

**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****14 CFR Parts 250 and 254**

[Docket DOT–OST–2020–0251]

RIN 2105–AE81

**Implementing Certain Provisions of the TICKETS Act and Revisions to Denied Boarding Compensation and Domestic Baggage Liability Limits****AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).**ACTION:** Final rule.

**SUMMARY:** This final rule amends the U.S. Department of Transportation's (or the Department's) oversales rule by clarifying that the maximum amount of Denied Boarding Compensation (DBC) that a carrier may provide to a passenger denied boarding involuntarily is not limited, and by prohibiting airlines from involuntarily denying boarding to a passenger after the passenger's boarding pass has been collected or scanned and the passenger has boarded, subject to safety and security exceptions. Further, pursuant to existing regulations, this final rule raises the liability limits for denied boarding compensation that U.S. and foreign air carriers may impose from the current figures of \$675 and \$1,350 to \$775 and \$1,550. Also, in accordance with existing regulations, this final rule raises the liability limit U.S. carriers may impose for mishandled baggage in domestic air transportation, adjusting the limit of liability from the current amount of \$3,500 to \$3,800.

**DATES:** This rule is effective on April 13, 2021.

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**SUPPLEMENTARY INFORMATION:****I. Clarifying That the Department's Oversales Rule Does Not Limit the Maximum Amount of DBC Carriers May Offer to Passengers Denied Boarding Involuntarily, and Related Provisions**

Section 425(e) of the FAA Reauthorization Act of 2018 (Pub. L. 115–254, October 5, 2018), which includes the Transparency Improvements and Compensation to Keep Every Ticketholder Safe Act of 2018 (TICKETS Act), requires the Department to complete a rulemaking to clarify that (1) there is no maximum

level of compensation an air carrier or foreign air carrier may pay to a passenger who is involuntarily denied boarding as the result of an oversold flight, and (2) the DBC compensation levels set forth in the regulation are the minimum levels of compensation an air carrier or foreign air carrier must pay to a passenger who is involuntarily denied boarding as the result of an oversold flight. “Maximum” DBC amount and DBC “limit” are terms found in various provisions of the Department's oversales rule in 14 CFR part 250. The concept of “maximum” DBC amount that a carrier is required to pay and a “limit” imposed on DBC calculation results were intended to (1) ensure passengers involuntarily denied boarding receive, *at a minimum*, a DBC amount required by the regulation when the DBC calculation resulted in a higher amount; and (2) allow carriers to impose a limit on the amount that they are liable for compensating eligible passengers in the event of involuntary denied boarding, if carriers choose to do so. Part 250 was never intended to *prohibit* carriers from voluntarily paying an amount of DBC that is higher than the “maximum” DBC amounts or DBC “limits” set forth in part 250.

Although during the many decades since the promulgation of the oversales rule, the Department has seen no evidence of industry confusion about the meaning of these terms, by passing the TICKETS Act, Congress is requiring DOT to revise the rule for clarity to avoid any potential public confusion about whether carriers may choose to pay a higher amount of DBC. Accordingly, in this final rule, the Department is making some editorial changes to the regulatory text in part 250 to make this point clear. Specifically, this final rule eliminates words and phrases such as “maximum” or “no more than” from § 250.5 to clarify that carriers are permitted to pay more than the amounts set by the regulations. Instead of using these terms, the amended part 250 states that carriers are required to provide to eligible passengers *at least* the lower amount of: (1) 200% of the passenger's one-way fare or \$775 for delays of more than one hour but less than two hours for domestic flights and delays of more than one hour but less than four hours for international flights, and (2) 400% of the passenger's one-way fare or \$1550 for delays of more than two hours for domestic flights and delays of more than four hours for international flights. Further, the Department is replacing the term “maximum denied boarding compensation” and “denied boarding

compensation limit(s)” with the term “denied boarding compensation liability limit(s)” or “DBC liability limit(s).” The new terms make clear that the monetary amounts prescribed by the rule are intended to allow carriers to limit the amount they are required to compensate passengers that are involuntarily denied boarding if the carriers choose to do so, and that the terms are not intended to impose a ceiling for the amount of compensation a carrier may offer and a passenger may receive. Further, by this final rule, the Department is adding paragraph (g) in § 250.5 to state that nothing in the rule prohibits carriers from offering denied boarding compensation in an amount more than the amount calculated according to part 250, or the denied boarding compensation liability limits provided by part 250. Similar amendments are made for the written denied boarding notice prescribed in § 250.9.

