

## SUPPORTING STATEMENT

### OMB No. 2138-0018 14 CFR Part 250 Report of Passengers Denied Confirmed Space

#### A. Justification

##### **1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

Title 14 Code of Federal Regulations (14 C.F.R.), Part 250 of the Department's aviation regulations establishes minimum standards for the treatment of airline passengers holding confirmed reservations who are not accommodated because their flight has been oversold. BTS Form 251 *Report of Passengers Denied Confirmed Space*, is filed pursuant to §250.10 of this regulation. The Department uses Form 251 data to monitor airlines compliance with Part 250.

In November 2016, the Department issued a final rule, Enhancing Airline Passenger Protections (81 FR 76800), which, among other things, expands the pool of carriers that are required to file Form 251. Under the previous rule, U.S. carriers that count for at least 1 percent of the domestic scheduled passenger revenue must file Form 251. Under the new rule, this threshold has been lowered to 0.5 percent. The new rule also requires that marketing carriers report the oversales data for the domestic codeshare flights they market. Under the previous rule, carriers were only required to report the oversales data for flights that they operate. The new requirements regarding oversales reporting will be applicable to flights operated on or after January 1, 2018. The expanded information collection by this new rule will allow the Department to collect oversales data about smaller airlines that often serve small communities. The Department will publish this additional data to allow the public to have a more complete view of the oversales situation by all carriers.

##### **2. Indicate how, by whom, and for what purpose the information is to be used. Indicate the actual use the agency has made the information received from the current collection.**

The previous information collection under this OMB control number covers U.S. air carriers that account for 1 percent or more of domestic scheduled passenger revenue. Under the new final rule, carriers that account for at least 0.5 percent but less than 1 percent of domestic scheduled passenger revenue will be added to the reporting carrier pool for the purpose of submitting Form 251. These same carriers submit Airline Service Quality Performance Reports. Carriers do not report data from inbound international

flights because the protections of Part 250 *Oversales* do not apply to these flights.

BTS Form 251 is a one-page report on the number of passengers denied boarding voluntarily and involuntarily, whether the bumped passengers were provided alternate transportation and/or compensation, and the amount of the payment. Under the 2016 final rule, any reporting carrier that markets codeshare flights will be required to submit a separate BTS Form 251 for the oversales data of their domestic codeshare flights. These reports allow the Department to monitor the effectiveness of its oversales rule. The involuntary denied-boarding rate has decreased over the years from 4.38 per 10,000 passengers in 1980 to 0.62 in 2016. The improvement has been made in a period when load factors have risen. The publishing of the air carriers' individual denied boarding rates has negated the need for more intrusive regulation.

The rate of denied boarding can be examined as a continuing fitness factor. This rate provides an insight into a carrier's policy of treating passengers and its compliance disposition. A rapid sustained increase in the rate of denied boarding often is an indicator of operational difficulty.

Because the rate of denied boarding is released quarterly, travelers and travel agents can select carriers with low bumping incidents when booking a trip. This information is made available to the public in the *Air Travel Consumer Report* and on the web at:

<http://airconsumer.dot.gov/>

A more detailed table of the Report of Passengers Denied Confirmed Space is available at:

[http://www.bts.gov/programs/airline\\_information/passengers\\_denied\\_confirmed\\_space\\_report/](http://www.bts.gov/programs/airline_information/passengers_denied_confirmed_space_report/)

*Air Travel Consumer Report* is also sent to newspapers, magazines, and trade journals. Without Form 251, determining the effectiveness of the Department's oversales rules would be an uncertainty.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.**

The Office of the Assistant Secretary for Research and Technology's Bureau of Transportation Statistics issued a final rule which was published in the 75 Federal

Register, No. 136, page 41580 on July 16, 2010 that requires reporting carriers to submit their recurrent reports to the Department via the internet using a comma separated values format or where applicable, PDF (portable document format). Carriers are able to use their browsers to upload the reports into the new system. 100% of the carriers submit the requested data via the internet using their browsers.

**4. Describe efforts to identify duplication. Show specifically why similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

Form 251 is the only report of its kind. There are no other information sources to check carriers' denied-boarding rates.

