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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

In the Matter of)	
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)	
OVERSALES AND DENIED BOARDING)	Docket DOT-OST-2001-9325
COMPENSATION RULES)	
)	
)	

COMMENTS OF
THE REGIONAL AIRLINE ASSOCIATION

The Regional Airline Association (“RAA”), on behalf of its members,¹ responds to the Department’s request for comments on proposals to burden regional airlines and the important service they provide by imposing detailed rules and regulations on oversales and denied boarding compensation to flights operated with aircraft seating 30 to 60 passengers, which are currently exempt from the rule, to double the maximum required compensation, and to impose substantial new burdens on passenger service personnel at departure gates that are likely to cause significant

¹ Aerolitoral, Air Canada Jazz, Air Serv International, Air Wisconsin Airlines, AirNet Systems, American Eagle Airlines, Atlantic Southeast Airlines, Big Sky, Cape Air, Caribbean Sun Airlines, Chautauqua Airlines, Colgan Air, Comair, Commutair, Compass Airlines, Empire Airlines, Era Aviation, ExpressJet, FedEx, Flight Options, LLC, GoJet, Grand Canyon Airlines, Great Lakes Airlines, Gulfstream International Airlines, Horizon Air, IBC Airways, Island Air, Mesa Airlines, Mesaba Airlines, New England Airlines, Piedmont Airlines, Pinnacle Airlines, Inc., PSA Airlines, Republic Airlines, Salmon Air, Scenic Airlines, Shuttle America Airlines, SkyBus Airlines, Inc., Skyway Airlines, SkyWest Airlines, Trans States Airlines and US Airways Express.

flight delays whenever an oversale occurs. (Notice of Proposed Rulemaking, Oversales and Denied Boarding Compensation, 72 Federal Register 65237, November 20, 2007 (“NPRM” hereafter))

Although the oversales regulations developed over decades by the Civil Aeronautics Board and the Department have struck a fair balance between regulation and market forces, the proposals under consideration in this proceeding will tip the balance toward greater regulation and less reliance on market forces. The current system enables air travelers to book seats which otherwise might be unavailable to them, provides significant flexibility for passengers to change their flights and reservations, and encourages airlines to maximize the productivity of their flights, reducing upward pressure on fares and downward pressure on services offered. The Department has continued to recognize these benefits. (See NPRM at 65238)

Airlines are already struggling to provide the best possible service to their customers and meet demand for service through comprehensive route networks at a time when fuel prices are increasing to unheard-of heights and an antiquated air traffic control system produces clogged airways whenever weather or other problems arise. Regional airlines must adjust to the fact that their aircraft are the first to be put on ground holds and the last to be released, resulting in cancellations down line. No airline wants to deny boarding to passengers, and airlines are working hard to adjust to the new realities of higher-load-factor flights as they recalculate their booking programs. Given enough time, they will succeed.

Despite concerns expressed by airlines and aviation associations, the Department has proposed to (1) extend the rule to cover smaller aircraft, (2) double the compensation maximums, (3) list non-exclusive examples of permissible boarding priority criteria, and (4) advise passengers individually whether they are “in danger of being involuntarily bumped and, if so, the

compensation the carrier is obligated to pay” the passenger. To the Department’s credit, it has also proposed that carriers which account for less than one percent of total domestic scheduled-service passenger revenue should be allowed to discontinue reporting denied boarding reports because they are not “reviewed, entered into an automated system, or published by the Department.” (NPRM at 65244)

RAA continues to oppose extension of the rules to cover aircraft with fewer than 61 but more than 30 seats. Extending denied boarding compensation requirements to aircraft with 31 to 60 seats and doubling the compensation maximums will impose significant burdens on regional airlines, the passengers they carry and the 635 cities they serve without adequate justification, particularly on multi-sector itineraries with far higher fares and potential compensation than the fares charged by the regional airlines for the sectors they serve on the itinerary. If compensation requirements are extended to aircraft with fewer than 61 seats, any increase should not exceed the unadjusted increase in domestic passenger yields since 1978. RAA sees no requirement for the Department to provide a non-exclusive list of acceptable boarding priorities in the regulation itself, but RAA does not oppose the proposal to include a truly non-exclusive list in the regulations. RAA strenuously objects, however, to the proposed requirement for individual advice to passengers regarding the prospects for denied boarding and the amount of compensation due to that passenger prior to soliciting volunteers, a procedure which would be totally unworkable and certain to increase flight delays at the gate.

