information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2007–08 fiscal period began on August 1, 2007, and the marketing order requires that the rate of assessment for each fiscal period apply to all onions handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this action which was unanimously recommended at a public meeting and is similar to other assessment rate actions issued in past fiscal periods. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2007, an assessment rate of $0.03 per 50-pound equivalent is established for South Texas onions.

Dated: April 15, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–1149 Filed 4–15–08; 12:13 pm]

BILLING CODE 3410–02–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: Final rule.

SUMMARY: The Department of Transportation (DOT or Department) is amending 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 through 60 passengers, which are currently exempt from the rule, and to make other changes. These changes are intended to maintain consumer protection commensurate with developments in the aviation industry. This action is taken on the Department's initiative and in response to a petition from the Air Transport Association.

DATES: This rule is effective May 19, 2008.

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 flights that are oversold. In most cases, bumped passengers are entitled to compensation. Part 250 sets the minimum amount of compensation that is required to be provided to passengers who are bumped involuntarily. Until now the rule has not applied to flights operated with aircraft with a design capacity of 60 or fewer passenger seats.

In adopting the original rule in the 1960s, the Civil Aeronautics Board (CAB), the Department's predecessor in aviation economic regulation, recognized the inherent unfairness in carriers selling more ''confirmed'' 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 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, the Department's Inspector General, and major airlines themselves, we reviewed the rule and have decided to revise certain aspects of the rule that we believe are outdated. In view of the passage of time since the rule was last revised and changes in commercial air travel over that time, we have decided to increase the compensation maximums and extend the rule to cover a broader range of aircraft. The Department is also making certain other changes of lesser impact.

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, or who fail to appear and provide no notice). 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 over 46 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 of the airline's choosing.

(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 1 hour of the planned arrival time of the oversold flight, no compensation is required. If the alternate transportation is scheduled to arrive between 1 and 2 hours after the planned arrival time of the oversold flight (between 1 and 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 he or she can use for alternate transportation or have refunded if not used.

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; see 72 FR 37491. 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).

On November 20, 2007, the Department published a Notice of Proposed Rulemaking (72 FR 65237) in which we proposed several specific changes to the Oversales rule. We did not propose to ban overbooking as many individual commenters urged. As indicated in the ''Background'' section above, air travelers receive some benefit from controlled overbooking. We are not aware of levels of consumer harm that require such a sweeping solution at this time, and we believe that the additional oversale protections that we are adopting here will address the principal issues related to this regulation that require action by the Department.

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

The Maximum Amount of Denied Boarding Compensation

It has been 25 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–

[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 voluntarily 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.

2001–9325.) More 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 he 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 smaller aircraft.

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 compensation rates in the DOT rule. The annual rate of involuntary denied boardings per 10,000 enplanements for the carriers tracked in the report has increased in each of the past three years and in 2007 was at the highest level in the past ten years. Involuntary denied boarding rates from the Air Travel Consumer Report for that period 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	1.12

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 been in the mid-80% range.

With respect to the denied boarding compensation limits, inflation has eroded the value of 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 was worth $128 at the time of the NPRM ($125 today). 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 as of the time of the NPRM ($1,272 today).

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 12.69 cents per revenue passenger mile in 2006 (latest available data)—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 have produced updated limits of $624 and $1,248, respectively, at the time of the NPRM. However, the NPRM noted that applying the 53.1% increase in passenger yield through 2006 to the current $200 and $400 limits would have produced updated limits of $306 and $612. It is important to note that the $200 and $400 figures in Part 250 are merely *limits* on the amount of denied boarding compensation required under the rule; the 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.

In the ANPRM the Department sought comment on five options with respect to the monetary limits on denied boarding compensation—increasing the limits based on the CPI–U or on the increase in fare yields, doubling the current limits, eliminating the limits (i.e., so there would be no cap on denied boarding compensation payments), or making no change to the current limits. In the NPRM the Department proposed to amend the 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 to the ANPRM 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 did 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 taken their toll on the value of the existing limits. As noted above, $400 in 1978 was worth $128 at the time of the NPRM, based on the change in the CPI–U. Therefore, we proposed to base part of an increase in the compensation caps on the CPI–U.

