Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–28549; Airspace Docket No. 07–ASO–15.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal aviation Regulations (14 CFR Part 71) to establish Class E5 airspace at Lady Lake, FL. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [AMENDED]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Lady Lake, FL [NEW]

Lady Lake Hospital Point In Space Coordinates
(Lat. 28°57′36″ N, long. 81°57′50″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the point in space (lat. 28°57′36″ N, long. 81°57′50″ W) serving Lady Lake Hospital.

* * * * *

Issued in College Park, Georgia, on June 26, 2007.

Kathy Kutch,

Acting Group Manager, System Support, Eastern Service Center.

[FR Doc. 07–3344 Filed 7–9–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 250

[OST Docket No. OST–01–9325]

RIN 2105–AD63

Oversales and Denied Boarding Compensation

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Department of Transportation (DOT or Department) is seeking comment on whether it should amend its rules relating to oversales and denied boarding compensation to cover flights operated with aircraft seating 30 through 60 passengers, which are currently exempt from the rule, to increase the maximum required compensation, and to make other changes. Such changes in the rule, if undertaken, would be intended to maintain consumer protection commensurate with developments in the aviation industry.

DATES: Comments are requested by September 10, 2007. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number OST–01–9325 by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

- *Fax:* (202) 493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, 1200 New Jersey Ave. SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 (ground level), 1200 New Jersey Ave. SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number OST–01–9325 or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided.

Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

The Department of Transportation is in the process of moving to a new building. It is anticipated that the Docket Office will move to its new location before the end of the comment period. We do not yet have the complete address for the Docket Office in the Department's new building. The Department will publish a **Federal Register** notice when this information becomes available. The address change will not affect electronic submissions, and mail submissions will be forwarded to the new address.

FOR FURTHER INFORMATION CONTACT: Tim Kelly, Aviation Consumer Protection Division, Office of the General Counsel, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–5952 (voice), 202–366–5944 (fax), *tim.kelly@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

Part 250 establishes minimum standards for the treatment of airline passengers holding confirmed reservations who are involuntarily denied boarding (''bumped'') from their flight because it has been oversold. In most cases, bumped passengers are entitled to compensation. Part 250 contains limits on the amount of compensation that is required to be provided to passengers who are bumped involuntarily. The rule does not apply to flights operated with aircraft with a design capacity of 60 or fewer passenger seats.

In adopting the current rules, the Civil Aeronautics Board (the Department's predecessor in aviation economic regulation) recognized the inherent unfairness in carriers selling ''confirmed'' ticketed reservations for a flight yet selling more of those reservations for the flight than they have seats. Therefore, the CAB sought to reduce the number of passengers involuntarily denied boarding to the smallest practicable number without prohibiting deliberate overbooking or interfering unnecessarily with the carriers' reservations practices. Air travelers receive some benefit from controlled overbooking because it allows flexibility in making and canceling reservations as well as buying and refunding tickets. Overbooking makes possible a system of confirmed reservations that can almost always be honored. It allows airlines to fill more seats, reducing the pressure for higher fares, and makes it easier for people to obtain reservations on the flights of their choice. On the other hand, overbooking is the major cause of oversales, and the people who are inconvenienced are not those who do not show up for their flights, but passengers who have conformed to all carrier rules. The current rule allocates the risk of being denied boarding among travelers by requiring airlines to solicit volunteers and use a boarding priority procedure that is not unjustly discriminatory.