RAA comments as follows in support of its positions:

I. Aircraft Seating 60 Or Fewer Passengers Should Continue To Be Exempt From Denied Boarding Compensation Rules

Regional airlines operating aircraft between 30 and 60 seats have enabled major airline networks to continue providing the only service at many small and mid-size communities and to offer multi-carrier competitive service that would otherwise be uneconomic in both smaller and larger markets. The economics of such service are already being jeopardized by government actions and proposals such as proposals to increase landing fees and other charges, particularly for smaller aircraft, at critical hub airports, security procedures that delay and inconvenience passengers who have an alternative to drive or use other means to travel on the shorter-haul routes served by regional airlines, and proposals to impose further regulation on regional airlines rather than relying on the marketplace and consumer choice to ensure adequate service.²

Extraordinarily high fuel prices, potential reductions in traffic related to economic conditions, and the difficulty of raising fares on short-haul routes where the automobile is competitive with aircraft all conspire to affect adversely the economics of regional airline operations. Doubling the potential compensation for denied boarding and imposing it on aircraft with between 30 and 60 seats would constitute a one-two punch to the economic viability of the regional airlines and their ability to provide excellent service bringing the benefits of modern jet aircraft to smaller communities, connecting those cities with major airline networks at hub cities, and multi-carrier competitive service at communities both small and large. With 452 cities served only by

² See, e.g., Advance Notice of Proposed Rulemaking, “Enhancing Airline Passenger Protections,” 72 Federal Register 65233, November 20, 2007, and Notice of Proposed Amendment, “Policy Regarding Airport Rates and Charges,” 73 Federal Register 3310, January 17, 2008.

regional airlines, maintaining the economic viability of regional airline service is critically important.

Although the CAB concluded that the hardship to passengers denied boarding may be similar regardless of aircraft size, it exempted aircraft up to 60 seats because of the “disproportionate size of the penalty relative to the typical short-haul fare” and the fact that “the viability of the small-aircraft segment of the industry, which competes most directly with ground transportation, depends partly on its ability to minimize its costs, respond flexibly to consumer demand, and maintain high load factors.”³

Some 90% of the passengers carried by regional airlines are carried pursuant to codeshare agreements with major airlines which determine the schedules to be operated, the aircraft to be flown, the bookings and overbookings to be made for a flight, the amenities to be provided to passengers, and the accommodations to be made when passenger trips are interrupted. Nonetheless, the adverse impact of excessive regulation and increased costs will be felt by regional airlines and the customers they serve. As regional airline costs increase, the flights they operate for major airline partners as well as the flights they operate on their own will become less economic. As a result, vulnerable service to small and mid-sized communities will be reduced or eliminated and competition in larger markets will be reduced. Although a major carrier codeshare partner may determine the markets to be served, the flights to be operated and the reservations made on the flight (NPRM at 65243) and the conditions of carriage to be

³ Small Aircraft Operations; Oversales and Denied Boarding Compensation, 46 Federal Register 42442, August 21, 1981, at 42443. Although regional airlines may attempt to maintain high load factors, their load factors consistently lag those of airlines operating larger aircraft, suggesting that they are less likely overall to cause denied boardings.

applied, increases to the cost of a flight operation affect scheduling decisions and markets to be served whether the decision is being made by a regional airline or a major codeshare partner.

The Department is now proposing not only to impose denied boarding compensation requirements on regional aircraft with between 30 and 60 seats but also to double the caps on compensation. Now as then, the passenger's denied boarding compensation for a connecting service offered by a regional airline and a long-haul airline may well exceed the regional airline's fare for transportation on the regional airline flight. Now more than ever the success of regional airlines depends on minimizing costs. And regional airlines continue to compete with surface transportation, a task which has become increasingly difficult with the advent of extensive security procedures at the airports served by regional airlines. Moreover, regional airlines also today compete with business aviation aircraft that are continuing to grow exponentially and do not face the airport security hassles and delays which are diverting regional airline passengers to other modes. Finally, because regional airlines continue to serve smaller airports with shorter runways and less sophisticated operations, they are more often subject to load limitations, particularly under adverse weather conditions, and would be forced to pay penalties even when required to rope off seats for safety reasons. As recent experience in adverse weather conditions demonstrate, regional airline flights are the first to be cancelled, whether by FAA or the major airline partner, and operating conditions at smaller airports with shorter runways and less sophisticated equipment pose far more challenges for accommodating full loads of passengers in adverse conditions. In addition to these continuing burdens, regional airlines face substantial additional costs for equipment, training and other procedures to meet the same safety and operational standards as larger aircraft without having the ability to spread the costs over a large number of seats in each aircraft. Moreover, individual airports and even the

FAA have proposed per-aircraft fees that would exacerbate the problem by increasing costs for small aircraft operations disproportionately to the seats available.

