DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. OST–2003–11473]

RIN 2105–ADO4

Reporting Requirements for Disability-Related Complaints

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document requires most certificated U.S. air carriers and foreign air carriers operating to and from the U.S. that conduct passenger-carrying service to record and categorize complaints that they receive alleging inadequate accessibility or discrimination on the basis of disability according to the type of disability and nature of complaint, prepare a summary report of those complaints, submit the report annually to the Department of Transportation's (Department or DOT) Aviation Consumer Protection Division, and retain copies of correspondence and record of action taken on disability-related complaints for three years.

DATES: This rule is effective on August 7, 2003.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of the General Counsel, 400 7th Street, SW., Room 4116, Washington, DC 20590, (202) 366–9342 (voice), (202) 366–7152 (Fax) or *blane.workie@ost.dot.gov* (E-mail). Arrangements to receive the rule in an alternative format may be made by contacting the above-named individual.

SUPPLEMENTARY INFORMATION:

Background

The Air Carrier Access Act (ACAA, 49 U.S.C. 41705) prohibits discriminatory treatment of persons with disabilities in air transportation. The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR–21''; Public Law 106–181) signed into law on April 5, 2000, extended the requirements of the Air Carrier Access Act to foreign air carriers and required, among other things, that the Secretary of Transportation ''regularly review all complaints received by air carriers alleging discrimination on the basis of disability'' and ''report annually to Congress on the results of such review.''

On February 14, 2002, the Department published a Notice of Proposed Rulemaking (NPRM) to implement the requirement of AIR–21 (67 FR 6892). The notice stated that the only practical way the Department can implement the statutory requirement to review disability complaints received by air carriers and report annually to Congress on the results of the review is by requiring carriers to record disability-related complaint data and submit it to the Department. It proposed to require an annual report on the disability-related incidents communicated by passengers to U.S. certificated and foreign air carriers involving flights to, from or between U.S. points. Air carriers would be required to categorize complaints that they receive into specific groups, and would be required to retain for three years copies of the complaints and the records of the action taken on the complaints. The proposed reporting regulations would not apply to air taxis, commuter air carriers, small certificated air carriers and foreign air carriers that operate strictly small aircraft (60 seats or less). The proposed reporting requirements would apply to all operations of carriers utilizing a mixed fleet (both large and small aircraft).

The NPRM had six main components on which we specifically solicited comment: (1) The scope/coverage of the rule; (2) the definition of a disability-related complaint; (3) the categories of data collected; (4) the frequency of data reporting; (5) the procedures for submission of data; and (6) the period of record retention. The comment period closed on June 4, 2002. The DOT received eleven comments, three from disability community organizations (Eastern Paralyzed Veterans Association, Epilepsy Foundation, Paralyzed Veterans of America), four from foreign air carriers (British Airways, Iberia Lineas Aereas de Espana, Crossair Ltd. d/b/a Swiss, Virgin Atlantic Airways), one from a U.S. carrier (Atlantic Southeast Airlines) and three from industry associations representing airlines (Air Transport Association of America, International Air Transport Association, Regional Airline Association). Generally, the disability community organizations supported the rule while carriers and industry representatives either opposed the rule or found the rule to be overly broad.

Discussion of Comments

1. Entities Covered Under the Rule

Proposed Rule: Under the proposed rule, certificated U.S. carriers that conduct passenger-carrying service with at least one aircraft having a designed seating capacity of more than 60 passengers and foreign air carriers operating to and from the United States that conduct passenger-carrying service with at least one aircraft having a designed seating capacity of more than 60 passengers would be required to record, categorize and submit disability-related complaint data.

Comments: The disability community organizations commented that the requirement to record, categorize and submit disability-related complaint data should also apply to carriers conducting passenger-carrying service on smaller aircraft. More specifically, the Eastern Paralyzed Veterans Association (EPVA) commented that the rule should be expanded to cover all carriers who operate aircraft with 30 or more passenger seats, while the Epilepsy Foundation and Paralyzed Veterans of America (PVA) asserted that the rule should be expanded to include all carriers operating aircraft with 19 or more passenger seats. The disability community organizations believe that expansion of the rule to cover smaller aircraft is appropriate as small aircraft provide the only means of air travel available for certain areas of the United States.

The Regional Airline Association (RAA) contends that the scope of the rule should not be expanded and agrees with the Department's proposal excluding commuter carriers and certificated carriers operating only aircraft with 60 or fewer seats from the reporting requirement. RAA states that these entities carry a small percentage of passenger traffic but that the cost of complying with the rule would be enormous, as numerous regional air carriers do not have the systems or software to record, categorize, and submit disability-related complaint data.

All of the foreign air carriers that commented on the proposal oppose its application to foreign airlines. Several foreign air carriers contend that AIR–21 does not require that the Department's report to Congress include complaints received by ''foreign air carriers'' since AIR–21 states that ''all complaints received by air carriers'' be reported to Congress and the term ''foreign air carrier'' is not normally encompassed within the term ''air carrier.'' The International Air Transport Association (IATA), British Airways, Iberia Lineas Aereas de Espana (Iberia), Crossair Ltd. d/b/a Swiss (Swiss), Virgin Atlantic Airways (Virgin) also argue that the proposed rule would impose an undue burden on foreign airlines. IATA and Virgin further assert that the proposal raises extraterritoriality concerns. IATA believes that it is unclear whether the proposed rule would require complaints relating to events outside the U.S. be reported to the Department. Another

concern raised by British Airways is that the proposed rule would lead to unanticipated negative consequences such as other countries imposing comparable reporting requirements on all carriers serving those countries.