In 1981, the CAB amended the oversales rule to exclude from the rule all operations using aircraft with 60 or fewer passenger seats. (ER–1237, 46 FR 42442, August 21, 1981.) At the time of that proceeding, the impact of the rule on carriers operating small aircraft was found to be significant. If a passenger was denied boarding on a typical small aircraft short-haul flight and subsequently missed a connection to a long-haul flight, the short-haul carrier usually had to compensate the passenger in an amount equal to twice the value of the passenger's remaining ticket coupons to his or her destination, subject to a maximum limitation. For example, if the short-haul fare was $50 and the connecting long-haul fare was $500, the first carrier often had to pay the passenger denied boarding compensation in an amount far greater than $50, depending on whether alternate transportation could be arranged to arrive within a short time, despite the minimal fare that the first carrier received for its flight. The problem was exacerbated by the fact that most commuter airline flights at the time were on small turboprop and piston engine aircraft which were affected by weight limitations in high temperature/humidity conditions to a greater extent than jets and, therefore, might require bumping even when the carrier did not book beyond the seating capacity of the aircraft.

Part 250 has tended to reduce passenger inconvenience and financial loss occasioned by overbooking without imposing heavy burdens on the airlines or significant costs on the traveling public. In focusing only on the treatment of passengers whose boarding is involuntarily denied, we have avoided regulating carriers' reservations practices. Overall, it appears that the rule has served a useful purpose; however, in light of recommendations from various sources, including Congress and major airlines themselves, we are seeking comment on whether certain aspects of the rule may be outdated and should be revised. In view of the passage of time since the rule was last revised and changes in commercial air travel over that time, we are in this advanced notice of proposed rulemaking seeking comment on whether we should increase the compensation maximums and extend the rule to cover a larger range of aircraft. The Department is also seeking comment on certain other changes of lesser impact that are under consideration.

The Current Denied Boarding Compensation Rule

The purpose of the Department's denied boarding compensation rule is to balance the rights of passengers holding reservations with the desirability of allowing air carriers to minimize the adverse economic effects of ''no-shows'' (passengers with reservations who cancel or change their flights at the last minute). The rule sets up a two-part system. The first encourages passengers to voluntarily relinquish their confirmed reservations in exchange for compensation agreed to between the passenger and the airline. The second requires that, where there is an insufficient number of volunteers, passengers who are bumped involuntarily be given compensation in an amount specified in the rule. In addition, the Department requires carriers to give passengers notice of those procedures through signs, and written notices provided with tickets and at airports, and to report the number of passengers denied boarding to the Department on a quarterly basis.

The Civil Aeronautics Board (CAB) first required payments to bumped passengers 45 years ago. In Order No. E–17914, dated January 8, 1962, the CAB conditioned its approval of ''no-show penalties'' for confirmed passengers on a requirement that bumped passengers be compensated. An oversales rule was adopted in 1967 as 14 CFR Part 250

(ER–503, 32 FR 11939, August 18, 1967) and revised substantially in 1978 and 1982 after comprehensive rulemaking proceedings (ER–1050, 43 FR 24277, June 5, 1978 and ER–1306, 47 FR 52980, November 24, 1982, respectively). The key features of the current requirements are as follows:

(1) In the event of an oversold flight, the airline must first seek volunteers who are willing to relinquish their seats in return for compensation offered by the airline.

(2) If there are not enough volunteers, the airline must use non-discriminatory procedures ('boarding priorities') in deciding who is to be bumped involuntarily.

(3) Most passengers who are involuntarily bumped are eligible for denied boarding compensation, with the amount depending on the price of each passenger's ticket and the length of his or her delay. If the airline can arrange alternate transportation that is scheduled to arrive at the passenger's destination within 2 hours of the planned arrival time of the oversold flight (4 hours on international flights), the compensation equals 100% of the passenger's one-way fare to his or her next stopover or final destination, with a $200 maximum. If the airline cannot meet the 2 (or 4) hour deadline, the compensation rate doubles to 200% of the passenger's one-way fare, with a $400 maximum. This compensation is in addition to the value of the passenger's ticket, which the passenger can use for alternate transportation or have refunded if not used.