By doubling the existing limits we would blend these two approaches. The limits proposed in the NPRM fall between the higher figures that would be produced by the CPI option and the

[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.

lower numbers that would result from the ''fares/yield'' option. We sought comment on this proposal, including any comments and justifications that were not already provided in response to the ANPRM about alternative amounts or methodologies.

It is important to note that this proposal concerning limits on compensation for involuntary denied boardings would not necessarily require carriers to offer more compensation to the great majority of passengers affected by overbooking because most such situations are handled through volunteers who agree to give up their seat in exchange for mutually-agreed compensation, typically at the departure gate. Nor would it 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 exceed the current 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 (often 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 entail the same cost as cash compensation given rates of non-use and inventory-management restrictions.

Comments

Our proposal to double the denied boarding compensation limits was endorsed by the American Society of Travel Agents (ASTA), the Airports Council International—North America (ACI–NA), the Aviation Consumer Action Project (ACAP), the Coalition for an Airline Passenger Bill of Rights (CAPBOR), Jet Airways (India), and all of the individuals who commented on this issue. ACAP also endorsed a minimum DBC amount of $100. ASTA remarked that the reasoning in the Regulatory Evaluation is sound and suggested that for lengthy delays (e.g., next day), DBC should be higher, e.g. perhaps based on the CPI concept. ACI–NA asserted that incentives against unreasonable overbooking levels must remain effective because current high load factors make rerouting more difficult. The National Business Travel Association (NBTA) favored an increase in DBC limits but believed that the Department's proposal did not go far enough—the Association noted that business travelers often pay high fares and book peak flights that it contended are more likely to be oversold and consequently favored limits of $400/$800 (the NPRM proposal) or half of that passenger's fare, whichever is higher. The Air Transport Association stated that it did not oppose the basic elements of the NPRM but had objections to certain proposals (see below) that were not related to the adjustment of the compensation limits.

The proposal to double the limits was opposed by most other organizations that commented on this issue. (No individual commenters opposed the proposal, although one felt that the limits should be removed altogether and several said that overbooking should be banned.) The Air Carrier Association of America (ACAA) stated that the increased limits are unfair to smaller carriers that have fewer rerouting options that would permit them to limit DBC to the 100% rate. ACAA said that the limits should be increased no more than 25%, although it gave no basis for this figure. The Regional Airline Association (RAA) said that involuntary denied boardings are rare and the current system is working, but if the limits are increased the adjustment should be based on historical increases in fares/yield rather than $400/$800. The National Air Carrier Association said that the limits should be increased only for carriers that consistently bump a high number of passengers. Delta Air Lines stated that there is no justification for an increase in the limits, but echoed RAA's contention (as did China Eastern Airlines) that any increase that does take place should be based on increases in fares rather than the $400/$800 proposal. Philippine Airlines wanted an increase of no more than 10%.

Response to Comments

After careful consideration of all of the comments, we have decided to double the current DBC limits as proposed. The limits have not been adjusted in nearly 30 years, and the purchasing power of the limits has eroded. Air fares have increased by more than 50% in that time, and thus a higher percentage of bumped passengers is undoubtedly having their DBC capped at a figure lower than the 100% or 200% DBC rate. The Department has been urged to reexamine the limits by the Senate, the Department's Inspector General, and the airlines themselves (see ATA's petition for rulemaking in this proceeding). As ACI–NA noted in its comments, unrealistic deterrents in the rule could produce more oversales—and indeed the rate of involuntary denied boardings has increased 30% in the past three years. Carriers whose schedules make it difficult to reroute passengers in time to limit DBC to the 100% rate are nonetheless in control of their overbooking rates and of the attractiveness of the compensation that they offer to prospective volunteers. With respect to the comments that urge us to base the increase in the limits solely on the increase in fares/yields, as noted above, denied boarding compensation is intended in part to compensate for the passenger's inconvenience, lost time, and lost opportunities, and the value of these considerations is linked to general inflation as well as to the cost of air fares.

