statement is made: ''Comments to Docket No. FAA–2003–14854/Airspace Docket No. 03–AAL–5.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Nelson Lagoon, AK. The intended effect of this proposal is to establish Class E airspace, from 700 feet above the surface, to contain Instrument Flight Rules (IFR) operations at Nelson Lagoon, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Nelson Lagoon Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 8, original; and (2) RNAV (GPS) Runway 26, original. The Binal One RNAV Departure, a new Departure Procedure to permit IFR traffic to depart Runway 8 and Runway 26, will also be established. New Class E controlled airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Nelson Lagoon Airport would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Nelson Lagoon Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

Paragraph 600 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Nelson lagoon, AK [New]

Nelson Lagoon Airport, AK
(lat. 56°00′27″ N., long. 161°09′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Nelson Lagoon Airport.

* * * * *

Issued in Anchorage, AK, on April 18, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–11025 Filed 5–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD27

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary (OST) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would adjust the amount of compensation available to two classes of carriers under the Air Transportation Safety and System Stabilization Act. The effect of the change would be to permit increased compensation for some small air carriers.

DATES: Comments on the subject of this proposed rule must be received on or before May 19, 2003.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket OST–2001–10885, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the postcard and return it to the commenter. Comments will be available for

inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/.* Commenters who wish to file comments electronically should follow the instructions on the DMS Web site. Interested persons can also review comments through this same Web site.

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

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington, DC 20590. Telephone 202–366–1213.

SUPPLEMENTARY INFORMATION: As a consequence of the terrorist attacks on the United States on September 11, 2001, the U.S. commercial aviation industry suffered severe financial losses. These losses placed the financial survival of many air carriers at risk. Acting rapidly to preserve the continued viability of the U.S. air transportation system, President Bush sought and Congress enacted the Air Transportation Safety and System Stabilization Act.

Under section 101(a)(2)(A)–(B) of the Stabilization Act, a total of $5 billion in compensation is provided for ''direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such stoppage; and the incremental losses incurred beginning September 11, 2001 and ending December 31, 2001, by air carriers as a direct result of such attacks.''

Section 103 of the Stabilization Act established the basis for determining the amount of compensation payable to each carrier. Under section 103(b), that amount, for each passenger and combination passenger-cargo carrier, was the lesser of (1) the amount of its direct and incremental losses, or (2) the product of $4.5 billion and the ratio of the number of available seat miles reported for the month of August 2001 by the particular carrier to the number of available seat miles of all such air carriers reported for that month.

Thereafter, a number of carriers expressed concern that the Stabilization Act's use of approximate market share ratios as one of the alternate tests for compensation—*i.e.*, measuring each carrier's available seat miles (ASMs) against the total number of industry ASMs—would not adequately compensate some classes of carriers for their losses. Since ASMs are the product of the number of seats available for revenue use and the miles they are flown, 14 CFR 330.3, these carriers pointed out that those who operate aircraft having relatively few seats and/or fly for relatively short distances, such as air ambulances and air tour operators, do not accumulate ASMs as quickly as carriers operating large aircraft and flying longer distances. They argued that an ASM ratio formula, if used as a ceiling for compensation, would place such carriers at a disadvantage to larger carriers and result in compensation payments that were well below the losses these carriers had sustained from the attacks.

Subsequently, Congress enacted Section 124(d) of the Aviation and Transportation Security Act (Pub. L. 107–71, Nov. 19, 2001), which amended section 103 of the Stabilization Act. The purpose of this amendment, according to the Conference Report (H.R. REP. No. 107–296 at 79), was ''to allow for a modified system of providing compensation to air tour operators and air ambulances to better address their needs after industry-wide losses.'' The following is the text of this amendment:

> (d) Compensation for Certain Air Carriers.—
>
> (1) SET–ASIDE.—The President may set aside a portion of the amount of compensation payable to air carriers under section 101(a)(2) to provide compensation to classes of air carriers, such as air tour operators and air ambulances (including hospitals operating air ambulances) for whom application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses. The President shall reduce the $4,500,000,000 specified in subsection (b)(2)(A)(i) by the amount set aside under this subsection.
>
> (2) Distribution of Amounts.—The President shall distribute the amount set aside under this subsection proportionally among such air carriers based on an appropriate auditable measure, as determined by the President.

On January 2, 2002 (67 FR 263), the Department requested comments concerning whether it should utilize this discretionary authority to set-aside of a portion of funds, and if so, in what manner and to what classes of air carriers. Following receipt and consideration of written comments, the Department determined that the statutory formula in the Stabilization Act did result in disproportionately smaller recoveries for smaller passenger carriers, and that it would be appropriate to use the set-aside authority to address that situation. In analyzing the financial information submitted to that point by smaller carriers, the Department found that air taxi, commuter, and regional carriers reporting fewer than 10 million ASMs would receive disproportionately less relative to their losses under the Stabilization Act formula than carriers that had higher ASM levels. Moreover, the smallest of these—those who reported an average of 10,000 or fewer per day, or 310,000 for the reporting period of August 2001—seemed to fall even further behind in compensation levels relative to their expected losses.