DOT Response: After fully considering the disability community organizations' comments that the rule should be extended to cover carriers that operate aircraft with 60 or fewer seats, the Department maintains that it is reasonable to apply the rule only to carriers operating larger than 60-seat aircraft. In choosing to exclude from the reporting requirement commuter carriers and certificated carriers operating only ''small aircraft'' (aircraft with 60 or fewer seats), the Department has tried to balance the need to receive good data regarding accessibility in air travel and the cost of compliance to carriers operating only aircraft with less than 60 seats. Carriers operating only aircraft with 60 or fewer seats are classified as small under the OST aviation ''small business'' standard in 14 CFR 399.73 and the Regulatory Flexibility Act encourages agencies to consider flexible approaches to the regulation of small businesses and other small entities that take into account their special needs and problems. As explained by RAA in its comments, the cost of complying with the reporting requirements would be prohibitive for most of its 58 member airlines. Further, the vast majority of passengers are carried on aircraft with more than 60 seats so the Department would still be able to receive high-quality data without extending coverage of the proposal to carriers operating only small aircraft.

The Department is also not persuaded by comments that there is no statutory basis for the Department to impose the new reporting requirements on non-U.S. carriers. AIR–21, which extended the Air Carrier Access Act (ACAA) to foreign air carriers, provides in the general applicability part of the section on discrimination against individuals with disabilities that '' * * * an air carrier, including (subject to section 40105(b)) any foreign air carrier * * *'' may not discriminate against a person in air transportation on the basis of disability. By defining an air carrier in the section on discrimination against disabled individuals to include any foreign air carrier, Congress demonstrated its intention for the ACAA requirements that apply to U.S. carriers to also apply to foreign air carriers. As a result, the Department believes that the requirement that it ''regularly review all complaints received by air carriers alleging discrimination on the basis of disability'' and ''report annually to Congress on the results of such review'' is a requirement for the Department to review not only complaints received by U.S. carriers but also complaints received by foreign carriers. In addition, the Department's general statutory authority for imposing reporting requirements under 49 U.S.C. 41708(b) applies to foreign air carriers.

With regard to issues of extraterritoriality, IATA and several foreign carriers raise this issue but do not fully explain their concerns. Although the rule would require complaints relating to events outside the U.S. be reported to the Department, most of the provisions of 14 CFR part 382 (the Department's rule implementing the ACAA) have applied extraterritorially to U.S. carriers for years and the only new feature about this proposal is its extraterritorial application to foreign carriers. As for cost issues raised by IATA and foreign air carriers, the Department realizes that this is the first time that reporting of disability-related complaints has been required and that there will be a cost to creating new databases but we expect that these costs would be minimal. Neither IATA nor the foreign air carriers provide data disputing the cost estimates provided by the Department and simply state that the reporting burden on foreign air carriers would be unnecessarily burdensome. Having considered all of these comments, the Department is not persuaded that the rule should not apply to foreign air carriers.

2. Definition of a Disability-Related Complaint

Proposed Rule: The proposed rule defined a disability-related complaint as a specific expression of dissatisfaction received from, or submitted on behalf of, an individual with a disability against a covered air carrier or foreign air carrier concerning a difficulty associated with the person's disability, which the person experienced when using or attempting to use the carrier's services. It proposed that disability-related complaints be recorded and reported without regard to the carrier's perception of the validity of the complaint and that in circumstances where a flight that is the subject of a disability-related complaint was a code-share flight, the carrier that receives the complaint from the passenger report the complaint.

Comments: The vast majority of carriers and industry associations representing airlines strongly argued that the definition of a disability-related complaint was overly broad because it requires any expression of dissatisfaction concerning a disability-related issue be recorded and reported as a complaint. They contend that DOT should only require complaints received in writing through a specifically designated department in the airline be reported. There were also arguments made, particularly by ATA and British Airways, that complaints that only incidentally address a disability-related issue not be reported. Other commenters such as IATA and Virgin insist that complaints that are unreasonable or were satisfactorily resolved not be reported while ATA recommends that only complaints that relate to a service or process required under part 382 be reported as DOT's authority is grounded in, and limited to, the Air Carrier Access Act as implemented by part 382. Virgin also urges that the complaints that a carrier receives as a result of the carrier directly soliciting comments and feedback from its passengers be exempted from the reporting requirements.

Further, several carriers and industry associations object to the proposal that a complaint received by a carrier from a passenger on a code-share partner's service be reported by the carrier that receives the complaint. These commenters argue that this requirement will result in double reporting as industry experience is that passengers complain to both ticketing and operating airlines about a problem on a particular flight. Representatives of airlines recommend that only the airline that operated the flight and carried the passenger who is making a complaint report the complaint. Two disability advocacy organizations, EPVA and PVA, while agreeing with the Department's proposal that in the case of code-share flights the carrier that receives the complaint record it, seem primarily interested in the Department creating some means to identify both code share partners.