Rather than further regulating regional airlines and burdening them with further costs that cumulatively could jeopardize the service provided today at smaller cities and competitive service in both small and large markets, the Department should allow the marketplace to continue to work. As the Department itself notes, “many regional carriers already voluntarily provide DBC to passengers bumped from their 30-to-60 seat aircraft” (NPRM at 65242), and compete more effectively for having done so.

II. Increasing the Compensation Maximums In Addition to Imposing Compensation Requirements on Smaller Aircraft Would Pose An Undue Burden on Regional Airlines

The current compensation maximums provide adequate relief to those passengers who decline airline compensation offers to voluntarily change their travel plans for accommodation on a later flight and adequate incentives for airlines to minimize involuntary denied boardings. Although the number of involuntary denied boardings increased during the first three quarters of 2007, it nonetheless represents fewer than 1.21 involuntary denied boardings per 10,000 passengers, and the vast majority of passengers in oversale situations accept airline offers for rebooking in exchange for compensation in the form of tickets or credits for future use. With the odds of qualifying for involuntary denied boarding roughly the same as the odds for winning the Pick 4 in a state lottery, the current system is working.

Since denied boarding compensation has always been tied to airline ticket prices and since inflation-adjusted airline yields have decreased by nearly 50% since 1978 (when the denied boarding compensation amounts were last changed) a reduction in maximum payments may actually be more appropriate than an increase if inflation is to be accounted for. Since a specific

index for air fares is available by computing inflation-adjusted yields, use of the Consumer Price Index to measure denied boarding compensation would be entirely inappropriate, since airline services are at issue, not the purchase of goods or other services.⁴ This error would be compounded if compensation were adjusted based on changes to the consumer price index, which can - and oftentimes does - move in the reverse direction from airline yields.

Applying the unadjusted increase in yields to the current formula would at least relate the compensation to airline fares, since it relates to the value a customer has placed on the air transportation itself. The current formula adequately compensates passengers who refuse to accept airline compensation offers and adequately encourage airlines to minimize oversales, so there is no compelling reason to increase the compensation at all.

In fact, the marketplace is working, and the Department is mandated to place “maximum reliance on competitive market forces and on actual and potential competition” to maintain and develop “a sound regulatory system that is responsive to the needs of the public” (49 U.S.C. § 40101(a)(6) and (7)). The Department can continue to rely on the marketplace to discipline increases in denied boarding levels. In addition to the incentives for airlines to make offers that will attract passengers to voluntarily accept deferred transportation, excessive involuntary denied boardings affect consumer attitudes about airlines, and passengers will vote with their ticket dollars by moving to airlines with lower denied boarding rates. These consumer incentives will

⁴ Adjustments based on the consumer price index may be appropriate for lost-baggage compensation since the baggage compensation is closely related to the value of lost goods, not the value of air transportation services. Although passengers denied boarding may incur some costs for food, beverages and accommodations, a \$200 maximum per passenger amounts to a per diem that should cover such costs adequately, and the passenger is still entitled to the transportation for which the passenger bargained in the first place.

encourage airlines, which also incur additional operational and passenger processing costs when oversales occur, to develop overbooking procedures that will minimize the number of involuntary denied boardings as they adjust to the new era of higher-load-factor operations at lower fares.

Under these circumstances, RAA urges the Department to retain the current \$200/\$400 limits if it is also imposing compensation requirements on aircraft with more than 30 and fewer than 60 seats. At the very most, the limits could be increased to \$290/\$580 based on the unadjusted increase in passenger yields since 1978. As noted above, increasing the limits based on the consumer price index would be entirely inappropriate, and there is no rational basis for doubling the current amounts or eliminating all caps, actions that would be particularly detrimental to airlines that carry passengers short distances for small fares but could be paid to passengers gaming the system by acquiring extraordinarily-expensive connecting tickets and seeking full reimbursement when they are denied boarding on short-haul connecting flights.