Therefore, in its final rule on the subject (67 FR 18468–78, April 16, 2002) the Department established a set-aside program and created two classes of small carrier for purposes of prospective compensation under that program. A Class I air carrier was defined as an air taxi, regional, or commuter air carrier that reported 310,000 or fewer available seat miles to the Department for the month of August 2001. A Class II air carrier was defined as an air taxi, regional, or commuter air carrier that reported between 310,001 and 10 million available seat miles to the Department for that month. 67 FR 18477, codified at 14 CFR 330.43. (Indirect carriers reporting 310,000 or fewer, and from 310,001 to 10 million ASMs, were added to these two classes in a final rule published on August 20, 2002, 67 FR 54058–83.) The rule further stated that compensation for Class I carriers would be calculated using a fixed ASM rate equivalent to the mean losses per ASM for all Class I carriers applying for compensation. Compensation for Class II carriers would be calculated using a graduated ASM rate equivalent to (i) the mean loss per ASM for all Class I carriers applying for compensation, for each of the first 310,000 ASMs reported and (ii) the mean loss per ASM for all Class II carriers applying for compensation for each ASM in excess of 310,000. 67 FR 18478, codified at 14 CFR 330.45(b).

Another subsection of the regulation set a ''floor'' for payment to qualifying set-aside carriers, equivalent to 25% of their direct and incremental transportation-related losses, to ensure that even air carriers with very high loss/ASM ratios would receive compensation at a rate more consistent with those being paid to larger carriers having high loss/ASM ratios. A further

provision was necessary to ensure that carriers under the set-aside would not receive a higher percentage of compensation for losses, on average, than non set-aside carriers. Thus, we provided that compensation for set-aside carriers would not be more than an amount equivalent to the mean percentage of compensation for losses received by passenger and combination passenger-cargo air carriers that were not eligible for the set-aside funds. Finally, we provided that if a set-aside carrier would receive more compensation under the Stabilization Act formula than under the set-aside formula, it would receive compensation at the higher amount. 14 CFR 330.35(c).

Important to these calculations are, of course, the amounts that represented the mean losses per ASM for Class I and Class II carriers. In the Preamble to the April rule, the Department made clear that these amounts could be calculated only after all applications had been received from Class I and II carriers, and only after the amounts of actual losses could be verified. However, for purposes of illustration, the Department offered estimates of the basis upon which each Class would be compensated, relying upon the forecasted losses made by the air carriers that had already applied and would qualify for Class I and Class II. As an example, for Class I carriers, the Department estimated that the mean loss per ASM was $0.82, based upon this preliminary data. Thus, for Class I carriers, the Department projected that a carrier with 100,000 ASMs might receive $82,000 in total compensation if this formula were used. For Class II carriers, the average losses might be expected to be in the range of 25 to 50 cents per ASM, but to achieve consistency with the compensation rates for the Class I carriers this amount would need to be averaged over the first 310,000 ASMs and those between 310,000 and 10 million. The Department projected that if the $0.82 per ASM rate were used for the initial 310,000 ASMs, the overall mean, based on these forecast data, would be reached by applying a rate of $0.19 per ASM for those over the first 310,000 ASMs. As an example, we estimated that a carrier with 750,000 ASMs might receive approximately $337,800 in total compensation under this formula. Again, we cautioned that these were estimates, and that, depending on the actual losses and ASMs that would be validated for set-aside applicants, the ASM rates for both Class I and Class II carriers could change. *See* 67 FR 18470.

The Department has now received and processed the carrier applications under the set-aside program. We have determined that the losses incurred by Class I carriers were significantly lower than our earlier estimates, averaging only $0.42 per ASM. This was primarily due to carriers reporting actual losses lower than they had forecast earlier, although disallowance of some claimed losses also played a part. Losses for Class II carriers, on the other hand, were more consistent with earlier estimates, ranging generally from 25 to 32 cents per ASM. We also found that the smallest carriers in Class I, those reporting fewer than 75,000 ASMs, reported losses that were on average significantly higher per ASM than the larger carriers in Class I.

As a result, air carriers in Class I have been processed for payments in amounts that are often less than anticipated. Also, the smallest of the carriers, because they have, on average, reported comparatively higher losses per ASM than other set-aside eligible carriers, still seem to have received disproportionately smaller amounts relative to those other carriers. On the other hand, because the verified loss amounts on a cumulative basis have been less than those we estimated, the Department has flexibility to modify the set-aside rule to provide more equitable treatment for the smaller set-aside carriers without disadvantaging the larger ones.