DOT Response: The Department does not believe that it is advisable to narrow the definition of a disability-related complaint to only complaints provided to a designated department in the airline. An airline employee can forward a complaint that he or she receives to the appropriate office in the airline. However, the Department is persuaded by comments from carriers and industry associations that the definition of a disability-related complaint is overly broad in other ways and needs to be amended. As noted in comments from industry, it would be impractical to expect every utterance of dissatisfaction concerning an accessibility matter by a passenger to an

airline employee be captured, recorded and coded for subsequent reporting to DOT. As a result, the definition of a disability-related complaint has been narrowed and carriers are required to record and report only written complaints.

It should be noted though that the Department believes further consideration of a complaint provided in person or over the telephone to Complaint Resolution Officials (CROs), specially trained employees available to passengers with disabilities whenever the carrier is operating flights at an airport, is warranted. The Department may, in a future rulemaking, expand the definition of a disability-related complaint that must be recorded and reported to include oral complaints to a CRO. The Department intends to solicit specific comments on this issue from the public in an upcoming Notice of Proposed Rulemaking (NPRM) that will propose to amend part 382 and extend its applicability to foreign air carriers. In this upcoming NPRM, the Department expects to ask about the benefit and/or detriment of broadening the definition of a disability-related complaint that must be recorded and reported to include oral complaints made to a CRO whenever a carrier is operating. At present, only U.S. carriers are required to have a CRO available in person or by telephone. This rulemaking has not changed the obligation of a U.S. carrier to provide a CRO whenever the carrier is operating and to ensure that its CRO provides a written response to a passenger's oral or written complaint of alleged violations of part 382.

With respect to the carriers' and industry associations' arguments that the types of complaints covered by the final rule should be limited to complaints deemed by the carrier to be reasonable, complaints that the carrier is not able to resolve satisfactorily, complaints that relate to a service required under part 382, complaints that address a disability-related issue as the primary issue and/or complaints that are not received as a result of the carrier soliciting comments, the Department is also not persuaded. The Department is required to report annually to Congress on all complaints received by carriers alleging discrimination on the basis of disability not just those disability complaints that the carrier deems to be valid or to constitute a potential violation of the Department's rule on air travel by passengers with disabilities. Limiting the definition of complaints as suggested by carriers and industry associations would result in the under-reporting of disability complaints in DOT's annual report to Congress.

The Department agrees with industry that a requirement that code-share complaints be reported by the carrier that receives the complaint may result in double reporting since passengers may complain to both ticketing and operating airlines about a problem on a particular flight. The Department also believes that if it requires only the ticketing or operating airline to report the complaint then some complaints would go unreported. As a result, the Department is requiring that the operating airline report disability-related complaints involving the flight itself and services provided on that flight and the ticketing airline report all other complaints, particularly complaints about the reservation system. The Department realizes that there may be situations where it is not clear if a particular complaint involves services provided by the operating carrier or services provided by the ticketing carrier. If there is disagreement between the code-share partners as to which carrier is responsible for reporting a particular complaint, the carrier that receives the complaint must report it. If both the ticketing and operating carrier receive the same complaint and there is no an agreement between the two as to which one is ultimately responsible for reporting the complaint, then both carriers must report the complaint. The final rules also requires that, in a code-share situation, the ticketing airline/operating airline must forward to its code share partner disability-related complaints it receives involving services provided by its code share partner. The Department would not be requiring the carrier reporting the complaint to identify its code-share partner, as requested by the disability community organizations, because knowing the identity of the code share partner, while useful, serves a limited public interest especially when weighed against the cost to carriers of providing this additional information.

3. Categories of Data Collected

Proposed Rule: The NPRM proposed that carriers use 13 categories to identify the nature of a passenger's disability and 12 areas to categorize the alleged discrimination or service problems related to disability, a system currently being used by the Department's Aviation Consumer Protect Division (ACPD). The 13 proposed categories within which to classify a passenger's disability are: vision-impaired, hearing-impaired, vision- and hearing-impaired, mentally impaired, communicable disease, allergies (*e.g.*, food allergies, chemical sensitivity), paraplegic, quadriplegic, other wheelchair, oxygen, stretcher, other assistive device (cane, respirator, etc.), and other disability. The 12 proposed categories within which to classify service problems are: refusal to board, refusal to board without an attendant, security issues concerning disability, aircraft not accessible, airport not accessible, advance-notice dispute, seating accommodation, failure to provide adequate or timely assistance, problem with storage/damage/delay relating to assistive device, service animal problem, unsatisfactory information, and ''other.'' Under the proposed rule, a contact from a passenger may express more than one complaint and a passenger may have more than one disability.

Comments: British Airways noted that its existing complaint categorization system and possibly other carriers' existing categorization systems are different from the one proposed by the Department. British Airways objects to the Department's requirement that the airline industry adopt the ACPD system and suggests that the Department develop a system that better reflects current industry categorizations systems.

