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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-2005-19411; SFAR No. 105]

RIN 2120-AI47

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; extension of expiration date.

SUMMARY: This action extends the expiration date of Special Federal Aviation Regulation (SFAR) No. 105 through October 31, 2008. This action is necessary to maintain the reservation system established for unscheduled arrivals at O'Hare International Airport consistent with the newly adopted limitations imposed on scheduled operations at the airport.

DATES: This final rule is effective on October 28, 2006, and SFAR No. 105 published at 70 FR 39610 (July 8, 2005), as amended at 70 FR 66255 (November 2, 2005), 71 FR 16219 (March 31, 2006), and in this rule, shall remain in effect until October 31, 2008.

FOR FURTHER INFORMATION CONTACT:

Gerry Shakley, System Operations Services, Air Traffic Organization; Telephone: (202) 267-9424; E-mail: gerry.shakley@faa.gov.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

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

(2) Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/; or

(3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

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

Small Business Regulatory Enforcement Fairness Act

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

Authority for This Rulemaking

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

The FAA's broad statutory authority to manage the efficient use of airspace encompasses management of the nationwide system of air commerce and air traffic control. To ensure the efficient use of the airspace, the FAA must take steps to prevent congestion at an airport from disrupting or adversely affecting the air traffic system for which the FAA is responsible. Inordinate delays of the sort experienced at O'Hare in late 2003 and much of 2004 can have a crippling effect on other parts of the system, causing significant losses in time and money for individuals and businesses,

as well as the air carriers and other operators at O'Hare and beyond. This rule facilitates the Agency's exercise of its authority to manage the safe and efficient use of the navigable airspace.

Background

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

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

On July 8, 2005, the FAA published SFAR No. 105, "Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport" (70 FR 39610). As stated in SFAR No. 105, the benefits achieved by the FAA's August 18 Order would dissipate if certain operations at the airport remained capped but other operations were permitted to grow. SFAR No. 105 maintained the historical level of unscheduled operations at O'Hare and supported other agency actions at O'Hare that address congestion and delay until additional capacity exists at the airport.

In SFAR No. 105, we discussed that it may be necessary to extend this rule limiting unscheduled arrivals at O'Hare to coincide with a final rule addressing scheduled arrivals, if adopted, or with an extension of the August 2004 Order. The NPRM addressing scheduled arrivals at O'Hare was published on March 25, 2005 (70 FR 15520).

¹ 49 U.S.C. 40103(a).

² 49 U.S.C. 40103(b)(1).

³ Operating Limitations at Chicago International Airport. Docket No. FAA-2004-16944.

On November 2, 2005, we extended the expiration date on SFAR No. 105 until March 31, 2006. On March 31, 2006, we extended the expiration date on No. 105 through October 28, 2006,⁴ to maintain the current operating environment at the airport while we considered comments to the proposed rule for scheduled arrivals.

On August 29, 2006, the FAA published the "Congestion and Delay Reduction at Chicago O'Hare International Airport" final rule. That final rule codifies the limit on scheduled arrivals initially imposed under the FAA's August 2004 Order and will expire on October 31, 2006. The rationale supporting SFAR 105 remains valid, in that the benefits achieved under the August 2004 Order and now expected to continue under the Congestion and Delay Reduction final rule would dissipate if other operations at the airport were permitted to grow. Consequently, it is imperative to maintain the limits imposed by this SFAR, during the same timeframe as the Congestion and Delay Reduction final rule, until additional capacity is available at the airport.

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

International Compatibility

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

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements(s) in this final rule to the Office of Management and Budget (OMB) for its review. OMB approved the collection of this information and assigned OMB Control Number 2120-0694.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a

currently valid OMB control number. The OMB Control Number for this information collection is 2120-0694.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually adjusted for inflation). This portion of the preamble summarizes the FAA's analysis of the economic impact of this SFAR extension.

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

In the preamble of SFAR No. 105, the FAA stated that we might consider extending SFAR 105 for a time period that would coincide with a final rule limiting scheduled operations. The FAA is extending this SFAR through October 31, 2008, to maintain the current level of operations at O'Hare consistent with the final rule published on August 29, 2006, that addresses scheduled operations at the airport. In the final economic assessment of SFAR No. 105, the FAA found that the rule provided system delay benefits at a minimal cost. The FAA finds that this extension is cost beneficial and will continue to

provide system delay benefits at minimal cost.

Regulatory Flexibility Determination

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

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

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

This final rule extends the expiration date of SFAR No. 105, which provides for fewer airport delays at a minimum cost. Just as in the initial and final regulatory flexibility analyses, the FAA expects there will be a substantial number of small entities affected by the extension of this final SFAR, however, the economic effect will continue to be insignificant. Therefore, as the FAA Administrator, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where

⁴ The limits on unscheduled arrivals do not apply on Saturdays.

appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of the extension of this final rule and determined that it will not have an effect on foreign commerce.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$120.7 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

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

Environmental Analysis

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

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a "significant energy action" under

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

The Amendment

■ For the reasons set forth above, the Federal Aviation Administration is amending chapter I of title 14 Code of Federal Regulations as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC

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

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

■ 2. Section 9 of Special Federal Aviation Regulation (SFAR) No. 105 is revised to read as follows:

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

* * * * *

Section 9. *Expiration.* This Special Federal Aviation Regulation expires at 9 p.m., Central Time, on October 31, 2008, unless sooner terminated.

Issued in Washington, DC on October 26, 2006.

Marion C. Blakey,

Administrator.

[FR Doc. 06-9000 Filed 10-27-06; 12:36 pm]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05-06-108]

RIN 1625-AA-09

Drawbridge Operation Regulations; Potomac River, Between Maryland and Virginia

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the new Woodrow Wilson Memorial (I-95) Bridge, mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. This

deviation allows the new drawbridge to remain closed-to-navigation each day from 10 a.m. to 2 p.m. beginning on October 25, 2006 until and including December 24, 2006, to facilitate completion of the Outer Loop portion for the new Woodrow Wilson Bridge construction project.

DATES: This deviation is effective from 10 a.m. on October 25, 2006, until 2 p.m. on December 24, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT:

Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION: In June 2006, the southernmost portion of the bascule spans for the new Woodrow Wilson Memorial Bridge, at mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland was publicly placed into service, switching I-95 Northbound traffic onto the new Outer Loop portion of the bridge. The newly-constructed portion of bridge will be required to open for vessels in accordance with the current drawbridge operating regulations set out in 33 CFR 117.255(c).

While the drawbridge is operational, coordinators for the construction of the new Woodrow Wilson Bridge Project indicated that the bascule span is not yet fully commissioned and the work continues through the rigorous testing phase. Opening the new bascule span for a vessel at this time would take approximately 45 minutes in a best case scenario. This has the potential to have a significant impact upon I-95 traffic, especially during the 10 a.m. to 2 p.m. bridge-opening time frame currently available for commercial vessels, in accordance with 33 CFR 117.255(c).

Coordinators requested a temporary deviation from the current operating regulation for the new Woodrow Wilson Memorial (I-95) Bridge set out in 33 CFR 117.255(c).

Though good progress has been made regarding commissioning of the north and south drawbridges (both now carrying I-95 vehicle traffic), the coordinators are requesting an additional two months of the 10 a.m. to 2 p.m. restriction of bridge operation to