73 FR 27614, May 13, 2008, as modified by Correction Notice of 74 FR 11469, March 18, 2009. This document includes the modifications from the Correction Notice.

DEPARTMENT OF TRANSPORTATION

14 CFR Part 382

[Dockets OST–2004–19482; OST–2005–22298; OST–2006–23999]

[RINs 2105–AC97; 2105–AC29; 2105–AD41]

Nondiscrimination on the Basis of Disability in Air Travel

AGENCY: Department of Transportation, Office of the Secretary

ACTION: Final Rule

SUMMARY: The Department of Transportation is amending its Air Carrier Access Act (ACAA) rules to apply to foreign carriers. The final rule also adds new provisions concerning passengers who use medical oxygen and passengers who are deaf or hard-of-hearing. The rule also reorganizes and updates the entire ACAA rule. The Department will respond to some matters raised in this rulemaking by issuing a subsequent supplemental notice of proposed rulemaking.

EFFECTIVE DATE: This rule is effective May 13, 2009.

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SUPPLEMENTARY INFORMATION:

Background

Congress enacted the Air Carrier Access Act (ACAA) in 1986. The statute prohibits discrimination in airline service on the basis of disability. Following a lengthy rulemaking process that included a regulatory negotiation involving representatives of the airline industry and disability community, the Department issued a final ACAA rule in March 1990. Since that time, the Department has amended the rule ten times.[1] These amendments have concerned such subjects as boarding assistance via lift devices for small aircraft, and subsequently for other aircraft, where level entry boarding is unavailable; seating accommodations for passengers with disabilities; reimbursement for loss of or damage to wheelchairs; modifications to policies or practices necessary to ensure nondiscrimination; terminal accessibility standards; and technical changes to terminology and compliance dates.

The Department has also frequently issued guidance that interprets or explains further the text of the rule. These interpretations have been disseminated in a variety of ways: preambles to regulatory amendments, industry letters, correspondence with individual carriers or complainants, enforcement actions, web site postings, informal conversations between DOT staff and interested members of the public, etc. This guidance, on a wide variety of subjects, has never been collected in one place. Some of this guidance would be more accessible to the public and more readily understandable if it were incorporated into regulatory text.

There have also been changes in the ways airlines operate since the original publication of Part 382. For example, airlines now make extensive use of web sites for information and booking purposes. Preboarding announcements are not as universal as they once were. Many carriers now use regional jets for flights that formerly would have been served by larger aircraft. Security screening has become a responsibility of the Transportation Security Administration (TSA), rather than that of the airlines. In this rulemaking, the Department is updating Part 382 to take these and other changes in airline operations into account.

The over 17-year history of amendments and interpretations of Part 382 have made the rule something of a patchwork, which does not flow as clearly and understandably as it might. Restructuring the rule for greater clarity, including using ``plain language'' to the extent feasible, is an important objective. To this end, Part 382 has been restructured in this rule, to organize it by subject matter area. Compared to the present rule, the text is divided into more subparts and sections, with fewer paragraphs and less text in each on average, to make it easier to find regulatory provisions. The rule uses a question-answer format, with language specifically directing particular parties to

[1] The dates and citations for these amendments are the following: April 3, 1990, 55 FR 12336; June 11, 1990, 55 FR 23539; November 1, 1996, 61 FR 56409; January 2, 1997, 62 FR 16; March 4, 1998, 63 FR 10528; March 11, 1998, 63 FR 11954; August 2, 1999, 64 FR 41781; January 5, 2000, 65 FR 352; May 3, 2001, 66 FR 22107; July 8, 2003, 68 FR 40488.

take particular actions (e.g., ``As a carrier, you must * * *"). We have also tried to express the (admittedly sometimes technical) requirements of the rule in plain language.

The Department recognizes that some users, who have become familiar and comfortable with the existing organization and numbering scheme of Part 382, might have to make some adjustments as they work with the restructured rule. However, the structure of this revision is consistent with a Federal government-wide effort to improve the clarity of regulations, which the Department has employed with great success and public acceptance in the case of other significant rules in recent years, such as revisions of our disadvantaged business enterprise and drug and alcohol testing procedures rules.[2] Many of the provisions of the current Part 382 are retained in this rule with little or no substantive change. To assist users familiar with the current rule in finding material in the new version of the rule, we have included a cross-reference table in Appendix B to the final rule.

In addition to this general revision and update, the Department in this rule is making important substantive changes to the rule in three areas: coverage of foreign carriers, accommodations for passengers who use oxygen and other respiratory assistive devices, and accommodation for deaf or hard-of-hearing passengers.

The original 1986 ACAA covered only U.S. air carriers. However, on April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) amended the ACAA specifically to include foreign carriers. The ACAA now reads in relevant part:

> *In providing air transportation, an air carrier, including (subject to [49 U.S.C.] section 40105(b)) any foreign air carrier, may not discriminate against an otherwise qualified individual on the following grounds:*
>
> *(1) The individual has a physical or mental impairment that substantially limits one or more major life activities.*
>
> *(2) The individual has a record of such an impairment.*
>
> *(3) The individual is regarded as having such an impairment.*

Section 40105(b) provides as follows:

> *(b) Actions of Secretary and Administrator.—*
>
> *(1) In carrying out this part, the Secretary of Transportation and the Administrator—*

[2] See 64 FR 5096, February 2, 1999 (for 49 CFR Part 26, disadvantaged business enterprise) and 65 FR 79462, December 19, 2000 (for 49 CFR Part 40, drug and alcohol testing procedures).

(A) shall act consistently with obligations of the United States Government under an international agreement;

(B) shall consider applicable laws and requirements of a foreign country; and

(C) may not limit compliance by an air carrier with obligations or liabilities imposed by the government of a foreign country when the Secretary takes any action related to a certificate of public convenience and necessity issued under chapter 411 of this title.

(2) This subsection does not apply to an agreement between an air carrier or an officer or representative of an air carrier and the government of a foreign country, if the Secretary of Transportation disapproves the agreement because it is not in the public interest. Section 40106 (b)(2) of this title applies to this subsection.

In response to the AIR-21 requirements, the Department on May 18, 2000, issued a notice of its intent to investigate complaints against foreign carriers according to the amended provisions of the ACAA. The notice also announced the Department's plan to initiate a rulemaking modifying Part 382 to cover foreign carriers. On November 4, 2004, the Department issued a notice of proposed rulemaking (NPRM) to apply the ACAA rule to foreign carriers (69 FR 64364). The NPRM sought to apply Part 382 to foreign carriers in a way that achieves the ACAA's nondiscrimination objectives while not imposing undue burdens on foreign carriers. This NPRM also proposed revisions to a number of other provisions of 14 CFR Part 382 and generally reorganized the rule. The Department received about 1300 comments on this NPRM. In this preamble to the final rule, this proposed rule is called the "Foreign Carriers NPRM" or the "2004 NPRM."

On September 7, 2005, the Department published a second NPRM, on the subject of medical oxygen and portable respiratory assistive devices (70 FR 53108). The Department received over 1800 comments on this proposed rule, which is referred to in this preamble as the "Oxygen NPRM." On February 23, 2006, the Department published a third NPRM, concerning accommodations for passengers who are deaf, hard-of-hearing, or deaf-blind. The Department received over 700 comments on this proposed rule, which is called the deaf and hard-of-hearing (DHH) NPRM in this preamble. This document addresses the over 3800 comments received on all three NPRMs. The section-by-section analysis will describe each provision of the combined final rule.

In this preamble, when we mention the "present," "current," or "existing" rule, we mean the version of Part 382 that is in effect now. It will remain in effect until a year from today, when it will be replaced by the provisions that are published in this final rule.

COMMENTS AND RESPONSES

General Regulatory Approach

A number of airline industry commenters-- principally, but not only, foreign carriers -- criticized the Foreign Carriers NPRM's approach as being too detailed and prescriptive. Many of these commenters said they preferred a more general approach, in which an overall objective of nondiscrimination and service to persons with disabilities was stated, with the details of implementation left to the discretion of carrier policies, guided by codes of recommended practice issued by various governments or international organizations.

It is the Department's experience, over the 21 years since the enactment of the Air Carrier Access Act, that in order to ensure that carriers are accountable for providing nondiscriminatory service to passengers with disabilities, detailed standards and requirements are essential. If all that carriers are responsible for is carrying out, in their best judgment, general objectives of nondiscrimination and good service, or best practices or recommendations, or regulations that are not enforceable by the Department, then effective enforcement of the rights Congress intended to protect in the ACAA becomes impracticable. It is understandable that carriers would wish to implement their goals through policies of their own devising and to limit potential compliance issues. However, the Department is responsible for ensuring consistent nondiscriminatory treatment of passengers with disabilities, including implementation of the variety of specific accommodations that are essential in providing such treatment. We must structure our response to this mandate in a way that allows for clear and consistent implementation by the carriers, and clear and consistent enforcement by the

Department. Consequently, we are convinced that the approach taken in the NPRM, reflecting the Department's years of successful experience in carrying out the ACAA, is appropriate.

Coverage and Definition of "Flight"

The Foreign Carriers NPRM proposed to cover the activities of foreign carriers with respect to a "flight," defined as a continuous journey, in the same aircraft or using the same flight number that begins or ends at a U.S. airport. The Foreign Carriers NPRM included several examples of what would or would not be considered covered "flights." One of these examples proposed that if a passenger books a journey on a foreign carrier from New York to Cairo, with a change of plane or flight number in London, the entire flight would be covered for that passenger. When there is a change in both aircraft and flight number at a foreign airport, the rule would not apply beyond that point. Another example proposed that the rules applying to U.S. carriers would apply to a flight operated by a foreign carrier between foreign points that was also listed as a flight of a U.S. carrier via a code sharing arrangement.

Commenters, including foreign carriers, generally conceded that it was acceptable for the rule to cover foreign carriers' flights that started or ended at a U.S. airport. Some carriers said that it was burdensome for them to continue to observe Part 382 rules for a leg of a flight that did not itself touch the U.S. (e.g., the London-Cairo leg in the example mentioned above). We note that only service and nondiscrimination provisions of the rule apply in such a situation, not aircraft accessibility requirements.