Other carriers as well as RAA and ATA are opposed to reporting on a passenger's specific disability or disabilities and argue that the 13 categories used to identify the nature of a passenger's disability should all be removed. According to these commenters, passengers do not always identify their disability and passengers would view questions by carriers about a passenger's disability as intrusive and offensive. Moreover, industry representatives contend that data gathered from reports on the nature of passengers' complaints provide sufficient information for the Department to identify potential areas of concern and meet the requirements of AIR–21.

The Department also received comments from industry advocating the removal of certain categories used to identify the nature of a passenger's disability. Virgin asserts that categories such as ''allergies'' and ''chemical sensitivity'' are not appropriate categories as they are open to interpretation and have definitions that change in different territories, while Swiss points out that some categories such as ''vision impaired,'' ''hearing impaired,'' ''allergies'' and ''communicable disease'' are not appropriate categories as they are not discernable without passenger disclosure.

Unlike commenters from the airline industry, disability community organizations do not appear to be troubled by the idea that the rule requires carriers to report on a passenger's specific disability. In fact, the Epilepsy Foundation remarked that an additional category should be created for people with epilepsy or seizure disorder. The Epilepsy Foundation explained that it is concerned that the existing categories would mask the problems experienced by individuals with epilepsy or seizure disorders when flying. Under the proposed categories of impairments, people with epilepsy or neurological disorders other than paraplegia or quadriplegia would be lumped together with the wide array of other conditions not specifically listed under the category, ''other.''

There were also a number of comments requesting that modifications be made to the proposed categorization system within which to classify service problems. The EPVA and PVA recommend that the category defined as ''problem with storage/damage/delay relating to assistive devices'' be separated into two categories, ''damage to assistive devices'' and ''storage and delay of assistive devices.'' PVA explains that damage to mobility equipment is a widespread problem that merits its own category. Similarly, the Epilepsy Foundation recommends that the category titled ''refuse to board'' be separated into two categories, refuse to board because no medical certificate and refuse to board because of epilepsy or seizure-related concern. The Epilepsy Foundation believes that carriers refuse to board people with epilepsy because of a lack of a medical certificate or because the individual has a disability and having two separate categories for the different reasons carriers refuse boarding would make it easier to identify an effective solution.

Comments from the industry differed from comments provided by disability community organizations in that carriers and their representatives recommend the elimination of categories rather than the addition of categories. Swiss and ATA, among others, strongly object to carriers having to report about security issues concerning disability, since the Transportation Security Administration (TSA) is now responsible for screening of passengers and baggage. Carriers also object to having to report about airports not being accessible as the airports are responsible for ensuring that the facilities are accessible. These commenters declare that carriers have little or no control over these types of complaints and it is unreasonable to charge these complaints against carriers and unfairly taint the airline industry. There were also comments from the industry that the category ''assistive devices'' either be removed as it is unclear or the Department give examples of the types of complaints that it would classify under this category.

Another issue raised by Swiss and ATA involves the requirement that airlines determine the type of service problem for each disability-related incident in a given contact (*e.g.*, email, letter) and record each of these disability-related problems as separate complaints. Swiss contends that this scheme of recording complaints is complicated and likely to lead to inconsistencies in categorizations. ATA argues that complaints should be coded only once and placed in only one category otherwise the overall number of complaints would be inflated and the value of reporting would be reduced because of inaccuracy.

DOT Response: The Department maintains that carriers need to adopt the system that the Department's ACPD uses to categorize complaints that carriers receive alleging inadequate accessibility or discrimination. The ACPD system enables the Department to determine for complaints that it receives directly from passengers the service areas that generate the most complaints and the groups of individuals with disabilities that appear to be experiencing the most problems when flying. By having the airline industry adopt the ACPD complaint categorization system, the data that carriers report would serve as an industry-wide diagnostic and monitoring tool as it would be a mechanism for identifying problem areas in the airline industry and gauging the industry's progress toward accessibility. Further, carriers do not presently have a uniform system of categorizing disability-related complaints and whatever system of categorization that is required by the Department would undoubtedly result in some carriers having to modify their complaint recording system. DOT is also not persuaded by the argument that the entire section on the nature of a passenger's disability should be removed because of the carriers' belief that they would be forced to ask passengers intrusive questions about the nature of their disability. The nature of a passenger's disability will likely be disclosed in the written complaints sent by the passengers. If the passenger does not self-disclose his/her disability, then the carrier would simply classify the disability as ''other disability''. Inquiries into the nature of passengers' disabilities are not required or encouraged by this rule. Similarly, the Department finds unconvincing the arguments presented by Virgin and Swiss that categories such as allergies and vision-impaired should be removed, as the carriers believe these categories are not discernable without passenger disclosure. The Department also finds that the 13 categories used by the ACPD to identify the passenger's disability is adequate and that there is no need to expand the number of categories describing the nature of the passenger's disability to include people with epilepsy or seizure disorder as suggested by the Epilepsy Foundation.