(4) There are several exceptions to the compensation requirement. Compensation is not required if the passenger does not comply fully with the carrier's contract of carriage or tariff provisions regarding ticketing, reconfirmation, check-in, and acceptability for transportation; if an aircraft of lesser capacity has been substituted for operational or safety reasons; if the passenger is offered accommodations in a section of the aircraft other than that specified on the ticket, at no extra charge (a passenger seated in a section for which a lower fare is charged is entitled to an appropriate refund); or if the carrier arranges comparable transportation, at no extra cost to the passenger, that is planned to arrive at the passenger's next stopover or final destination not later than 1 hour after the planned arrival time of the passenger's original flight.

(5) A passenger who is denied boarding involuntarily may refuse to accept the denied boarding compensation specified in the rule and seek monetary or other compensation through negotiations with the carrier or by private legal action.

(6) Carriers must post counter signs and include notices with tickets to alert travelers of their overbooking practices and the consumer protections of the rule. In addition, they must provide a detailed written notice explaining their oversales practices and boarding priority rules to each passenger involuntarily denied boarding, and to any other person requesting a copy.

(7) Every carrier must report, on a quarterly basis, data on the number of denied boardings on flights that are subject to Part 250.

Issues

The Maximum Amount of Denied Boarding Compensation

It has been over 20 years since the rule was last revised, and the existing $200 and $400 limits on the amount of required denied boarding compensation for passengers involuntarily denied boarding have not been raised since 1978. The Department has received recommendations from various sources that it reexamine its oversales rule and, in particular, the maximum amounts of compensation set forth in the rule. In this regard, in a sense-of-the-Senate amendment to the Department of Transportation and Related Agencies Appropriations Act of 2000, Public Law 106–69, the Senate noted its sense that the Department should amend its denied boarding rule to double the applicable compensation amounts. Congress has also proposed legislation to require the Department to review the rule's maximum amounts of compensation. (See S.319, reported in the Senate April 26, 2001.) In addition, in his February 12, 2000, Final Report on Airline Customer Service Commitments, the Department's Inspector General (IG) recommended, among other things, that the airlines petition the Department to increase the amount of denied boarding compensation payable to involuntarily bumped passengers. In response thereto, and citing the length of time since the maximum amounts of denied boarding compensation were last revised, the Air Transport Association (the trade association of the larger U.S. airlines) filed a petition with the Department on April 3, 2001, requesting that a rulemaking be instituted to examine those amounts.[1] (Docket OST–01–9325). Most recently, the IG on November 20, 2006, issued his ''Report on the Follow-up Review Performed of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment'' in which the IG recommended that we determine whether the maximum DBC amount needs to be increased and whether the oversale rule needs to be extended to cover aircraft with 31 through 60 seats.

The CAB's decision in 1978 to double the maximum amount of denied boarding compensation to $400 was based on its determination that the previous maximum was inadequate to redress the inconvenience to bumped passengers and that the increase would provide a greater incentive to carriers to reduce the number of persons involuntarily bumped from their flights. Following promulgation of the rule in 1978 requiring the solicitation of volunteers and doubling the compensation maximum, the overall industry rate of involuntary denied boardings per 10,000 enplanements in fact declined for many years. Until the most recently published report, the rate was slightly below the level of involuntary bumping reported 10 years ago. In this regard, 55,828 passengers were involuntarily bumped from their flights in 2006 on the 18 largest U.S. airlines (carriers whose denied boarding rate is tracked in the Department's monthly Air Travel Consumer Report[2]). Additional passengers were bumped by other airlines, whose denied boarding rate is not tracked in this report but whose bumped passengers are subject to the maximum compensation rates in the DOT rule. The annual rate of involuntary denied boardings per 10,000 enplanements in 2006 for the carriers tracked in the report is the highest since 2000, and that trend continues in the rate for the first quarter of 2007. Involuntary denied boarding rates from the Air Travel Consumer Report for the past ten years appear below:

Year	Invol. DB's per 10,000 passengers
1997	1.06
1998	0.87
1999	0.88
2000	1.04

[1] It is important to note that the maximum involuntary denied boarding amounts set forth in Part 250 are amounts below which carriers cannot set their maximum compensation. Airlines have been and continue to be free, as a competitive tool, to set their maximum compensation levels at amounts greater than that provided in the Department's rule. We are not aware of any carrier that has elected to do so.