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.

The majority of the aircraft operated by the regional airline industry have 60 or fewer seats and thus are exempt from the denied boarding rule. However, this sector 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. As noted in the NPRM, regional jets have fueled much

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

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, a fee-for-service arrangement, 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 also demonstrate the growth in traffic on flights operated by aircraft with 31 through 60 seats. From the fourth quarter (4Q) of 2002 (earliest available consistent data) to 4Q2006, 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]

As noted in the NPRM, 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. Therefore, the NPRM proposed to extend the applicability of the oversales rule to flights using aircraft having 30 or more seats.

Comments

This proposal was supported by the ACAA, NBTA, ACI–NA, and by the two individuals who commented on this issue. ACAA stated that the current exclusion for these aircraft is unfair to smaller carriers that do not have aircraft of a size that benefit from the exclusion. The initiative was opposed by RAA, Delta Air Lines, and Peninsula Airways. RAA said that the proposal would have disparate cost impact on regional carriers that cannot always raise fares due to competition from automobiles. RAA asserted that cost increases will cause marginal routes to be dropped, reducing competition and leaving some small points without service. The organization was concerned that DBC on connecting flight may exceed a regional carrier's fare. It noted that the small aircraft and short runways frequently used by regional carriers cause seats to be figuratively ''roped off'' (i.e., to have to exclude passengers from those seats) for safety-related weight/balance reasons more frequently than is the case for larger aircraft, but under the current rule DBC must still be paid. Delta also noted this latter issue and suggested that if this proposal is finalized, the Department should amend the ''substitution of equipment'' exception to DBC to include passengers bumped as a result of the need to limit payload for safety-related weight/balance reasons.

Peninsula Airways (an Alaskan operator) stated that aircraft with less than 35 seats should remain excluded from the rule, but if the proposal to include aircraft with 30–60 seats is adopted, the rule should exclude commuter operations with propeller aircraft solely within the state of Alaska. This would capture regional jets, the commenter noted, while maintaining the current relief for small turboprops. Peninsula contended that this is justified for the same reasons that CAB originally excluded aircraft with 60 seats or less. Peninsula also disputed the statement in the NPRM that on a codeshare ''the major carrier is responsible for providing denied boarding compensation on the flights of the smaller carrier.'' Peninsula says that this is true only on fee-for-service arrangements, and Peninsula uses a pro-rate system.

Response to Comments

For the reasons described above, we are extending the applicability of the oversales rule to flights using aircraft with 30 or more passenger 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 has become affiliated and integrated with the ''brand'' of a major carrier. In recent times, aircraft with 30 through 60 seats (to a large extent regional jets) have been substituted for larger airplanes on numerous routes. The great 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. In its comments on the ANPRM, JetBlue asserted 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. In its comments on the ANPRM, ACAA provided data showing that regional jets account for half or nearly half of all departures at most hub airports.

A significant amount, if not most, of the service on small-aircraft flights operated for major carriers is provided under a ''fee-for-service'' arrangement such as Peninsula Airways referred to, where a major carrier dictates the market, the schedule, and the price of the flight. Under such an arrangement the tickets are not 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 purposes relevant to this rule 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.

As a result of changes in the marketplace, we now believe that consumers who purchase transportation in this aircraft class are entitled to the protections of the oversales rule. Carriers that use small aircraft to operate flights for a major carrier can protect themselves contractually by negotiating a mutually acceptable sharing of risk with the major airline. However, we are sensitive to the operational challenges faced by operators of aircraft with 30 through 60 seats. As certain commenters noted, these aircraft are more susceptible than larger airplanes to the need to limit payload in certain situations, typically hot weather, especially at higher altitudes. These situations, which cannot be reliably forecast when reservations are being taken weeks and months in advance, sometimes cause passengers to have to be bumped. Consequently, as suggested by Delta, we will revise the existing DBC exception in our oversales rule for substitution of aircraft of lesser capacity to include situations where the aircraft is not substituted, but payload must be limited for safety reasons and passengers are bumped as a result. We expect carriers to keep adequate records that will demonstrate the legitimate use of this exception to DBC when it is employed. Consistent with our obligations under the Regulatory Flexibility Act to assess the impact of rules on operators of aircraft having 60 or fewer seats (see 14 CFR 399.73), this new relief will be limited to flights operated with aircraft having 60 or fewer seats. Larger aircraft are affected by unpredictable payload restrictions

[4] DOT Form 41, schedule T–100.

less often, and operators of those aircraft are not the subject of the Regulatory Flexibility Act.