With regard to arguments concerning modifications to the categories describing alleged discrimination and service problems, the Department agrees with carriers that, complaints about services that the carrier has no control over need not be reported. However, despite assertions to the contrary, carriers are still involved in security and airport accessibility at terminals they own, lease, or otherwise control. Therefore, the final rule is keeping the categories ''security issues concerning disability'' and ''airport not accessible''. Carriers must report complaints involving security and/or accessibility at airports if they have any control over these services. Carriers do not need to report complaints involving security and/or airport accessibility if other entities (*e.g.*, TSA or airport authorities) are responsible.

The Department also agrees with EPVA's and PVA's recommendation to change the proposed category of ''assistive devices'' into two separate categories, ''damage to assistive devices'' and ''storage and delay of assistive devices.'' The Department believes this adjustment would be of benefit in determining whether most complaints about assistive devices concern damage to the devices or storage and delay problems. Further, having two separate categories for complaints concerning assistive devices makes it clearer to carriers about the types of complaints that would need to be classified under each category. However, the Department is not adopting the suggestion by the Epilepsy Foundation that the category ''refuse to board'' be divided into two separate categories. We believe that the term ''refuse to board'' should remain general because there could be many reasons beyond the two identified by the Epilepsy Foundation for a carrier to deny boarding to a passenger.

The Department has also considered comments from carriers and carrier associations regarding only one complaint being recorded per

communication. The Department maintains that carriers must treat each disability-related problem as a separate incident as there is no reason to require a complainant to write separate letters to document multiple problems/incidents occurring in connection with one or more flights. When DOT receives a written letter alleging more than violation, DOT records each separate incident as a complaint. The purpose of the report to Congress is not to track the number of letters but rather to track the number of complaints alleging inadequate accessibility or discrimination in an effort to improve accessibility.

4. Frequency of Data Reporting

Proposed Rule: Under the NPRM, carriers would submit to the Department an annual report summarizing the disability-related complaint data. The first report, which would be for complaints received by carriers during calendar year 2003, would be submitted on January 26, 2004 and all subsequent submissions would be due on the last Monday in January and would cover data from the prior year.

Comments: None of the commenters object to the annual reporting system although British Airways objects to the proposed initial filing deadline of January 26, 2004 while EPVA and PVA state that the January 2004 filing deadline is appropriate and advises DOT to incorporate penalties for airlines that do not submit timely reports. British Airways and IATA argue that the initial filing deadline should be deferred to provide carriers an opportunity to develop the necessary database system and train its personnel. British Airways would also like for the Department to publish a notice 30 days in advance of each year's deadline. There were also recommendations from ASA and ATA that the Department report the complaint data on a per-enplanement basis rather than simply reporting the raw complaint numbers as the raw data will be of little use to the public given size and other differences among airlines.

DOT Response: The final rule provides that the initial filing deadline is in January 2005 rather than in January 2004 as proposed in the NPRM because this final rule is issued on July 8, 2003 and the information required to be submitted in January 2005 would cover complaints received by carriers during calendar year 2004. The Department can assess a civil penalty of up to $10,000, under the ACAA and Part 382, against a carrier for each instance the carrier failed to submit the required complaint data in a timely fashion. For continuing violations, each day each violation continues constitutes a separate offense. As a result, it is not necessary to create a specific penalty provision allowing the Department to assess fines for a carrier's failure to file a timely report as suggested by disability community organizations.

The Department is willing to publish a notice 30 days in advance of each year's deadline as a reminder to carriers of their reporting requirements. However, the lack of such notice by the Department, would not qualify as a justifiable excuse by carriers of not providing the required information. The Department also agrees to report the disability-related complaint data on a per-enplanement basis when possible.

5. Procedures for Submission of Data

Proposed Rule: The NPRM proposes to require carriers to report a summary of the disability-related complaint data by using a form designed by the Department which is included in the appendix to part 382. It also proposes to mandate that carriers submit this form through the World Wide Web rather than submitting paper copies, disks or emails of the form. The NPRM proposed to allow limited exceptions to those carriers that can demonstrate that they would suffer undue hardship if required to submit the data through the web.

Comments: The disability community raises no specific issues. EPVA simply notes that the form used by carriers to submit data must be uniform in order to be of use. Swiss indicates that submission of the reports via a private website would an efficient methodology for carriers. However, IATA and British Airways believe that carriers should be given options as to the means they wish to use to file their reports.

DOT Response: The Department is not making any changes to the rule with regard to submission of data. If submission of the form through a website creates undue hardship, then carriers have options as to the means to file the report. The rule provides that carriers may submit the form, which summarizes the disability-related complaint data, by paper copies, disks, or emails.

6. Retention of Records

Proposed Rule: The NPRM proposed that covered carriers retain copies of the disability-related complaints for three years. It also proposed that covered carries make these records available for review by DOT officials at their request.

Comments: The disability community raises no specific issues here. ATA is opposed to a three-year retention period for complaint data and recommends that the record retention term be reduced to one year. Swiss suggests that the Department take into consideration the record-retention requirements of the foreign air carriers' home governments. The other carriers and industry associations either had no comment or indicated that they were not opposed to the three year proposed record retention. Several carriers were concerned about the requirement that records be made available to DOT for review. Virgin appears to be concerned that DOT officials may make unreasonable and burdensome requests for review of such records. British Airways wants assurances that the Department would work with them to develop procedures to ensure that any sharing of complaint data would comply with the requirements imposed by the United Kingdom's Data Protection Act.