Like the denied boarding compensation liability limit, the domestic baggage liability limit provided in 14 CFR part 254 is intended to permit carriers to adopt a ceiling that caps their liability for delayed, lost, or damaged bags in domestic air transportation, and it is not intended to prohibit them from offering a compensation that is a higher amount than the adopted ceiling amount. As such, the Department is also removing the terms “minimum limit of [baggage] liability” and “minimum liability amount” used in 14 CFR 254.6, and replacing them with the term “domestic baggage liability limit.”

The TICKETS Act also requires the Department to complete a rulemaking to ensure that carriers must proactively offer to pay compensation to a passenger who is voluntarily or involuntarily denied boarding on an oversold flight, rather than waiting until the passenger requests the compensation. The Department has carefully reviewed the existing rule text and its enforcement records, and believes that the Department's oversales rule already imposes such requirements on carriers. Specifically, with respect to passengers denied boarding voluntarily, § 250.2b provides that, in the event of an oversold flight, carriers shall request volunteers for denied boarding before using any other boarding priority. The rule further defines a “volunteer” as “a person who responds to the carrier's request for volunteers and who willingly accepts *the carrier's offer of compensation*, at any amount, in exchange for relinquishing the confirmed reserved space (emphasis added).” In other words, for a carrier to fulfill its obligation of soliciting for

volunteers before denying any passenger boarding involuntarily, carriers must first request volunteers with an offer of compensation. Further, with respect to passengers denied boarding involuntarily, § 250.8 provides that carriers must tender to passengers DBC on the day and in the place the denied boarding occurs, or within 24 hours after the denied boarding occurs. Carriers are required to do so even if the eligible passenger is not aware of the entitlement to DBC and therefore does not make a request for compensation. Although the Department's Office of Aviation Consumer Protection interprets part 250 as requiring carriers to offer, proactively, compensation to passengers voluntarily and involuntarily denied boarding, the Department is amending § 250.2b to require explicitly that carriers must provide compensation proactively instead of waiting for passengers to request the compensation in an oversale situation. The Department will continue to enforce part 250 to ensure that passengers that have volunteered to be denied boarding in response to carriers' offers of compensation and passengers denied boarding involuntarily receive proper compensations due to them.

For a carrier that imposes a liability limit to its denied boarding compensation and mishandled domestic baggage compensation, the limits must be updated to these new amounts for transportation taking place on or after the effective date (as opposed to tickets sold on or after the effective date). All notices to passengers required by parts 250 and 254 as they pertain to the new DBC liability limits and domestic baggage liability limit must be updated by the effective date of this final rule.

## II. Codifying Sections 425(b)–(d) of the TICKETS Act Prohibiting Removal of Passengers Who Already Boarded Flights

Section 425(b) of the TICKETS Act contains a self-effectuating provision that prohibits airlines from denying boarding to a revenue passenger traveling on a confirmed reservation or involuntarily removing that passenger from a flight, if the passenger checked in before the check-in deadline and had a ticket or boarding pass collected or electronically scanned and accepted by the gate agent. Pursuant to sections 425(c) and (d) of the TICKETS Act, this prohibition is subject to safety, security, or health risk exceptions and it may not be construed as a limitation on the responsibility or authority of a pilot in command of an aircraft under 14 CFR 121.533. This prohibition also may not limit a penalty imposed on an

individual for interfering with flight crew members and attendants, as provided in 49 U.S.C. 46504. The requirements in sections 425(b)–(d) of the TICKETS Act became effective on October 5, 2018, the effective date of the FAA Reauthorization Act of 2018. This final rule codifies these requirements exactly as provided in the FAA Reauthorization Act of 2018<sup>1</sup> in 14 CFR part 250, and makes it enforceable by the Department.

