, it may obtain and use slots in both the commuter and air carrier pools. Of course, commuter slots can only be utilized for commuter operations.

Section 93.215 Initial Allocation of Slots.

Subpart S does not affect the total number of slots and the total number of commuter operator and air carrier slots as specified in Subpart K of Part 93. This section specifies how slots will be initially allocated.

Paragraph (a) of § 93.215 provides that air carriers and commuter operators holding permanent slots on December 16, 1985 will be allocated those slots subject to the withdrawal provisions of Subpart S. The records of the air carrier and commuter operator scheduling committees will be used to determine which operators were holding permanent slots on December 16, 1985. A slot allocated on a temporary basis is not a permanent slot. If the scheduling committee records submitted to the FAA indicate a dispute over which carrier holds a slot, the FAA will resort to other records to effectuate the initial slot allocation. The FAA will meet with each scheduling committee to determine proper placement of each slot. The agency may ask carriers to produce documentation to support any claim to slots. If the FAA cannot determine which operators were holding particular slots as of December 16, 1985, those slots will not be allocated under § 93.215. Rather, they will be allocated at a later date under the provisions of § 93.217, for international operations; § 93.219, for essential air service (EAS) operations; or § 93.223, by lottery, to air carrier or commuter operators, for any operations they desire. The Chief Counsel of the FAA shall be the final decisionmaker in this regard. Slot trades may need to be temporarily suspended by the FAA in order to make these determinations.

Paragraph (b) of § 93.215 provides for those slots that are being held by different operators on different days of the week and those whose use is otherwise divided. Any such division of slots would have to be confirmed by a scheduling committee.

Those carriers having partial use of slots will continue to be allocated those slots as they operated them in the past. For example, some slots have been allocated for 2 days to one operator and for 2 days to another operator. Those operators would be able to continue to use those slots in that fashion. For slot withdrawal purposes (see the discussion of § 93.223), the slots would receive a single withdrawal priority number and, for slot use-or-lose purposes (see the discussion of § 93.227), if either carrier ceases to use its share of the slots 65 percent of the time over a 2-month period, that carrier would lose its share while the other carrier would not. Thus, only 2 days use of the slots would be reallocated.

Since certain slots used for international operations—those described in § 93.217(a)(1)—are specially treated within Subpart S, it is important that the Department be aware of which slots are being used for those operations. Paragraph (c) of § 93.215 requires that, within 30 days after the issuance date of the rule, each U.S. air carrier and commuter operator must notify the FAA in writing of those slots used, as of December 16, 1985, for the international operations described in § 93.217(a)(1). This requirement applies to slots used for international operations at LaGuardia Airport. This provision does not apply to foreign operators since all operations conducted by them are international.

Section 93.215(d) indicates that slots not held by an operator on December 16, 1985 will be allocated in accordance with other provisions of Subpart S.

Section 93.217 Allocation of Slots for International Operations and Applicable Limitations.

Section 93.217(a) provides that slots will be allocated to airlines to conduct certain specified international operations at Kennedy and O'Hare Airports. For purpose of allocation, slots will not be allocated for international operations at LaGuardia Airport unless otherwise required by bilateral agreement. The international operations for which slots will be provided under § 93.217(a) are—(a) any flight segment in which either the takeoff or landing is at a foreign point, and (b) for foreign operators only, any flight segment that is a continuation of a flight that begins or ends at a foreign point.The Department believes that foreign operator continuation flights should be few in number.

Under § 93.217(a)(1), continuation flights by U.S. international operators to or from high density airports will be treated as domestic operations since U.S. operators can carry local traffic on those flight segments. To treat continuation flights of U.S. international operators the same as those of foreign operators, for slot allocation purposes, would place U.S. domestic operators at a competitive disadvantage since they will not be able to obtain slots upon request under § 93.217. It could also lead to abuse, since U.S. international operators could obtain numerous slots under § 93.217 by characterizing purely domestic flights as continuation flights. Should the Department receive convincing evidence that a significant competitive disadvantage to U.S. international operators results from this provision, the Department reserves the option to review the treatment of continuation flights under the rule.

The same paragraph also provides that slots obtained under § 93.217 may not be bought, sold, leased or otherwise transferred, except that those slots may be traded for other slots used for international operations on a one-for-one basis at the same airport. In addition, if a slot obtained under § 93.217 will not be used for more than a 2-week period, the slot must be returned to the FAA, and, if it is not used every day of the week, the carrier is required to notify the FAA in writing of those days in which the slot will not be used. Failure to comply with these requirements will result in the slots involved becoming available for reallocation under Subpart S.

In providing a slot for an international operation, the FAA will atttempt to match the hour of the slot with that

requested by the U.S. or foreign operator consistent with international scheduling needs. However, in order to provide some flexibility to the FAA in allocating slots for international operations, § 93.217(a) provides that slots will be allocated to carriers in a time period within two hours of the time period requested. In this way, the FAA will be able to avoid withdrawing slots from a domestic operator to fill an international operation's need if there are unallocated slots available reasonably close in time to the time requested by the international operator.

It should be noted that, under § 93.217(b), slots obtained under § 93.215 which are used for the international operations described in § 93.217(a)(1) are subject to the same basic conditions as are applied to slots obtained under § 93.217. These conditions apply to slots used for international operations at LaGuardia Airport as well as Kennedy and O'Hare Airports. The conditions include those relating to how the slots may be used, the prohibition against most transfers the return of unused slots, and the notification of the days of the week on which the slots are not being used.

Under paragraph (c) of § 93.217, the Office of the Secretary of Transportation (DOT) states a reservation with respect to the application of the provisions of § 93.217(a). In this paragraph, DOT makes it clear that slots need not be allocated to foreign operators if the country of that operator allocates slots to U.S. operators on a basis more restrictive than that provided by Subpart S. For example, if a foreign country allocates slots at its capacity constrained airports in a manner which limits increased operations by U.S. carriers, operators from that country should not automatically expect to receive free slots for increased operations under this amendment. Any decision on the application of § 93.217(a) will be made by the Office of the Secretary of Transportation.