DOT Response: The Department does not require carriers to retain the complaint data for three years but rather to retain the actual complaints for three years. The requirement to retain consumer complaints for three years already exists for U.S. carriers and is not a new cost to them. The Department's regulations in 14 CFR 249.20 requires certificated U.S. air carriers to retain correspondence and record of action taken on all consumer complaints for three years. DOT believes the three-year record retention requirement for U.S. and foreign air carriers is a reasonable period of time as trends in the data over multiple years may indicate the need for the airlines and/or the Department to take a closer look at the actual complaints.

7. Economic Analysis

Proposed Rule: The Department estimated that the first year cost to industry of the proposed rule would range from $242,957 to $254,738 and the annual cost to industry in subsequent years would range from $239,113 to $249,425.

Comments: The disability community raises no specific issues here. Several carriers and carrier associations assert that the Department has not accurately assessed the practical and financial impact the proposed reporting requirements will have on the airlines. They believe that the regulatory evaluation greatly underestimates the cost to the industry and are concerned that airlines will be required to undertake substantial investments in information technology, related equipment and staff training. ATA explains that it believes the cost to industry to be high, particularly if new training for a large number of employees is needed as well as extensive system

development and hardware. There is also concern, mostly by foreign air carriers, that necessary systems modifications will not be ready by the January 2004 reporting deadline.

DOT Response: The Department does not believe that the reporting requirements of this rule would result in significant costs to the airline industry, particularly since the definition of a complaint has been narrowed to exclude oral complaints. In addition, carriers already maintain reporting systems that record and categorize data about disability related complaints.

Regulatory Analysis and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined to be non-significant under Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures. The cost resulting from this action would be minimal since most air carriers already record and categorize data about disability related complaints that they receive. The primary cost imposed of this final rule is the time to read, categorize, and record the disability complaint correspondence that the carriers receive. The Office of the Secretary has prepared and placed in the docket a regulatory evaluation of the final rule.

B. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. We hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. A direct air carrier or a foreign air carrier is a small business if it provides air transportation only with small aircraft. *See* 14 CFR 399.73. This final rule does not apply to U.S. and foreign air carriers that are operating only a small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds). Moreover, the overall national annual costs of the rule are not great.

E. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to: Department of Transportation, Aviation Enforcement and Proceedings, Office of the General Counsel, 400 7th Street, SW., Room 4116, Washington DC 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. OST may not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. OST intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The ICRs were previously published in the **Federal Register** (67 FR 6892). Neither the assumptions upon which these calculations are based nor the information collection burden hours have changed. This final rule imposes three information collection requirements: (1) A requirement for carriers to record and categorize disability-related complaints that they receive according to type of disability and nature of complaint on a standard form; (2) a requirement for each covered carrier to submit an annual report summarizing the disability-related complaint data; and (3) a requirement for carriers to retain correspondence and record of action taken for all disability-related complaints. The Department will use the data submitted by carriers to report annually to Congress on the results of its review as required by law.

The title, description, respondent description of the information collections and the annual recordkeeping and periodic reporting burden are stated below.

(1) Requirement to read, record and categorize each disability related complaint from a passenger or on behalf of a passenger.

Respondents: Certificated U.S. air carriers and foreign air carriers operating to and from the United States that conduct passenger-carrying service with large aircraft.

Estimated Annual Burden on Respondents: 15 minutes to 1,000 hours a year for each respondent (time to record and categorize one complaint [15 minutes] multiplied by the number of complaints respondents receive [1 complaint a year to 4,000 annual complaints a year]. The number of complaints received by carriers varies greatly. In the year 2000, ACPD received complaints for 661 incidents from people with disabilities involving airline service difficulties. The 10 carriers that received the most complaints accounted for 84% of the total complaints received by ACPD. Carriers are estimated to receive 50 complaints for each one ACPD receives.

Estimated Total Annual Burden: 8,262 hours for all respondents (time to record and categorize one complaint [15 minutes] multiplied by the total number of complaints for all respondents [33,050]).

Frequency: 1 to 4,000 complaints per year for each respondent (Some of the air carriers may receive only one

complaint a year while some of the larger operators could receive 4,000 annual complaints based on our assumption that airlines receive 50 disability complaints for each disability complaint received by ACPD).

(2) Requirement to submit a report to DOT summarizing the disability-related complaint data (key-punching web-based matrix report).

Respondents: Certificated U.S. air carriers and foreign air carriers operating to and from the United States that conduct passenger-carrying service with large aircraft.

Estimated Annual Burden on Respondents: 30 minutes a year for each respondent to type in the 169 items (matrix consists of 13 disabilities and 13 service problems).

Estimated Total Annual Burden: 148 to 185 hours for all respondents (annual burden [30 minutes] multiplied by the total number respondents [295 to 370]).

Frequency: 1 report to DOT per year for each respondent.

(3) Requirement to retain correspondence and record of action taken on all disability-related complaints for three years.

Respondents: Foreign air carriers operating to and from the United States that conduct passenger carrying service with large aircraft.