Foreign carriers' main objection, however, centered on codeshare flights between two foreign points. They said that it was an inappropriate extraterritorial extension of U.S. jurisdiction to apply U.S. rules to a foreign carrier just because the foreign carrier's flight between two foreign points carried passengers under a code-sharing arrangement with a U.S. carrier. In response to these comments, the Department has changed the applicable provision of the final rule. If a foreign carrier operates a flight between two non-U.S. points and the flight carries the code of a U.S. carrier, the final rule will not extend coverage to the foreign carrier for that flight segment and the foreign carrier will not be responsible to the Department for compliance with Part 382 for that segment. Rather, with respect to passengers ticketed to travel under the U.S. carrier's code, the Department regards the transportation of those passengers to be transportation by a U.S. carrier, concerning which the U.S. carrier is responsible for Part 382 compliance. If there is a service-related violation of Part 382 on a flight between two non-U.S. points operated by a foreign carrier, affecting a passenger traveling under the U.S. carrier's code, the violation would be attributed to the U.S. carrier, and any enforcement action taken by the Department would be against the U.S. carrier. We note that the aircraft accessibility requirements would not apply in such a situation. U.S. carriers can work with their foreign carrier codeshare partners to ensure that required services are provided to passengers.

Conflict of Law Waivers and Equivalent Alternative Determinations

One of the most frequent comments made by foreign carriers and their organizations was that implementation of the proposed rules would lead to conflicts between Part 382 and foreign laws, rules, voluntary codes of practice, and carrier policies. These conflicts, commenters said, would lead to confusion and reduce efficiency in service to passengers with disabilities. Many commenters advocated that the Department should defer to foreign laws, rules, and guidance, or accept them as equivalent for purposes of compliance with Part 382.

In anticipation of this concern, and in keeping with the Department's obligation and commitment to giving due consideration to foreign law where it applies, the Foreign Carriers NPRM proposed a conflict of laws waiver mechanism. Under the proposal, a foreign carrier would be required to comply with Part 382, but could apply to DOT for a waiver if a foreign legal requirement conflicted with a given provision of the rule. If DOT agreed that there was a conflict, then the carrier could continue to follow the binding foreign legal requirement, rather than the conflicting provision of Part 382. Foreign carriers commented that this provision was unfair, because it would force them to begin complying with a Part 382 requirement allegedly in conflict with a foreign legal

requirement while the application for a waiver was pending. Some commenters also objected to DOT making a determination concerning whether there really was a conflict between DOT regulations and a provision of foreign law.

In order to determine whether a foreign carrier should be excused from complying with an otherwise applicable provision of Part 382, the Department has no reasonable alternative to deciding whether a conflict with a foreign legal requirement exists. The Department cannot rely solely on an assertion by a foreign carrier that such a conflict exists.

Comments from a number of foreign carriers asked the Department to broaden the concept of the proposed waiver, by allowing foreign carriers to comply with recommendations, voluntary codes of practice, etc. We do not believe such a broadening is necessary to comply with the Department's legal obligations. Nor would it be advisable from a policy point of view, as it would not provide the consistency that passengers with disabilities should expect, regardless of the identity or nationality of the carrier they choose.

We therefore want to make clear, for purposes of this waiver provision, what we mean by a conflict with a provision of foreign law. By foreign law, we mean a legally binding mandate (e.g., a statute, regulation, a safety rule equivalent to an FAA regulation) that imposes a nondiscretionary obligation on the foreign carrier to take, or refrain from taking, a certain action. Binding mandates frequently can subject a carrier to penalties imposed by a government in the event of noncompliance. Guidance, recommendations, codes of best practice, policies of carriers or carrier organizations, and other materials that do not have mandatory, binding legal effect on a carrier cannot give rise to a conflict between Part 382 and foreign law for purposes of this Part, even if they are published or endorsed by a foreign government. In order to create a conflict, the foreign legal mandate must require legally something that Part 382 prohibits, or prohibit something that Part 382 requires. A foreign law or regulation that merely authorizes carriers to adopt a certain policy, or gives carriers discretion in a certain area that Part 382 addresses, does not create a conflict cognizable under the conflict of laws waiver provision.

For example, Part 382 says that carriers are prohibited from imposing number limits on passengers with disabilities. Suppose that Country S has a statute, or the equivalent of an FAA regulation, mandating that no more than three wheelchair users can, under any circumstances, travel on an S Airlines flight. S Airlines would have no discretion in the matter, since it was subject to a legal mandate of its government. This would create a conflict between Part 382 and the laws of Country S that could be the subject of a conflict of laws waiver. However, suppose that the government of Country S publishes a guidance document that says limiting wheelchair users on a flight to three is a good idea, has a regulation authorizing S Airlines to impose a number limit if it chooses, or approves an S Airlines safety program that includes a number limit. In these cases, the conflict of laws waiver would not apply, since in each case there is not a binding government requirement for a number limit, and S Airlines has the discretion whether or not to adopt one.

We note one exception to this point. If a foreign government officially informs a carrier that it intends to take enforcement action (e.g., impose a civil penalty) against a carrier for failing to implement a provision of a government policy, guidance document, or recommendation that conflicts with a portion of the Department's rules, the Department would view the government action as creating a legal mandate cognizable under this section.

While retaining the substance of the conflict of laws provision of the NPRM, the Department has, in response to comments, modified the process for considering waiver requests.. We agree with commenters that it would be unfair to insist that carriers comply with a Part 382 provision that allegedly conflicts with foreign law while a waiver request is pending. Consequently, we have established an effective date for the rule of one year after its publication date. We strongly encourage carriers, even where a provision of Part 382 itself explicitly allows an exception in order to comply with a foreign law (i.e., section 382.87(a)), to consider filing a conflict of law waiver request as outlined in section 382.9(a) whenever a carrier believes itself bound by a legal mandate that requires something Part 382 prohibits or prohibits something Part 382 requires. If a carrier sends in a waiver request within 120 days of the publication date of the final rule, the Department will, to the maximum extent feasible, respond before the effective date of the rule. If we are unable to do so, the carrier can keep implementing the policy or practice that is the subject of the request until we do respond, without becoming subject to enforcement action by the Department. The purpose of the 120-day provision is to provide an incentive to foreign carriers to conduct a due diligence review of foreign legal requirements that may conflict with Part 382 and make any waiver requests to DOT promptly, so that the Department can resolve the issues before the rule takes effect.

What a foreign carrier obtains by filing all its conflict of laws waiver requests within the first 120 days is, in effect, a commitment from DOT not to take enforcement action related to implementing the foreign law in question pending DOT's response to the waiver request. For example, if S Airlines filed a waiver request with respect to an alleged requirement of a Country S law requiring number limits for disabled passengers within 120 days of the rule's publication, then the Department would not commence an enforcement action relating to an alleged violation of Part 382's prohibition of number limits that occurred during the interval between the effective date of Part 382 and the date on which DOT responds to S Airline's waiver request. This would be true even if the Department later denies the request.

However, if S Airlines did not file its request until 180 or 210 days after the rule is published, DOT could begin enforcement action against the carrier for implementing number limits inconsistent with Part 382 during the period between the effective date of the rule and the Department's response to the waiver request. If the Department granted the waiver request, any enforcement action relating to the carrier's actions during that interval would probably be dismissed. However, if the waiver request were denied, the enforcement action would proceed. S Airlines thus would have put itself at somewhat greater risk by failing to submit its waiver request on a timely basis.

We also recognize that laws change. Consequently, if a new provision of foreign law comes into effect after the 120-day period, a carrier may file a waiver request with the Department. The carrier may keep the policy or practice that is the subject of the request in effect pending the Department's response, which we will try to provide within 180 days. Again, the carrier would not be at risk of a DOT enforcement action relating to the period during which the Department was considering the waiver request concerning the new foreign law.

Carriers should not file frivolous waiver requests, the stated basis for which is clearly lacking in merit or which are filed with the apparent intent of delaying implementation of a provision of Part 382 or abusing the waiver process. In such cases, the Department may pursue enforcement action even if the frivolous waiver request has been filed within 120 days. As a general matter, a carrier that does not file a request for a waiver, or whose request is denied, cannot then raise the alleged existence of a conflict with foreign law as a defense to a DOT enforcement action.

Many foreign carriers and their organizations also said that a conflict of laws waiver, standing alone, was insufficient. They said that their policies and approaches to assisting passengers with disabilities, or laws or policies relating to disability access of foreign carriers' countries (either single-country laws or those of, for example, the European Union) should be recognized as equivalent to DOT's rules. Compliance with equivalent foreign laws and carrier policies, they said, should be sufficient to comply with Part 382.

U.S. disability law includes a concept – equivalent facilitation -- that can address these comments to a reasonable degree. This concept, which is embodied in such sources as the Department's Americans with Disabilities Act (ADA) regulations and the Americans with Disabilities Act Accessibility Guidelines (ADAAG), states that a transportation or other service provider can use a different accommodation in place of one required by regulation if the different accommodation provides substantially equivalent accessibility. The final rule permits U.S. and foreign carriers to apply to the Department for a determination of what the final rule will call an "equivalent alternative." (We use this term is used in place of "equivalent facilitation" to avoid any possible confusion with the use of "equivalent facilitation" in other contexts.). If, with respect to a specific accommodation, the carrier demonstrates that what it wants to do will provide substantially equivalent accessibility to passengers with disabilities than literal compliance with a particular provision of the rule, the Department will determine that the carrier can comply with the rule using its alternative accommodation. This provision applies to equipment, policies, procedures, or any other method of complying with Part 382

It should be emphasized that equivalent alternative determinations concern alternatives only to specific requirements of Part 382. The Department will not entertain an equivalent alternative request relating to an entire regulatory scheme (e.g., an application asserting that compliance with European Union regulations on services to passengers with disabilities was equivalent to Part 382 as a whole). It should be emphasized that the fact that a carrier policy or foreign regulation addresses the same

subject as a provision of Part 382 does not mean the carrier policy or foreign regulation is an equivalent alternative. For example, both Part 382 and various carrier policies address the transportation of service animals. A policy or regulation that was more restrictive than Part 382 would not be viewed as an equivalent alternative, since it provided less, rather than substantially equivalent, accessibility for passengers who use service animals.