[2] This report tracks the denied boarding rate of air carriers that each account for at least 1% of domestic scheduled-service passenger revenues for the previous year. Consequently, the list of carriers whose performance is tracked in this report can change from year to year.

Year	Invol. DB's per 10,000 passengers
2001	0.82
2002	0.72
2003	0.86
2004	0.86
2005	0.89
2006	1.01
1st qtr. 2007	1.45

Likely contributing to this upward trend is the fact that flights are fuller: from 1978 to 2006 the system-wide load factor (percentage of seats filled) for U.S. airlines increased from 61.5% to 79.2%, with most of this increase taking place since 1994.

With respect to the denied boarding compensation limits, inflation has eroded the $200 and $400 limits that were established in 1978. Using the Consumer Price Index for All Urban Consumers (CPI–U, the basis for the inflation adjustor in the Department's domestic baggage liability rule, 14 CFR 254.6), $400 in 1978 is worth $128 as of February 2007. (See the Bureau of Labor Statistics Inflation Calculator at *http://www.bls.gov/cpi/home.htm*.) Stated another way, in order to have the same purchasing power today as in 1978, the $400 limit would need to be $1,248 in February 2007.

At the same time, however, air fares have not risen to the same extent as the CPI–U. While historical comparisons of air fares are problematic, one frequently-used index for changes in air fares is passenger yield. Yield is passenger revenue divided by revenue passenger miles—the revenue collected by airlines for carrying one passenger for one mile. According to the Air Transport Association, system-wide nominal yield (*i.e.*, not adjusted for inflation) for all reporting U.S. air carriers was 8.29 cents per revenue passenger mile in 1978 and 12.00 cents per revenue passenger mile in 2005 (latest available data at this writing)—an increase of 44.8%.

Applying the CPI–U calculation to the current $200 and $400 DBC limits that were established in 1978 would produce updated limits of $624 and $1,248 respectively. However, applying the 44.8% increase in passenger yield to the current $200 and $400 limits would produce updated limits of $290 and $580 respectively. The $200 and $400 figures in Part 250 are merely limits on the amount of denied boarding compensation; the actual compensation rate is 100% or 200% of the passenger's fare (depending on how long he or she was delayed by the bumping). The Department requests comment on whether the maximums in the rule should be increased so that that a higher percentage of denied boarding compensation payments are not affected.

Consequently, we are seeking comment on five options with respect to the limits on the amount of denied boarding compensation, as well as any other suggested changes:

(1) Increase the $200/$400 limits to approximately $624 and $1,248 respectively, based on the increase in the CPI as described above;

(2) Increase the $200/$400 limits to approximately $290 and $580 respectively, based on the increase in passenger yield as described above;

(3) Double the maximum amounts of denied boarding compensation from $200 to $400 and from $400 to $800;

(4) Eliminate the limits on compensation altogether, while retaining the 100% and 200% calculations;

(5) Take no action, *i.e.* leave the current $200/$400 limits in place.

We also seek comment on whether we should amend the rule to include a provision for periodic adjustments to the denied boarding compensation maximums, as is required by our baggage liability rule (14 CFR Part 254). As in the case of the baggage rule, the Department could review the CPI–U every two years, and adjust the maximum amounts accordingly. The new maximum DBC amounts could be rounded to the nearest $50, for simplicity. Any increase would be announced by publishing a notice in the **Federal Register**. (Since this would be merely a mathematical computation, the Department would not need to first publish a proposed rule to effectuate an increase.) The new maximum compensation amounts and revised notice requirements under the rule would be effective a specified amount of time after publication in the **Federal Register** (*e.g.*, perhaps 90 days). We request comment on this approach.