Estimated Annual Burden on Respondents: 1 hour a year for each respondent.

Estimated Total Annual Burden: 231 to 306 hours for all respondents (annual burden [1 hour] multiplied by the total number respondents [231 to 306]).

Frequency: 1 to 4,000 complaints per year for each respondent.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

Issued this 24th day of June, 2003, at Washington DC.

Norman Y. Mineta,

Secretary of Transportation.

List of Subjects in 14 CFR Part 382

Air carriers, Consumer protection, Individuals with disabilities, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department amends 14 CFR part 382 as follows:

■ 1. The authority citation for 14 CFR part 382 continues to read as follows:

Authority: 49 U.S.C. 41702, 47105, and 41712.

■ 2. Section 382.3 (c) is revised to read as follows:

§ 382.3 Applicability.

* * * * *

(c) Except for § 382.70, this part does not apply to foreign air carriers or to airport facilities outside the United States, its territories, possessions, and commonwealths.

* * * * *

■ 3. A new § 382.70 is added to read as follows:

§ 382.70 Disability-related complaints received by carriers.

(a) For the purposes of this section, a disability-related complaint means a specific written expression of dissatisfaction received from, or submitted on behalf, of an individual with a disability concerning a difficulty associated with the person's disability, which the person experienced when using or attempting to use an air carrier's or foreign air carrier's services.

(b) This section applies to certificated U.S. carriers and foreign air carriers operating to, from, and in the United States, conducting passenger operations with at least one aircraft having a designed seating capacity of more than 60 passengers. Foreign air carriers are covered by this section only with respect to disability-related complaints associated with any flight segment originating or terminating in the United States.

(c) Carriers shall categorize disability-related complaints that they receive according to the type of disability and nature of complaint. Data concerning a passenger's disability must be recorded separately in the following areas: vision impaired, hearing impaired, vision and hearing impaired, mentally impaired, communicable disease, allergies (*e.g.*, food allergies, chemical sensitivity), paraplegic, quadriplegic, other wheelchair, oxygen, stretcher, other assistive device (cane, respirator, etc.), and other disability. Data concerning the alleged discrimination or service problem related to the disability must be separately recorded in the following areas: refusal to board, refusal to board without an attendant, security issues concerning disability, aircraft not accessible, airport not accessible, advance notice dispute, seating accommodation, failure to provide adequate or timely assistance, damage to assistive device, storage and delay of assistive device, service animal problem, unsatisfactory information, and other.

(d) Carriers shall submit an annual report summarizing the disability-related complaints that they received during the prior calendar year using the form specified in Appendix A to this Part. The first report shall cover complaints received during calendar year 2004 and shall be submitted to the Department of Transportation by January 25, 2005. Carriers shall submit all subsequent reports on the last Monday in January of that year for the prior calendar year. All submissions must be made through the World Wide Web except for situations where the carrier can demonstrate that it would suffer undue hardship if it were not permitted to submit the data via paper copies, disks, or email, and DOT has approved an exception. All fields in the form must be completed; carriers are to enter ''0'' where there were no complaints in a given category. Each annual report must contain the following certification signed by an authorized representative of the carrier: ''I, the undersigned, do certify that this report has been prepared under my direction in accordance with the regulations in 14 CFR Part 382. I affirm that, to the best of my knowledge and belief, this is a true, correct, and complete report.'' Electronic signatures will be accepted.

(e) Carriers shall retain correspondence and record of action taken on all disability-related complaints for three years after receipt of the complaint or creation of the record of action taken. Carriers must make these records available to Department of Transportation officials at their request.

(f)(1) In a code-share situation, each carrier shall comply with paragraphs (c) through (e) of this section for—

(i) Disability-related complaints it receives from or on behalf of passengers with respect to difficulties encountered in connection with service it provides;

(ii) Disability-related complaints it receives from or on behalf of passengers when it is unable to reach agreement with its code-share partner as to whether the complaint involves service it provides or service its code-share partner provides; and

(iii) Disability-related complaints forwarded by another carrier or governmental agency with respect to difficulties encountered in connection with service it provides.

(2) Each carrier shall also forward to its code-share partner disability-related complaints the carrier receives from or on behalf of passengers with respect to difficulties encountered in connection with service provided by its code-sharing partner.

(g) Each carrier, except for carriers in code-share situations, shall comply with paragraphs (c) through (e) of this section for disability-related complaints it receives from or on behalf of passengers

as well as disability-related complaints forwarded by another carrier or governmental agency with respect to difficulties encountered in connection with service it provides.

(h) Carriers that do not submit their data via the Web shall use the disability-related complaint data form specified in appendix A to this part when filing their annual report summarizing the disability-related complaints they received. The report shall be mailed, by the dates specified in paragraph (d) of this section, to the following address: U.S. Department of Transportation, Aviation Consumer Protection Division, 400 7th Street, SW., Room 4107, C–75, Washington, DC 20590.