As with the conflict of laws waiver, if a carrier submits a request for an equivalent alternative determination within 120 days of the publication of this Part, the Department will endeavor to have a response to the carrier by the effective date of the rule. If the Department has not responded by that time, the carrier can implement its proposed equivalent alternative until and unless the Department disapproves it. However, with respect to a request filed subsequent to that date, carriers must begin complying with the Part 382 provision when it becomes effective, and could not use their proposed equivalent alternative until and unless the Department approved it.

Other International Law Issues

A number of foreign carriers said that application of the rule alike to U.S. and foreign carriers was unfair, in that U.S. carriers receive Federal funds to support their operations, while European and other foreign carriers do not. Commenters also argued that it was unfair for DOT to allow U.S. carriers to avoid civil penalties if they have introduced programs that go beyond minimum requirements.

The Department disagrees with both these comments. The very reason for the existence of the ACAA is that the Supreme Court, in Paralyzed Veterans of America v. Civil Aeronautics Board, 477 U.S. 597 (1986), determined that, with minor exceptions not germane to the issue raised by commenters, U.S. carriers do not receive Federal financial assistance. For this reason, the Court said, section 504 of the Rehabilitation Act of 1973 – which applies only to entities receiving Federal financial assistance – largely does not cover U.S. air carriers. Congress then enacted the ACAA to ensure that U.S. air carriers provided nondiscriminatory service to passengers with disabilities, notwithstanding the absence of Federal financial assistance. The situation that the Court saw in 1986 remains: U.S. carriers engaging in international transportation do not receive Federal financial assistance.

The second of these comments appears to be a somewhat inaccurate reflection of a DOT enforcement policy that, in some cases, allows a carrier to invest part of a civil penalty to improve services for passengers with disabilities above and beyond what the ACAA requires, rather than paying the amount of this investment to the Department. For example, if a carrier were assessed a $1.5 million civil penalty for failure to provide timely and adequate assistance to passengers who use wheelchairs, the Department's Office of Aviation Enforcement and Proceedings might require a cash payment of only $200,000 if the carrier agreed to use the remaining $1.3 million to enhance accessibility for passengers with mobility impairments in ways that go beyond the requirements of Part 382. Since this enforcement approach applies equally to foreign and U.S. carriers,

continued implementation of this policy will not result in any inequity between U.S. and foreign carriers.

Numerous foreign carriers and organizations complained that the Foreign Carriers NPRM was inconsistent with 49 U.S.C. 40105(b), which directs the Secretary to "act consistently with obligations of the United States government under an international agreement" and to "consider applicable laws and requirements of a foreign country." In the context of this rule, the Department believes that the conflict of laws waiver provision effectively discharges the statutory obligation imposed on the Department by the language of subsection (b)(1)(B), since the Department would "consider" foreign requirements in implementing its waiver authority when a Department regulatory provision was shown to conflict with a foreign legal mandate. In addition, the Department has also provided greater flexibility in the rule through incorporating an equivalent alternative provision, which covers policies and practices that are not mandated by foreign laws and requirements. This provision will facilitate our efforts to implement ACAA requirements smoothly in the context of our international relationships.

A related argument that many foreign carriers made is that the Foreign Carriers NPRM proposed provisions inconsistent with international agreements binding on the U.S., thereby violating subsection (b)(1)(A). In particular, commenters cited provisions of the Chicago Convention (e.g., Articles 1 and 37 and Annex 9). Article 1 concerns the sovereignty of signatory states with respect to aviation; Article 37 authorizes the International Civil Aviation Organization (ICAO) to adopt standards and recommendations in a variety of areas, and Annex 9 includes a series of standards and recommendations concerning transportation of persons with disabilities.

In the Department's view, Article 1 is fully consistent with the adoption of requirements that affect flights to and from the U.S., a point with which many commenters agreed. The one area in which the Foreign Carriers NPRM was said by many commenters to assert extraterritorial jurisdiction – coverage of foreign carriers with respect to flights carrying passengers under the code of a U.S. carrier – has been changed in the final rule, as described above.

The authority of ICAO under Article 37 to issue standards and recommendations does not purport to pre-empt a signatory state's authority to issue rules concerning air commerce to and from its airports. Nor do the standards and recommendations of Annex 9 with respect to transportation of passengers with disabilities purport to occupy the field, such that member states are pre-empted from issuing their own rules in this area. Indeed, the ICAO recommended practices suggest that member states should take their own implementing actions. It is reasonable to state that the provisions of the ACAA and Part 382 faithfully carry out these recommendations, making concrete many of the suggestions that ICAO makes to member states.

The two ICAO standards in Annex 9 related to transportation of passengers with disabilities are the following:

> Standard 8.27. *Contracting States shall take the necessary steps to ensure that airport facilities and services are adapted to the needs of persons with disabilities*.
>
> Standard 8.34. *Contracting States shall take the necessary steps to ensure that persons with disabilities have adequate access to air services.*

The ACAA rule does not conflict with these standards, it supports them. The rule requires that airport facilities and services involving transportation to and from the U.S. provide nondiscriminatory service to passengers with disabilities. The rule includes a variety of steps necessary to ensure that passengers with disabilities have nondiscriminatory access to air services, again in transportation to and from the U.S.

Some commenters alleged that requirements of the Chicago Convention regarding "notification of differences" should apply to the rulemaking and that the Department had failed to comply with them. The relevant language is the following:

> Notification of differences. *The attention of Contracting States is drawn to the obligation imposed by Article 38 of the Convention by which Contracting States are required to notify the Organization of any differences between their national regulations and practices and the International Standards contained in this Annex and any amendments thereto. Contracting States are invited to extend such notification to any differences from the Recommended Practices contained in this Annex, and any amendments thereto.*

The requirement for a notification of differences applies only to differences between Standards and national regulations. As noted above, there are no differences between the ICAO Standards and the ACAA rule. The Convention's language says that States are "invited" to extend notification to ICAO with respect to any differences from Recommended Practices. Obviously, an "invitation" falls well short of a legal mandate. In any event, the ACAA requirements have the effect of carrying out the Recommended Practices. We reject any assertion that, by making specific accommodations mandatory (e.g., by saying "must" instead of "should") or by limiting airline discretion to provide poorer rather than better accommodations for passengers (e.g., with respect to service animals), the rule is creating "differences" with International Standards cognizable under provisions of the Chicago Convention.

In connection with their Chicago Convention-related arguments, a number of foreign carriers or organizations cited British Caledonian Airways v. Bond, 665 F.2d 1153 (D.C. Cir., 1981). This case arose from the crash of a DC-10 that FAA traced to cracks in engine pylons that were exacerbated by faulty maintenance procedures. FAA issued an emergency Special Federal Aviation Regulation (SFAR) grounding all DC-10s of U.S. carriers. FAA then issued a similar SFAR prohibiting foreign carriers' DC-10s from operating in U.S. airspace. Shortly before FAA rescinded the SFARs in question, their purpose having been achieved, several foreign carriers sought judicial review of the foreign carrier SFAR. The Court found that the SFAR conflicted with Article 33 of the Chicago Convention, which provides that certificates of airworthiness or licenses issued

by the State in which the aircraft is registered must be recognized as valid by other contracting States, unless the country of registration is not observing "minimum standards."

This case concerns solely Article 33 and its relationship to the validity of carrier airworthiness certificates issued by foreign governments. This rulemaking, on the other hand, has nothing to do with Article 33 or airworthiness certificates. The case therefore is irrelevant to the rulemaking. It may be that commenters were arguing that DOT regulatory actions in general that conflict with the Chicago Conventions are vulnerable to court challenges; however, as noted above, this regulation is fully consistent with relevant portions of the Chicago Convention.

Other comments from foreign carriers and organizations were more policy-oriented in nature, asking for consultation through ICAO or other channels prior to publication of a rule which, while carefully limited to matters affecting service to and from the U.S., had implications for the international aviation system. Comments asked for greater focus on international harmonization. In fact, the Department consulted extensively with other interested parties. The volume and detail of comments from foreign carriers and organizations testify to the extensive opportunity non-U.S. parties have had to participate in this rulemaking. This final rule reflects the Department's consideration of this participation (and we note that participation between the time of the Foreign Carriers NPRM and the final rule is just as valid as participation before issuance of the Foreign Carriers NPRM). DOT officials also met and had phone conferences with organizations representing European and Asian governments and/or carriers. It would be unreasonable to contend that this extensive participation somehow does not count.

The Department is willing to continue discussions with foreign carriers and international organizations with respect to harmonization of U.S. and other standards in the area of transportation of passengers with disabilities. Meantime, the Department has a responsibility to carry out its statutory mandate to apply the ACAA to foreign carriers, and we cannot make working with other parties on harmonization matters a condition precedent to carrying out what Congress has mandated.

Some comments alluded to the regulatory negotiation process that preceded the issuance of the original ACAA NPRM, complaining that there was not a similar process prior to the issuance of the November 2004 NPRM. Regulatory negotiation, is, of course, a wholly voluntary process on the Department's part. There can be no implication that, because the Department chose to use such a process in the 1980s, the Department was in any sense required to do so again for this rulemaking. Nor is there any such requirement in the statutory amendment applying the ACAA to foreign carriers. It is worth noting, in any event, that the original ACAA NPRM was not the product of consensus resulting from the regulatory negotiation. That negotiation terminated short of consensus, because of intractable disagreements on some issues between carriers and disability groups. The original NPRM, like the 2004 NPRM, was wholly the Department's proposal. The variety of disagreements among commenters concerning the November 2004 NPRM suggests, in retrospect, that the likelihood of achieving consensus on the application of the ACAA to foreign carriers in a manner consistent with the Department's obligations

under the ACAA would have been very low. Moreover, in the years since the original ACAA regulatory negotiation, disability groups have expressed some skepticism about the utility of the regulatory negotiation process for nondiscrimination rules of this kind, making it questionable whether they would have chosen to participate in such a venture.

