

## § 93.26

transfer under the August 18, 2004, "Order Limiting Scheduled Operations at O'Hare International Airport," as amended, as long as operations conducted under the Arrival Authorization begin no later than January 27, 2007.

(c) Arrival Authorizations will be assigned to the U.S. or Canadian air carrier that actually operated the flight regardless of any codeshare or marketing arrangement unless such carrier did not market the flight under its own code and the inventory of the flight was under the control of another Carrier. If the inventory was under the control of another Carrier, the FAA shall assign the Arrival Authorization to that Carrier. Carriers may subsequently transfer Arrival Authorizations for use by other Carriers under their marketing control in accordance with § 93.2(m).

(d) Any Arrival Authorization not assigned under paragraphs (a) or (b) of this section will be assigned to carriers conducting scheduled international service under § 93.29. Any remaining Arrival Authorizations will be assigned by preferred lottery under § 93.30.

(e) The FAA Vice President, System Operations Services, is the final decision-maker for determinations under this section.

[Doc. No. FAA-2005-20704, 71 FR 51400, Aug. 29, 2006, as amended by Amdt. 93-86, 71 FR 60426, Oct. 13, 2006]

## § 93.26 Reversion and withdrawal of Arrival Authorizations.

(a) A U.S. or Canadian air carrier's Arrival Authorizations assigned under §§ 93.25 or 93.27 revert automatically to the FAA 30 days after the Carrier has ceased all operations at O'Hare for any reason other than a strike.

(b) The FAA may withdraw or temporarily suspend Arrival Authorizations at any time as a result of reduced airport capacity or to fulfill operational needs. Whenever Arrival Authorizations must be withdrawn, they will be withdrawn in the required 30-minute Arrival Authorization time periods in accordance with the priority list established under § 93.32 of this subpart.

(c) Any Arrival Authorization that is withdrawn or temporarily suspended under paragraph (b) will, if reassigned, be reassigned to the Carrier from which

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it was taken, provided that the Carrier continues to conduct scheduled operations at O'Hare.

(d) The FAA shall not withdraw or temporarily suspend under paragraph (b) any Arrival Authorizations if the result would be to reduce a Carrier's total number of Arrival Authorizations below eight.

(e) Except as otherwise provided in paragraph (a) of this section, the FAA will notify the affected Carrier before withdrawing or temporarily suspending any Arrival Authorization and specify the date by which operations under the authorizations must cease. The FAA will provide at least 45 days' notice unless otherwise required by operational needs.

## § 93.27 Sale and lease of Arrival Authorizations.

(a) No U.S. or Canadian air carriers may sell or lease its Arrival Authorizations at O'Hare except in accordance with the procedures in this section and in the manner prescribed by the FAA. Carriers may not buy, sell, lease or otherwise transfer control of Arrival Authorizations assigned under § 93.29.

(b) Only monetary consideration may be provided in any transaction conducted under this section.

(c) New Entrants and Limited Incumbents may not sell, lease, or otherwise transfer control of any Arrival Authorizations assigned through a Preferred Lottery within 12 months of such assignment, except to another New Entrant or Limited Incumbent. One-for-one trades to other Carriers under § 93.28 are permitted.

(d) A U.S. or Canadian air carrier seeking to sell or lease an Arrival Authorization must provide the following information in writing to the FAA:

- (1) Arrival Authorization number and time;
- (2) Frequency;
- (3) Planned effective date(s) of transfer;
- (4) Minimum reserve price, if established by the offering carrier;
- (5) Other pertinent information, if applicable; and
- (6) Carrier's authorized representative.

(e) The FAA will post a notice of the available Arrival Authorization and

specific information concerning the proposed sale or lease transaction on the FAA Web site at <http://www.fly.faa.gov>. The Web site will include information regarding registration to be advised of posted transactions, and other relevant information pertaining to this section. The FAA will post the notice within two business days after receipt of all required information from the U.S or Canadian air carrier offering the Arrival Authorization for sale or lease. The notice will provide ten business days for bids to be received and will specify a bid closing date and time. Only U.S. and Canadian air carriers may bid on Arrival Authorizations. Information identifying the Carrier providing the Arrival Authorization for sale or lease will not be posted or released by the FAA until after the FAA has approved the transfer.

(f) All bids must be sent to the FAA electronically, via the FAA Web site, by the closing date and time, and no extensions of time will be granted. Late bids will not be considered. All bids will be held confidential, with each bidder certifying in a form acceptable to the FAA that its bid has not been disclosed to any person not its agent.

(g) The FAA will forward the highest qualifying bid to the selling or leasing U.S. or Canadian air carrier without identifying the bidder. The selling or leasing Carrier will have up to three business days to accept or reject the bid. The selling or leasing Carrier must notify the FAA via the Web site or in writing of its acceptance no later than 5 p.m. Eastern Time on the third business day. If the selling or leasing Carrier does not notify the FAA of its acceptance within the allotted time, the transaction will terminate.

(h) Upon acceptance, the FAA will notify the U. S. or Canadian air carrier, who submitted the highest bid, and request that the buyer/lessee and the seller/lessor submit to the FAA the information (such as Arrival Authorization number, frequency and effective date(s) of transfer) required to transfer the Arrival Authorization.