Paragraph (d) of § 93.217 states that requests for slots for international operations must be submitted to the FAA by August 1, for operations planned for the Winter scheduling period, and by February 1, for operations planned for the Summer scheduling period. These time frames coincide, more or less, with the time frames used under the past practice of obtaining slots through the scheduling committees for international operations.

In order to ensure that those airlines requesting slots for international operations will in fact use them, § 93.217(e) requires a certified statement, signed by a senior officer of the operator requesting the slots. The statement must indicate that the operator has bona fide plans to use the requested slots for operations described in § 93.217)(a)(1) and has, or has contracted for, appropriate aircraft. This provision is needed since, in some cases, slots will have to be withdrawn from domestic operators to be provided for international operations and needless withdrawals would unnecessarily disrupt air transportation service. This would be the case even though the FAA will offer to the affected domestic operator any slots that were withdrawn from it for international operations and then were returned within 180 days after withdrawal. Any lack of good faith on the part of those requesting slots for international operations could result in criminal enforcement action under Title 18 of the U.S. Code for false certification to the Federal Government (18 U.S.C. 1001).

Section 93.219 Allocation of Slots for Essential Air Service (EAS) Operations and Applicable Limitations.

Under this section, whenever the Office of the Secretary of Transportation determines that slots are needed for operations to or from a high density airport under the essential air service (EAS) program, established under section 419 of the Federal Aviation Act, as amended, those slots will be provided to the designated air carriers or commuter operators, subject to the following conditions. Those slots may not be bought, sold, leased or otherwise transferred, except they may be traded for other slots on a one-for-one basis at the same airport. This would enable EAS operators to make slight adjustments in their schedules to better serve the public. In addition, any slot obtained under the section must be returned to the FAA if it will not be used for EAS purposes for more than a 2-week period. A slot so returned, however, may be reallocated to the operator which returned it, upon request to the FAA, if that slot has not been reallocated to an operator to provide substitute EAS service. To provide the FAA with some flexibility in allocating slots under this section, slots will be allocated in a time period within 90 minutes of the time period requested. This flexibility could result in fewer slots having to be withdrawn for EAS purposes from other operators.

Section 93.219(d) provides that the agency will not honor a request for a slot for essential air service if the requesting operator has sold or traded a slot it used for essential air service to or from the same point in the past.

Finally, paragraph (e) of § 93.219 makes it clear that slots obtained under Civil Aeronautic Board Order No. 84-11-40 will be considered to have been obtained under § 93.219. Only a limited number of such slots exist and they were allocated by the Department specifically for EAS purposes. They should, therefore, be subject to the special restrictions in § 93.219, which are discussed above.

Section 93.221 Transfer of Slots.

This section provides, in general, that slots may be bought, sold or leased for any consideration and for any time period and they may be traded in any combination for slots at the same airport or any other high density airport. The section contains a number of conditions that must be met for these transfers to be effective.

This section does not wholly apply to the transfer of slots obtained for international operations and essential air service operations under §§ 93.217 and 93.219, respectively. Section 93.221 must be applied together with § 93.217(a)(2) or § 93.219(a) for such transfers.

The conditions that must be met under § 93.221(a) include the following:

(1) requests for confirmation of the validity of the transfer, including leases, must be made to the FAA in writing and must identify the slot designation;

(2) current FAA records must indicate that the transferor has the slots to be transferred in its base;

(3) written evidence of each transferor's consent (signed by a senior official of the transferor) to the transfer must be provided to the FAA;

(4) the recipient of a transferred slot may not use the slot until written confirmation has been received from the FAA. The confirmation process within the FAA will be handled as expeditiously as possible; and

(5) slots obtained in a lottery may not be sold or traded on other than a one-for-one basis at the same airport unless they are first used by the operator obtaining them for a 2-month period at least 65 percent of the time.

This section makes it clear that leases of slots are included in the reporting requirements applicable to transfer.

Because the Department prefers to rely upon the private sector whenever possible, we urge the air transport industry to establish its own system of tracking slot holdings and confirming slot transfers. This might be done through an existing instrumentality, such as the scheduling committees reservation center, or through a new organization, perhaps funded by fees

imposed on slot transfers. If such an industry sponsored system were established, which adequately provided for transactions involving EAS slots, as discussed below, the FAA would be amenable to allowing operations to begin after a slot transfer as soon as confirmation was received under the industry system. The FAA would, however, reserve the right, at a later date, to review the transactions and disallow any transfer if the rules of Subpart S were not met. The FAA may issue further instructions in this connection.

A final condition, which will be applied by the Office of the Secretary of Transportation, is that the transfer may not be injurious to the EAS program. Carriers serving communities with an EAS designation may have a continuing obligation to provide that service. This regulation is not intended to provide an incentive or means to abrogate that obligation. Therefore, should a carrier with an obligation to provide essential air service to a point enter into a transaction after which that service would no longer be provided, the Department may find it necessary to disapprove the transaction to ensure that the legal obligation to provide EAS service is met. In order to avoid the possibility of this occurring, the Office of the Secretary is willing to advise concerned parties informally prior to their entering a proposed slot transaction as to whether that transaction is likely to be disapproved by the Department. The Department urges that operators take advantage of this procedure. If not, approval of the transaction may be delayed.

Under § 93.221(b), the FAA will keep records of all slot transfers and current slot assignments. Those records will be made available to the public upon written request or by visiting the FAA Docket.

