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 or impose substantial direct compliance costs on them, 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. The regulatory initiatives discussed in this ANPRM would have some impact on some small entities but we do not believe that it would have a significant impact on a substantial number of small entities. We invite comment to facilitate our assessment of the potential impact of these initiatives on small entities.

E. Paperwork Reduction Act

The ANPRM proposes several new collections of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (49 U.S.C. 3501 *et seq.*) The ANPRM solicits comment on requiring certificated and commuter airlines that operate domestic scheduled passenger service using any aircraft with more than 30 passenger seats to retain for two years the following information about any ground delay that triggers their contingency plan or lasts at least four hours: (1) The length of the delay, (2) the cause of the delay, and (3) actions taken to minimize hardships for passengers. The Department plans to use this information to conduct reviews of incidents involving long delays on the ground and to identify any trends and patterns that may develop. The ANPRM further proposes to require the collection of flight delay data from certain U.S. and foreign air carriers regarding their flights to and from the U.S. and also to require certain U.S. carriers to compile and publish complaint information. We invite comments regarding any aspect of these information collections, including the following: (1) The necessity and utility of the information collection, (2) the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information collected, and (4) ways to minimize the collection burden without reducing the quality of the information collected.

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 15th day of November, 2007, at Washington, DC.

Michael W. Reynolds,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 07–5760 Filed 11–15–07; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 250

[Docket No. DOT–OST–01–9325]

RIN No. 2105–AD63

Oversales and Denied Boarding Compensation

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Department of Transportation (DOT or Department) is proposing to amend its rules relating to oversales and denied boarding compensation to increase the limits on the compensation paid to ''bumped'' passengers, to cover flights by certain U.S. and foreign air carriers operated with aircraft seating 30 to 60 passengers, which are currently exempt from the rule, and to make other changes. Such changes in the rule, if adopted, would be intended to maintain consumer protection commensurate with developments in the aviation industry.

DATES: Comments are requested by January 22, 2008. Late-filed comments will be considered to the extent practicable.

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

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

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

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

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 on certain U.S. and foreign carriers who are involuntarily denied boarding (''bumped'') from their flights because they have 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 original rule in the 1960's, the Civil Aeronautics Board (the Department's predecessor in aviation economic regulation) recognized the inherent unfairness in carriers selling more ''confirmed'' ticketed reservations for a 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 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 proposing to revise certain aspects of the rule that may be outdated. In view of the passage of time since the rule was last revised and changes in commercial air travel over that time, we are seeking comment on whether we should increase the compensation maximums and extend the rule to cover a broader range of aircraft, or whether we should adopt other more fundamental changes to the rule. 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.

Discussion

On July 10, 2007, the Department published an Advance Notice of Proposed Rulemaking (ANPRM) seeking comment on several issues associated with the oversales rule. We received over 1,280 comments in response to the ANPRM. About 20 of the comments were from organizations, with the rest from individuals. Most of the comments from the organizations, including those from air carriers and organizations representing air carriers, expressed the opinion that the rule serves a useful purpose and had benefited the industry and the public. Many of the individual comments did not express an opinion on the specific issues discussed in the ANPRM but rather urged that overbooking be banned, described their own negative air travel experiences, or commented on other issues (e.g., flight delays).

In this Notice of Proposed Rulemaking we are not proposing to ban overbooking as many individual commenters urged. As indicated in the section above entitled ''The Current Denied Boarding Compensation Rule,'' air travelers receive some benefit from controlled overbooking. 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. We are not aware of levels of consumer harm that require such a sweeping solution at this time, and banning overbooking is beyond the scope of our objectives in this proceeding. We believe that the additional oversale protections that we are proposing here will address the principal issues related to this regulation that require action by the Department.

The issues that were presented in the ANPRM and a summary of the comments appear below.

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. Legislation has also been introduced in Congress 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 DOT–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 denied boarding compensation (DBC) amount needs to be increased and whether the oversales 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 amendment to 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 2007, the rate for the past decade has been 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 19 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 2007 to date. Involuntary denied boarding rates from the Air Travel Consumer Report for the past ten years and 2007 to date appear below:

Year	Invol. DB's per 10,000 passengers
1997	1.06
1998	0.87
1999	0.88
2000	1.04
2001	0.82
2002	0.72
2003	0.86
2004	0.86
2005	0.89
2006	1.01
2007 through 3rd quarter	1.21

(The table above has been updated from the one published in the ANPRM to include data for 2007 to date.)