Accessibility of Airport Terminals and Facilities

The Foreign Carriers NPRM (sec. 382.51) proposed that both U.S. and foreign carriers, at both U.S. and foreign airports, would be responsible for ensuring the accessibility of terminal facilities they own, lease, or control. The responsibility of foreign carriers at foreign airports would extend only to facilities involved with flights to or from the U.S. U.S. airports must meet applicable accessibility requirements (e.g., the ADAAG) under the ADA and section 504. The Foreign Carriers NPRM proposed a performance standard for foreign airports, since U.S. accessibility standards do not apply there. This performance standard would require carriers to ensure that passengers with disabilities could readily move through terminal facilities to get to or from boarding areas. Carriers could meet this performance standard by a variety of means. A related provision (sec. 382.91) proposed that, at both U.S. and foreign airports, both U.S. and foreign carriers would have to provide assistance to passengers with disabilities in moving through the terminal and making connections between gates.

Some comments appear to have misunderstood the Foreign Carriers NPRM to propose that DOT wished U.S. accessibility standards, like the ADAAG, to apply to foreign airports. The Foreign Carriers NPRM did not make such a proposal. Those comments aside, the most frequent comment made by foreign carriers and their organizations on this subject was that the Foreign Carriers NPRM's proposals for airport facility accessibility did not sufficiently take into account the fact that foreign governments or airport operators, not airlines, controlled matters relating to accessibility at many foreign airports. For example, it was pointed out that under recent European Union regulations, airport operators are given most of the responsibility for accommodating passengers with disabilities in airports.

The Department recognizes that this may often be the case, and the final rule should not be understood to require carriers to duplicate the accommodations made by airport operators at foreign airports. Where foreign airport operators provide accessibility services or accessible facilities, foreign carriers may rely on the airport operators' efforts, to the extent that those efforts fully meet the requirements of this Part. What happens, though, if the foreign airport operators' efforts do not fully provide the accessibility that this rule requires (e.g., the airport operator is responsible for providing wheelchair assistance to passengers within the terminal, but does not provide connecting service between gates for wheelchair users who are changing planes on flights covered by the rule)? In such a case, this rule requires air carriers to supplement the services provided by the airport operator, by providing the supplemental services itself or hiring a contractor to do so. If the carrier cannot legally do so (e.g., the airline is legally prohibited from supplementing the airport's services to passengers with disabilities), the carrier could seek a conflict of laws waiver.

The Foreign Carriers NPRM asked whether the final rule should require automated kiosks operated by carriers in airports or other locations (e.g., for ticketing and dispensing of boarding passes) to be accessible, and, if so, what accessibility standards should apply to them. Disability community commenters generally expressed support for this proposal; carriers and their organizations generally expressed concern about the cost and technical feasibility of accessible kiosks. The Department believes that all services available to the general public should be accessible to people with disabilities. Nevertheless, the comments concerning kiosks were not sufficient to answer our questions about cost and technical issues. Consequently, the Department plans to seek further comment about kiosks in a forthcoming supplemental notice of proposed rulemaking (SNPRM). The preamble to the SNPRM will discuss this issue in more detail. On this subject, the Department intends to coordinate with the Access Board, which also has work under way that could affect kiosks.

As an interim measure, the final rule will require a carrier whose kiosks are not accessible to provide equivalent service to passengers with disabilities who cannot use the kiosks. For example, suppose a passenger with a disability having only carry-on luggage wants to use a kiosk to get a boarding pass without standing in line with passengers checking baggage. If, because the kiosk is not accessible, the passenger cannot use it, the carrier would have to provide equivalent service, such as by having carrier personnel operate the kiosk for the passenger or allowing the passenger to use the first class boarding pass line.

We recognize that some disability community commenters have expressed concern about the latter approach, thinking that it might call undue attention to the individuals receiving the accommodation. We agree that assisting the passenger at the kiosk is preferable. In our view, however, a potentially awkward accommodation is preferable to none at all (e.g., in a situation where personnel were not available to assist the passenger at the kiosk). We urge carriers to provide such an accommodation with sensitivity to passengers' potential concerns about looking as though they have been singled out for special treatment.

U.S. airports are governed, for disability nondiscrimination, by several Federal laws and rules, all of which coexist on the same airport real estate. The ACAA and DOT's ACAA rules apply to terminal facilities owned, leased, or controlled by a carrier, specifically facilities that provide access to air transportation (e.g., ticket counters, baggage claim areas, gates). Title II of the ADA, and the Title II rules of the Department of Justice (DOJ) apply to terminal facilities owned by public entities like state and local airport authorities. DOT's rules under section 504 of the Rehabilitation Act of 1973 apply to those same facilities owned by public entities, if they receive DOT financial assistance (i.e., under the FAA's airport improvement program). In some cases, DOT's 504 rules could apply to airport facilities of airlines (e.g., those air carriers who receive essential air service program funds from DOT). DOT's Title II ADA rules apply to transportation services provided by public entities (e.g., a parking shuttle service run by the airport authority) or public transportation services that serve the airport (e.g. a public rail or bus transit link to the airport) DOT's Title III ADA rules apply to private transportation serving the airport (e.g., private taxi, demand-responsive shuttle, or bus

service). DOJ's Title III ADA rules also apply to places of public accommodation on airport grounds that serve the general public (e.g., hotels, restaurants, news and gift stores).

Fortunately, ascertaining the practical obligations of various parties at the airport is a good deal less confusing than this summary of overlapping authorities might make it seem. In a November 1996 amendment to its existing ACAA rule, the Department clarified these relationships, and this understanding of the relationship carries over into the new ACAA rule (see 61 FR 56417-56418, November 1, 1996). Basically, regardless of which statutory or regulatory authority or authorities apply to a particular facility or portion of a facility, Title II ADA requirements apply to public entity spaces and Title III ADA requirements apply to private entity spaces. The Americans with Disabilities Act Accessibility Guidelines (ADAAG) are the physical accessibility standards that apply throughout the airport (note, however, that until DOJ completes its adoption of the 2004 ADAAG, the 1991 ADAAG continues to apply spaces controlled by DOJ regulations).

Enplaning, Deplaning, and Connecting Assistance

The original Part 382, issued in 1990, required U.S. carriers to provide enplaning and deplaning assistance, and it assigned to the arriving carrier the responsibility for providing assistance in making connections and moving between gates. The Foreign Carriers NPRM built on this existing requirement, proposing to require carrier assistance between the terminal entrance and gate, as well with accessing ticket and baggage locations, rest rooms, and food service concessions. The Foreign Carriers NPRM asked whether carriers should be permitted to require advance notice for these accommodations, and it proposed that enplaning, deplaning, and connecting assistance be provided "promptly."

The Foreign Carriers NPRM proposed requiring carriers, in the course of providing this assistance, to help passengers with disabilities with carry-on and gate-checked luggage. It also proposed requiring carriers to make a general announcement in the gate area offering preboarding to passengers with disabilities.

Some carriers said that while they would voluntarily provide assistance to passengers with disabilities in moving through the terminal when practical and feasible, they opposed a regulatory requirement to provide this assistance. The Department does not believe that, under the ACAA, it is appropriate to tell passengers that they must learn to rely on the kindness of strangers. One of the purposes of Part 382 always has been, and remains, to create legally enforceable expectations upon which passengers with disabilities can consistently depend. Reliance on purely voluntary action by carriers does not achieve this objective.

One of the issues discussed most often in comments concerned the proposed requirement that enplaning, deplaning, and connecting assistance be provided promptly. Many commenters, particularly people with disabilities and organizations representing them, thought that the rule should specify maximum times for assistance – 5, 10, or 15 minutes – rather than having a more general requirement for promptness. Some disability

community comments also said that the rule should prohibit carriers from waiting until everyone else had left the plane before providing deplaning assistance to passengers with disabilities (e.g., to deplane a person needing assistance at the same time as persons in adjacent rows leave), or at least that the rule should require carriers to assist passengers with disabilities in deplaning no later than the time the aircraft aisle is free of other passengers. Carriers, on the other hand, opposed such specificity, saying that it was impractical and potentially costly. Some carriers wanted a less specific term than "promptly," preferring a concept like "as soon as reasonably possible under the circumstances."

The Department has decided to adopt the "promptly" language as proposed. The Department is concerned that, given the wide variety of situations in different airports and flights, adopting a specific time limit as some commenters advocated would be unrealistic. On the other hand, having no standard would have the effect of reducing the requirement, as a practical matter, to "whenever the carrier gets around to it." We understand "promptly" to mean, in the case of deplaning, that personnel and boarding chairs should be available to deplane the passenger no later than as soon as other passengers have left the aircraft. We believe that halting the boarding process for everyone behind, for example, Row 15, until a wheelchair user in Row 15 was transferred to a boarding chair and assisted off the aircraft, could unduly inconvenience a considerably greater number of persons. The requirement for prompt service imposes a reasonable performance requirement on carriers without creating unnecessarily rigid timing requirements which, in some situations, carriers operating in the best of faith might be unable to meet.

Many carriers suggested that they be allowed to require advance notice (e.g., of 24 or 48 hours) from passengers wanting enplaning, deplaning, and connecting assistance. This would make the logistics of providing the service easier for carriers to deal with, they said, and would ensure better service for passengers. We agree that it is highly advisable for passengers who want assistance to tell the airline about their needs in advance, and we urge passengers to communicate with carriers as soon as possible to set up assistance. We also noted comments from some carriers that, at some airports, particular locations have been established at which passengers arriving without prior notice can obtain assistance more easily and quickly than might otherwise be the case. This appears to be a good idea that carriers might consider using more widely. Nevertheless, being able to receive assistance in moving through the airport is so fundamental to access to the air travel system that the Department does not believe that allowing carriers to require – as distinct from recommending – advance notice would be consistent with the nondiscrimination objectives of the ACAA. Passengers with disabilities, like other passengers, sometimes must travel on short notice for business or personal reasons, and it would not be consistent with the ACAA to limit their access to needed assistance in moving through the terminal.