We will not exempt flights using aircraft with less than 35 seats or commuter-carrier operations using propeller aircraft solely within the state of Alaska, as was suggested by Peninsula Airways. We believe that carriers serving Alaska have sufficient experience with the operational considerations in that environment to be able to implement overbooking practices that do not expose the carrier to undue risk, and we are reluctant to deny Alaskan travelers the benefits of the rule. The new exemption for denied boardings caused by safety-related payload restrictions on flights using aircraft with 60 or fewer seats (see above) should address many of the situations about which Peninsula was concerned.

Boarding Priorities

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. In the NPRM 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 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.

Comments

Philippine Airlines and ACI–NA favored the proposal. RAA said that it is not necessary but that the organization did not oppose it. ASTA opposed the proposal, stating that passengers with low fares or no frequent-flyer miles on that carrier are no less inconvenienced by bumping and should not be singled out.

Response to Comments

For the reasons described above, we will adopt this proposal. With respect to ASTA's comment, airlines set their own boarding priorities and the longstanding ability of airlines to have boarding priorities based on passengers' fares or frequent-flyer status is not at issue in this proceeding. Airlines have had such boarding priorities for years, and the Department has not found this to be inconsistent with the mandate in section 14 CFR 250.3(a) described above. The proposal in this proceeding is simply intended to clarify and provide improved access to this policy by including it in the rule.

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 saw some merit in the suggestion to make this notice requirement more direct. Accordingly, in the NPRM we sought 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

RAA and ATA strongly objected to this proposal. Both organizations said that it is unrealistic and would impede passenger processing at airports without providing any consumer benefit. RAA asserted that it would be highly burdensome to determine the risk to each prospective volunteer of being bumped involuntarily and would increase delays at the gate. Most carriers make general announcements rather than soliciting individual passengers, RAA claimed, and individual pre-solicitation notice is impossible in those circumstances. ATA said that volunteers have already decided to give up their reservation in exchange for the offered compensation, and the risk of being bumped is irrelevant.

The Aviation Consumer Action Project said that potential volunteers should be given a written statement summarizing the DOT rule, with monetary penalties payable to the passenger if this is not done.

There were no individual consumer comments on this issue.

Response to Comments

For the reasons summarized above, and consistent with the recommendation of the IG, we will finalize the proposal. Commenters' concerns about the practicality of the provision appear to result from a misunderstanding of what we proposed. Informing a prospective volunteer ''whether he or she is in danger of being involuntarily denied boarding'' need not entail a precise calculation of the probability of that person being involuntarily bumped. Carriers may still make general announcements seeking volunteers and, if the need arises to accept the offer of any of those who indicate a willingness to volunteer, it would be sufficient for a carrier to tell a volunteer just before handing him or her the volunteer compensation that there is a reasonable chance that he or she may have been bumped involuntarily (if that is true), and if that were to be the case the compensation would be $X. The oversales regimen relies in large part on consumers being able to make informed decisions and this is no more than what is required under the current rule.

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 NPRM the Department proposed to 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 would still receive adequate information and the public would 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

Three airlines and two airline associations commented on this issue; all of them favored the proposal.

Response to Comments

For the reasons summarized above, we will 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. The carriers that are being relieved of this requirement need not file a Form 251 report for the quarter during which this amendment goes into effect.

All other comments on the various issues in this proceeding were beyond the scope of the NPRM.