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. The most-recently reported monthly load factors have hovered in the mid-80% range.

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), the July 2007 ANPRM noted that

[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. With the exception of JetBlue Airways, whose recently changed policy is described below, 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.

$400 in 1978 was worth $128 as of February 2007 ($125 as of October 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, $400 would have needed to be $1,248 in February 2007 and $1,279 as of October 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 the time of the ANPRM)—an increase of 44.8%. The figure for 2006, which became available after the ANPRM was published, is 12.69 cents, an increase of 53.1% from the 1978 figure.

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 at the time of the ANPRM. However, the ANPRM noted that applying the 44.8% increase in passenger yield through 2005 to the current $200 and $400 limits would produce updated limits of $290 and $580 respectively ($306 and $612 if the 2006 yield figure is used). It is important to note that 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). In the ANPRM, the Department requested comment on whether the maximums in the rule should be increased so that that a higher percentage of denied boarding compensation payments are not ''capped'' by the limits.

Consequently, in the ANPRM we sought 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.

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.

Comments

The vast majority of the comments in the docket are from individuals (as opposed to organizations). On the issue of the denied boarding compensation monetary limits, 79 of these individual commenters favored option #1—increase these limits to approximately $624 and $1,248 based on the increase in the CPI. 20 of the individual commenters were in favor of option #3, doubling the current limits to $400 and $800. Another 146 individual commenters expressed the opinion that the current limits should be increased but did not cite a specific amount. Two individual commenters favored an increase in the limits based on the increase in passenger yield (air fares), and three said that the limits should be eliminated (option #4). None of the individual comments indicated that the Department should take no action (option #5).

In its comments, the Air Transport Association (which represents the larger U.S. airlines) presented arguments it said justify the practice of overbooking and keeping compensation level as they now are. ATA noted that on most oversold flights there are enough volunteers and consequently no involuntary denied boardings. The organization stated that the real cost of air fares (i.e., adjusted for inflation) has fallen since the denied boarding compensation limits were last adjusted. According to ATA, the current caps are likely to exceed the required compensation levels (i.e., 100% or 200% of the bumped passenger's fare) in the large majority of cases. ATA believes that no adjustment in the compensation caps is warranted at this time, but if there is an adjustment, it should be based on the change in yield (air fares) because, the association asserted, denied boarding compensation amounts have always been tied to the passenger's fare.

The International Air Transport Association, which represents international airlines worldwide, supported ATA's position that there should be no change in the limits. The Regional Airline Association shared this view as well. Like ATA, RAA went on to say that if the Department does adjust the limits it should do so based on the air fare/yield index rather than the CPI because denied boarding compensation has always been tied to airline ticket prices. The Association of Asia Pacific Airlines supported an increase in the caps based on the fare/yield index, for the same reasons cited by ATA and RAA.

The National Air Carrier Association commented that no change in the compensation limits is necessary. If the Department were to make a change, this organization said that it would reluctantly support an increase based on fares/yields (option #2) or eliminating the caps altogether (option #4). NACA noted that adopting option #4 would remove the need for periodic adjustments in the caps, which was another issue on which the ANPRM had sought comment.

The American Society of Travel Agents states that adjusting the compensation limits based on the CPI is workable but acknowledges a disconnect between air fares and the CPI. Consequently, ASTA favors doubling the current limits, to strike a balance between the CPI and yield options and because of the simplicity of this approach.

The Airports Council International—North America also favors doubling the caps, to $400 and $800. ACI–NA was concerned that the CPI option would set a limit that is inappropriately high while a limit based on air fares would capture only passengers with an ''average'' fare.

Qantas Airways and Qatar Airways supports an increase on the caps that is

based on fares/yields. Air Pacific, JetBlue Airways, and Air Tahiti Nui oppose any increase, with the latter carrier emphasizing the industry's costs and slim profits. JetBlue, which notes that it does not intentionally oversell flights, points out that when it must unexpectedly deny boarding involuntarily, it pays the passenger $1,000—considerably more than the current regulatory formulas and limits and more than most of the proposed limits. JetBlue urges the Department to allow carrier competition to govern denied boarding compensation limits in this manner.

The International Airline Passengers Association advocates option #3, doubling the current limits. Like other commenters, it submits that air fares are not generally tied to inflation.