Carrier comments also mentioned, in this context, the relationship between carriers and many foreign airports, where airports often have the major responsibility for providing assistance in the terminal. As noted elsewhere in the preamble, carriers can rely on airports' efforts with respect to assistance in the terminal, supplementing the

assistance that airports provide as necessary to meet fully the requirements of Part 382. If carriers are precluded by law from supplementing the airport-provided assistance, carriers can request a conflict of laws waiver.

The Foreign Carriers NPRM, like the existing rule, assigns responsibility for connecting assistance to the carrier on which the passenger arrives. One foreign carrier mentioned that, per agreements with other carriers in at least some airports, its arriving passengers would be assisted to a connecting carrier's gate by personnel of the connecting carrier. As noted elsewhere, the Department does not object to contractual agreements between carriers that would delegate the connecting assistance function to the connecting carrier. However, under the rule, the arriving carrier would retain responsibility for ensuring that the function was properly carried out.

Many carriers objected to having to allow passengers they are assisting to stop at a restroom or food service location, saying that this would delay service and increase personnel costs. Passenger comments, to the contrary, suggested that it was unfair for assistance personnel to insist on wheeling a passenger who needed to go to the bathroom or who was hungry past a conveniently located restroom or food concession, at which ambulatory passengers could stop at their discretion. Their comments pointed out that eating and relieving oneself are basic life activities that people must do from time to time. This issue has become increasingly significant in recent years due to the need for early arrival at the airport for security screening and cutbacks in airline meal service.

The final rule is structured to accommodate both sets of concerns. If an airline or contractor employee is assisting a passenger from, for example, the ticket counter to the gate, and they come to a restroom on the route they are taking, the employee is required to allow the passenger a brief stop, if the passenger self-identifies as a person with a disability needing this service. The employee is not required to detour to a different route, provide personal care attendant services to the passenger, or incur an unreasonable delay. A delay which would result in the passenger not getting to a connecting flight would obviously be unreasonable.

The Foreign Carriers NPRM proposed that persons with disabilities who need assistance in boarding be provided an opportunity to preboard. It also proposed requiring a general preboarding announcement to this effect in the gate area. Disability community comments generally supported the proposed requirements. Carrier comments did not object to the proposed requirement to provide an opportunity for persons with disabilities to preboard, though some carriers did object to making the general announcement of the opportunity in the gate area, mostly out of concern that too many ineligible people would try to preboard, thereby slowing the boarding process. The Department believes that preboarding is an important way in which carriers can facilitate transportation by passengers with disabilities. Indeed, some portions of Part 382 (e.g., with respect to on-board stowage of accessibility equipment) are premised on the availability of preboarding. The final rule will include this requirement. However, we will not make final the proposed provision requiring a general announcement of this opportunity in the boarding area. Some carriers make such an announcement as a matter of policy. Even where this is not the case, carrier personnel are generally responsive to requests from

passengers with disabilities to preboard and often scan the boarding area to determine if there are passengers for whom preboarding would be appropriate. Passengers who want to ensure that they can preboard should ask gate personnel for the opportunity. It is reasonable to expect passengers to take this step.

The Foreign Carriers NPRM proposed that carriers, in the course of providing assistance to passengers with a disability in moving through the terminal, would assist them in transporting carry-on and gate-checked baggage. A number of carrier comments opposed this proposal, saying that it would impose staffing and cost burdens on them. If a passenger wanted to have someone carry his or her bags, at least one comment suggested, the passenger should hire porter service. Other commenters said that such service should be limited to wheelchair users or persons with severe hearing or vision impairments.

The Department notes that, in many cases, passengers with disabilities do not need extensive extra assistance in dealing with carry-on items. It is commonplace for wheelchair users to carry their briefcases or purses on their laps when being assisted through the terminal, for example. Proper-size carry-on and gate-checked items are, by definition, limited in size, and they are not the kind of items that passengers in general need to use a skycap and a cart to move through the airport. It would not be appropriate, in the context of a nondiscrimination rule, to effectively require passengers with disabilities to hire such service. We agree with commenters, however, that passengers who can carry their own items should do so, and we have added language saying that this service need be provided only to those passengers who cannot do so because of their disability. Carrier or contractor personnel can request credible verbal assurances from a passenger that he or she cannot transport the item in question or, in the absence of such credible assurances, require documentation as a condition of providing the service.

Number Limits

A number of foreign carriers commented that being able to limit the number of passengers with disabilities on board a given flight was important for safety, particularly in the context of an emergency evacuation. In some cases, carriers mentioned that laws or regulations of their governments either permitted or required them to impose limits on the numbers of either passengers with disabilities or assistive devices in the cabin.

A number limit permits a carrier to say to a passenger, in effect "As a person with a disability, we will deny you transportation on this flight solely because some number of other persons with disabilities are on the flight." Such a response to a passenger is intrinsically discriminatory. The Department discussed this issue in the preamble to the original ACAA rule (55 FR 8025-8028; March 6, 1990), and our view of the matter has not changed. If anything, our view of the matter has been strengthened by the fact that, during the 17 years since the original rule was issued, we are not aware of any instances of safety problems resulting from the existing rule's prohibition on number limits. As mentioned elsewhere, a foreign carrier can apply for a conflict of laws waiver concerning number limits. The final rule also retains the existing provision permitting a carrier to require advance notice for a group of 10 or more passengers with disabilities traveling

together, so that the airline can make appropriate preparations for the group (e.g., a team traveling to a competition for wheelchair athletes).

Safety Assistants/Attendants

The Foreign Carriers NPRM proposed retaining, with minor modifications, the existing Part 382 limitations on the ability of carriers to require passengers with disabilities to travel with attendants. One terminological change we proposed was to refer to attendants that airlines could require in certain specified situations for safety purposes as "safety assistants." The use of this term is intended to emphasize that the only reason a carrier may require another person to travel with a passenger with a disability is safety. It would never be permitted for a carrier to require someone to travel with a passenger with a disability as a personal care attendant; that is, as someone who is present to assist the passenger with personal needs such as eating, drinking, and elimination.

A number of foreign carriers asserted that they should retain the discretion to require attendants for passengers with disabilities. They gave several reasons for this desire. Some commenters did not want to have to rely on passengers' self-assessments of their ability to travel independently. Some cited provisions of carrier manuals or government guidance that were contrary to the proposed regulation. Some feared that crew members might be pressed into performing personal care functions. Others argued that, on lengthy overseas flights, it was reasonable to require attendants for personal care purposes, since otherwise passengers with disabilities would be unable to perform personal functions for long periods, with harm possibly resulting to themselves or others. Some comments said that the requirement to allow a safety assistant to fly free if the carrier disagreed with the passenger's self-assessment could lead to abuse by clever passengers trying to get free flights for someone. Some of these comments suggested providing discounted, rather than free, transportation for the attendant in these situations.

Disability community commenters generally supported the Foreign Carriers NPRM proposals, and a number of comments were particularly supportive of the change to the "safety assistant" term, believing that it helped to clarify the meaning of the provision. Some comments from people with disabilities, however, objected to the provision to the extent that it would ever permit carriers to insist on an attendant over the passenger's objections. These commenters did not trust the carriers' judgments about passengers' capabilities and were concerned that carriers would impose attendant requirements arbitrarily, increasing the costs and difficulty of flying for passengers with disabilities.

The limits on carrier requirements for attendants were a significant issue in the original ACAA rulemaking, and the Department's discussion of that issue in the preamble to the 1990 ACAA rule remains relevant (see 55 FR 8029-8032; March 6, 1990). Passengers with disabilities, for the most part, are the best judges of their capabilities, and providing broad discretion to carriers to override that judgment does carry with it a significant risk of arbitrary burdens being placed on passengers. On the other hand, carriers have ultimate responsibility for the safety of passengers, and we

believe that the balance struck in the original ACAA rule is a sensible one. Passengers have the primary responsibility for making the determination if they can travel independently, but carriers can overrule that determination, in a carefully limited set of circumstances, and require a safety assistant. If it is really an overriding safety reason that compels a carrier to overrule a passenger's decision and insist that he or she travel with a safety assistant, then it is appropriate for the carrier to bear the cost of the safety judgment that it makes. In the 17 years that the Department has implemented this provision under the existing ACAA rule, this requirement has not resulted, to the best of our knowledge, either in safety problems or frequent or significant abuse by passengers.

Even on long flights, passengers with disabilities, under a nondiscrimination statute, have the right to determine whether they will incur the discomfort involved with not having someone available to assist them with personal functions. A passenger may choose to forego the airline's food and beverage service. A passenger may dehydrate himself and avoid the need to urinate. The Foreign Carriers NPRM, like the present rule, emphasizes that flight attendants and other carrier personnel are never required to perform personal care functions for a passenger. To ensure that passengers who make the choice to fly unaccompanied have the opportunity to be fully informed of the implications of their decision, the information to which passengers are entitled (see sec. 382.41(f)) includes a description of services that are or are not available on a flight.

For these reasons, the Department is adopting the proposed provision and thereby retaining the substance of the existing provision of Part 382. The Department has made a few modifications in the rule text, however. In a situation where the carrier insists on a passenger traveling with a safety assistant, contrary to the passenger's self-assessment, we are deleting the proposed language that would require the carrier to make a good-faith effort to find someone to perform the safety assistant function. This language was not part of the original 1990 rule, and we do not think it is essential to add it. As stated in the preamble to the 1990 rule (see 55 FR 8031), the carrier can play an important role in selecting a safety assistant (e.g., a deadheading crew member, a passenger volunteer), which can be useful from the carrier's point of view if the carrier is worried about a passenger with a disability trying to abuse the system. If the carrier does not designate an employee or volunteer to be the safety assistant, the carrier cannot refuse to accept someone designated by the passenger (i.e., with the result that no one would be available to act as the safety assistant), as long as that person is capable of assisting the passenger in an evacuation.