Overbooking Notice

Section 250.11 specifies the text of a notice that carriers must use on signs at ticket-selling locations and in notices accompanying tickets to disclose overbooking and describe denied boarding procedures. One portion of this notice states that there are exceptions to the requirement to pay denied boarding compensation. In the NPRM we proposed to revise that section of the notice to state that failing to comply with the carrier's check-in deadline is one such exception and to require carriers to either include their check-in deadline in the notice or state in the notice that the airline's check-in deadline is available upon request from the carrier.

Comments

The Air Transport Association objected to this proposal. It said that check-in times can vary, especially between domestic and international operations; that the information is available on carriers' Web sites; that air travelers have become used to checking in early since 9/11; and that most of the notices would be displayed at airports and by the time a traveler sees the notice at the airport it is too late.

Response to Comments

We have decided to finalize the proposal. We believe that it is important for consumers to be aware that missing the carrier's check-in deadline disqualifies them from eligibility for denied boarding compensation if they should be involuntarily denied boarding. A great deal of consumer information is available on carrier Web sites, but this does not obviate the usefulness of affirmatively pointing out key information in notices of this type. Airlines that find it burdensome to include their specific check-in deadline(s) in the notice can simply state that the deadlines are available from the carrier upon request, as stated in the NPRM. Finally, this revised notice is not limited to airports; pursuant to section 250.11(b) of the existing rule (which is not being revised), the sec. 250.11(a) notice described in the NPRM must also accompany tickets.

Technical Changes

We are revising the definition of ''Carrier'' in section 250.1 to (1) explicitly include commuter air carriers (with respect to the extension of the rule to flights using aircraft with 30 through 60 seats), (2) remove citations to the Federal Aviation Act, a statute that no longer exists under that name, and (3) reduce the range of sections cited in this definition as the source of DOT authority for foreign air carriers to the one section that is most applicable. (The other sections cited in the foreign-carrier citation are procedural in nature and are not necessary in this definition.)

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 discussion of possible costs and benefits of the proposed rule is presented in the preamble and in the accompanying Regulatory Evaluation, a copy of which has been placed in the docket. The Regulatory Evaluation concluded that the benefits of the rule appear to exceed the costs. It noted that the absolute number of involuntary denied boardings, the rate of such denied boardings per 10,000 enplanements and the ratio of involuntary to voluntary denied boardings have all increased substantially in recent years, suggesting that the 30-year-old caps on involuntary denied boarding compensation that are being updated here have been encouraging carriers to resort to involuntary denied boardings more frequently. The average one-way fare (all domestic and international flights) was $232 in the 2nd Quarter of 2007, above the $200 compensation limit that pertains to the 2-hour deadline. Due to the regulatory caps on denied boarding compensation, a passenger flying at or above an above-average fare will not receive the full amount of compensation derived from the fare-based formula in the rule. Similarly, the air carriers are not subject to the disincentive of the loss of a higher-than-average fare if a passenger is bumped.

The added cost of doubling of the denied boarding compensation caps would be approximately four cents per passenger even if every single passenger who is involuntarily denied boarding receives the maximum compensation (which is not the case). The monetary cost for this option would result in a corresponding dollar-for-dollar monetary benefit for the bumped passengers. It is not expected that an additional four-cent charge on a $200 ticket would make a material difference in ticket demand or air carrier net revenues from ticket sales.

B. Executive Order 13132 (Federalism)

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This amendment does not: (1) Have a substantial direct effect 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) impose substantial direct compliance costs on State and local governments; or (3) preempt state law because states are already preempted from regulating in this area under the Airline Deregulation Act (ADA), 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because nothing in this rule 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 this rule may impose new requirements on certain small air carriers, but the Department believes that the economic impact will not be significant. All air carriers have control over the extent to which the rule impacts them because 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 (or different) 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 will be covered by the oversales rule for the first time as a result of this amendment 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. Under such an arrangement the tickets are not 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. At the same time, this final rule provides that the oversales requirements will not apply when a passenger is denied boarding on an aircraft with a designed capacity of 30 through 60 passenger seats due to a need to reduce the number of passengers for safety purposes (e.g., weight/balance, maximum takeoff weight). This exemption greatly reduces the financial burden of the oversales rule on operators of small aircraft , whether by small entities (who by definition only operate aircraft of 60 seats or fewer) or other carriers. This is particularly true with respect to events that are not easy to predict at the time reservations are taken (e.g., hot weather) that affect safety-related payload limits. Finally, it is worth noting that one provision in this Final Rule relieves an existing reporting requirement for all but the largest carriers. For all these reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