The Air Crash Victims Families Group advocated increasing the compensation limits ''to the standard/value existing at the time the Regulation is put into force'' without specifying a methodology for the update. This group also urged the Department to ban overbooking with respect to prepaid tickets, harmonize its rule with the oversales rule of the European Community, mandate uniform boarding priorities for all carriers, and eliminate the exception to compensation for passengers bumped as a result of substitution of aircraft of lesser capacity.

The Coalition for an Airline Passengers Bill of Rights suggests that the Department mandate denied boarding compensation in a flat amount of $1,000 regardless of the passenger's fare or the length of his/her delay—essentially the JetBlue policy.

As indicated earlier, in 2006 over 55,000 passengers were denied boarding involuntarily by the 19 carriers that were tracked at that time in the Department's Air Travel Consumer Report (i.e., the 17 largest U.S. air carriers and two voluntarily reporting carriers). We assume that an increase in the regulatory maximums would result in an increase in amounts paid to such passengers but we requested 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. Although we received useful general comments, commenters provided very little data supporting the conclusion that any of the increases in denied boarding compensation on which we requested comment would have a significant financial impact on any segment of the industry.

Response to Comments

The Department has decided to propose to amend its oversales rule to double the limits on involuntary denied boarding compensation from $200 to $400 for passengers who are rerouted within two hours (four hours internationally) and from $400 to $800 for passengers who are not rerouted within these timeframes. As many commenters pointed out, there is a significant air-fare component to the denied boarding compensation formula (100%/200% of the bumped passenger's fare), and air fares have risen less than the CPI. As indicated above, system-wide nominal yield (not adjusted for inflation) for all reporting U.S. air carriers, which is a frequently used index for changes in air fares, was 8.29 cents per revenue passenger mile in 1978 and 12.69 cents per revenue passenger mile in 2006, an increase of 53.1%. Nonetheless, we will not propose the ''fares/yield'' option from the ANPRM as the sole method for updating the compensation caps.

Denied boarding compensation is intended in part to compensate for the passenger's inconvenience, lost time, and lost opportunities. The value of these considerations is linked to general inflation as well as to the cost of air fares. Therefore, the arguments of the carrier organizations about the decline in real (i.e., inflation-adjusted) air fares during that period are somewhat off the mark, because consumers live with some of the consequences of denied boarding in today's dollars, not 1978 dollars. As we indicated in the ANPRM, 30 years of inflation have also taken their toll on the value of the existing limits. As noted above, $400 in 1978 is worth $128 today, based on the change in the CPI–U. Therefore, we propose to base part of an increase in the compensation caps on the CPI–U.

By proposing to double the existing limits we would blend these two approaches. The proposed limits fall between the higher figures that would be produced by the CPI option and the lower numbers that would result from the ''fares/yield'' option. We seek comment on this proposal, including any comments and justifications that were not already provided in response to the ANPRM about alternative amounts or methodologies.

Periodic Adjustment of the Limits

In the ANPRM we also requested 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, we stated that 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. We suggested that any increase could be announced by publishing a notice in the **Federal Register** rather than first publishing a proposed rule to effectuate an increase. We requested comment on this approach.

Comments

All 34 of the individuals who commented on this issue believed that the compensation limits should be adjusted on a regular basis.

Many of the comments from organizations noted that denied boarding compensation is based on the bumped passenger's air fare and that air fares have risen more slowly than the CPI–U. RAA in particular stated that CPI can and often does move in the reverse direction of airline ''yields'' (average fares). ATA opposed any periodic adjustment in the compensation caps. ASTA supports periodic adjustment based on the CPI as described in the ANPRM. The Association of Asia Pacific Airlines opposes adding an adjustment mechanism to the rule and recommends amending the caps only when necessary. The Air Crash Victims Families Group and the Coalition for an Airline Passengers Bill of Rights support regular CPI-based adjustment of the caps. The International Airline Passengers Association states that the caps ''should be tied to a periodic review process to enable adjustments if necessary.''