(i) Each U.S. or Canadian air carrier must provide the FAA evidence of its consent and each Carrier must certify

that only monetary consideration will be or has been exchanged.

(j) The FAA will approve requested transfers of Arrival Authorizations that comply with these regulations. The recipient U.S. or Canadian air carrier of the transfer may not use the Arrival Authorization until the conditions in paragraph (i) of this section have been met and the FAA has approved the transfer.

(k) The FAA will keep a record of all bids received and of each Arrival Authorization transfer, including the identity of both Carriers and the winning bid price, all of which will be made available to the public.

(l) U.S. or Canadian air carriers may request the FAA post notice that it is seeking to lease or purchase an Arrival Authorization at O'Hare. The Carrier may submit information in writing or via the FAA's Web site. This information may include the effective date, number or timing of Arrival Authorizations sought, whether a Carrier is seeking to purchase or lease, maximum price offered, or other pertinent information. The FAA may edit any submissions, or choose not to post certain information, in order to ensure the integrity of the solicitation process. Information identifying the Carrier seeking an Arrival Authorization for sale or lease will not be posted or released by the FAA. The FAA will post such requests within two business days of receipt for a period of at least 30 days. Any resulting offers to sell or lease Arrival Authorizations shall be conducted in accordance with this subsection.

(m) A U.S. or Canadian air carrier may transfer an Arrival Authorization to another U.S. or Canadian air carrier that conducts operations at O'Hare solely under the transferring Carrier's marketing control, including the entire inventory of the flight. Each Carrier must provide written evidence of its consent to the transfer. The FAA will approve requested transfers that comply with these regulations. The FAA Vice President, System Operations Services, is the final decision-maker for determinations under this subsection. The recipient Carrier of the transfer may not use the Arrival Authorization until the FAA has provided written confirmation. A record of each

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Arrival Authorization will be kept on file by the FAA and made available to the public on request.

**§ 93.28 One-for-one trade of Arrival Authorizations.**

(a) Except as otherwise provided in this subpart, any Carrier may exchange an Arrival Authorization it has been assigned with another Carrier on a one-for-one basis for the purpose of conducting that operation in a different half-hour time period.

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

(c) The FAA will approve requested transfers of Arrival Authorizations that comply with these regulations. The recipient Carrier of the transfer may not use the Arrival Authorization until written confirmation has been received from the FAA.

(d) A U.S. or Canadian air carrier assigned Arrival Authorizations under § 93.29 may trade on a one-for-one basis within its own base of Arrival Authorizations subject to FAA approval, provided that the purpose is to operate the arrival flight from a foreign point outside Canada in a different half-hour time period than assigned. The FAA must confirm the transfer prior to operation.

(e) A record of each Arrival Authorization exchange will be kept on file by the FAA and made available to the public upon request.

(f) Carriers participating in a one-for-one transfer must certify to the FAA that no other consideration will be or has been provided for the exchange.

**§ 93.29 International Arrival Authorizations.**

(a) Except as otherwise provided in paragraph (d) of this section, the FAA shall make an initial assignment of Arrival Authorizations to U.S. and Canadian carriers arriving from a foreign point, excluding Canada, or any other foreign carrier arriving from a foreign point or the continuation of a flight that begins at a foreign point for the winter and summer scheduling seasons as follows. This section does not apply to arrivals at O'Hare from Canada by U.S. or Canadian air carriers.

(1) *Winter Scheduling Season.* Upon request, the FAA shall assign to each Carrier that published a scheduled arrival during the Winter 2006 Scheduling Season, as evidenced by the FAA's records, a corresponding Arrival Authorization for the Winter 2007 Scheduling Season.

(2) *Summer Scheduling Season.* Upon request, the FAA shall assign to each Carrier that published a scheduled arrival for the Summer 2006 Scheduling Season, as evidenced by the FAA's records, a corresponding Arrival Authorization for the Summer 2007 Scheduling Season.

(3) Arrival Authorizations will be assigned to the Carrier that actually operated the flight regardless of any codeshare or marketing arrangement unless the flight was predominately marketed, by contract, under the control of another Carrier. If the flight was under the marketing control of another Carrier or the entire inventory was under the control of another Carrier, the FAA shall assign the Arrival Authorization to that Carrier.

(4) The FAA Vice President, System Operations Services, is the final decision-maker for determinations under this subsection.

(b) Notwithstanding the limit on Arrival Authorization in § 93.23(a), any U.S. or Canadian air carrier arriving at O'Hare from a foreign point, excluding Canada, shall be assigned an Arrival Authorization under this section for that flight.

(c) Notwithstanding the limit on Arrival Authorizations in § 93.23(a), any non-Canadian, foreign air carrier conducting scheduled service and arriving at O'Hare shall be assigned an Arrival Authorization under this section for that flight.

(d) The Department of Transportation reserves the right to withhold the assignment of an Arrival Authorization to any foreign air carrier of a country that does not provide equivalent rights of access to its airports for U.S. air carriers, as determined by the Secretary of Transportation.

(e) For each scheduling season, Carriers must request Arrival Authorizations under this section in accordance with the procedures announced by the