It is important to note that none of these proposals would necessarily require carriers to offer more compensation to the great majority of passengers affected by overbooking because most such situations are handled through voluntary compensation, typically at the departure gate. Nor would they affect the significant proportion of involuntarily bumped passengers—possibly the majority—with fares low enough that the formula for involuntary denied boarding compensation would not reach the proposed new limits. Finally, even with respect to involuntarily bumped passengers whose denied boarding compensation might increase with higher maximums, many such passengers accept a voucher for future travel on that airline (usually in a face amount greater than the legally required denied boarding compensation) in lieu of a check. Carriers make such offers because vouchers do not have the same value as cash compensation given high rates of non-use and inventory-management restrictions.

As indicated earlier, in 2006 over 55,000 passengers were denied boarding involuntarily by the 18 carriers that are tracked in the Department's Air Travel Consumer Report (*i.e.*, the 18 largest U.S. air carriers). We assume that an increase in the regulatory maximums would result in an increase in amounts paid to such passengers but request comment on the likely financial impact, including both the direct impact (increased cash compensation), and the indirect impact resulting from either lower overbooking rates or higher voluntary compensation levels.

The Small-Aircraft Exclusion

The Oversales rule originally issued by the CAB did not contain an exclusion for small aircraft. In 1981 that agency amended Part 250 to exclude operations with aircraft seating 60 or fewer passengers The CAB determined that without this exclusion the denied boarding rule imposed a proportionately greater financial and operational burden on these small-aircraft operators than on carriers operating larger aircraft. In addition, because of the lower revenues generated by these small aircraft, the financial burden of denied boarding compensation placed certificated carriers operating aircraft with 60 or fewer seats at a competitive disadvantage relative to commuter carriers (non-certificated) operating similar equipment and on similar routes which were not subject to Part 250. The number of flights that was excluded by the amendment was small and most such flights were operated by small carriers that operated small aircraft exclusively. Part 250 currently applies to certificated U.S. carriers and foreign carriers holding a permit, or exemption authority, issued by the Department, only with respect to operations performed with aircraft seating more than 60 passengers.

While largely exempt from the denied boarding rule, the regional airline industry has experienced tremendous growth. According to the Regional Airline Association,[3] passenger enplanements on regional carriers have increased more than 100% since 1995, and regional airlines now carry one out of every five domestic air travelers in

[3] See *http://www.raa.org*.

the United States. RAA states that Revenue Passenger Miles on regional carriers have increased forty fold since 1978 and increased 17 percent from 2004 to 2005 alone. Regional jets have fueled much of the recent growth. According to RAA, from 1989 to 2004 the number of turbofan aircraft (regional jets) in the regional-airline fleet increased from 54 to 1,628 and regional jets now make up 59% of the regional-carrier fleet. Although many regional jets have more than 60 passenger seats and thus are subject to Part 250, the ubiquitous 50-seat regional jet models have driven much of the growth of the regional-carrier sector. Moreover, most regional jets are operated by regional carriers affiliated with a major carrier via a code-share agreement and/or an equity stake in the regional carrier. RAA asserts that 99% of regional airline passengers traveled on code-sharing regional airlines in 2005.

DOT statistics demonstrate the growth in traffic on flights operated by aircraft with 31 through 60 seats. From the 4th quarter of 2002 (earliest available consistent data) to the 4th quarter of 2005, the number of U.S.-carrier flights using such aircraft increased by 22% while the number of flights using aircraft seating more than 60 passengers declined by 0.8%. During the same period, the number of passengers carried on flights using aircraft with 31 through 60 seats increased by 40.8% while the number of passengers carried on flights using aircraft seating more than 60 passengers increased by only 8.3%.[4]