Response to Comments

If the rule is adopted as proposed, we plan to institute a procedure of reviewing the compensation caps every two years. As part of this review, the Department would determine if the compensation caps should be adjusted based on both the CPI and the change in fare yields as we did in proposing the doubling of the caps to $400 and $800 in this NPRM (see above). We are, however, not proposing the approach described in the ANPRM of the periodic adjustment in the compensation caps being automatic (no additional comment period provided). Instead, we plan to institute a de novo rulemaking each time we seek to adjust the DBC maximum amount to allow the public an opportunity to provide input to the Department as to whether there are any reasons (not anticipated at the time of this rulemaking) not to increase the DBC

maximum amounts based on DOT's analysis. We seek comment on the advantages or disadvantages of the Department continually adjusting the denied boarding compensation maximum amounts through notice and comment rulemaking. Also, commenters who think that the proposed two-year period for considering adjustments to the compensation caps is not appropriate, or believe the frequency should be more or less than two years, should explain why and suggest alternate approaches.

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. Thus, 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 the United States. RAA states that revenue passenger miles on regional carriers have increased 40-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 and smaller 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. The ANPRM provided statistics through the fourth quarter of 2005, but information for 2006 has subsequently become available. From the fourth quarter of 2002 (earliest available consistent data) to 4Q 2006 the number of flights using aircraft with 31 through 60 seats increased by 13.5% while the number of flights using aircraft with more than 60 seats rose only 3.4%. The number of passengers carried on flights using aircraft with 31 through 60 seats increased by 34.9% from 4Q 2002 through 4Q 2006, while the number of passengers carried on flights using aircraft with more than 60 seats rose by only 12.1% during that period.[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 sought 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 requested 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 were specifically asked to include in their comments 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.

Comments

All 155 individuals who commented on this issue advocated extending the rule to aircraft with 30 through 60 seats. A couple of these commenters said it should only be extended to aircraft that operate flights in the name of a major carrier. More than half of the 155 individual commenters on this issue said that the rule should also apply to aircraft with fewer than 30 seats.

Among the organizations that commented, ATA urges the Department not to change the current exception for aircraft with 60 or fewer seats. It asserts that these aircraft not only are more susceptible than larger airplanes to unpredictable operational constraints, but that these aircraft often operate at smaller airports where shorter runways can limit capacity on hot days. RAA echoed the latter comment and also quoted from the preamble to the Civil Aeronautics Board's 1981 oversales exemption for aircraft with 60 or fewer seats that acknowledged that these aircraft were ''assuming an increasingly significant role in the national air transportation system'' but concluded that the denied boarding compensation levels in the regulation would be a disproportionate penalty relative to the typical short-haul fare. RAA also noted the costs of complying with the same FAA rules as operators of larger aircraft and the disproportionate cost impact of suggested per-aircraft user fees.

The Air Carrier Association of America (which represents certain low-fare airlines), the American Society of Travel Agents, the Association of Asia Pacific Airlines and JetBlue Airways are in favor of extending the oversales rule to operations using aircraft with 30 through 60 seats for the reasons described in the ANPRM. JetBlue notes that even large aircraft are susceptible to load limits based on heat and altitude, and it asserts that 57% of the flights operated in August 2007 for American, Continental, Delta, Northwest, United and U.S. Airways were on regional jets. [Some of those regional jets no doubt have more than 60 seats and thus are already subject to the oversales rule, but many are not.] ACAA provided data showing that regional jets account for half or nearly half of all departures at most hub airports. It notes that regional jets with more than 60 seats are subject to the rule while those with 60 or fewer seats are not.

Peninsula Airways urges the Department not to extend the rule to

[3] See *www.raa.org.*

[4] DOT Form 41, schedule T–100.

commuter operations solely within the state of Alaska, or in the alternative to expand the rule only to regional jets, e.g., by extending the regulation to aircraft with 35 or more seats rather than 30 or more, thereby continuing to exempt the vast majority of propeller aircraft. Hawaii Island Air recommended that the rule only be extended to 30-through-60 seat aircraft operated by a carrier that also operates large aircraft.