### Covered Carriers Under the TICKETS Act

The Department's oversales rule, 14 CFR part 250, applies to direct air carriers and foreign air carriers with respect to scheduled flight segments using an aircraft that has a designed passenger capacity of 30 or more passenger seats, operating in interstate air transportation, or foreign air transportation with respect to nonstop flight segments originating at a point within the United States. In contrast, pursuant to section 402 of the FAA Reauthorization Act of 2018, "covered air carrier" as used in the TICKETS Act means an air carrier or a foreign air carrier as those terms are defined in 49 U.S.C. 40102. Under 49 U.S.C. 40102, an "air carrier" means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation; and a "foreign air carrier" means a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation. This means that more air carriers and foreign air carriers are covered under the TICKETS Act than carriers covered under the existing requirements of part 250. The requirement of sections (b)–(d) of the TICKETS Act apply to all direct and indirect air carriers and foreign air carriers that fall under the definitions of section 40102.<sup>2</sup> As such, we are revising the applicability section of part 250,

<sup>1</sup> Instead of incorporating the statutory language verbatim, the Department made certain necessary editorial changes to the statutory language when codifying the statute into the rule text. The changes made are: (1) Deleting the effective date of the requirements in the statute which is "the date of the enactment of this Act" because the effective date of the requirements as codified in 14 CFR part 250 is the date that is 90 days from the publication date of this final rule; and (2) changing the lead sentence in the "Limitation" paragraph from "The prohibition pursuant to subsection (b) shall not apply . . ." to "The prohibition pursuant to paragraph (a) of this section shall not apply. . . ."

<sup>2</sup> The Department does not believe that Congress intended to apply the broader scope of section 40102 definitions to section (e) of the TICKETS Act, which relates to denied boarding compensation. It is our understanding that should Congress intend to require carriers that are not currently covered by part 250 to provide denied boarding compensations to passengers, it would have stated so specifically.

§ 250.2, to specify that the requirements regarding removing a revenue passenger from a flight, as codified under 14 CFR 250.7, has a broader scope than the other provisions of part 250.

### *Ticket or Boarding Pass Collected or Electronically Scanned and Accepted by the Gate Agent*

According to the TICKETS Act, airlines are prohibited from removing a passenger or denying a passenger boarding after the passenger's ticket or boarding pass is "collected or electronically scanned and accepted by the gate agent" (emphasis added). Therefore, a carrier agent's physical collection of a paper boarding pass alone does not indicate an acceptance of the passenger to board the aircraft. Similarly, when a carrier uses electronic devices of any kind to scan a boarding pass (e.g., a paper boarding pass, an electronic boarding pass on a mobile device), the scanning itself alone does not indicate that the carrier has accepted the passenger for boarding. After the physical collection or electronic scanning, the gate agent may have reasons to not permit a passenger to board (e.g., the agent may find out that the passenger was trying to board a wrong flight, or may find out that the passenger has been selected to be involuntarily denied boarding). In those situations, the carrier may legally deny the passenger boarding because the passenger has not been accepted by a gate agent. Alternatively, if the gate agent accepts a passenger for boarding after collecting or scanning the passenger's boarding pass, the carrier is prohibited from removing the passenger from the flight thereafter.

## III. Revision of Carriers' Liability Limits for Denied Boarding Compensation

The Department's oversales rule, 14 CFR part 250, requires that the DBC liability limit amounts be periodically adjusted to reflect changes in the Consumer Price Index for All Urban Consumers (CPI-U). Specifically, 14 CFR 250.5(e) provides for the review of denied boarding compensation every two years through a specific formula to calculate the revised DBC liability limit amounts. The formula is below:

$$\text{Current DBC limit}^3 \text{ in } \S 250.5(a)(2) \text{ multiplied by } (a/b) \text{ rounded to the nearest } \$25$$

<sup>3</sup> The term "DBC limit" in the current rule text will be revised to "DBC liability limit" to clarify that carriers are permitted to limit their liability to the amount provided by regulation, or to offer a higher amount, consistent with the requirement of the TICKETS Act.

Where:

a = July CPI-U of year of current adjustment  
b = the CPI-U figure in August 2011 when the inflation adjustment provision was added to part 250.

Section 250.5(e) specifies that the DBC liability limit in § 250.5(a)(3) shall be twice the revised limit for § 250.5(a)(2), the DBC liability limit in § 250.5(b)(2) shall be the same as the revised limit for § 250.5(a)(2), and the DBC liability limit in § 250.5(b)(3) shall be twice the revised limit in § 250.5(a)(2).