With respect to passengers who have mobility impairments, we have clarified the criterion relating to safety assistants to say that the passenger with a disability must be capable of "physically" assisting in his or her own evacuation. This clarification is made to avoid the possibility that someone could claim he is assisting in his own evacuation merely by calling for help. Finally, given that the rule will now apply to foreign carriers, we have added to the provisions concerning persons with mental disabilities and deaf-blind individuals a notation referring to briefings required by foreign government regulations, as well as those of the FAA.

Consistent with the approach taken in the current rule and the Foreign Carriers NPRM, we proposed in the DHH NPRM to allow carriers to require any passenger who has severe hearing and vision impairment or is deaf-blind to travel with a safety assistant if communication adequate for transmission of the required safety briefing cannot be established. (We use the term "severe hearing and vision impairment" to include the entire spectrum of this disability, including the extreme of "deaf-blind," unless we expressly indicate otherwise.) We proposed to require both the carrier's personnel and the disabled passenger to make reasonable attempts to establish adequate communication, beginning with self-identification on the passenger's part. We further proposed that if the carrier disagrees with the passenger's assessment that he or she is capable of traveling independently, the carrier must transport the safety assistant free of charge and must also make reasonable efforts to locate such an assistant. We solicited comments on the proposed joint responsibility, on what might qualify as reasonable attempts to communicate, on whether our proposal is specific enough for all parties concerned to understand their responsibilities, and on whether a different standard might be more appropriate. We also solicited comments on the costs of compliance.

The carriers and carrier associations that filed comments all supported the proposed requirement that passengers with severe hearing and vision impairment self-identify. Most opposed being required to find a voluntary safety assistant if they disagree with the disabled passenger's self-assessment of being able to travel without one, and all opposed being required to transport the safety assistant without charge. They contend that not only would the requirement to transport the safety assistant without charge create incentives for fraudulent assertions of independence, but using voluntary safety assistants would raise serious insurance and liability issues, and requiring free transportation would saddle them with undue costs. Most sought clarification of carriers' responsibility for making reasonable efforts to establish communication with passengers whose hearing and vision are severely impaired. For flights of twelve hours or more, some carriers said, inexperienced passengers may not be aware of what needs may arise for them during their flight.

Of the disability organizations that filed comments, one supported joint responsibility for reasonable efforts to establish communication to determine the need for a safety assistant. Others maintained that the rule should ensure that persons with severe hearing and vision impairment are not denied travel because a carrier's employees lack adequate training in or knowledge of basic communication techniques.

In response to the comments we received, we are modifying the proposed rule in some respects. In so doing, we are maintaining the basic principle that has worked effectively in the domestic airline industry since the original 1990 rule: if a passenger is able to establish adequate communication with the carrier for purposes of receiving the safety briefing, and the carrier nonetheless decides to overrule the passenger's assessment that he or she can travel independently, the carrier cannot charge for the transportation of the safety assistant that the carrier requires.

To allow the carrier an opportunity to confirm that the passenger had such a means of communication available, the final rule provides that the carrier can require the

passenger to self-identify 48 hours before the flight. As part of this notification, the passenger would explain to the carrier how communication can be established (e.g., via tactile speech-reading by touching the speaker's lips, cheek and throat). If the passenger does not notify the carrier 48 hours before the flight, the rule nonetheless requires the carrier to accommodate the passenger as far as is practicable.

For example, if a passenger with severe hearing and vision impairments does not notify the carrier 48 hours before the flight of his or her intent to travel alone and of his or her ability to communicate adequately for transmission of the safety briefing, the carrier could refuse to transport the passenger without a safety assistant. If, however, the same passenger does not provide advance notice but is taking a nonstop flight, brings an interpreter to the airport, and is able to establish communication (in the gate area) adequate for the transmission of the safety briefing and to receive instruction during an emergency evacuation, the carrier must allow the passenger to travel without a safety assistant..

The FAA requires that the safety briefing be provided before each takeoff, so communication to permit transmission of this briefing must be established for each flight segment of the passenger's itinerary. Passengers can use a variety of means to establish the needed communication. A passenger could, for example, bring a companion to the airport to serve as a go-between with carrier personnel there. That individual can interpret for the passenger during the safety briefing and can help the passenger agree with carrier personnel on physical signals—touching the passenger's hand in a specific manner, for example—for use during evacuation or other emergencies. Another means by which the passenger may establish communication is to give carrier personnel an instruction sheet for communicating with him or her.

While we are not requiring carriers to make safety briefing information available on Braille cards, they are free to do so. The carrier may not require the passenger to demonstrate his or her ability to communicate or that he or she has understood the safety briefing. For example, there could not be a quiz on the contents of the safety briefing or a demonstration of lip reading or finger spelling ability.

In the case of codeshare flights, the carrier whose code is used must inform the operating carrier that a passenger with severe hearing and vision impairment has provided notice 48 hours in advance of his or her intent to travel without a safety assistant. If there is sufficient time before the 48-hour deadline for the passenger to directly contact the operating carrier, the carrier whose code is being used could, as an alternative, provide the passenger a number where he or she could contact the operating carrier to impart this information.

Consistent with the treatment of this issue in the rest of the rule, in cases where carriers disagree with a passenger's self-assessment that he or she can travel alone, we will continue to require that they transport the safety assistant without charge. Of course, any carrier that wishes to accommodate a passenger with severely impaired vision and hearing by designating a safety assistant from among, say, non-revenue passengers, its

airport personnel, ticketed passengers on the same flight who volunteer to serve in that capacity, or a person accompanying the disabled passenger to the airport is free to do so.

This requirement of free transportation for the safety assistant also applies in cases when the disabled passenger who believes that he or she does not need a safety assistant proposes to establish communication by means of tactile signing or finger spelling, but no member of the carrier's flight crew can communicate using these methods. Carriers may decide as a practical matter that providing free transportation for a safety assistant in these cases is less costly than training personnel to communicate using such methods.

Finally, with respect to a passenger with a mental impairment (e.g., someone with Alzheimer's disease), the Department wants carriers and passengers to understand that it is the passenger himself, not someone accompanying the passenger to the airport, who must be able to understand safety instructions from the crew.

Medical Certificates/Communicable Diseases

The Foreign Carriers NPRM proposed to continue, and apply to covered flights of foreign carriers, the existing Part 382 limits on the extent to which carriers can exclude or restrict passengers with communicable diseases and the situations in which carriers can require a passenger to get a medical certificate from a physician before traveling.

Many air carrier comments asked for greater guidance on how to apply the provisions of these sections. Some of these suggested incorporating past DOT guidance that spelled out that a combination of severity of health consequences and easy transmission of a disease in the aircraft cabin environment would create an appropriate situation for restrictions on an individual's travel and/or a requirement for a medical certificate. Commenters asked whether such conditions as the common cold, SARS, tuberculosis, or AIDS would meet the requirements of the proposed rule for permitting restrictions on travel or the requirement for a medical certificate. Some comments also asked how directives or recommendations from public health authorities would play into carrier decisions under the rule.

There were a number of comments about the concept of "direct threat," which is defined as a significant risk to the health or safety of others that cannot be eliminated by a modification of polices, practices, or procedures or eliminated by the provision of auxiliary aids or services. Disability community commenters expressed the concern that use of this term -- derived from the Americans with Disabilities Act – would make it too easy for carriers to use their discretion to exclude passengers, perhaps in a discriminatory fashion. Some carriers believed, to the contrary, that it would make it too difficult to exercise the discretion they need to protect the health of travelers or that it would be too burdensome for their personnel to make judgments on this basis. A medical group suggested that a direct threat be defined as a condition that would be seriously exacerbated by the flight itself or a serious communicable disease that could be transmitted to another person in flight.

Some carriers questioned the objectivity or qualifications of a passenger's physician to make a sound determination of whether it was safe for a passenger to travel. Some carriers preferred that their own medical staffs make these determinations, or at least have the ability to evaluate and override medical certificates provided by passengers' physicians. Generally, carriers preferred to have wider discretion to restrict passengers' travel than they perceived the provisions of the Foreign Carriers NPRM as giving them.

In response to comments, the Department has made some modifications in the final rule provisions on these subjects. We have included the substance of the DOT guidance. Under this provision, carriers would have the ability to impose travel restrictions and/or require a medical certificate if a passenger presented with a communicable disease that was both readily transmitted in the course of a flight and which had serious health consequences (e.g., SARS, but not AIDS or a cold). In addition, carriers could conduct additional medical reviews of a passenger and, notwithstanding a medical certificate, restrict travel under some conditions. This additional review would have to be conducted by medical personnel (e.g., members of the carrier's medical staff or medical personnel to whom the carrier referred the passenger), and this provision is not a license for non-medically trained carrier staff to disregard medical certificates presented by passengers from their own physicians. Nor would it be appropriate for carrier staff to exclude or discriminate against passengers because the passengers' appearance might disturb or upset other persons (see also sec. 382.19(b)).

Existing language of the regulation, which will be carried forward, permits a carrier to require a medical certificate from a passenger when there is reasonable doubt that the individual can complete the flight safely without requiring extraordinary medical assistance. This language accommodates the comment that one aspect of a direct threat is a passenger's having a condition that would be seriously exacerbated by the flight itself. We disagree with a commenter's assertion that a carrier should be able to ask for a medical certificate if any medical attention might be needed. This suggestion goes too far in the direction of granting carriers discretion to demand medical documentation for potentially minor medical conditions or for disabilities that do not entail any acute medical condition.

We have added language permitting carriers to rely on instructions issued by public health authorities (e.g., the U.S. Centers for Disease Control or Public Health Service; comparable agencies in other countries; the World Health Organization) in making decisions about carrying passengers with communicable diseases. For example, if CDC or WHO issues an alert or directive telling airlines not to carry a particular individual who poses a serious health risk (e.g., an individual with multiple drug-resistant tuberculosis), or persons exhibiting symptoms of a serious health condition (e.g., SARS), we would expect carriers to follow the public health agency's instructions. Carriers could do so without contradicting the requirements of this Part.