Paragraph (c) of § 93.221 makes it clear that any person, a term defined in 14 CFR Part 1, may buy or sell slots and any air carrier or commuter may use them. For purposes of Subpart S, a state or local government would be considered to be a person. However, even though any person may buy or sell slots or hold them, commuter slots may only be used by air carriers with aircraft of the kind described in § 93.123(c)(2). This provision will ensure that commuter slots continue to be used with the smaller aircraft most suitable for serving small and medium size communities and are not bought by carriers intent on serving busier, more populous markets with large aircraft. Air carrier slots, on the other hand, could be used with large or small aircraft.

Section 93.221(d) indicates that, until April 1, 1986, slots may only be transferred by trade on a one-for-one basis for slots at the same high density airport. This provision is needed in order to set up a slot tracking system and to consider Notice No. 85-25. If unrestricted slot transfers were allowed during the period before April 1, 1986, the FAA would be faced with the impossible administrative problem of trying to track the many slots that are in existence without the necessary tracking system in place. This period will also provide a period of time for application of the use-or-lose provisions of § 93.227. This will ensure that carriers are not able to profit from the sale of any slots that they are not actually using.

Section 93.223 Slot Withdrawal.

This section establishes a procedure for the withdrawal of slots if that should become necessary. Slots may have to be withdrawn from some operators for operational needs, such as to allow other carriers to conduct essential air service or international operations. Paragraph (a) of the section makes it clear that slots do not represent a property right but represent only an operating privilege subject to absolute FAA control. Paragraph (a) also indicates that, before withdrawing any slots for operational needs, those slots available because they were returned to the FAA or recalled by the FAA under the use-or-lose provisions of § 93.227 will be allocated for these purposes.

To establish withdrawal priorities, the FAA will conduct a series of lotteries. They will be held within 30 days after the scheduling committee records are obtained or 30 days after the effective date of the rule, whichever occurs later. The slot withdrawal lottery procedures are set forth in § 93.223(b). Separate lotteries will be conducted for air carrier slots and for commuter operator slots at each airport. Each slot at the airport will be provided a specific designation, which will include an airport code, a code indicating whether the slot is an air carrier or commuter slot, the airline code, and the time period of the slot. The designation may also indicate that the slot is used for international operations, or EAS operations, or by different operators on different days of the week. All communications with the agency concerning slots must include the designation assigned in the lottery.

The agency will either place the slot designations on individual pieces of paper and place those pieces of paper in containers for the drawings or it might use another similarly random method to establish the withdrawal priority. All drawings will be blind and they will be made one at a time. As drawn, each slot will be assigned a withdrawal priority in numerical order, i.e., the slot first drawn in the lottery will be the first slot to be withdrawn if withdrawal should become necessary and if the drawn slot is in a time period in which a slot is required. After a withdrawal priority number is established for each of the slots, a complete list of the withdrawal priority numbers will be made available to the public.

Whenever slots must be withdrawn, they will be withdrawn in accordance with the priority list established under § 93.223. A slot will retain its withdrawal priority number at all times, even after reallocation by the FAA or transfer to another carrier. If there are newly created slots, they will be assigned the lowest withdrawal priorities (i.e., the highest withdrawal priority numbers.)

Slots necessary for international and essential air service operations will be exempt from withdrawal for use for other international or essential air service operations. This provision is set forth in § 93.223(c). Such slots will retain their withdrawal priority number but will be passed over for withdrawal as long as they are used for international or EAS operations.

Since some U.S. carriers will hold slots in the same time period that are used for domestic and international operations, a special rule is set forth in paragraph (d) of § 93.223 to establish which of those slots are international and EAS slots and what the withdrawal priorities of each are. Under that paragraph, if an operator has more than one slot in a specific time period in which it has a slot being used for international or essential air service operations, the international and essential air service slots will be considered to be those with the lowest withdrawal priority (i.e., the highest priority number.) By applying this rule, carriers will be able to determine (1) which slots may only be traded on a one-for-one basis for international and essential air service slots, and (2) the order of slot withdrawal, if withdrawal were required for purposes other than to provide for international and essential air service operations. Section 93.223(d) will also make it clear to operators and potential transferees that the slots with the highest withdrawal priority are those that are not used for international or essential air service operations.

When the FAA determines that a slot must be withdrawn, the operator currently using it will be notified in

writing and, generally, will be given at least 30 days after notification to cease operations with that slot. During this period, the operator could notify the FAA if the slot is being used for essential air service operations. Where exigencies exist, a shorter time period to cease operations may be necessary and will be specified in the notification to the operator. This procedure is set forth in § 93.223(e).

Finally, paragraph (f) of § 93.223 provides that the FAA will not withdraw slots granted in the initial allocation or slots awarded in a lottery under § 93.225 from any air carrier or commuter operator holding eight or fewer slots, excluding slots used for international operations, at that airport. This provision recognizes that withdrawing slots from carriers with a limited number of slots could be disproportionately injurious to them. The provision does not apply to purchased slots because the price of those slots presumably will reflect their withdrawal priority. The provision does not apply to non-carrier slot holders. In this connection, slots of carriers or commuters with joint ownership, as defined in § 93.213(c), will be considered a single entity for purposes of withdrawal under § 93.223.

Section 93.224 Return of Slots.

Section 93.224 sets forth how carriers are to return slots when required and how they should return those slots if they voluntarily do so. Return is accomplished under this section by written notification to the FAA.

Section 93.225 Lottery of Available Slots.

Under this section, whenever the FAA determines that sufficient slots have become available for distribution for purposes other than international or essential air service operations, they will be allocated using a lottery. The FAA does not expect that such lotteries will be held more than twice a year because of administrative burdens and because the existence of a sufficient number of available slots to warrant such a lottery is unlikely to exist any more frequently. The FAA will not necessarily hold a lottery each time slots are available.