In a final rule issued on May 27, 2015, the Department reviewed the DBC liability limit amounts then in effect (\$650 and \$1,300). Based on the formula prescribed in § 250.5(e), using the CPI-U for July 2014, the Department determined that the DBC liability limit amounts should be raised to \$675/<sup>4</sup>\$1,350.

For this review, we are using the CPI-U for July 2020, which was issued by the Bureau of Labor Statistics on August 12, 2020. In this review, we apply the formula using the CPI-U from August 2011 (the basis month required by the formula) and July 2020. The results of this calculation require that the DBC liability limit amounts be raised. Specifically, the appropriate inflation adjustment for the amount provided in § 250.5(a)(2) is  $\$675 \times 259.101/226.545$  [ $\$675 \times 1.1437$ ], which yields \$772. The base amount of \$675 in the formula was the denied boarding compensation liability limit amount in § 250.5(a)(2),<sup>5</sup> as adjusted by the 2015 final rule; 259.101 was the CPI-U for July 2020, and 226.545 was the CPI-U for August 2011. Section 250.5(e) requires us to round the adjustment to the nearest \$25, which is \$775 in this case. Section 250.5 under paragraphs (a)(3) and (b)(3) provide that for passengers who are not rerouted to reach their destination within two hours of the planned arrival time of their original domestic flight (four hours for international transportation), the DBC liability limit amount is twice the amount provided by § 250.5(a)(2) and (b)(2); therefore, under

the formula adjustment, this amount is twice \$775, or \$1,550.

#### IV. Revision of Domestic Baggage Liability Limit

The baggage liability limit that air carriers may apply to domestic air service is established by 14 CFR part 254. This limit applies to a carrier's liabilities towards any provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's baggage that was in a carrier's custody during domestic air transportation. Like the requirements regarding the provision of DBC to passengers in appropriate circumstances, this requirement has never limited the maximum amount of compensation a carrier may provide a passenger in connection with mishandled baggage. It merely provides a regulatory minimum liability limit that carriers may set. Section 254.6 requires review every two years of the limit of liability prescribed in part 254 and revision of the limit of liability, if necessary, to reflect changes in the CPI-U as of July of each review year through a specific formula. The formula is below:

$\$2500 \times (a/b)$  rounded to the nearest \$100

Where:

a = July CPI-U of year of current adjustment  
b = the CPI-U figure in December 1999 when the inflation adjustment provision was added to part 254.

The application of the formula during the 2014–2015 review of the domestic baggage liability limit raised the amount from \$3,400 to the current amount of \$3,500. The current review requires another inflation adjustment. Applying the formula using the consumer price index for December 1999 (the basis month required by the formula) and July 2020, the appropriate inflation adjustment is  $\$2,500 \times 259.101/168.30$  [ $\$2,500 \times 1.5395$ ], which yields \$3,848.75. The base amount of \$2,500 in the formula was the minimum liability limit in part 254 at the time that this biennial indexing provision was added to the rule in 1999, 259.101 was the CPI-U for July 2020, and 168.30 was the CPI-U for December 1999. Section 254.6 requires rounding the adjustment to the nearest \$100, which is \$3,800.

#### V. Regulatory Analyses and Notices

##### A. Good Cause for Issuing Rule Without Prior Notice and Comment

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) provides that when an agency, for good cause, finds that notice and public procedure thereon are impractical,

unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment (5 U.S.C. 553(b)(3)(B)). The Department has determined that there is good cause to issue this final rule without notice and an opportunity for public comment because such notice and comment would be unnecessary.

This rule implements section 425(e) of the TICKETS Act by making conforming changes to the rule text of 14 CFR part 250 to clarify that the Department's oversales regulation does not impose a ceiling on the amount of denied boarding compensation an airline may provide to a passenger involuntarily denied boarding. These editorial changes do not amend what the rule previously required and is not expected to impact carriers' current practice. This rule also implements sections 425(b)–(d) of the TICKETS Act by incorporating, virtually verbatim, the statutory language prohibiting airlines from involuntarily denying boarding to a passenger after the passenger's boarding pass has been collected or scanned and the passenger has boarded. Since the Department is exercising no discretion to implement these TICKETS Act provisions, public comment is unnecessary.

