

Interim Final Rule Justification

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without seeking notice and comment prior to the rulemaking.

At present the absence of a secondary flightdeck barrier presents an imminent risk to the U.S. aviation industry, along with crew and passengers aboard airline aircraft. Based on continued unruly passenger events, including recent attempted flight deck breaches provided below, there is good cause that the Federal Aviation Administration issue an Interim Final Rule under its emergency authority. Requiring personnel to use inferior and non-standardized mitigations, including carts or their person, is insufficient and prolongs unnecessary risk to the system.

Further, there is good cause to issue the rule without seeking prior notice and comment because complying with the requirement while waiting for a proposed rule to be finalized will draw greater attention to operational vulnerabilities for aircraft performing service that implicate our national defense and homeland security. Finally, finding of good cause exception should be based on the impracticability of providing the public with notice-and-comment while complying with the 1-year statutory mandate in the FAA Reauthorization Act of 2018. The “impracticability exception” to normal notice and comment procedures is an important exception that is used where delay would do real harm. To this point, the good cause exception was made part of the APA to address certain scenarios encountered by federal agencies where delay would jeopardize their assigned missions to protect the public, including the Federal Aviation Administration’s statutory obligation to maintain safety as the highest priority in air commerce.

Recent Attempted Flight Deck Breaches

Spirit Airlines 1839	September, 2020
American Airlines 2392	November, 2020
Delta Air Lines 478	December, 2020
American Airlines AA60	May, 2021
United Airlines 5365	June, 2021
Delta Air Lines 386	June, 2021
JetBlue 261	September, 2021
American Airlines 488	January, 2022

American Airlines 1775

February, 2022

Unruly Passenger Events

2021 Unruly Passengers Events

5,981

2022 Unruly Passengers Events (through March 28 2022) 1,035