Section 93.225(b) through (f) prescribes the lottery procedures. Initially, a random lottery would be held to determine the order in which carriers will select slots. Separate lotteries will be held on an airport-by-airport basis for commuter operators and for air carriers. Unlike the lotteries for slot withdrawal purposes (which will be conducted only once for air carrier and commuter operator slots for each high density airport), lotteries for allocation purposes will be conducted whenever the agency determines that a sufficient number of slots are available for allocation. A notice will be published in the **Federal Register** announcing the lottery dates and possibly specifying additional procedures to be in effect for the lotteries. The FAA will attempt to publish the notice at least 30 days prior to the lottery. Each U.S. air carrier and commuter operator that is operating at the affected airport will be included in the lottery. It should be noted that foreign operators will not be permitted to participate in the lotteries since they can obtain slots under §93.217 for their international operations. Any U.S. carrier not operating at the airport but wishing to initiate service at the airport will be included in the lottery if it notifies the FAA at least 15 days prior to the lottery date.

At the slot selection, each operator, in the order established by the random lottery, will make its selection within 5 minutes after being called or it will lose its turn. If capacity still remains after each operator has had an opportuity to select slots, the selection process will be repeated in the same order. An operator may select any two slots available at the airport during each selection sequence, except that new entrant carriers may select four slots, if available, in the first sequence.

Paragraph (g) of § 93.225 sets forth carrier qualifications for participating in the lottery. The carrier must have appropriate economic authority under Title IV of the Federal Aviation Act of 1958, as amended, and at least have made substantial progress in obtaining FAA operating authority under 14 CFR Parts 121 or 135. This latter condition is necessary to preclude "paper" airlines from obtaining slots in the lottery for free purely for speculative purposes. Paragraph (g) also specifies, in detail, what will be considered to be substantial progress in obtaining FAA operating authority.

As a further preference for new entrant carriers and to ensure that some slots are available to them, 15 percent of the slots available during the first selection sequence will be reserved for selection by new entrant carriers. This number will not be less than two slots. The FAA believes the new entrant preferences in the lotteries are warranted to further policies enunciated in the Airline Deregulation Act of 1978.

Paragraph (i) of § 93.225 explains the withdrawal priorities for slots obtained in a lottery. They are discussed above in connection with § 93.223.

Section 93.227 Slot Use and Loss.

The general rule under § 93.227 is that slots must be used 65 percent of the time over a 2-month period or they will be recalled by the FAA. This 65 percent rule would permit a carrier to use a slot five out of the 7 days in each week (many carriers do not operate certain slots on weekends) and would also provide some leeway for those circumstances where, because of mechanical problems, a limited number of flights might have to be cancelled over a 2-month period.

Section 93.227, in paragraphs (b), (c), (d) and (f), contains a number of exceptions to the general use-or-lose rule. First, slots obtained in a lottery will not have to be used for the first 60 days after they are allocated to give operators an opportunity to arrange for the necessary aircraft, gate space, crews, etc. New entrant carriers would be given 90 days instead of 60 to first use their slots, recognizing their need for additional time to initiate operations at a new airport. Furthermore, new entrant carriers that have not obtained their Part 121 or 135 certificates from the FAA at the time of allocation will be given 180 days after the slots are allocated in the lottery to initiate operations. This 180-day period recognizes the fact that obtaining FAA authority can take some time, but a carrier meeting the requirements of § 93.225(g) when entering the lottery should be able to initiate revenue operations within 180 days after the slots are allocated.

Second, the use-or-lose provisions do not apply to slots of an operator forced by a strike to cease operations using those slots. The FAA has no way of knowing how long a strike will last and also no way of knowing which particular slots will continue to be used by a carrier who might have to cease only some operations because of a strike. Therefore, the FAA is unable to withdraw and reallocate slots of a carrier subjected to a job action by its employees. If a significant number of slots are not used for some time because of a strike, the FAA will consider special regulatory action to put the slots back into use.

Third, the use-or-lose provisions are inapplicable to slots of an operator that files for protection under the Federal bankruptcy laws during the first 60 days after filing. This 60-day period will provide time for the trustee in bankruptcy to lease or sell the slots of the bankrupt carrier, or for the carrier to be reorganized and to resume operations. It should be noted that after the 60-day period, the use-or-lose

provisions would apply to the slots of the bankrupt carrier.

Fourth, the use-or-lose provisions do not apply to slots used for international operations, as designated in § 93.217(a)(1). Under the provisions of § 93.217, international slots must be returned to the FAA if they are not used for a 2-week period.

Section 93.227(f) makes it clear that slots obtained in a lottery, slots of a carrier subject to a strike, and slots of a bankrupt carrier may be leased to others while they are not being used by the carrier holding them. Leasing, which is permitted for all slots under § 93.221, allows slots to be used to the maximum extent.

Section 93.227(h) provides that, within 30 days after an operator files for protection under the Federal bankruptcy laws, the FAA may recall any slots of that operator that have been used for essential air service if the Office of the Secretary of Transporation determines that those slots are required to provide substitute essential air service to or from the same points. Absent this provision, a trustee in bankruptcy could lease or sell slots that are necessary to provide essential air service.

Finally, § 93.227(i) requires that each holder of a slot (air carrier, commuter operator or other person) file with the FAA a bi-monthly report setting forth the daily usage for each of its high density airport slots. This will enable the agency to readily track operations in accordance with the use-or-lose provision. The report must be signed by a senior official of the air carrier or commuter operator holding the slot. The report shall show the name of the operator which operated the slot (after April 1, 1986, the operator may or may not be the same as the holder) for each day of the particular calendar month. Since this amendment would, effective April 1, 1986, allow non-air carriers and commuters to hold slots, this provision would require any "person" holding a slot to file the report. This provision may be withdrawn if the industry develops a self-regulating system to monitor slot usage. The report must include the airline flight number for which the slot was used and must identify the flight as an arrival or departure.