DOT has long-standing OMB clearance for the reporting requirements in Part 250 (OMB No. 2138–0018). Prior to issuance of this final rule, we estimated a reporting burden of 1600 hours annually for 40 U.S. carriers and 600 hours annually for 100 foreign carriers. This final rule is reducing reporting requirements so that only 20 U.S. carriers will continue to report denied boarding information for a total of 800 hours annually. We will modify our paperwork inventory for this rule accordingly.

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 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. In § 250.1 the definition for ''Large aircraft'' is removed and the definition for ''Carrier'' is revised 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 of Transportation pursuant to 49 U.S.C. 41102 or that has been found fit to conduct commuter operations under 49 U.S.C. 41738, or an exemption from 49 U.S.C. 41102, authorizing the scheduled transportation of persons; or (2) a foreign air carrier holding a permit issued by the Department 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 scheduled flight segments using an aircraft that has a designed passenger capacity of 30 or more passenger seats, operating in (1) interstate air transportation or (2) 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 by 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. In § 250.3 paragraph (b) is added to read as follows:

§ 250.3 Boarding priority rules.

* * * * *

(b) 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 § 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 250.6(b) is revised to read as follows:

* * * * *

(b) The flight for which the passenger holds confirmed reserved space is unable to accommodate that passenger because of substitution of equipment of lesser capacity when required by operational or safety reasons; or, on an aircraft with a designed passenger capacity of 60 or fewer seats, the flight for which the passenger holds confirmed reserved space is unable to accommodate that passenger due to weight/balance restrictions when required by operational or safety reasons;

* * * * *

■ 8. 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) on a flight operated with an aircraft having 60 or fewer seats, you are denied boarding due to safety-related weight/balance restrictions that limit payload; or (5) 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 (6) 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 4 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.

■ 9. In § 250.10, remove the word ''carrier'' and replace it with the phrase ''reporting carrier as defined in 14 CFR 234.2 and any carrier that voluntarily submits data pursuant to § 234.7 of that part.''

■ 10. 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 14th day of April, 2008, at Washington, DC.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 08–1145 Filed 4–16–08; 9:08 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 748 and 774

[Docket No. 080307395–8515–01]

RIN 0694–AE32

Technical Corrections to the Export Administration Regulations Based Upon a Systematic Review of the CCL

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to make various technical corrections and clarifications to the EAR as a result of a systematic review of the Commerce Control List (CCL) that was conducted by the Bureau of Industry and Security (BIS). This rule is the first phase of the regulatory implementation of the results of a review of the CCL that was conducted by BIS starting in 2007. The BIS CCL review benefited from input received from BIS's Technical Advisory Committees (TACs) and comments that were received from the interested public in response to the publication of a BIS notice of inquiry on July 17, 2007 (72 FR 39052).

DATES: *Effective Date:* This rule is effective: April 18, 2008. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE32, by any of the following methods:

E-mail: publiccomments@bis.doc.gov Include ''RIN 0694–AE32'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE32.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.* RIN 0694–AE32)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce; by telephone: (202) 482–2440; or by fax: 202–482–3355.

SUPPLEMENTARY INFORMATION:

Background

This rule amends the Export Administration Regulations (EAR) to make various technical corrections and clarifications to the EAR as a result of a systematic review of the Commerce Control List (CCL) that was conducted by the Bureau of Industry and Security (BIS) beginning in 2007. This rule is the first phase of the regulatory implementation of the results of that review. This rule focuses on making needed technical corrections and clarifications to the CCL. The BIS CCL review benefited from input received from BIS's Technical Advisory Committees (TACs) and public comments received in response to a BIS notice of inquiry (July 17, 2007, 72 FR 39052).

BIS intends to publish another rule later this year that will implement the