The increased use of jet aircraft in the 30-to-60 seat sector accompanied by the increase in the ''branding'' of those operations with the codes and livery of major carriers has blurred the distinction between small-aircraft and large-aircraft service in the minds of many passengers. There would seem to be little, if any, difference to a consumer bumped from a small aircraft or a large aircraft—the effect is the same. The Department therefore is seeking comment on whether we should extend the consumer protections of Part 250 to these flights (including flights of non-certificated commuter air carriers) and thus scale back the small-aircraft exception that was added to the rule in 1981. Specifically, the Department seeks comment on whether it should reduce the seating-capacity exception for small aircraft from ''60 seats or less'' to ''less than 30 seats'' and add commuter carriers to the list of carriers to which Part 250 applies. Since the Department is aware that many regional carriers already voluntarily provide DBC to passengers bumped from their 30-to-60-seat aircraft, commenters are specifically asked to include in their presentations data regarding oversales and denied boarding compensation in operations with aircraft having 30 through 60 seats by both certificated and non-certificated carriers, to the extent it is available.

Application of the Denied Boarding Compensation Rule

Boarding priority rules determine the order in which various categories of passengers will be involuntarily bumped when a flight is oversold. Part 250 states that boarding priority rules must not provide any undue or unreasonable preference. The IG in his 2000 report identified possible ambiguities in the Department's requirements regarding boarding priority rules, and he recommended that we provide examples of what we consider to be an undue or unreasonable preference. The IG was also concerned that the amounts of compensation provided passengers who are involuntarily bumped was in some cases less than the face value of vouchers given to passengers who volunteer to give up their seats. He therefore recommended, in addition to raising the maximum compensation amounts for involuntarily bumped passengers, as discussed above, that we require carriers to disclose orally to passengers, at the time the airline makes an offer to volunteers, what the airline is obligated to pay passengers who are involuntarily bumped.

Boarding Priorities

Our boarding priority requirement was designed to give carriers the maximum flexibility to set their own procedures at the gate, while affording consumers protection against unfair and unreasonable practices. Thus, the rule (1) Requires that airlines establish their own boarding priority rules and criteria for oversale situations consistent with Part 250's requirement to minimize involuntary bumpings and (2) states that those boarding priority rules and criteria ''shall not make, give, or cause any undue or unreasonable preference or advantage to any particular person or subject any particular person to any unjust or unreasonable prejudice or disadvantage in any respect whatsoever.'' (14 CFR 250.3(a)).

Although we are not aware of any problems resulting from this rule as written, we agree that guidance regarding this provision would be useful to the industry and public alike. Accordingly we seek comment on whether the Department should list in the rule, as examples of permissible boarding priority criteria, the following:

- A passenger's time of check in (first-come, first-served);
- Whether a passenger has a seat assignment before reaching the departure gate for carriers that assign seats;
- A passenger's fare;
- A passenger's frequent flyer status; and
- Special priorities for passengers with disabilities, within the meaning of 14 CFR Part 382, or for unaccompanied minors.

We wish to make clear that the five examples proposed here are illustrative only, and not exclusive. We do not intend by these examples, if incorporated into Part 250, to foreclose the use by carriers of other boarding priorities that do not give a passenger undue preference or unjustly prejudice any passenger.

Notice to Volunteers

Accurately notifying passengers of their rights in an oversale situation is important, so that they can make an informed decision. Part 250 already contains requirements designed to accomplish that objective and to protect passengers from being involuntarily bumped if they have not been accorded adequate notice. Section 250.2b(b) prohibits a carrier from denying boarding involuntarily to any passenger who was earlier asked to volunteer without having been informed about the danger of being denied boarding involuntarily and the amount of compensation that would apply if that occurred. While this provision would appear to provide adequate incentive for airlines to provide complete notice to passengers who are asked to volunteer, and to protect those passengers not provided such notice, we see some merit in making this notice requirement more direct. Accordingly, we seek comment on whether we should amend section 250.2b to affirmatively require that, no later than the time a carrier asks a passenger to volunteer, it inform that person whether he or she is in danger of being involuntarily bumped and, if so, the compensation the carrier is obligated to pay.