This requirement should not create any burden on any party since similar information is already kept by operators for other purposes. It must be noted that submission of false information under this requirement will subject the person and company filing this report to civil and criminal penalties.

Section 93.229 Penalties.

This section emphasizes that the provisions of Section 901 of the Federal Aviation Act of 1958, as amended, which prescribe a civil penalty, currently up to $1,000, for each violation of the Federal Aviation Regulations, are applicable to Subpart S. Any air carrier or commuter operator using a slot that it is not entitled to use will be subject to a $1,000 maximum civil penalty for each unlawful takeoff or landing operation it conducts. The violations continue for each day the rule is not complied with. Moreover, any person failing to return a slot to the FAA, as required by Subpart S, will be subject to a $1,000 maximum civil penalty for each such slot for each day the person is in violation. For purposes of taking enforcement action under Subpart S, FAA records concerning the identity of the persons holding slots shall be controlling in any enforcement proceeding. This section does not preclude the application of any other penalty available under FAR Part 13.

Regulatory Evaluation

A regulatory evaluation of the projected economic impacts of the final rule has been prepared and placed in the docket. The Department's conclusions in this evaluation may be summarized as follows:

Carriers. In the short term, benefits to air carriers and commuters will accrue from the full utilization of slots resulting from the use-or-lose provisions. In the long run, benefits will also be realized from the more efficient allocation of slots which will result from the competitive slot market. Further benefits will accrue from the ability to liquidate a slot at a price higher than the value to the using carrier, or alternatively, to acquire a slot at a price which will permit a return on investment higher than the next preferable investment alternative. A 1980 study found that an economically efficient allocation of slots at Washington National Airport could result in an increase in air carrier profits of between $100,000 and $130,000 per day. The separate allocation of international and EAS slots and the continuing restrictions on commuter slot use, adopted for public policy reasons discussed above, mitigate somewhat the potential efficiency benefits of the buy-sell rule. It must further be noted that carriers and commuters are not required to buy or sell slots and that other airports are available for their use in each area.

New Entrants. New entrant carriers benefit from being able to obtain access to high density airport markets at the market price for such access.

Passengers. In the competitive buy-sell market, the Department believes that the cost of slot purchases will not be passed through to passengers to any significant degree, and fares may actually be decreased by the resulting economic efficiency. However, it is possible that fares in certain isolated markets may increase to a degree without drawing competition.

Government. Under the regulation adopted, the Department will be relieved of the responsibility of monitoring the air carrier and commuter scheduling committees. However, the Government will incur additional costs for recordkeeping and monitoring of slot assignments and transfers, and also for antitrust oversight of slot transactions. The Government may need to hire additional personnel to monitor and implement this amendment.

Summary of costs and benefits. The analysis indicates that the regulation is likely to produce economic benefits in the long run by facilitating improvement in the allocation of slots among air carriers. The proposal may also result in some increased governmental responsibilities and costs with respect to rule enforcement and antitrust activity. On balance, it is expected that the benefits will exceed the costs, resulting in a positive net benefit to society. It is also likely that the regulation will result in some redistribution of wealth among various groups—incumbent carriers, potential new entrants, and consumers of air transportation services based upon an analysis of DOJ, FTC, CEA, and OMB comments. On balance, and in the context of the existing competitive market, the Department believes that the impacts of the regulation are positive.

International Trade Impact Analysis

This rule will not influence or affect the sale of foreign products or services domestically or the sale of U.S. products or services in foreign countries. Therefore, the Department certifies that this rule will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the U.S. The Department also certifies that the rule will not eliminate existing or create additional barriers to the sale of U.S. aviation products and services in foreign countries.

Regulatory Flexibility Act Determination

As discussed above, this rule should only result in minimal positive benefits to U.S. carriers. Small operators will not

be disproportionately affected in any discernible way by this rule. Accordingly, the Department has determined that the rule will not, if enacted, have a significant economic impact on a substantial number of small entities.

For the reasons set forth above, the Department has determined that this amendment (1) is not a major rule under Executive Order 12291, (2) is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and I certify that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities. A copy of the regulatory evaluation prepared for this action can be obtained from the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Immediate Effectivity

This rule contains a requirement prohibiting slot transfers, except trades on a one-for-one basis at the same airport, until April 1, 1986, that becomes effective upon publication. Other requirements establish allocations based on conditions in effect on the issuance date of the rule. These provisions are needed for the FAA to establish initial slot allocations. A failure to make them apply as adopted herein could render the FAA's task impossible. Therefore, I find that good cause exists for making these requirements effective immediately.

Paperwork Reduction Act

This amendment will require the reporting of certain information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget has approved the information collection provision of this rule. OMB Approval Number 2120-0524 has been assigned to Subpart S.

List of Subjects in 14 CFR Parts 11 and 93

Aviation safety, Air traffic control.

Adoption of the Amendment

For the reasons set out above, Parts 11 and 93 of the Federal Aviation Regulations (14 CFR Parts 11 and 93) are amended as follows:

PART 11—[AMENDED]

1. The authority citation for Part 11 is revised to read as follows:

Authority: 49 U.S.C. 1341(a), 1343(d), 1348, 1354(a), 1401 through 1405, 1421 through 1431, 1481, 1502, 49 U.S.C. 106 (Revised Pub. L. 97-449, January 12, 1983).

Note.—Authority citations following any section throughout Part 11 are removed.

2. By amending § 11.101 by adding a new OMB Control Number to the table in paragraph (b), as follows:

§ 11.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

Part 93 Subpart S	2120-0524

3. The authority citation for Part 93 is revised to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402 and 2424; 49 U.S.C. 106 (Revised Pub. L. 97-449, January 12, 1983).

Note.—Authority citations preceding any subpart or following any section through out Part 93 are removed.