Response to Comments

For the reasons described in the ANPRM, we are proposing to extend the applicability of the oversales rule to flights using aircraft with 30 or more seats. Since the time that the CAB exempted this sector of the industry from the rule in 1981, the vast majority of operations at this level have become affiliated and integrated with the ''brand'' of a major carrier. A higher percentage of these flights than was the case in 1981 are operated with larger aircraft in this under-60 seat exempted range (to a large extent regional jets), and are affected by weather constraints less frequently than aircraft with less than 30 seats. In recent times, aircraft with 30 through 60 seats have been substituted for larger airplanes on numerous routes. The vast majority of the traffic that would be covered by this initiative is carried by airlines that are owned by or affiliated with a major carrier or its parent company. Moreover, a significant amount, if not most, of the service on such flights is provided under a ''fee-for-service'' arrangement, where a major carrier dictates the market, the schedule, and the price of the flight, and the tickets may not even be sold under the regional carrier's code so that the passenger's contract of carriage covering the transportation is solely with the major carrier. In such circumstances, the flights are for all legal and practicable purposes flights of the major carrier, not the regional airline, in which case the major carrier is responsible for providing denied boarding compensation on the flights of the smaller carrier. While we are sensitive to the operational challenges faced by operators of aircraft with 30 through 60 seats, we now believe that consumers who purchase transportation in this aircraft class are entitled to the protections of the oversales rule. Because this is a proposal, however, we invite additional comment on the issue of the seating capacity of the aircraft to which the rule should apply.

Boarding Priorities and Notice to Volunteers

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.

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, in the ANPRM we requested 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 stated in the ANPRM that the five examples proposed here are illustrative only, and not exclusive. We did not intend by these examples to foreclose the use by carriers of other boarding priorities that do not give a passenger undue preference or unjustly prejudice any passenger.

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.

Comments

There were only a handful of individual comments on the issue of boarding priorities; most of them favored the Department's proposal. There was virtually no comment from individuals about the volunteer notice.

Most of the commenters from the airline industry and IAPA stated that it is not necessary to list specific permissible boarding priorities. Some of the industry commenters said that they do not oppose this as long as it's clear that the list is illustrative and does not restrict carriers from having other boarding priorities. (Boarding priorities must be disclosed in the written notice required by section 250.9 of the rule.) The Air Crash Victims Families Group urged the Department to mandate uniform boarding priorities for all carriers. The Coalition for an Airline Passenger Bill of Rights stated that carriers should be required to make

boarding priorities more widely available; it also urges the Department to prohibit boarding priorities that are based on the passenger's fare.

The industry commenters as a group opposed the proposal to provide additional notice to volunteers, stating that it was unduly restrictive. The consumer organizations did not comment on this issue.

Response to Comments

For the reasons articulated in the ANPRM and summarized above, and consistent with the recommendation of the IG, we propose to revise the rule 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, and to list the following examples of permissible boarding priority criteria:

- 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.

As we stated in the ANPRM, we propose that these five examples be illustrative only, and not exclusive.

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 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 20 airlines (see 14 CFR 234). For a current list of these carriers, see the Department's *Air Travel Consumer Report* at *http://airconsumer.ost.dot.gov/reports/index.htm.* This 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.

In the ANPRM the Department requested 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 reporting 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.

Comments

Only four of the individual commenters expressed an opinion on this issue; all four of them favored the Department's proposal. ATA and JetBlue believe that this reporting requirement should be retained. The other industry commenters supported the proposal to eliminate this requirement for all but the ATCT-reported carriers. The consumer organizations did not weigh in on this issue.

Response to Comments

For the reasons articulated in the ANPRM and summarized above, we propose to revise the rule to relieve all carriers of this reporting requirement except for ''reporting carriers'' as defined in 14 CFR 234.2 and any carrier that voluntarily submits data pursuant to section 234.7 of that part. At the present time this is 20 airlines.

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 and in the accompanying Regulatory Evaluation. The Regulatory Evaluation concluded that the benefits of the proposals appear to exceed the costs. A copy of the Regulatory Evaluation has been placed in the docket.

B. Executive Order 13132 (Federalism)

This 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 elements of these proposed rules may impose new requirements on certain small air carriers, but 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. Moreover, a significant amount, if not most, of the service on such flights is provided under a ''fee-for-service'' arrangement, where a major

carrier dictates the market, the schedule, and the price of the flight, and the tickets may not even be sold under the regional carrier's code so that the passenger's contract of carriage covering the transportation is solely with the major carrier. In such circumstances, the flights are for all legal and practical purposes flights of the major carrier, not the regional airline, in which case the major carrier is responsible for providing denied boarding compensation on the flights of the smaller carrier. 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. It is worth noting that one of the options on which we are seeking comment relieves an existing reporting requirement for all but the largest carriers. For all these reasons, I certify that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The provisions that we are proposing impose no new information reporting or recordkeeping 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.