We are, therefore, considering changes to the definitions for the two classes of set-aside air carrier in 14 CFR 330.43. Class I would now consist of those carriers reporting 75,000 or fewer ASMs to the Department for the month of August 2001, while Class II would consist of those reporting between 75,001 and 10 million ASMs for that month. The set-aside formula for Class I carriers would be based on a mean ASM rate for that class of $0.984 per ASM. The formula for Class II carriers would be based on the rate of $0.984 for each of the first 75,000 ASMs, and $0.24 for each ASM from 75,001 to 10 million. Use of these mean ASM rates would not reduce the payments any set-aside carrier has received. They would increase the maximum possible payment for set-aside carriers that reported 310,000 or fewer ASMs, but, primarily, would increase payments to the smallest carriers in that group.

To illustrate the effects of this change, the following table shows the approximate maximum payments that three fictional carriers would receive under both the preexisting and the proposed mean ASM rates and class definitions:

Carrier	ASMS in August 2001	Maximum compensation under April 16 rule	Maximum compensation under amended rule
ABC Airways	60,000	$25,200	$59,040
DEF Airways	250,000	105,000	115,800
GHI Airways	5,000,000	1,255,800	1,255,800

In addition to use of this formula for compensation, the Department may utilize several other alternatives as bases for compensation of set-aside carriers. These other alternatives are currently available under 14 CFR 330.45(c), and no change is being made to that subsection. Thus, the compensation paid to qualifying set-aside carriers will not be less than an amount equivalent to 25 percent of the direct and incremental transportation-related losses that they demonstrate to the satisfaction of the Department were incurred as result of the terrorist attacks. This would ensure that there would be a ''floor'' of compensation at the 25 percent level available for extreme cases of loss.

In that same subsection, the Department had set a ceiling rate for compensation to ensure that set-aside carriers are not compensated at levels that would be excessive relative to other carriers. Passenger and combination passenger-cargo air carriers that were not eligible for the set-aside have received compensation computed at a mean of 71 percent of their losses. Accordingly, the Department would compensate set-aside carriers at that level if the amount that would be received is less than that computed under the set-aside formula.

Finally, the Department has noted that, in some unusual circumstances, the ASM-based formula established originally under the Stabilization Act would provide a greater level of compensation to a set-aside carrier than the 71 percent calculation based on the mean level of compensation for non set-aside carriers noted above. Because Congress afforded discretion to the Department in the Security Act to assist, not disadvantage, smaller carriers, we would provide compensation in this case based on the Stabilization Act formula, up to, but not to exceed, compensation for all air transportation-related losses.

Regulatory Analyses and Notices

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The Act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include approximately 50 small air carriers. The Department certifies that this rule does not have a significant economic impact on a substantial number of small entities because the rule will increase payouts to such a limited number of small air carriers. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the State nor preempt any State law or regulation.

Comment Period

The Department has shortened the comment period for this rule for good cause pursuant to 5 U.S.C. 553 (d)(3). First, this proposal will benefit a number of carriers by providing additional funds. Second, the shortened comment period will allow the Department to finalize the rule expeditiously, which will permit final payments to be made to these carriers sooner.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs—Transportation, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR part 330 as follows:

PART 330—[AMENDED]

1. The authority citation for 14 CFR part 330 continues to read as follows:

Authority: Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note); sec. 124(d), Pub. L. 107–71, 155 Stat. 631 (49 U.S.C. 40101 note).

2. Revise § 330.43 (a) and (b) as follows:

§ 330.43 What classes of air carriers are eligible under the set-aside?

* * * * *

(a) You are a Class I air carrier if you are an air taxi, regional, commuter or indirect air carrier and you reported 75,000 or fewer ASMs to the Department for the month of August, 2001.

(b) You are a Class II air carrier if you are an air taxi, regional, commuter or indirect air carrier and you reported between 75,001 and 10 million ASMs to the Department for the month of August 2001.

3. Revise § 330.45 (b)(2) (i) and (ii) as follows:

§ 330.45 What is the basis on which air carriers will be compensated under the set-aside?

* * * * *

(b) * * *

(2) As a Class II carrier, your compensation will be calculated using a graduated ASM rate equivalent to —

(i) The mean loss per ASM for all Class I carriers applying for compensation, for each of the first 75,000 ASMs reported; and

(ii) The mean remaining loss per ASM for all Class II carriers applying for compensation for each ASM in excess of 75,000.

* * * * *

Issued in Washington, DC, this 1st day of May, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–11185 Filed 5–1–03; 2:38 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket Nos. 02N–0275 and 02N–0277]

Proposed Regulations Implementing Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Notice of Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; satellite downlink public meeting; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of April 8, 2003 (68 FR 16998). The document announced a public meeting (via satellite downlink) to discuss the proposed regulations implementing two sections in Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) regarding maintenance and inspection of records for foods (Docket No. 02N–0277) and administrative detention (Docket No. 02N–0275). The document was published with inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Louis Carson, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2277, FAX: 301–436–2605, e-mail: CFSAN-SS@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION: In the FR Doc. 03–8576, appearing on page 16999 in the **Federal Register** of Tuesday, April 8, 2003, the following corrections are made:

1. On page 16999, beginning in the second column and ending in the third column, under table 1, under ''Pre-event Test:'' the last sentence is corrected to