4. A new Subpart S is added to read as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

* * * * *

Subpart S—Allocation of Commuter and Air Carrier IFR Operations at High Density Traffic Airports

Sec.

93.211 Applicability.
93.213 Definitions and General Provisions.
93.215 Initial Allocation of Slots.
93.217 Allocation of Slots for International Operations and Applicable Limitations.
93.219 Allocation of Slots for Essential Air Service Operations and Applicable Limitations.
93.221 Transfer of Slots.
93.223 Slot Withdrawal.
93.225 Lottery of Available Slots.
93.227 Slot Use and Loss.
93.229 Penalties.

Subpart S—Allocation of Commuter and Air Carrier IFR Operations at High Density Traffic Airports

§ 93.211 Applicability.

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

(b) This subpart also prescribes rules concerning the transfer of allocated IFR operational authority and the use of that authority once allocated.

§ 93.213 Definitions and general provisions.

(a) For purposes of this subpart—

(1) "New entrant carrier" means a commuter operator or air carrier which does not hold a slot at a particular airport and has never sold or given up a slot at that airport after December 16, 1985.

(2) "Slot" means the operational authority to conduct one IFR landing or takeoff operation each day during a specific hour or 30 minute period at one of the High Density Traffic Airports, as specified in Subpart K of this part.

(b) The definitions specified in Subpart K of this part also apply to this subpart.

(c) For purposes of this subpart, if an air carrier, commuter operator, or other person has more than a 50-percent ownership or control of one or more other air carriers, commuter operators, or other persons, they shall be considered to be a single air carrier, commuter operator, or person. In addition, if a single company has more than a 50-percent ownership or control of two or more air carriers and/or commuter operators or any combination thereof, those air carriers and/or commuter operators shall be considered to be a single operator. A single operator may be considered to be both an air carrier and commuter operator for purposes of this subpart.

§ 93.215 Initial allocation of slots.

(a) Each air carrier and commuter operator holding a permanent slot on December 16, 1985, as evidenced by the records of the air carrier and commuter operator scheduling committees, shall be allocated those slots subject to withdrawal under the provisions of this subpart. The Chief Counsel of the FAA shall be the final decisionmaker for initial allocation determinations.

(b) Any permanent slot whose use on December 16, 1985 is divided among different operators, by day of the week, or otherwise, as evidenced by records of the scheduling committees, shall be allocated in conformity with those records. The Chief Counsel of the FAA shall be the final decisionmaker for these determinations.

(c) Within 30 days after December 16, 1985, each U.S. air carrier and commuter operator must notify the office specified in § 93.221(a)(1), in writing, of those slots used for operations described in § 93.217(a)(1) on December 16, 1985.

(d) Any slot not held by an operator on December 16, 1985 shall be allocated in accordance with the provisions of §§93.217, 93.219 or 93.225 of this subpart.

§ 93.217 Allocation of Slots for International Operations and Applicable Limitations

(a) Any air carrier or commuter operator having the authority to conduct

international operations shall be provided slots for those operations, subject to the following conditions:

(1) The slot may be used only for a flight segment in which either the takeoff or landing is at a foreign point or, for foreign operators, the flight segment is a continuation of a flight that begins or ends at a foreign point. Slots may be obtained and used under this section only for operations at Kennedy and O'Hare airports unless otherwise required by bilateral agreement.

(2) Slots used for an operation described in paragraph (a)(1) of this section may not be bought, sold, leased or otherwise transferred, except that such a slot may be traded for another slot used for such operations on a one-for-one basis at the same airport.

(3) Slots used for operations described in paragraph (a)(1) of this section must be returned to the FAA if the slot will not be used for such operations for more than a 2-week period.

(4) Each air carrier or commuter operator having a slot that is used for operations described in paragraph (a)(1) of this section but is not used every day of the week shall notify the office specified in § 93.221(a)(1) in writing of those days on which the slots will not be used.

(5) Slots shall be allocated in a time period within two hours of the time period requested.

(b) If a slot allocated under § 93.215 was scheduled for an operation described in paragraph (a)(1) of this section on December 16, 1985, its use shall be subject to the requirements of paragraphs (a)(1) through (a)(4) of this section. This requirement applies to slots used for international operations at LaGuardia Airport.

(c) The Office of the Secretary of Transportation reserves the right not to apply the provisions of paragraph (a) of this section, concerning the allocation of slots, to any foreign air carrier or commuter operator or a country that provides slots to U.S. air carriers and commuter operators on a basis more restrictive than provided by this subpart. Decisions not to apply the provisions of paragraph (a) will be made by the Office of the Secretary of Transportation.

(d) Each operator desiring slots under paragraph (a) of this section must request those slots from the office specified in § 93.221(a)(1) by August 1, for operations to be conducted during the following Winter scheduling period (during the observance of Standard Time), and by February 1, for operations during the Summer scheduling period (during the observance of Daylight Savings Time.)

(e) Each request for slots under this section shall state the airport, days of the week and time of the day of the desired slots and the period of time the slots are to be used. The request must be accompanied by a certified statement signed by an officer of the operator indicating that the operator has or has contracted for aircraft capable of being utilized in using the slots requested and that the operator has bona fide plans to use the requested slots for operations described in paragraph (a).

§ 93.219 Allocation of slots for essential air service operations and applicable limitations.

Whenever the Office of the Secretary of Transportation determines that slots are needed for operations to or from a High Density Traffic Airport under the Department of Transportation's Essential Air Service (EAS) Program, those slots shall be provided to the designated air carrier or commuter operator subject to the following limitations:

(a) Slots obtained under this section may not be bought, sold, leased or otherwise transferred, except that such slots may be traded for other slots on a one-for-one basis at the same airport.

(b) Any slot obtained under this section must be returned to the FAA if it will not be used for EAS purposes for more than a 2-week period. A slot returned under this paragraph may be reallocated to the operator which returned it upon request to the FAA office specified in § 93.221(a)(1) if that slot has not been reallocated to an operator to provide substitute essential air service.