List of Subjects in 14 CFR Part 250

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, we propose to amend 14 CFR part 250 as follows:

PART 250—[AMENDED]

1. The authority citation for part 250 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 413, 417.

2. Section 250.1 is amended by removing the definition of ''large aircraft'' and revising the definition of ''Carrier'' to read as follows:

§ 250.1 Definitions.

* * * * *

Carrier means:

(1) A direct air carrier, except a helicopter operator, holding a certificate issued by the Department pursuant to 49 U.S.C. 41102 or that has been found fit to conduct commuter operations under 49 U.S.C. 41738, authorizing the scheduled transportation of persons; or

(2) A foreign route air carrier holding a permit issued pursuant to 49 U.S.C. 41302, or an exemption from that provision, authorizing the scheduled foreign air transportation of persons.

* * * * *

3. Section 250.2 is revised to read as follows:

§ 250.2 Applicability.

This part applies to every carrier, as defined in § 250.1, with respect to flight segments using an aircraft that has a designed passenger capacity of 30 or more passenger seats, operating in interstate air transportation or foreign air transportation with respect to nonstop flight segments originating at a point within the United States.

4. In § 250.2b paragraph (b) is amended by removing the last sentence and adding a new first sentence to read as follows:

§ 250.2b Carriers to request volunteers for denied boarding.

* * * * *

(b) Every carrier shall advise each passenger solicited to volunteer for denied boarding, no later than the time the carrier solicits that passenger to volunteer, whether he or she is in danger of being involuntarily denied boarding and, if so, the compensation the carrier is obligated to pay if the passenger is involuntarily denied boarding.

5. Section 250.3(b) is added to read as follows:

§ 250.3 Boarding priority rules.

* * * * *

(b) The Department has determined that acceptable boarding priority factors may include, but are not limited to, the following:

(1) A passenger's time of check in;

(2) Whether a passenger has a seat assignment before reaching the departure gate for carriers that assign seats;

(3) The fare paid by a passenger;

(4) A passenger's frequent-flyer status; and

(5) A passenger's disability or status as an unaccompanied minor.

6. Section 250.5(a) is revised to read as follows:

§ 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.

(a) Subject to the exceptions provided in § 250.6, a carrier to whom this part applies as described in § 250.2 shall pay compensation to passengers denied boarding involuntarily from an oversold flight at the rate of 200 percent of the fare (including any surcharges and air transportation taxes) to the passenger's next stopover, or if none, to the passenger's final destination, with a maximum of $800. However, the compensation shall be one-half the amount described above, with a $400 maximum, if the carrier arranges for comparable air transportation [see section 250.1], or other transportation used by the passenger that, at the time either such arrangement is made, is planned to arrive at the airport of the passenger's next stopover, or if none, the airport of the passenger's final destination, not later than 2 hours after the time the direct or connecting flight from which the passenger was denied boarding is planned to arrive in the case of interstate air transportation, or 4 hours after such time in the case of foreign air transportation.

* * * * *

7. Section 250.9(b) is revised to read as follows:

§ 250.9 Written explanation of denied boarding compensation and boarding priorities.

* * * * *

(b) The statement shall read as follows:

Compensation for Denied Boarding

If you have been denied a reserved seat on (name of air carrier), you are probably entitled to monetary compensation. This notice explains the airline's obligation and the passenger's rights in the case of an oversold flight, in accordance with regulations of the *U.S. Department of Transportation.*

Volunteers and Boarding Priorities

If a flight is oversold (more passengers hold confirmed reservations than there are seats available), no one may be denied boarding against his or her will until airline personnel first ask for volunteers who will give up their reservation willingly, in exchange for a payment of the airline's choosing. If there are not enough volunteers, other passengers may be denied boarding involuntarily in accordance with the following boarding priority of (name of air carrier): (In this space the carrier inserts its boarding priority rules or a summary thereof, in a manner to be understandable to the average passenger.)

Compensation for Involuntary Denied Boarding

If you are denied boarding involuntarily, you are entitled to a payment of ''denied boarding compensation'' from the airline unless: (1) you have not fully complied with the airline's ticketing, check-in and reconfirmation requirements, or you are not acceptable for transportation under the airline's usual rules and practices; or (2) you are denied boarding because the flight is canceled; or (3) you are denied boarding because a smaller capacity aircraft was substituted for safety or operational reasons; or (4) you are offered accommodations in a section of the aircraft other than specified in your ticket, at no extra charge (a passenger seated in a section for which a lower fare is charged must be given an appropriate refund); or (5) the airline is able to place you on another flight or flights that are planned to reach your next stopover or final destination within one hour of the planned arrival time of your original flight.