The Department has also determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with a notice of proposed rulemaking and public comment for the inflation adjustments herein as the application of this rule does not involve any agency discretion. These adjustments are a ministerial inflation update based on the terms and formulas set by 14 CFR 250.5 and 14 CFR 254.6. Those formulas were subject to notice and comment in the rulemaking proceedings during which they were added to the baggage liability and oversales rules. Accordingly, because this is purely a formula update, we find that there is good cause to dispense with notice and comment for this rulemaking.

##### B. Executive Order 12866

This final rule has been evaluated following existing policies and procedures, and is considered not significant under Executive Order 12866 and DOT's Regulatory Policies and Procedures. Therefore, the rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. This regulation conforms with the policies and procedures of DOT's administrative rule on rulemakings. 49 CFR part 5.

<sup>4</sup> 80 FR 30144.

<sup>5</sup> Section 250.5(a)(2) provides that the liability limit amount for DBC is \$675 for passengers who are denied boarding involuntarily on a domestic flight by a carrier who offers alternate transportation that is planned to arrive at the passenger's first stopover or final destination more than one hour but less than two hours after the planned arrival time of the passenger's original flight. Section 250.5(a)(3) provides that the liability limit amount for DBC is \$1,350 for passengers who are denied boarding involuntarily on a domestic flight by a carrier who offers alternate transportation that is planned to arrive at the passenger's first stopover or final destination more than two hours after the planned arrival time of the passenger's original flight.

### Revisions Implementing the TICKETS Act

The rule revises 14 CFR part 250 to implement certain provisions of the TICKETS Act, but does not impose additional costs on carriers. The revision clarifies the meaning of “maximum” DBC and DBC “limits,” but does not affect the amounts carriers must compensate passengers. Instead, the clarification is intended to prevent any potential misunderstanding from the public. The revision also prohibits removing passengers after their boarding passes are accepted by carriers or after they board aircraft, codifying a self-effectuating statutory provision. Removing passengers after their boarding passes are accepted is not a common practice among carriers, and the revision will not require carriers to alter their behavior meaningfully. Thus, the benefits and costs associated with implementing the TICKETS Act provisions are *de minimis*.

### Denied Boarding Compensation Liability Limits

The rule provides for an inflation adjustment to the DBC liability limit amounts that air carriers and foreign air carriers must pay passengers who are involuntarily denied boarding. The inflation adjustment is required by regulation and does not involve any exercise of discretion or interpretation. Because the Department does not have the flexibility to alter the inflation adjustment, it did not consider regulatory alternatives. The rule increases transfers from carriers to passengers to the extent that it increases compensation; any increase, however, would be minimal. In 2019, 20,868 passengers—24 passengers per 1,000,000 enplaned passengers—were involuntarily denied boarding on scheduled domestic and outbound international flights.<sup>6</sup> Many of those passengers qualified for compensation amounts below the DBC liability limit, and their compensation would not have been affected by the increase in the limits.

### Domestic Baggage Liability

The rule provides for an inflation adjustment to the amount of the minimum limit on baggage liability that air carriers may assert in cases of mishandled baggage. The adjustment is required by current regulation, with no opportunity for interpretation. The rule

increases transfers from carriers to passengers to the extent that it increases mishandled baggage compensation. This increase would be limited, however, because the majority of mishandled baggage cases do not result in claims that meet the liability limit. Based on information provided by carriers during an inflation adjustment review to the domestic baggage limit in 2013, slightly more than half of one percent of mishandled bags qualify for the current limit.<sup>7</sup>

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires an assessment of the impact of proposed and final rules on small entities unless the agency certifies that the proposed regulation will not have a significant economic impact on a substantial number of small entities. An air carrier or a foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.*, aircraft with up to 60 seats/18,000-pound payload capacity). See 14 CFR 399.73. The revisions of the baggage liability amounts affect flight segments operated with large aircraft, *i.e.*, more than 60 seats. The revisions of the DBC amounts affect flight segments operated with aircraft designed to have passenger capacity of 30 or more. As a result, many operations of small entities, such as air taxis and many commuter air carriers, are not covered by the rule. Moreover, any additional costs for small entities associated with the rule will be minimal and, in the case of baggage liability, may be covered by insurance. Accordingly, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

### D. Paperwork Reduction Act

This final rule imposes no new reporting or record keeping requirements necessitating clearance by OMB.