(c) Slots shall be allocated for EAS purposes in a time period within 90 minutes of the time period requested.

(d) The Department will not honor requests for slots for EAS purposes to a point if the requesting carrier has previously traded away or sold slots it had used or obtained for use in providing essential air service to that point.

(e) Slots obtained under Civil Aeronautics Board Order No. 84–11–40 shall be considered to have been obtained under this section.

§ 93.221 Transfer of slots.

(a) Except as otherwise provided in this subpart, effective April 1, 1986, slots may be bought, sold or leased for any consideration and any time period and they may be traded in any combination for slots at the same airport or any other high density traffic airport. Transfers, including leases, shall comply with the following conditions:

(1) Requests for confirmation must be submitted in writing to Slot Transfers, Office of the Chief Counsel, Rules Docket, 800 Independence Avenue, SW., Room 915G, AGC–204, Washington, DC 20591, in a format to be prescribed by the Administrator. Requests will provide the names of the transferor and recipient; business address and telephone number of the persons representing the transferor and recipient; whether the slot is to be used for an arrival or departure; the date the slot was acquired by the transferor; the section of this subpart under which the slot was allocated to the transferor; whether the slot has been used by the transferor for international or essential air service operations; and whether the slot will be used by the recipient for international or essential air service operations. After withdrawal priorities have been established under § 93.223 of this part, the requests must include the slot designations of the transferred slots as described in § 93.223(b)(5).

(2) The slot transferred must come from the transferor's then-current FAA-approved base.

(3) Written evidence of each transferor's consent to the transfer must be provided to the FAA.

(4) The recipient of a transferred slot may not use the slot until written confirmation has been received from the FAA.

(5) Slots obtained in a lottery held under § 93.225 of this part may not be sold or traded, except on a one-for-one basis at the same airport, unless they are first used by the operator obtaining them for a 2-month period at least 65 percent of the time. If a slot obtained in a lottery is traded before the above use requirement is met, any slot acquired in the first or subsequent trades may not be sold or traded except on a one-for-one basis at the same airport until such slot is used for a 2-month period at least 65 percent of the time by the operator which obtained the slot in the lottery. Requests for confirmation of transfers of slots obtained in a lottery must be accompanied by documentation of use.

(6) The Office of the Secretary of Transportation must determine that the transfer will not be injurious to the essential air service program.

(b) A record of each slot transfer shall be kept on file by the office specified in paragraph (a)(1) of this section and will be made available to the public upon request.

(c) Any person may buy or sell slots and any air carrier or commuter may use them. Notwithstanding § 93.123, air carrier slots may be used with aircraft of the kind described in § 93.123 (c)(1) or

(c)(2) but commuter slots may only be used with aircraft of the kind described in § 93.0123(c)(2).

(d) Prior to April 1, 1986, slots may only be transferred by trade on a one-for-one basis at the same airport, provided that the conditions specified in paragraphs (a)(1) through (a)(4) and (a)(6) of this section are met.

§ 93.223 Slot withdrawal.

(a) Slots do not represent a property right but represent an operating privilege subject to absolute FAA control. Slots may be withdrawn at any time to fulfill the Department's operational needs, such as providing slots for international or essential air service operations or eliminating slots. Before withdrawing any slots under this section to provide them for international operations, essential air services or other operational needs, those slots returned under § 93.224 of this part and those recalled by the agency under § 93.227 will be allocated.

(b) By December 16, 1985 or within 30 days after receipt of the scheduling committee records specified in § 93.215(a) of this part, whichever occurs later, the FAA shall conduct recall lotteries for each High Density Traffic Airport to establish a priority for the recall of slots at each airport. The lotteries shall be conducted as follows:

(1) A separate lottery shall be conducted for air carrier slots and for commuter operator slots at each airport.

(2) Each slot shall be assigned a designation consisting of the applicable airport code, a code indicating whether the slot is an air carrier or commuter operator slot, the airline code, and the time period of the slot (e.g., DCA/Air Car/PL/0900). The designation shall also indicate if the slot is used by different operators on different days of the week, is used for international operations, or was allocated for EAS purposes.

(3) Separate pools shall be established for air carriers and commuters at each airport. The slot designations shall be placed in drawing pools.

(4) Blind drawings shall be made from each of the pools, one at a time, and, as withdrawn, each slot designation will be assigned a withdrawal priority in numerical order (i.e., the slot first drawn in the lottery will be the first slot to be withdrawn if withdrawal should become necessary and if the drawn slot is in a time period in which a slot is required).

(5) The withdrawal priority number shall be added to the slot designation (e.g., DCA/Air Car/DL/0900/1) and a complete list of the withdrawal priority numbers will be made available to the public.

(c) Whenever slots must be withdrawn, they will be withdrawn in accordance with the priority list established under paragraph (b) of this section, except:

(1) Slots obtained in a lottery held pursuant to § 93.225 of this part shall be subject to withdrawal pursuant to paragraph (i) of that section, and

(2) Slots necessary for international and essential air service operations shall be exempt from withdrawal for use for other international or essential air service operations.

(d) The following withdrawal priority rule shall be used to permit application of the one-for-one trade provisions for international and essential air service slots and the slot withdrawal provisions where the slots are needed for other than international or essential air service operations. If an operator has more than one slot in a specific time period in which it also has a slot being used for international or essential air service operations, the international and essential air service slots will be considered to be those with the lowest withdrawal priority.

(e) The operator(s) using each slot to be withdrawn shall be notified by the FAA of the withdrawal and shall cease operations using that slot on the date indicated in the notice. Generally, the FAA will provide at least 30 days after notification for the operator to cease operations unless exigencies require a shorter time period.