**5. If the collection of information impacts small businesses or other small entities, describe efforts to minimize burden.**

Carriers that count for at least 0.5 percent of annual domestic scheduled passenger revenues are required to submit Form 251 with respect domestic scheduled and international scheduled outbound flights using aircraft with 30 or more seats. For the purpose of implementing the Regulatory Flexibility Act in rules promulgated by the Office of the Secretary of Transportation regarding aviation economic and consumer matters, an airline is a small business if it provides air transportation only with aircraft having 60 or less seats (14 CFR 399.73). Among the six new carriers that are required to file Form 251 under the new rule, there are no carriers that exclusively operate aircraft with 60 or less seats. Therefore, there are no small businesses or other small entities impacted by this expanded information collection.

**6. Describe the consequence to the Federal Program or policy activities if the collection were not collected or conducted less frequently as well as any technical or legal obstacles to reducing burden.**

Originally, the information was collected monthly. Filing frequency was changed to quarterly to reduce carrier-reporting burden. Because of the nature of the airline business, less frequent filing could obscure seasonal or peak-travel period oversales problems.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**

- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, government contracts, grant-in-aid, or tax records for more than 3 years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances that pertain to this data collection.

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the Agency's notice, required by 5 CFR 1320.8(d) soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to the notice and describe actions taken by the agency in response to these comments.**

**Describe efforts to consult with persons outside the Agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format, and on the data elements to be recorded, disclosed, or reported.**

**Consultation with representatives of those from whom information is to be obtain or those who must compile records should occur at least once every 3 years, even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation.**

An NPRM inviting public comments was published in the Federal Register on May 23,

2014 (79 FR 29995). This NPRM is used for the 60 day notice. 750 comments were received from U.S. air carriers and associations, foreign air carriers and associations, consumer rights groups, travel agents and associations, airports and related industry groups and individual consumers. Four consumer rights groups support the burden reporting expansion, several airlines, airports, airport associations and one airline association support the burden reporting expansion and feel that it should be expanded to all U.S. air carriers, not just the additional 11. A number of airlines did not support the expansion and asserted that any change to the current reporting rules are unjustified and misleading. For the Department’s response, it notes that a September 2011 GAO report to Congress states that the Department should collect and publicize more comprehensive airline consumer data. The comments opposing expansion of the reporting carrier pool mainly focus on the burden it will place on smaller carriers. In that regard, the Department has determined that there is a balance between obtaining the most useful flight performance quality data and avoiding excessive burden and cost to smaller airlines, by expanding the reporting air carrier threshold from 1 percent of total industry scheduled domestic passenger revenues to 0.5 percent. A Final Rule was published in the Federal Register on November 3, 2016 (81 FR 76824).

**9. Explain any decision to provide any payment or gift to respondents, other than re-enumeration of contractors or grantees.**

There were no payments or gifts to respondents.

**10. Describe any assurances of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or Agency policy.**

Because Form 251 is a consumer report, there are no guarantees of confidentiality.

**11. Are there any questions of a sensitive nature?**

There are no questions of a sensitive nature.

**12. Provide estimates of reporting burden.**

U.S. AIR CARRIERS  
(Form 251 for Flights They Operate and Codeshare Flights They Market)

Respondents	<u>18</u>	
Quarterly Reports	<u>4</u>	
Total Reports	72	
Hours per Reports	<u>16</u>	-
Burden Hours	1,152	

The basis for this estimate is explained in Item 15.

**13. Provide an estimate of the total annual cost burden to the respondents. Do not include the cost of any hour burden shown in items 12 and 14. Generally, estimates should not include purchase of equipment or services or portions thereof made prior to October 1995.**

The Department estimated a one-time set-up cost of \$106,000 per new reporting carrier to be able to collect and report on-time performance, mishandled baggage, and oversales data to the Department.<sup>1</sup> The estimate does not distinguish the costs for each of the three categories of data, but since oversales data is collected and reported quarterly, as opposed to monthly collection and reporting for on-time performance and mishandled baggage data, we believe the set-up cost for reporting oversales data is less than one-third of the total set-up cost, or less than \$35,000 per carrier.

