



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 14th day of April, 2000

Served: April 19, 2000

In the matter of

**THE WENDELL H. FORD AVIATION
INVESTMENT AND REFORM ACT FOR
THE 21st CENTURY**

For exemptions from 14 CFR Part 93, under 49
U.S.C. § 41717(c)

Docket OST-2000-7180 -- 15

**ORDER ESTABLISHING PROCEDURES FOR NEW ENTRANT
SLOT EXEMPTION APPLICATIONS AT
CHICAGO O'HARE INTERNATIONAL AIRPORT**

By this order the Department is establishing procedures for air carriers that have applied, or may subsequently apply, for slot exemptions at Chicago O'Hare International Airport, under the provisions of 49 U.S.C § 41717(c) as enacted by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

BACKGROUND

On April 5, 2000, the President signed into law the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21). Among other things, AIR-21 liberalizes slot and slot exemption access at the four airports now subject to the provisions of the High Density Rule, 14 CFR 93 Subparts K and S. Specifically, at Chicago O'Hare International Airport, the Act provides *inter alia* that the slot-controlled window will be narrowed effective July 1, 2001, to the 2:45 p.m. to 8:14 p.m. time period, and that slot restrictions will be totally eliminated after July 1, 2002. AIR-21 also provides that certain interim slot and slot exemption requirements will be effective on the date of its enactment.

One of these interim provisions, new 49 U.S.C. section 41717(c), directs the Secretary to grant¹, by order, 30 slot exemptions to "any new entrant air carrier or limited

¹ Because AIR-21 directs such action to be taken, and short, mandatory deadlines are imposed, there is no requirement to prepare an environmental impact statement under the National Environmental Policy Act.

incumbent air carrier to provide air transportation to or from Chicago O'Hare International Airport." Consistent with legislative history,² the Department has interpreted this as requiring the Secretary to grant a total of 30 exemptions to qualifying new entrants and limited incumbents. For these purposes, a new entrant air carrier or limited incumbent air carrier is defined as an air carrier or commuter operator that holds or operates (or held or operated, since December 16, 1985) fewer than 20 slots and slot exemptions at O'Hare.³ Such exemptions must be granted within 45 days of date of application. We are directing all carriers interested in receiving consideration under this provision to apply within 10 days of this order.⁴

At the same time, we note that Congress elsewhere has provided for a liberalized regime of granting new entrant exemptions at O'Hare, LaGuardia, and JFK when applications are found to be in the public interest, 49 U.S.C. 41714(i). These decisions are to be made within 60 days of application, and a failure to make a determination in that time is to be deemed as an approval. Qualified applicants who are not awarded the number of exemptions they seek under the 41717(c) process may reapply for such exemptions under the 41714(i) process. We intend to issue further guidance to assist carriers wishing to apply under this latter process.

DECISION

Any new entrant or limited incumbent air carrier that desires to receive consideration for award of the 30 slot exemptions to be granted under 49 U.S.C. § 41717(c) shall apply for same within 10 days of this order.

In the event that requests are received for more than the total of 30 slot exemptions that will be awarded in this docket, the Department will have to select among competing applications. Under these circumstances the Department may consider the service benefits that would be attained, the likely effect on competition, whether the proposed service would likely be operationally and financially viable, and, especially, the practical ability of the carrier to initiate service on a timely basis.⁵

See, e.g., *American Airlines v. Department of Transportation*, 202 F. 3d 788 (5th Cir., 1999). Note, however, that in accordance with Congressional direction and Departmental requirements, any service to be undertaken under this section must be with Stage 3 aircraft (the quietest category), priority is to be given in making grants for airport noise compatibility planning and programs to the four high-density airports, and the Department next year will study the community noise levels compared with the levels in such areas before 1991.

² Cf. language of H. R. Conf. Rep. No. 513, 106th Cong. 2nd Sess. 176 (2000).

³ 49 U.S.C. §41714(h). In addition, under 49 U.S.C. § 41714(k) "...an air carrier that operates under the same designator code, or has or enters into a code-share agreement, with any other air carrier shall not qualify for a new slot or slot exemption as a new entrant or limited incumbent air carrier at an airport if the total number of slots and slot exemptions held by the 2 carriers at the airport exceed 20 slots and slot exemptions."

⁴ Carriers that have already applied will be considered; however, they may wish to amend their applications within the 10-day period should that be deemed necessary to address the Department's award considerations as addressed below.

⁵ Section 41717(c) contains no Congressionally-mandated criteria for making slot exemption determinations under its authority. However, given that applications may be received for more than the 30

As part of such application, each such carrier must certify, in accordance with 14 CFR 302.4(b)⁶, that it meets the statutory criteria as a new entrant/limited incumbent; i.e. that it holds or operates (or held or operated since December 16, 1985) fewer than 20 slots and slot exemptions at Chicago O'Hare International Airport. Such certification shall also state the number of exemptions sought, and state that aircraft that would be used are Stage 3 compliant.

Applicants may also state: how grant of their proposal provides a maximum of benefit to the United States economy, including the number of United States jobs created by the air carrier, its suppliers, and related activities; and the consumer benefits associated with the award of such exemptions.⁷

ADMINISTRATIVE TERMS

As the FAA slot regulation makes clear, slot(s) "...do not represent a property right but represent an operating privilege subject to absolute FAA control (and) slots may be withdrawn at any time..." to fulfill the Department's operational needs

14 CFR 93.223(a). Under the provisions of 49 U.S.C. § 41714(j) these carriers may not sell, trade, transfer, or convey the operating authorities granted by the subject exemptions. Further, granting of these exemptions in no way is to be construed as allowing a carrier to operate that otherwise could not, i.e., carriers must still meet all the requirements of the Department of Transportation, the Federal Aviation Administration, and all other statutes and regulations governing air transportation.

This Order is issued under authority delegated in 49 CFR 1.56(a).

ACCORDINGLY,

1. The Department directs interested air carriers to apply for an exemption from 14 CFR Part 93, Subparts K and S, for authority to conduct operations at Chicago O'Hare International Airport under the provisions of 49 U.S.C § 41717(c) during the slot-

slot exemptions that are available, some means must be established whereby selections might be made from among the competing applicants. Moreover, we note that Congress has specified (in new 49 U.S.C. §41714(i)) that otherwise qualified new entrant/limited incumbent carriers must be granted exemptions if the Secretary determines that their applications are in the public interest. Since determinations under §41717(c) must be made on a greater priority basis than those under §41714(i), we have concluded that applicants who seek such priority treatment should be prepared to submit information that would support award under at least a public interest standard. Especially in the event that requests for slot exemptions significantly exceed the 30 available, we have further set forth for the guidance of potential applicants the criteria we will use in that event to determine the merits of individual requests.

⁶ On March 10, 2000, we issued a Notice advising all parties that until further notice, certifications prescribed by 14 CFR 302.4(b) need only accompany filings in connection with fitness proceedings. We find that such certification here is also in the public interest.

⁷ This information need not be offered if the carrier certifies that it proposes to use under the exemption a type of aircraft for which there is not a competing U.S. manufacturer. 49 U.S.C. § 41715(c).

controlled hours of 6:45 a.m. to 9:15 p.m. within 10 days of the issuance date of this order. This authority will be granted only to new entrant or limited incumbent air carriers as defined by 49 U.S.C. § 41714(h) and may be used only to provide air transportation with Stage 3 aircraft and is subject to the provisions of 49 U.S.C. § 41714(i), § 41714(j), § 41714(k), and § 41717(f); and

2. We shall serve a copy of this order on U.S. certificated air carriers and the City of Chicago.

By:

A. BRADLEY MIMS
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

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