(f) Notwithstanding other provisions in this section, the FAA shall not withdraw slots obtained under § 93.215 or § 93.225 from any air carrier or commuter holding eight or fewer slots (excluding slots used for operations described in § 93.217(a)(1)) at that airport.

§ 93.224 Return of slots.

(a) Whenever a slot is required to be returned under this subpart, the holder must notify the office specified in § 93.221(a)(1) in writing of the date after which the slot will not be used.

(b) Slots may be voluntarily returned for use by other operators by notifying the office specified in § 93.221(a)(1) in writing.

§ 93.225 Lottery of available slots.

(a) Whenever the FAA determines that sufficient slots have become available for distribution for purposes other than international or essential air service operations, but generally not more than twice a year, they shall be allocated in accordance with the provisions of this section.

(b) A random lottery shall be held to determine the order of slot selection.

(c) Slot allocation lotteries shall be held on an airport-by-airport basis with separate lotteries for commuter operator and air carrier slots.

(d) The FAA shall publish a notice in the **Federal Register** announcing any lottery dates. The notice may include special procedures to be in effect for the lotteries.

(e) Each U.S. air carrier or commuter operator, as appropriate, operating at the airport shall be included in the lottery. Any U.S. carrier not operating at the airport, but wishing to initiate service at the airport, shall be included in the lottery if that operator notifies, in writing, the Office of the Chief Counsel, Docket Section, AGC-204, 800 Independence Ave., SW., Washington, DC 20591. The notification must be in duplicate and must be received 15 days prior to the lottery date.

(f) At the lottery, each operator must make its selection within 5 minutes after being called or it shall lose its turn. If capacity still remains after each operator has had an opportunity to select slots, the allocation sequence will be repeated in the same order. An operator may select any two slots available at the airport during each sequence, except that new entrant carriers may select four slots, if available, in the first sequence.

(g) In order to select slots during a slot lottery session, the operator must have appropriate economic authority under Title IV of the Federal Aviation Act of 1958, as amended, and must have made substantial progress in obtaining FAA operating authority under Parts 121 or 135 of this chapter. For purposes of this subpart, substantial progress in obtaining FAA operating authority under Parts 121 or 135 of this chapter shall be evidenced by the submission of at least three of the following documents, as required by those parts, to the FAA:

(1) The compliance statements.

(2) The aircraft operating manuals.

(3) The company operating manuals.

(4) The operator's training program.

(5) The operator's maintenance programs.

(6) A schedule of certification events, such as planned dates of:

(i) Proving runs;

(ii) Aircraft deliveries;

(iii) Training completion;

(iv) Emergency evacuation demonstration; and

(v) First revenue trip.

(h) During the first selection sequence, 15 percent of the slots available but no fewer than two slots shall be reserved for selection by new entrant carriers.

(i) Slots obtained under this section shall retain their withdrawal priority as established under § 93.223. If the slot is newly created, a withdrawal priority shall be assigned. That priority number shall be higher than any other slot assigned a withdrawal number previously.

§ 93.227 Slot use and loss.

(a) Except as provided in paragraphs (b), (c), (d), and (g) of this section, any slot not utilized 65 percent of the time over a 2-month period shall be recalled by the FAA.

(b) Paragraph (a) of this section does not apply to slots obtained under § 93.225 of this part during—(1) the first 180 days after they are allocated if the operator obtaining them did not have a Part 121 of 135 certificate at the time of allocation; (2) the first 90 days for other new entrant carriers; or (3) the first 60 days after they are allocated for all other operators.

(c) Paragraph (a) of this section does not apply to slots of an operator forced by a strike to cease operations using those slots.

(d) Paragraph (a) of this section does not apply to slots of an operator that files for protection under this Federal bankruptcy laws during the first 60 days after filing.

(e) Persons having slots withdrawn pursuant to paragraph (a) of this section must cease all use of those slots upon receipt of notice from the FAA.

(f) Persons holding slots but not using them pursuant to the provisions of paragraphs (b), (c) and (d) may lease those slots for use by others. A slot obtained in a lottery may not be leased after the expiration of the applicable time period specified in paragraph (b) of this section unless it has been operated for a 2-month period at least 65 percent of the time by the operator which obtained it in the lottery.

(g) This section does not apply to slots used for the operations described in § 93.217(a)(1) of this part.

(h) Within 30 days after an operator files for protection under the Federal bankruptcy laws, the FAA shall recall any slots of that operator, if—(1) the slots were formerly used for essential air service and (2) the Office of the Secretary of Transportation determines those slots are required to provide substitute essential air service to or from the same points.

(i) Every air carrier and commuter operator or other person holding a slot at a high density airport shall, within 14 days after the last day of the second full month after December 16, 1985 and every 2 months thereafter, forward, in writing, to the address identified in § 93.221(a)(1), a list of all slots held by the air carrier, commuter operator or other person along with a listing of which air carrier or actually operated the slot for each day of the particular calendar month. The report shall identify the flight number for which the slot was used and shall identify the flight as an arrival or departure. The report shall be signed by a senior official of the air carrier or commuter operator. If the slot is held by an "other person," the report must be signed by an official representative.

§ 93.229 Penalties.

(a) Any air carrier or commuter operator using a slot it is not entitled to use under the provisions of this subpart shall be subject to a $1,000 maximum civil penalty in accordance with section 901 of the Federal Aviation Act, as amended, for each unlawful takeoff or landing operation it conducts. For purposes of this subpart, FAA records concerning the identity of the persons holding slots shall be controlling in any enforcement proceeding.

(b) Any person failing to return a slot to the FAA as required by this subpart shall be subject to a $1,000 maximum civil penalty in accordance with section 901 of the Federal Aviation Act, as amended, for each day the person is in violation.

Issued in Washington, DC, on December 16, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85-30081 Filed 12-17-85; 2:34 pm]

BILLING CODE 4910-13-M