Aircraft Accessibility Features

The Foreign Carriers NPRM proposed extending to foreign carriers requirements for aircraft accessibility features based, with some modifications, on provisions in the existing ACAA rule. These features include accessible lavatories, movable aisle armrests, provision of on-board wheelchairs, and space to store wheelchairs and other mobility aids in the cabin. A few commenters apparently misunderstood the proposal as requiring retrofit of existing aircraft. This is not the case; no such requirement has ever existed or been proposed.

1. Movable aisle armrests

The current rule requires U.S. carriers using aircraft with 30 or more seats to have movable aisle armrests on at least half the passenger aisle seats. Such armrests need not be provided on emergency exit row seats or on seats on which movable aisle armrests are not feasible. The carrier is required to provide a means to ensure that individuals with mobility impairments or other passengers with disabilities can readily obtain seating in rows having movable aisle armrests. The requirement applies to new aircraft ordered or delivered after the rule went into effect (retrofitting was not required) or to situations in which existing seats are replaced by newly manufactured seats.

The Foreign Carriers NPRM proposed retaining these requirements and applying them to foreign carriers, with some modifications and clarifications. The exception for seats on which movable aisle armrests are not feasible was not included in the Foreign Carriers NPRM regulatory text, and a new requirement was proposed that would call on U.S. and foreign carriers to ensure that movable aisle armrests were proportionately provided in all classes of service. The information provided by carriers about the location of movable aisle armrests would have to be specified by row and seat number.

A number of carriers and aircraft manufacturers commented that the proposed deletion of the feasibility exception and the requirement to have movable aisle armrests in each class of service were problematic. They said that some seats and seat console designs for first and business class seats in fact did make movable armrests infeasible or too costly. Moreover, they said, the wider seat pitches in first and business class cabins often permitted horizontal transfers of passengers from boarding chairs to aircraft seats, making movable armrests unnecessary in these cases.

The Department agrees that, if in a given aircraft, seats and seat pitches are configured so as to permit a horizontal transfer of a passenger from a boarding wheelchair to the aircraft seat (i.e., a transfer that can be accomplished without lifting the passenger over the aisle armrest), it would not be necessary to have a movable aisle armrest at that location. Consequently, if a carrier can show, through an equivalent alternative request, that such transfers are feasible with a given cabin configuration, the Department would grant the request for the carrier's aircraft using that configuration. The underlying rule, however, will be adopted as proposed, because without a means of making a horizontal transfer into aircraft seats, passengers who board using boarding wheelchairs will have to use the less comfortable, safe, and dignified method of being

lifted over the armrest. Carriers that are unable to demonstrate an equivalent alternative would have to provide movable aisle armrests even in first and business class.

Some commenters also said that putting seats with movable armrests into existing aircraft should be required only when newly designed or developed types of seats are installed, as distinct from newly manufactured seats of the same type that formerly occupied the space. Consistent with other provisions of the ACAA, ADA, and section 504, when a feature of a vehicle or facility is replaced, it must be replaced with an accessible item. (We note that, according to information referred to in the regulatory evaluation, movable aisle armrests are now standard features of at least some seat manufacturers' products.) This obligation is not limited to new models of a feature placed into a space where older models formerly were used. Indeed, adopting the commenters' suggestion would create a means for carriers to avoid providing movable aisle armrests on existing aircraft when newly manufactured armrests are installed, since carriers could simply order older seat models whenever they replaced the seats. When carriers remove any of the old seats on existing aircraft and replace them with newly manufactured seats, half of the replacement aisle seats must have movable armrests.

Disability community commenters generally favored the Foreign Carriers NPRM proposal, but suggested some modifications. Some comments said that emergency exit rows should be made part of the base from which the 50 percent calculation should be made. The Department believes, however, that the existing formula, which excludes those rows from the calculation, will result in sufficient rows being equipped with movable aisle armrests. Other comments suggested requiring some rows (presumably, in economy as well as business or first-class sections) to have wider seat pitches, the better to accommodate service animals or assistive devices, or to remove some rows entirely and provide securement devices so that passengers could sit in their own wheelchairs. The Department regards these suggestions as impractical and potentially too costly to airlines, as they would reduce seating capacity on the aircraft. The latter suggestion, in addition, would be inconsistent with FAA safety rules concerning passenger seats on aircraft, since aircraft seats must be certified to withstand specified g-forces.

One comment suggested requiring that in new aircraft or those subject to a cabin refit, the bulkhead row always have a movable aisle armrest. While we do not believe it is necessary to be this specific in the regulatory text, we believe that this is a good idea that carriers and manufacturers should consider, except when a bulkhead row is unavailable to passengers with disabilities because of FAA safety rules (e.g., a bulkhead row that is also an exit row). Bulkhead rows are often used by people with disabilities (see the seating accommodations section of this Part).

2. Accessible lavatories

The Foreign Carriers NPRM proposed to retain the existing requirement that cabins of aircraft with more than one aisle (e.g., a twin-aisle aircraft like a 747) have an accessible lavatory. As under the existing rule, this requirement would apply to new aircraft (i.e., aircraft ordered/delivered after the effective date of the rule). If a carrier replaced an inaccessible lavatory on an existing twin-aisle aircraft, it would have to do so

with an accessible lavatory. The Foreign Carriers NPRM also proposed to clarify that if a carrier replaced a component of an existing, inaccessible lavatory on a twin-aisle aircraft (e.g., a sink) without replacing the entire lavatory, the new component would have to be accessible.

Many disability community commenters believed the existing and proposed requirements concerning accessible lavatories were inadequate. They said that accessible lavatories should be required in all aircraft, including the much more common single-aisle aircraft. The absence of accessible lavatories makes travel uncomfortable and difficult for passengers with disabilities, they said. Airline industry commenters, on the other hand, said that adding a requirement for accessible lavatories on single-aisle aircraft would be overly costly and burdensome.

Particularly given that single-aisle aircraft often make lengthy flights (e.g., across North America, some trans-oceanic flights), it is clear that providing accessible lavatories on single-aisle aircraft would be a significant improvement in airline service for passengers with disabilities. One of the organizations that commented on the Foreign Carriers NPRM is in the process of working with carriers and manufacturers to develop an accessible lavatory design for single-aisle aircraft that would minimize seat loss. At the present time, however, the Department is concerned that the revenue loss and other cost impacts of requiring accessible lavatories on single-aisle aircraft could be too great. Consequently, we are not imposing such a requirement at this time. Providing accessible lavatories on single-aisle aircraft remains a matter of interest to the Department, and we will look carefully at ongoing developments in this area to determine if future rulemaking proposals may be warranted.

Some comments objected to the proposed requirement to use accessible components (e.g., a sink) when replacing a component of a lavatory on a twin-aisle aircraft. Cost concerns aside, the main point of these comments was that lavatories typically are sold and installed as a unit, and that it is unusual to replace a single component of a lavatory. Even when this happens, because the lavatory is an integrated unit, only a given component that is dimensionally consistent with its original design is likely to fit. The Department believes that this comment has merit, and we are deleting the sentence in question.

Several foreign carriers objected to the application to them of the existing rule's requirement that when an inaccessible lavatory unit was being replaced on a twin-aisle aircraft, it must be replaced with an accessible lavatory. Their main concern was that since the accessible lavatory unit would require more space than its inaccessible predecessor, they would have to remove or forego seats, causing revenue loss. One carrier made very high estimates of seat loss from such a change (e.g., eight seats on some aircraft) and suggested that alternative means (e.g., a curtain) could provide as adequate restroom facilities as an accessible lavatory. Consequently, these commenters urged, the rule should require an inaccessible lavatory to be replaced with an accessible lavatory only in the context of a change in cabin layout.

Since the original ACAA rule (see 55 FR 8020-8021; March 6, 1990), the Department has drawn a distinction between single-aisle and twin-aisle aircraft for purposes of accessible lavatory requirements. While the Department has acknowledged since the time of the original rule that requiring accessible lavatories in twin-aisle aircraft involves direct costs and revenue losses (though some seat loss estimates, like the one referred to above, appear overstated), the Department determined then and continues to believe now that the requirement is justified in twin-aisle aircraft. The cabins of these aircraft are physically larger, affording somewhat greater flexibility than single-aisle aircraft in placing accessible lavatory units. They tend to be used on longer-distance flights and carry more people, making the presence of accessible lavatories all the more important to passengers. U.S. carriers have been subject to the same requirement for many years, and it is important to maintain a level playing field between U.S. carriers and their foreign carrier competitors in terms of such a requirement. Contrary to one foreign carrier comment, requiring accessible lavatories on twin-aisle aircraft does not discriminate against foreign carriers; U.S. carriers, no less than their foreign counterparts, use twin-aisle aircraft on long-distance international routes.

Several commenters requested a clarification with respect to the accessible lavatory requirement in a twin-aisle airplane, to the effect that only one accessible lavatory need be installed. For example, if a carrier was refitting a cabin, and replacing all its old inaccessible lavatories, it would only have to install one accessible lavatory unit. We believe that this is a reasonable interpretation of the requirement, and we will use this interpretation as we implement and enforce the rule. However, we do not believe that additional regulatory language is necessary.

3. Stowage Space for Wheelchairs

The Foreign Carriers NPRM proposed to retain with some modifications, and to apply to foreign carriers' aircraft, the existing requirement that aircraft with 100 or more passenger seats have a priority space to stow at least one passenger wheelchair. The modifications proposed from the existing rule were to add dimensions of a wheelchair that would fit without disassembly into the priority space and to delete the application of this section to electric wheelchairs.

As with other aircraft accessibility provisions of the Foreign Carriers NPRM, the proposed requirement concerning on-board stowage of wheelchairs would apply to new aircraft. Contrary to concerns expressed by a number of carriers, the Foreign Carriers NPRM did not propose a retrofit requirement. Nor would the requirement apply to "all types of aircraft," as several comments asserted. It would apply only to aircraft with 100 or more seats.