■ 4. A new appendix A is added to part 382 to read as follows:

BILLING CODE 4910–62–P

Appendix A – Disability Complaint Reporting Form

Name of Carrier: _____ Submission Date: _____

Contact Person: Period of Data Collection: _____

Name: _____
Telephone # (include country code if outside the U.S.): _____
Email address: _____
Mailing address: _____

Total number of complaints (i.e., incidents): _____

REPORT OF DISABILITY-RELATED COMPLAINT DATA

	Vision Impaired	Hearing Impaired	Vision & Hearing Impaired	Paraplegic	Quadriplegic	Other wheelchair	Oxygen	Stretcher	Other Disability	Other Assistive Device	Mentally Impaired	Communicable Disease	Allergies
Refusal To Board Passenger													
Refusal to Board w/o Attendant													
Security Issues Regarding Disability													
Aircraft Not Accessible													
Airport Not Accessible													
Advance Notice Dispute													

Seating Accommodation													
Failure to Provide Assistance													
Damage to Assistive Device													
Storage and Delay of Assistive Device													
Service Animal Problem													
Unsatisfactory Info													
Other													

Certification Statement: I, the undersigned, do certify that this report has been prepared under my direction in accordance with the regulations in 14 CFR Part 382. I affirm that, to the best of my knowledge and belief, this is a true, correct, and complete report

Signature: _____

[FR Doc. 03–17248 Filed 7–2–03; 4:35 pm]
BILLING CODE 4910–62–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Foreign Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') is adopting amendments to Rule 30.5, which provides an exemption from registration for firms located outside the U.S. that, with regard to foreign futures and options, are acting in a capacity that requires registration, other than registration as a futures commission merchant. The amendments being adopted herein are necessary to facilitate the ongoing program of converting from a paper-based registration system to online registration. Currently, pursuant to Rule 30.5, firms that qualify for the exemption under the rule must file a petition for exemption with the National Futures Association and designate an agent for service of process in the U.S. The amendments being adopted herein facilitate the electronic submission of petitions for exemptions under Rule 30.5 through the online registration system and are technical in nature.

EFFECTIVE DATE: July 8, 2003.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5439.

SUPPLEMENTARY INFORMATION:

I. Background

Commission Rule 30.5 provides an exemption from the registration requirement for any person located outside the U.S. who is required to be registered with the Commission under part 30 of the Commission's rules, other than a person required to register as a futures commission merchant (''FCM'')—*i.e.*, an introducing broker (''IB''), commodity pool operator (''CPO''), or commodity trading advisor (''CTA'').[1] Pursuant to Rule 30.5, any person seeking exemption from registration under the rule must designate an agent for service of process in the U.S. and submit a petition for exemption to the National Futures Association (''NFA''). The designated agent must be the FCM located in the U.S. through which business is done, any registered futures association (currently NFA is the only registered futures association), or any person located in the U.S. in the business of providing services as an agent for service of process.

In June 2002, NFA implemented an electronic online registration system (''ORS'') to replace a paper-based registration system. As part of the ongoing program of updating the registration process, NFA has submitted to the Commission for its approval, pursuant to Section 17(j) of the Commodity Exchange Act (the ''Act''),[2] amendments to NFA registration rules that would require applicants seeking exemption pursuant Commission Rule 30.5 to file such petitions electronically through ORS. On July 1, 2003, the Commission approved these amendments to the NFA registration rules.

The addition of the Rule 30.5 exemption to NFA's ORS should streamline the exemption process and provide a quicker and easier way for persons to provide NFA with the required information and enable NFA to process this information more efficiently and confirm exemption from registration pursuant to Rule 30.5 more quickly. Additionally, information on persons exempt from registration pursuant to Rule 30.5 should be more readily accessible by the public, NFA, and the Commission.

II. The Rule Amendments

Under the ORS, persons submitting a petition for exemption from registration pursuant to Rule 30.5 will file a Form 7–R. When a person indicates that it wishes to process a Part 30 exemption application, the ORS will follow the applicable ''path'' of the online Form 7–R, requiring the person to submit the information required by Rule 30.5. Currently, Rule 30.5 does not require a petition for exemption to be completed on a particular form, but instead requires the petition to be in writing and sets forth the information that must be included in the petition. The Commission is amending Rule 30.5 to make clear that a petition for exemption must be filed on a Form 7–R completed in accordance with the instructions therein.

Current Rule 30.5 provides the postal address where the petition should be submitted to NFA. As the petition will now be submitted through the ORS, it is unnecessary to include the postal address in the rule.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[3] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments being adopted herein will not place any additional burdens since all persons seeking the exemption provided for pursuant to Rule 30.5 are already subject to the filing requirements of Rule 30.5. To the contrary, the amendments will help to streamline and simplify the current exemption procedures. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to Section 3(a) of the RFA[4] that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[5] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The rule amendments do not require a new collection of information on the part of any entities subject to the proposed rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these rule amendments will not impose any new reporting or recordkeeping requirements. The Commission has submitted hard copies of how the new Form 7–R path will appear in the electronic registration system to the Office of Management and Budget.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and

[1] Commission rules referred to herein may be found at 17 CFR Ch. I (2002).

[2] 7 U.S.C. 1 *et seq.* (2000).

[3] 5 U.S.C. 601 *et seq.*

[4] 5 U.S.C. 605(b).

[5] 44 U.S.C. 3501 *et seq.*