Amount of Denied Boarding Compensation

Passengers who are eligible for denied boarding compensation must be offered a payment equal to their one-way fare to their destination (including connecting flights) or first stopover of four hours or longer, with a $400 maximum. However, if the airline cannot arrange ''alternate transportation'' (see below) for the passenger, the compensation is doubled ($800 maximum). The fare upon which the compensation is based shall include any surcharge and air transportation tax.

''Alternate transportation'' is air transportation (by any airline licensed by DOT) or other transportation used by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's next scheduled stopover of four hours or longer or, if none, the passenger's final destination, no later than 2 hours (for flights between U.S. points, including territories and possessions) or 4 hours (for international flights) after the passenger's originally scheduled arrival time.

Method of Payment

Except as provided below, the airline must give each passenger who qualified for involuntary denied boarding compensation a payment by cash or check for the amount specified above, on the day and at the place the involuntary denied boarding occurs. If the airline arranges alternate transportation for the passenger's convenience that departs before the payment can be made, the payment shall be sent to the passenger within 24 hours. The air carrier may offer free or discounted transportation in place of the cash payment. In that event, the carrier must disclose all material restrictions on the use of the free or discounted transportation before the passenger decides whether to accept the transportation in lieu of a cash or check payment. The passenger may insist on the cash/check payment or refuse all compensation and bring private legal action.

Passenger's Options

Acceptance of the compensation may relieve (name of air carrier) from any further liability to the passenger caused by its failure to honor the confirmed reservation. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other manner.

* * * * *

§ 250.10 [Amended]

8. In the first sentence of § 250.10, the word ''carrier'' is replaced with the phrase ''reporting carrier as defined in 14 CFR 234.2 and any carrier that voluntarily submits data pursuant to section 234.7 of that part.''

9. Section 250.11(a) is revised to read as follows:

§ 250.11 Public disclosure of deliberate overbooking and boarding procedures.

(a) Every carrier shall cause to be displayed continuously in a conspicuous public place at each desk, station and position in the United States which is in the charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers, a sign located so as to be clearly visible and clearly readable to the traveling public, which shall have printed thereon the following statement in boldface type at least one-fourth of an inch high:

Notice—Overbooking of Flights

Airline flights may be overbooked, and there is a slight chance that a seat will not be available on a flight for which a person has a confirmed reservation. If the flight is overbooked, no one will be denied a seat until airline personnel first ask for volunteers willing to give up their reservation in exchange for compensation of the airline's choosing. If there are not enough volunteers, the airline will deny boarding to other persons in accordance with its particular boarding priority. With few exceptions, *including failure to comply with the carrier's check-in deadline (carrier shall insert either ''of ____ minutes prior to each flight segment'' or ''(which are available upon request from the air carrier)'' here),* persons denied boarding involuntarily are entitled to compensation. The complete rules for the payment of compensation and each airline's boarding priorities are available at all airport ticket counters and boarding locations. Some airlines do not apply these consumer protections to travel from some foreign countries, although other consumer protections may be available. Check with your airline or your travel agent.

* * * * *

Issued this 15th day of November, 2007, at Washington, DC.

Michael W. Reynolds,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 07–5761 Filed 11–15–07; 4:15 pm]

BILLING CODE 4910–9X–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141 and 385

[Docket No. RM07–18–000]

Elimination of FERC Form No. 423

November 2, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking, the Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to eliminate the FERC Form No. 423, *Monthly Report of Cost and Quality of Fuels for Electric Plants.* The Commission's infrequent use of the information no longer justifies the burden and cost of collecting it. Conversely, the Energy Information Administration has expressed a need for this information and, upon cessation of the Commission's collection, proposes to collect the information, as part of its newly proposed EIA–923.

DATES: *Comment deadline:* Comments are due December 20, 2007.

ADDRESSES: You may submit comments identified by Docket No. RM07–18–000, by one of the following methods:

- *eFiling:* From the Commission's Web site: *http://www.ferc.gov*, follow the instructions for submitting comments electronically found by selecting eFiling under the Documents & Filing heading.
- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Please refer to the Comment Procedures section for additional information.

FOR FURTHER INFORMATION CONTACT: Lawrence Greenfield (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426,