III. The Rules Should Not Be Amended To Require Informing Individual Passengers Whether They Are In Danger Of Being Involuntarily Bumped, and What Their Compensation Would Be For An Involuntary Denied Boarding Before Soliciting Volunteers

Although airlines expressed concerns about the proposal to “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.” (Proposed § 250.2b, NPRM at 65245), the Department has proposed to adopt this proposal without providing any meaningful explanation how the extraordinary burden of such a requirement on airline personnel and passengers would be justified. The proposed rule appears

to require an airline before soliciting any volunteers to (1) ascertain the number of overbookings, (2) determine the odds that booked passengers who have not yet checked in will do so, (3) apply the carriers' denied boarding priorities policy and calculate which specific passengers are "in danger of being involuntarily denied boarding," (4) determine, by calculating for each passenger in danger of being involuntarily denied boarding, the passenger's fare, alternative flights, the arrival times for those flights compared to the passenger's original arrival times, and the precise compensation that would be due to that passenger if the passenger were denied boarding and then (5) inform each such passenger individually that he or she is in danger of being involuntarily denied boarding, (6) explain how much compensation will be due if the passenger is denied boarding and, in all likelihood, (7) respond to numerous questions from each passenger regarding alternative flights and other issues. Moreover, all the explanation may well be for naught since other volunteers may obviate the need for any involuntary denied boardings on the relevant flight.

When airlines recognize that a flight is overbooked and denied boardings may occur, expeditious solicitation of passengers willing to defer travel in exchange for some form of compensation and prompt resolution of the overbooking is imperative to avoid delays in boarding and departures. For this reason, airlines make a general announcement that the flight is overbooked, that denied boardings are possible and that passengers willing to defer their travel will be compensated. Those passengers who are willing to defer travel voluntarily for compensation are then processed. Since airlines do not ask a specific passenger to volunteer but rather ask all of the passengers if there are any volunteers, there is no way to inform a particular passenger, before asking that passenger to volunteer, whether that particular passenger is "in danger of being involuntarily bumped and, if so, the compensation the carrier is obligated to

pay” without extensive research and consultation. Establishing passenger-by-passenger boarding priorities before soliciting volunteers, calculating each passenger’s odds of being denied boarding involuntarily and the amounts due to the passenger and then informing each passenger before soliciting volunteers would add hours to the departure process and inconvenience both passengers and airline personnel at the gate where the overbooked flight is boarding as well as down-line passengers affected by the inevitable flight delay.⁵

Passengers are able to determine, based on a general announcement, whether they are willing to defer travel for compensation or risk involuntary denied boarding, and the present practices, which are working well, should be allowed to continue.

IV. The Department Has Appropriately Relieved All Carriers Of The Part 250 Reporting Requirement Except For Those Carriers Whose Data Are Analyzed and Published in the Air Travel Consumer Report

Although the Department currently requires all carriers subject to Part 250 to submit quarterly reports on oversales activity, the only reports “reviewed, entered into an automated system, or published by the Department are the airlines that are subject to the on-time performance reporting requirement.” (NPRM at 65244) The Paperwork Reduction Act was designed “to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information. . . collected.” (5 CFR § 1320.1) To this end, agencies are required to demonstrate that collections of information are “the least burdensome necessary for the proper performance of the agency’s functions,” have “practical utility” and are “necessary to satisfy

⁵ Because of positive bag match requirements, time must also be available to offload the checked bags of bumped passengers.

statutory requirements or other substantial need.” (5 CFR § 1320.5(d)(1)(i)(iii) and (2)(emphasis added))

V. Conclusion

As the Department analyzes its NPRM and comments submitted in response to it and considers preparation of a final rule to revise Part 250, RAA urges the Department to continue the exemption of aircraft with 60 or fewer seats from Part 250; to retain the current involuntary denied boarding compensation levels or to raise them, at most, by the percentage increase in unadjusted airline yields since the current levels were established if the requirements are extended to aircraft with 60 or fewer seats; to retain the current requirements for informing passengers when soliciting volunteers to defer travel for compensation; and to discontinue reporting requirements imposed on airlines whose reports are not analyzed or utilized.

Respectfully submitted,



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January 22, 2008
DCIWDMS: 4860765_1