<sup>7</sup> The information provided to the Department by carriers in 2013 was based on the number of mishandled baggage reports (MBRs) filed with carriers by passengers, which was consistent with the reporting requirement in effect then pursuant to 14 CFR part 234. The number of MBRs in general is equal to the number of passengers who experienced mishandled bags. In 2016, the Department revised part 234 by requiring reporting carriers to report the number of mishandled bags instead of MBRs. See, *Final Rule, Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments*, 81 FR 76300, Nov. 2, 2016. The new reporting requirement became effective in 2019. As one MBR may contain multiple mishandled bags, the number of mishandled bags is in general slightly larger than the number of MBRs.

### E. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979) available at <https://www.transportation.gov/office-policy/transportation-policy/procedures-considering-environmental-impacts-dot-order-56101c>. Categorical exclusions are actions identified in an agency’s NEPA implementing procedures that do not normally have a significant impact on the environment, and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.1(d). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 4.c.6.i of DOT Order 5610.1C provides that “[a]ctions relating to consumer protection, including regulations” are categorically excluded. The purpose of this rulemaking is to adjust the amounts for denied boarding compensation and the minimum domestic baggage liability limit. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

### List of Subjects

#### 14 CFR Part 250

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

#### 14 CFR Part 254

Air carriers, Administrative practice and procedure, Consumer protection, Reporting and recordkeeping requirements.

Accordingly, the Department of Transportation amends 14 CFR parts 250 and 254 as follows:

### PART 250—OVERSALES

- 1. The authority citation for 14 CFR part 250 continues to read as follows:

**Authority:** 49 U.S.C. 329 and chapters 41102, 41301, 41708, 41709, and 41712

- 2. Revise § 250.2 to read as follows:

#### § 250.2 Applicability.

Except for § 250.7, this part applies to every carrier, as defined in § 250.1, with respect to scheduled flight segments

<sup>6</sup> Source: *Air Travel Consumer Report*, February 2020 edition, page 38. <https://www.transportation.gov/individuals/aviation-consumer-protection/february-2020-air-travel-consumer-report>.

using an aircraft that has a designed passenger capacity of 30 or more passenger seats, operating in interstate air transportation with respect to nonstop flight segments originating at a point within the United States. Section 250.7 applies to any air carrier or foreign air carrier as those terms are defined in 49 U.S.C. 40102.

■ 3. Amend § 250.2b by adding paragraph (d) to read as follows:

**§ 250.2b Carriers to request volunteers for denied boarding.**

\* \* \* \* \*

(d) Carriers must proactively offer to pay compensation to a passenger who is voluntarily or involuntarily denied boarding on an oversold flight, rather than waiting until the passenger requests the compensation.

■ 4. Amend § 250.5 by revising paragraphs (a)(2) and (3), (b)(2) and (3), and (e) and adding paragraph (g) to read as follows:

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

(a) \* \* \*

(2) Compensation shall be at least 200 percent of the fare to the passenger's destination or first stopover, or \$775, whichever is lower, if the carrier offers alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if none, the airport of the passenger's final destination more than one hour but less than two hours after the planned arrival time of the passenger's original flight; and

(3) Compensation shall be at least 400 percent of the fare to the passenger's destination or first stopover, or \$1,550, whichever is lower, if the carrier does not offer alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if none, the airport of the passenger's final destination less than two hours after the planned arrival time of the passenger's original flight.

(b) \* \* \*

(2) Compensation shall be at least 200 percent of the fare to the passenger's destination or first stopover, or \$775, whichever is lower, if the carrier offers alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if not, the airport of the passenger's final destination more than one hour but less than four hours after the planned arrival time of the passenger's original flight; and

(3) Compensation shall be at least 400 percent of the fare to the passenger's destination or first stopover, or \$1,350, whichever is lower, if the carrier does not offer alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if not, the airport of the passenger's final destination less than four hours after the planned arrival time of the passenger's original flight.