Reporting

Section 250.10 of the current rule requires all carriers that are subject to Part 250 to file a quarterly report (Form 251) on oversale activity. Due to staffing limitations, for many years the only carriers whose oversale data have been routinely reviewed, entered into an automated system, or published by the

[4] DOT Form 41, schedule T–100.

Department are the airlines that are subject to the on-time performance reporting requirement. Those are the U.S. carriers that each account for at least 1 percent of total domestic scheduled-service passenger revenues—currently 18 airlines (see 14 CFR 234). The Department's monthly Air Travel Consumer Report provides data for these airlines in four areas: on-time performance, baggage mishandling, oversales, and consumer complaints. The oversale data for that report are derived from the Form 251 reports mandated by Part 250. The data in the Form 251 reports filed by the other carriers is not keypunched, summarized, published, or routinely reviewed.

The Department seeks comment on whether it should revise section 250.10 to relieve all carriers of this reporting requirement except for the airlines whose data is being used, *i.e.*, U.S. carriers that are required to report on-time performance under Part 234. Those airlines account for the vast majority of domestic traffic and bumpings, so the Department will still receive adequate information and the public will continue to have access to published data for the same category of carriers as before. Such action would be consistent with the Paperwork Reduction Act and the Regulatory Flexibility Act. It would also result in consistent carrier reporting requirements for all four sections of the Air Travel Consumer Report.

Regulatory Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget under that Order. A preliminary discussion of possible costs and benefits of the proposed rule is presented above.

B. Executive Order 13132 (Federalism)

This Advance Notice of Proposed Rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This notice does not propose any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because none of the options on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. Certain options on which we are seeking comment may impose new requirements on certain small air carriers, but few of them are small businesses as defined by the Small Business Administration and the Department believes that the economic impact would not be significant. All air carriers have control over the extent to which the rule impacts them since they control their own overbooking rates. Carriers can mitigate the cost of denied boarding compensation by obtaining volunteers who are willing to give up their seat for less compensation than what the rule mandates for passengers who are bumped involuntarily, and by offering travel vouchers in lieu of cash compensation. The vast majority of the traffic that would be covered by the oversales rule for the first time as a result of the options on which we seek comment is carried by airlines that are owned by or affiliated with a major carrier or its parent company. As noted below, one of the options on which we are seeking comment relieves an existing reporting requirement for all but the largest carriers. The monetary costs of most of these options result in a corresponding dollar-for-dollar monetary benefit for members of the public who are bumped from their confirmed flights and for small businesses that employ some of them. The options provide an economic incentive for carriers to use more efficient overbooking rates that result in fewer bumpings while still allowing the carriers to fill seats that would go unsold as the result of ''no-show'' passengers. Therefore, the options on which we are seeking comment are not expected to have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The options on which we are seeking comment impose no new information reporting or record keeping necessitating clearance by the Office of Management and Budget. They relieve a reporting requirement for many carriers that are currently subject to that requirement. One required handout that airlines distribute to bumped passengers would require minor revisions.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

Issued this 3rd day of July, 2007, at Washington, DC.

Andrew B. Steinberg,

Assistant Secretary for Aviation and International Affairs.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405 and 416

[Docket No. SSA 2007–0032]

RIN 0960–AG47

Amendments to the Quick Disability Determination Process

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to amend our regulations to extend the quick disability determination process (QDD), which is operating now in the Boston region, to all of the State disability determination services. We also propose to remove from the QDD process the existing requirements that each State disability determination service maintain a separate QDD unit and that each case referred under QDD be adjudicated within 20 days. These proposed actions stem from our continuing effort to improve our disability adjudication process.

DATES: To be sure that we consider your comments, we must receive them no later than August 9, 2007.

ADDRESSES: You may give us your comments by: Internet through the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830; or letter to the Commissioner