

## UNITED STATES CIVIL AVIATION BOARD (CAB)

## SMOKING RULEMAKING

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There are two United States government agencies that have responsibility for smoking aboard aircraft. The Federal Aviation Administration (FAA) looks at the issue from the standpoint of public safety and health. The Civil Aeronautics Board (CAB) is responsible for the adequacy of airline service, which includes the quality of that service.

In the early seventies, the FAA conducted a study of smoking aboard aircraft by placing air sampling packages throughout the aircraft on 28 flights, and by distributing a questionnaire to passengers on those flights. The FAA found that the low level of carbon monoxide and other contaminants aboard the aircraft did not present a significant health hazard but did bother non-smokers. Corrective action was suggested to alleviate their discomfort but the FAA decided not to take such action itself in the absence of a health hazard.

As a result, the CAB took over and proposed a rule that would require airlines to provide separate sections for smokers and non-smokers and place the smoking section in the back of the aircraft. In 1973, the CAB adopted this proposal as a final rule, but dropped the requirement that smokers be placed in the back, leaving the placement of the smoking section to the discretion of the airlines. This rule was viewed as a compromise between smokers and non-smokers, and necessary to ensure adequate service.

Between 1976 and 1981, the CAB considered several measures to tighten its smoking rule. These included banning cigar and pipe smoking, requiring fully functioning ventilation systems when passengers were smoking, prohibiting sandwiching (the placement of a no-smoking section between two smoking sections), banning smoking on small aircraft on short flights, and requiring airlines to place partitions or buffer zones between the smoking and no-smoking sections. In 1979, the CAB decided to specially segregate cigar and pipe smokers, require fully functioning ventilation, and place restrictions on sandwiching, but these new requirements were eliminated in 1981. By that time, most airlines had banned cigar and pipe smoking on their own.

The only 1979 addition to the rule that survived the rule change of 1981 was the requirement that airlines guarantee their non-smoking passengers a seat in the no-smoking section. Under this requirement, airlines had to move passengers around or expand the no-smoking section if more non-smokers showed up for a flight than they expected. As a result of the problems this caused some airlines, the CAB modified the requirement in 1981 by stating that an airline would not have to expand the no-smoking section or move people around to accommodate the desires of a non-smoker who failed to comply with the airline's check-in deadline. This meant that airlines would not have to make last-minute seating changes, but it did not affect the basic premise that when smokers' and non-smokers' interests came into conflict, the rights of the non-smoker should take priority over those of the smoker.

At the same time that the CAB was considering these changes, an important shift in its legal authority was taking place. The Congress passed, and President Jimmy Carter signed, a new law, the Airline Deregulation Act. This law called for the phasing out of most non-safety-related government regulation of airlines, and for the "sunset" of the CAB in 1985. As a result, many questioned whether the CAB should continue to regulate airline smoking policies.

In 1981, the CAB addressed this question and found that smoking was not analogous to the types of economic issues, such as routes and pricing, that were being deregulated, but rather was an issue that evoked strong passenger emotions, and possibly had health ramifications for at least some people. As a result, the CAB saw a need to keep order and civility aboard the aircraft with a government-enforced rule that provided a central agency to deal with complaints. The CAB also noted that the general requirement of its rule, separating smokers and non-smokers, had widespread public support and a small economic impact on the airlines.

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The determination that the CAB's rule has widespread public support is supported by surveys conducted by the Roper Organization, Tarrance & Associates, and the Airline Passenger Association (an organization of frequent flyers). These surveys found that an overwhelming majority of the public favoured separating smokers and non-smokers on airlines and were satisfied with current airline policies that do this. These surveys also indicated that passengers are now more bothered by crying babies or the lack of leg room than smoking. A recent survey by the Georgia Lung Association, however, indicated that most passengers would not object to a ban on smoking on short flights. In addition, the CAB continues to receive angry letters from non-smokers complaining that they continue to suffer from smoke despite the segregated seating arrangements.

As a result of these continued complaints, and of a recent court action, the CAB is again considering additional restrictions on smoking. It has proposed to ban smoking on flights of one or two hours, on aircraft with 30 or 60 seats, or when the ventilation systems are not producing adequate ventilation. In addition, the CAB has proposed to ban cigar and pipe smoking on all flights and to require airlines to provide special seating (such as a seat farthest from the smoking sections) for passengers who present medical evidence of being especially sensitive to smoke. The regulations, effective as of 9 September 1983, are reproduced in the Appendix to this Annex.

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APPENDIX

CIVIL AERONAUTICS BOARD ECONOMIC REGULATIONS

Part 252 - Smoking aboard aircraft  
(effective as of 9 September 1983)

252.1 Applicability

This part establishes rules for the smoking of tobacco aboard aircraft. It applies to all operations of direct air carriers, except on-demand services of air taxi operators, with aircraft designed to have a passenger capacity of more than 30 seats. Nothing in this regulation shall be deemed to require carriers to permit the smoking of tobacco aboard aircraft.

252.1a Special segregation of cigar and pipe smokers

Carriers shall adopt and enforce rules providing for special segregation of cigar and pipe smokers, and for such other procedures as may be necessary to avoid exposing persons seated in no-smoking areas to smoke from cigars and pipes.

252.2 No-smoking sections

(a) Except as provided by paragraph (b) of this section, air carriers shall ensure that non-smoking passengers are not unreasonably burdened by breathing smoke and to that end shall provide at a minimum:

- (1) A no-smoking area for each class of service and for charter service;
- (2) A sufficient number of seats in the no-smoking sections of the aircraft for all persons who wish to be seated there;
- (3) Expansion of no-smoking sections to meet passenger demand; and
- (4) Special provisions to ensure that if a no-smoking section is placed between smoking sections, the non-smoking passenger is not unreasonably burdened.

(b) On flights for which passengers may make confirmed reservations and on which seats are assigned before boarding an air carrier need not provide a seat in a no-smoking section to a passenger who has not met the carrier's requirements as to time and method of obtaining a seat on the flight, or who does not have a confirmed reservation. If a seat is available in the established no-smoking section, however, a carrier shall seat there any enplaning passenger who so requests, regardless of boarding time or reservation status.

252.2a Ban on smoking when ventilation systems not fully functioning

Carriers shall adopt and enforce rules prohibiting the smoking of tobacco whenever the ventilation system is not fully functioning. A ventilation system shall be considered fully functioning only when all parts are in working order and operating at the capacity designed for normal service.

252.3 Enforcement

Each air carrier shall take such action as is necessary to ensure that smoking is not permitted in non-smoking sections and to enforce its rules with respect to the separation of passengers in smoking and no-smoking areas.

252.4 Waivers

Air carriers may file with the Board's Docket Section applications for waivers of one or more of the requirements of this part, in order to experiment with other methods of achieving the public policy objectives of this part.

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