**14. Provide estimates of annualized cost to the Federal Government.**

Cost to the Government to process Form 251 under the previous rule is estimated to be about \$10,000 per year. With the expanded information collection, additional cost to the Government is estimated to be no more than \$5,000 per year. This estimate is comprised of allocation of additional staff time to log in receipt of the additional carriers reports (both with respect to reports from additional smaller carriers and reports for codeshare flights), compilation of the quarterly data, allocation of printing cost (denied boarding makes up 5% of the pages in the *Air Travel Consumer Report*, and an allocation of consumer statistics exhibited on DOT's internet site.

**15. Explain the reasons for any program changes or adjustments in Items 13 or 14 of OMB 83-I.**

Government costs increased due to the cost and workload to make the additional information available to the public and the industry via electronic media/websites.

The increase in burden hours from the last OMB renewal is caused by additional respondents that are required to report due to the reporting threshold dropping from 1 percent to 0.5 percent of total industry scheduled domestic passenger revenues and reporting of codeshare flights, bring the total reporting air carriers to 18, and the burden hours increasing from 10 hours per report to 16 hours per report based on a cost/benefits analysis conducted in 2016 and is part of the Final Rule Nov. 3, 2016, (81 FR on page 76822).

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<sup>1</sup> See., *Regulatory Impact Analysis for Final Rule Enhancing Airline Passenger Protection III*, October 18, 2016. <https://www.regulations.gov/document?D=DOT-OST-2014-0056-0792>.

**16. Is the information received published?**

DOT publishes the *Air Travel Consumer Report*, which includes tables giving information by U.S. air carriers on the number of passengers bumped involuntarily and on the number who voluntarily gave up their seats on oversold flights in exchange for compensation. The rate of involuntarily denied boarding per 10,000 passengers is also included.

Although the *Air Travel Consumer Report* is a monthly publication, denied boarding information is displayed for the latest available quarter and year-to-date. The *Air Travel Consumer Report* is also available on the internet.

More detailed denied boarding information is available at:

[http://www.bts.gov/programs/airline\\_information/passengers\\_denied\\_confirmed\\_space\\_report/](http://www.bts.gov/programs/airline_information/passengers_denied_confirmed_space_report/)

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

We are not seeking approval to not display, the OMB expiration date on the file format.

**18. Explain each exception to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act Submissions,” of Form 83-I.**

There are no exceptions.

## **MISSION STATEMENT**

The Department of Transportation (DOT) relies on the Report of Passengers Denied Confirmed Space Report to fulfill its strategic plan. The DOT monitors and studies carrier scheduling and reservation practices to assess their compliance disposition and financial fitness. DOT is committed to guiding and overseeing America's air transportation system today and into the future by recognizing statistical trends that identify recurring problems and consumer dissatisfaction. High involuntary-denied-boarding rates exhibit consumer dissatisfaction with airline operations.

DOT is committed to developing transportation policies and programs that foster fast, safe, efficient, and convenient transportation at the lowest cost. Economic growth prospers when the real economic cost of transportation is reduced. DOT recognizes that the collection of delay data is critical to identifying and solving air congestion problems effectively reducing transportation costs. DOT performs an essential role as a catalyst for improving the quality of decisions affecting the transportation sector. In this role, the Bureau of Transportation Statistics serves as a facilitator in providing missing critical data to the FAA. Four economic trends impact transportation: (1) the globalization of commerce, (2) a growing attention to logistics in the production process, (3) a greater reliance on private investment in transportation industry, and (4) the rise of competing and complementary technologies. The accelerated application of advanced information technologies, competitive techniques, and traffic flow information systems affect the transportation industry. Adoption of these information-related technologies will facilitate the collection, management, integration, and distribution of more transportation information in less time with better accuracy and broader application

BTS has advanced the precepts of the Clinger-Cohen Act and the Paperwork Reduction Act by re-engineering its data processing system. BTS is responsible for planning, managing, and maximizing the results of its IT investments. In this process, BTS is committed to working with its transportation partners to ensure the successful transition of its Information Technology (IT) systems. BTS' objectives are to improve the quality, reliability, and accessibility of transportation-related information. BTS' resources will also be used to mitigate the paperwork burden imposed on the air transportation industry and the public.