1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Aurora, MO. It replaces ''Aurora Memorial Municipal Airport,'' the former name of the airport, with ''Jerry Summers Sr. Aurora Municipal Airport,'' the new name of the airport, in the legal description. It brings the legal description of the airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15460/Airspace Docket No. 03–ACE–58.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 1312.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have significant economic impact, positive or negative, 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).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 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 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, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Aurora, MO

Jerry Summers Sr. Aurora Municipal Airport, MO
(Lat. 36°57′44″ N., long. 93°41′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Jerry Summers Sr. Aurora Municipal Airport and within 2 miles each side of the 181° bearing from the Jerry Summers Sr. Aurora Municipal Airport extending from the 6.3-mile radius to 9.3 miles north of the airport.

* * * * *

Issued in Kansas City, MO on July 17, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19165 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD27

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, (DOT).

ACTION: Final rule.

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

DATES: This rule is effective July 29, 2003.

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:

Background

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 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.

The Department published a Notice of Proposed Rulemaking on May 5, 2003, at 68 FR 23627. No comments were received in response to that notice. This final rule adopts the proposed rule without change.

The Rule

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

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 will ensure that there is 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 will 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 will 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.

Immediate Effective Date

The Department is making this rule effective immediately upon publication. The Department finds good cause to do so based on the importance of implementing this rule immediately to be able to enable the Department to make payments under the adjusted compensation formula to eligible air carriers. These eligible air carriers are typically among the smallest and most economically vulnerable participants in the industry, who have been awaiting compensation payments for many months.

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 amends 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 22nd day of July, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–19240 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–025]

RIN 1625–AA00

Safety Zone; Colorado River, Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Laughlin, Nevada in support of the Avi Resort and Casino fireworks show. This temporary safety zone is necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 p.m. (PDT) on August 31, 2003 until 10 p.m. (PDT) on August 31, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–025] and are available for inspection or copying at Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The precise location of the event necessitating promulgation of this safety zone and other logistical details surrounding the event were not finalized until a date close in time to the event. Delaying the effective date of this rule would be contrary to the public interest because doing such would prevent the Coast Guard from maintaining the safety of the participants of the event and users of the waterway.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Colorado River in Laughlin, Nevada in support of the Avi Resort and Casino fireworks show. The fireworks will be launched from an area on land, however, the fallout area will be over a section of the Colorado River and a safety zone on this section of the river is necessary to provide for the safety of the users of this waterway.

Discussion of Rule

The Coast Guard proposes to establish this temporary rule to provide for the safety of the participants, spectators and other users of the waterways. The temporary safety zone is specifically defined as that portion of the Colorado River 1000 yards north of Veterans Bridge. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.