

carriers on a nonstop basis is a different situation.

US Airways objects to any lottery, characterizes the lottery mechanism as "anti-incumbent" and argues that "redistributive lotteries" are not appropriate.

One of the primary purposes of the lottery provision was to enhance competition by affording new entrant and limited incumbent carriers greater access to slot-controlled airports. Thus, the Department believed that allowing incumbent carriers to participate on equal terms with new entrants in seeking permanent allocation of slots would reduce the opportunities for new entrants or limited incumbents to introduce competitive service (57 FR 37309; August 18, 1992). Therefore, in promulgating this rule, the FAA and the Department restricted the permanent allocation of slots to incumbent carriers. Whether or not that policy should be revisited today, in light of the economic condition of incumbent carriers, the FAA is clearly bound to give it its full force and effect and to carry out the intent of our regulations.

US Airways complains that the lottery provision is "anti-incumbent" in that airlines that hold a substantial number of slots may only receive a temporary allocation through the lottery after all new entrant and limited incumbent carriers have finished their selections. However, incumbent carriers such as US Airways received a large base level of slots at the time the allocation rules were adopted in 1985; as a whole, arguably, the provisions benefited incumbents. Today, US Airways and its wholly owned subsidiaries hold 43 percent of the slots at DCA, the next largest slot holder at the airport is Delta and its wholly owned subsidiaries with approximately 14 percent of the slots. Thus, two carrier groups account for nearly 60 percent of the slots at the airport. Despite the buy-sell rule, the lottery provision in the regulations is the only mechanism that specifically addresses competitive access to slot-controlled airports such as DCA.

The need for a lottery also stems from other aspects of our rules. The slots in question have never been allocated permanently, and the lottery allocation provision is the only means of allocating these peak hour slots on a permanent basis. US Airways and other carriers were allocated slots during peak hours on a temporary basis subject to recall by the FAA and distribution by lottery in accordance with the regulations. Consequently, this process is entirely appropriate to allocate available slots.

3. Lottery Allocation in Light of Other Related Proceedings

Spirit Airlines points to the variety of pending proceedings concerning slots and slot exemptions and asks the FAA and the Department to end the practice of allocating slots on a piecemeal basis, saying this practice makes it difficult for any new entrant carrier to evaluate the true economics of potential operations at the airport. Spirit would defer the lottery until other agency actions on slots exemptions and/or the potential exemptions in pending legislation, in particular, H.R. 2115 "Aviation Investment and Revitalization Vision Act," are allocated. Conversely, ATA argues that the public interest requires that slots be allocated whenever they become available and says that slots should be used once allocated. ATA and MWAA also oppose a delay of the lottery to wait for the potential allocation of slot exemptions currently under consideration by Congress. US Airways again questions the basis for any lottery and forecasts that it is likely that slots will become available after the current slot usage waiver terminates and that a lottery should be conducted at that time.

The FAA has discretion to conduct a lottery when it determines that there are sufficient slots available for allocation. The fifteen slots that are available for allocation in this lottery are slots that were previously returned to the FAA or were allocated temporarily to carriers on a first-come, first-served basis on the express condition that they would be recalled when the FAA determines that it is necessary to allocate the slots permanently. Over the past many months the FAA received numerous inquiries and requests for slots at DCA by new entrant carriers. In light of the expressed demand for permanent allocation of the available slots at the airport, we believe that the spirit of our regulations require that we allocate whatever capacity is available at the earliest practical time. As indicated by the number of carriers that filed requests to participate in the lottery and by the comments submitted to the docket, it is evident that there is demand by many carriers for even this limited number of slots.

We have no indication that slots at DCA will be returned to the FAA after the expiration of the slot usage waiver period, instituted in April 2003. (Temporary return of peak-hour slots for non-use during this waiver period has been minimal.) Some AIR-21 slot exemptions were recalled for non-use, however, their reallocation process is not done by lottery. We find it would be

inconsistent with the regulatory allocation regime to indefinitely postpone the lottery. Consequently, the FAA will proceed with the lottery on August 12, 2003.

4. Use of Commuter Equipment in Air Carrier Slots

MWAA and the ACAA express concern over the increasing incidence with which air carrier slots are operated by carriers using commuter type aircraft that qualify for commuter slots. These parties argue that this practice has resulted in a decline of passenger activity at DCA even as the number of overall operations at the airport has remained relatively constant. MWAA asks that we require air carriers participating in the lottery not only to have aircraft that meet the definition of the equipment that may be operated in this category of slots, but also to have the stated intention to use these slots for operations with the larger aircraft.

A carrier that wishes to participate in a lottery for either air carrier or commuter slots must hold the appropriate FAA operating authority for the slots the operator seeks to select (14 CFR 93.225a(g)). The FAA has interpreted the existing provisions of § 93.225 to limit participation in air carrier lotteries to carriers capable of operating air carrier equipment within the meaning of 14 CFR 93.123(c) (51 FR 21706; June 13, 1986). After air carrier slots have been allocated, a carrier may use smaller aircraft in air carrier slots in accordance with 14 CFR 93.221(c). While we are sympathetic to MWAA's position, the FAA cannot limit or condition approval on participation in the air carrier lottery in the manner suggested by MWAA, without amending the regulation.

5. "Mandatory Participation"

ATA complains that the FAA plans to include all carriers that currently operate at DCA in the lottery, even if those carriers did not actually notify the FAA that they want to participate in the lottery. ATA says this plan constitutes a "mandatory participation" regime that is not in accordance with either the regulations or the lottery notice.

This argument reflects a misunderstanding of the rule. The rule expressly provides that "participation in a lottery is *open* to each U.S. air carrier or commuter operating at the airport * * * as well as where provided for by bilateral agreement" (14 CFR 93.225(e) (emphasis added)). Participation is not mandatory. As a matter of procedure, the FAA includes every carrier at the airport as eligible to participate and each carrier receives a rank order. These