\* \* \* \* \*

(e) The Department of Transportation will review the denied boarding compensation liability limit amounts prescribed in this part every two years except for the first review, which will take place in 2012, to put the reviews specified in this section on the same cycle as the reviews of domestic baggage liability limits specified in 14 CFR 254.6. The Department will use any increase in the Consumer Price Index for All Urban Consumers (CPI-U) as of July of each review year to calculate the increased denied boarding compensation liability limit amounts. The Department will use the following formula:

(1) Current Denied Boarding Compensation liability limit in paragraph (a)(2) of this section multiplied by (a/b) rounded to the nearest \$25 where a = July CPI-U of year of current adjustment and b = the CPI-U figure in August 2011 when the inflation adjustment provision was added to this part.

(2) The Denied Boarding Compensation liability limit in paragraph (a)(3) of this section shall be twice the revised limit for paragraph (a)(2) of this section.

(3) The Denied Boarding Compensation liability limit in paragraph (b)(2) of this section shall be the same as the revised limit for paragraph (a)(2) of this section, and the Denied Boarding Compensation liability limit in paragraph (b)(3) of this section shall be twice the revised limit for paragraph (a)(2) of this section.

\* \* \* \* \*

(g) Nothing in this part prohibits carriers from offering denied boarding compensations in an amount more than the amount calculated according to paragraphs (a) through (d) of this section, or more than the denied boarding compensation liability limit amounts effective at the time of denied boarding.

■ 5. Add § 250.7 to read as follows:

**§ 250.7 Provision to implement the Transparency Improvements and Compensation to Keep Every Ticketholder Safe Act of 2018.**

(a) *Boarded passengers.* A covered air carrier may not deny a revenue passenger traveling on a confirmed reservation permission to board, or involuntarily remove that passenger from the aircraft, once a revenue passenger has:

(1) Checked in for the flight prior to the check-in deadline; and

(2) Had their ticket or boarding pass collected or electronically scanned and accepted by the gate agent.

(b) *Limitations.* The prohibition pursuant to paragraph (a) of this section shall not apply when:

(1) There is a safety, security, or health risk with respect to that revenue passenger or there is a safety or security issue requiring removal of a revenue passenger; or

(2) The revenue passenger is engaging in behavior that is obscene, disruptive, or otherwise unlawful.

(c) *Rule of construction.* Nothing in this section may be construed to limit or otherwise affect the responsibility or authority of a pilot in command of an aircraft under 14 CFR 121.533, or limit any penalty under section 46504 of title 49, United States Code.

■ 6. Amend § 250.9(b) in the statement under "AMOUNT OF DENIED BOARDING COMPENSATION" by revising the entries for "Domestic Transportation" and "International Transportation" to read as follows:

**§ 250.9 Written explanation of denied boarding compensation and boarding priorities, and verbal notification of denied boarding compensation.**

\* \* \* \* \*

(b) \* \* \*

**Amount of Denied Boarding Compensation**

*Domestic Transportation*

Passengers traveling between points within the United States (including the territories and possessions) who are denied boarding involuntarily from an oversold flight are entitled to: (1) No compensation if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover not later than one hour after the planned arrival time of the passenger's original flight; (2) at least 200 percent of the fare to the passenger's destination or first stopover, or \$775, whichever is lower, if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover more than one hour but less than two hours after the planned

arrival time of the passenger's original flight; and (3) at least 400 percent of the fare to the passenger's destination or first stopover, or \$1,550, whichever is

lower, if the carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger's destination or first stopover less than

two hours after the planned arrival time of the passenger's original flight.

0 to 1 hour arrival delay ..... No compensation.

1 to 2 hour arrival delay ..... 200% of one-way fare (carriers may limit this amount to \$775 if it is higher than \$775).\*

Over 2 hours arrival delay ..... 400% of one-way fare (carriers may limit this amount to \$1,550 if it is higher than \$1,550).\*

\* Nothing in the Department of Transportation's regulation prohibits carriers from offering denied boarding compensations in an amount more than the amount calculated according to the chart above, or more than the denied boarding compensation liability limit amounts stated in the chart.

#### International Transportation

Passengers traveling from the United States to a foreign point who are denied boarding involuntarily from an oversold flight originating at a U.S. airport are entitled to: (1) No compensation if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover

not later than one hour after the planned arrival time of the passenger's original flight; (2) at least 200 percent of the fare to the passenger's destination or first stopover, or \$775, whichever is lower, if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover more than one hour but less than four hours after the planned arrival time of

the passenger's original flight; and (3) at least 400 percent of the fare to the passenger's destination or first stopover, or \$1,550, whichever is lower, if the carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger's destination or first stopover less than four hours after the planned arrival time of the passenger's original flight.

0 to 1 hour arrival delay ..... No compensation.

1 to 4 hour arrival delay ..... 200% of one-way fare (carriers may limit this amount to \$775 if it is higher than \$775).\*\*

Over 4 hours arrival delay ..... 400% of one-way fare (carriers may limit this amount to \$1,550 if it is higher than \$1,550).\*\*

\*\* Nothing in the Department of Transportation's regulation prohibits carriers from offering denied boarding compensations in an amount more than the amount calculated according to the chart above, or more than the denied boarding compensation liability limit amounts stated in the chart.

\* \* \* \* \*

### PART 254—DOMESTIC BAGGAGE LIABILITY

■ 7. The authority citation for 14 CFR part 254 continues to read as follows:

**Authority:** 49 U.S.C. 40113, 41501, 41504, 41510, 41702, and 41707.

#### § 254.4 [Amended]

■ 8. Section 254.4 is amended by removing "\$3,500" and adding "\$3,800" in its place.

#### § 254.5 [Amended]

■ 9. Section 254.5(b) is amended by removing "\$3,500" and adding "\$3,800" in its place.

■ 10. Section 254.6 is revised to read as follows:

#### § 254.6 Periodic adjustments.

The Department of Transportation will review the domestic baggage liability limit prescribed in this part every two years. The Department will use the Consumer Price Index for All Urban Consumers as of July of each review year to calculate the revised domestic baggage liability limit amount. The Department will use the following formula:  $\$2500 \times (a/b)$  rounded to the nearest \$100, where a = July CPI-U of year of current adjustment and b = the CPI-U figure in December 1999 when the inflation adjustment provision was added to this part.

Issued in Washington, DC, on this 15th day of December 2020, pursuant to authority delegated in 49 CFR 1.27(n).

**Steven G. Bradbury,**

*General Counsel.*

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### FEDERAL TRADE COMMISSION

#### 16 CFR Part 1

#### Adjustments to Civil Penalty Amounts

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission ("FTC" or "Commission") is implementing adjustments to the civil penalty amounts within its jurisdiction to account for inflation, as required by law.

**DATES:** Effective January 13, 2021.

#### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015<sup>1</sup> directs agencies to adjust the civil

penalty maximums under their jurisdiction for inflation every January. Accordingly, the Commission issues annual adjustments to the maximum civil penalty amounts under its jurisdiction.<sup>2</sup>

Commission Rule § 1.98 sets forth the applicable civil penalty amounts for violations of certain laws enforced by the Commission.<sup>3</sup> As directed by the FCPIAA, the Commission is issuing adjustments to increase these maximum civil penalty amounts to address inflation since its prior 2020 adjustment. The following adjusted amounts will take effect on January 13, 2021:

- Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1) (premerger filing notification violations under the Hart-Scott-Rodino Improvements Act)—Increase from \$43,280 to \$43,792;

- Section 11(I) of the Clayton Act, 15 U.S.C. 21(I) (violations of cease and desist orders issued under Clayton Act section 11(b))—Increase from \$22,994 to \$23,266;

- Section 5(I) of the FTC Act, 15 U.S.C. 45(I) (unfair or deceptive acts or practices)—Increase from \$43,280 to \$43,792;

- Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) (unfair or

101-410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note).

<sup>2</sup> 81 FR 42476 (2016); 82 FR 8135 (2017); 83 FR 2902 (2018); 84 FR 3980 (2019); 85 FR 2014 (2020).

<sup>3</sup> 16 CFR 1.98.

<sup>1</sup> Public Law 114-74, sec. 701, 129 Stat. 599

(2015). The Act amends the Federal Civil Penalties Inflation Adjustment Act ("FCPIAA"), Public Law