Comments from disability community commenters generally supported the proposed requirement, though several of these comments said that the dimensions proposed for wheelchairs to be carried in the cabin should be enlarged, given the size of many current types of mobility devices. Many foreign carrier comments said either that all wheelchairs should be carried in the cargo compartment or that carriers should have discretion concerning whether or not to carry a wheelchair in the cabin. Some comments

expressed the concern that carriers could not fit a space for a folding wheelchair into their cabin configurations without losing seating capacity. One foreign carrier added that crew luggage should have priority over a passenger's wheelchair.

The reasons for storing a wheelchair in the cabin are twofold. First, it can often be more convenient for a passenger to have the wheelchair close at hand when he or she leaves the aircraft and to be able to get as close as possible to the aircraft door on boarding before having to transfer. Second, as pointed out in the preamble to the original ACAA rule (55 FR 8035; March 6, 1990), passengers with disabilities have the same concerns as other passengers about loss of or damage to their property when it is checked. While, as some comments pointed out, requiring space for one wheelchair does not completely solve this problem for all passengers with disabilities, doing so does help at least one such passenger per flight. A bit of added inconvenience to non-disabled passengers or crew who might have to stow their carry-on items elsewhere seems an acceptable price to pay, in the context of a nondiscrimination rule, for this service to passengers with respect to their means of mobility.

For these reasons, the Department is adopting the proposed requirement. We recognize that some foreign carriers are used to exercising their discretion about where to carry passengers' wheelchairs, as were U.S. carriers prior to the adoption of the original ACAA rule. U.S. carriers, with appropriate oversight from DOT, have successfully adapted to this requirement, and foreign carrier comments did not contain any compelling reasons why they could not do so as well. It is important to remember that foreign carriers will not be required to modify existing cabins just for the purpose of creating a space for passengers' wheelchairs.

There is a wide variety of wheelchairs and mobility devices on the market. It would not be practical to require spaces that can handle every sort of device. The rule's requirement is now limited to spaces for folding manual wheelchairs, the present and proposed language concerning cabin stowage of power wheelchairs having been deleted in response to comments expressing concern about the adequacy of space, problems arising from the disassembly and reassembly of wheelchairs in the context of transportation in the cabin, and potential issues concerning stowage of batteries. Of course, since only folding manual wheelchairs are permitted in the cabin, large, motorized mobility-assistive devices of any type – not just power wheelchairs, as such – would not have to be carried in the cabin.

Based on the Department's experience, the dimensions in the Foreign Carriers NPRM should be sufficient to handle a considerable majority of models of folding wheelchairs. Consequently, while we agree that this required space will not be sufficient for all models, we believe it is a reasonable compromise between the needs of passengers and the space constraints of carriers. We note that, under the final rule, carriers are not required to carry electric wheelchairs in the cabin.

One matter that some comments raised was the so-called "seat-strapping" method of carrying wheelchairs in cabins. This involves strapping down a wheelchair across a row of seats in an aircraft that does not have the required space for stowing a folding

wheelchair in the cabin. While nowhere mentioned or authorized in the current Part 382, this practice has been permitted by DOT enforcement policy in some cases. Some comments supported allowing this approach as an alternative to providing a stowage space in the cabin. The Department does not believe that this is an appropriate alternative to endorse in the rule, because it is a more awkward way of carrying a wheelchair and because it can, on a given flight, reduce seating capacity for other passengers. This is a more important consideration than ever, given frequently high load factors on many flights. However, because DOT practice has allowed this measure in the past, we do not believe it is fair to ban the practice altogether. Consequently, seat-strapping will not be permitted as an alternative to designated stowage spaces on new aircraft ordered by or delivered to carriers after two years from the rule's effective date. The Department's policy will not change with respect to existing aircraft.

4. On-board wheelchairs

The existing rule requires that, on aircraft with more than 60 seats, the carrier must provide an on-board wheelchair in any case if the aircraft has an accessible lavatory, and on a passenger's advance request even if the aircraft does not have an accessible lavatory. The rationale for the latter requirement is that some passengers with limited mobility may be able to use an inaccessible lavatory on their own but may need to be assisted down the aisle to the lavatory in an on-board wheelchair. The Foreign Carriers NPRM proposed that this requirement apply on aircraft with 50 or more seats, as distinct from the criterion of more than 60 seats in the existing regulation. The reason for this proposal was that 50-seat regional jets are becoming an increasingly important component of the fleets of many carriers, and the accommodation provided by this section should be made available to passengers who use those aircraft.

Carriers and their associations objected to the application of the provision to 50-seat aircraft. Carriers cited cost as one reason for their position. In addition, they said, 50-seat aircraft typically have only flight attendant on board. If that attendant is assisting a passenger using an on-board wheelchair, he or she will be unable to carry out other duties. This could create difficulties if an emergency occurred while the flight attendant was assisting a user of an on-board wheelchair, which might also obstruct the aisle in an emergency situation. In addition, carriers questioned whether the interior of a 50-seat regional jet could be configured to provide storage space for the on-board wheelchair when it was not in use.

While the cost estimates of commenters for on-board wheelchairs appear to be overstated, we believe that the operational concerns of carriers with respect to the use of on-board wheelchairs on 50-seat aircraft with one flight attendant have merit. In addition, the typically very confined spaces in lavatory units on these aircraft make their use by persons with limited mobility problematic. Consequently, the final rule will retain the existing rule's provision applying on-board wheelchair requirements to aircraft with more than 60 seats.

Stowage of Wheelchairs and Mobility Aids

The current rule requires wheelchairs that cannot be carried in the cabin to be checked, carried as baggage, and returned to users as closely as possible to the door of the aircraft. These devices have priority over other items in the baggage compartment. Carriers must accept battery-powered wheelchairs (and other battery-powered mobility aids) in baggage, subject to applicable hazardous materials rules. Wheelchairs powered by lithium batteries may not be permitted under the hazardous materials rules depending on the lithium content of the battery. Generally, non-spillable batteries do not need to be removed from wheelchairs and separately packaged, if the batteries are securely attached to the wheelchair and the batteries or their housing, if any, are clearly marked as being non-spillable. Wet cell batteries which are not non-spillable may require removal from the wheelchair if the wheelchair cannot be loaded and stowed in an upright condition and secured against movement in the cargo compartment. Carriers may establish a one-hour advance check-in time to process battery-powered wheelchairs. Wheelchair users may provide written instructions concerning assembly and disassembly of their devices. On domestic flights, U.S. carriers must fully compensate passengers for loss of or damage to wheelchairs, without regard to rules limiting liability for lost or damaged baggage.

The Foreign Carriers NPRM essentially proposed to continue these provisions and apply them to foreign as well as U.S. carriers. Commenters made a number of points in response. One commenter asserted that the requirement to carry power wheelchairs in the baggage compartment was inconsistent with ICAO technical standards and IATA dangerous goods rules. While virtually identical in many respects, the DOT and ICAO/IATA standards differ, the commenter said, because the latter gives carriers discretion to refuse to carry such mobility aids while the former does not. The Department, according to the commenter, cannot impose a lesser requirement than the international standard. In the Department's view, there is no conflict. As cited by the commenter, the ICAO/IATA standard gives carriers the discretion to carry battery-powered wheelchairs. The DOT requirement tells carriers to exercise the discretion permitted them by the ICAO/IATA standard by, in fact, carrying the wheelchairs. The DOT rule does not require anything that the ICAO/IATA rule does not allow. It would not be accurate to call the Department's requirement a "lesser" standard than that of ICAO/IATA. Indeed, it is more properly regarded as a higher standard, since it ensures service to passengers with disabilities that the ICAO/IATA materials leave to carrier discretion.

On October 5, 2007, the Department's Pipeline and Hazardous Materials Administration (PHMSA) issued a special permit in response to an IATA request. The permit, which granted an exemption from portions of the Department's hazardous materials rules concerning battery-powered mobility aids, was revised in response to ATA's request on October 30, 2007. Under the special permit, the current term of which expires January 31, 2009, a non-spillable battery that is completely enclosed and protected from short circuits in a rigid case integral to the mobility aid would not have to be disconnected and its terminals further protected from short circuits to be carried on an aircraft. This special permit should make handling of some battery-powered wheelchairs easier for carriers to which the permit applies. It is PHMSA's intention to issue a

Due to the many instances of wheelchair damage resulting from disconnecting battery cables, the Department will require carriers not to disconnect the cables on non-spillable batteries unless a PHMSA or FAA safety regulation, or the safety regulation of a foreign government, requires them to do so.

Carriers and passengers with disabilities had differing views on the existing and proposed requirements for carriers to permit passengers to provide written instructions about the disassembly and reassembly of wheelchairs. Some of the former suggested requiring passengers to provide the manufacturer's instructions; some of the latter suggested that the airline employee who disassembles the wheelchair provide written instructions that would go forward to the employee who reassembles the wheelchair at its destination telling that employee how to put the device back together.

The Department believes that both suggestions have some merit. To the extent that there are relevant manufacturer's instructions, it seems useful for passengers to provide a copy to carriers. We do not think it would be appropriate to require the provision of manufacturer's instructions, since they may not exist in all cases and may not apply to specialized or customized features of a particular passenger's device. It also seems plausible that a user of a particular device would be in a good position to provide experience-based instructions to the carrier. Likewise, to the extent that a carrier employee at the passenger's originating airport can write down a "here's how I took it apart and here's how it goes back together" note to his counterpart at the destination, the information could be helpful to the latter. However, the employee may not have time to do so, and some passengers may prefer that the employee does not do so (i.e., out of concern that the employee could get it wrong). Consequently, we do not believe it advisable to change the proposed language.

Some carrier comments said that Warsaw/Montreal convention provisions controlled payments for items carried as baggage and that the Department should not attempt to alter compensation requirements for international flights. We agree, and the Foreign Carriers NPRM proposed to make compensation requirements for lost or damaged mobility aids applicable only to U.S. domestic passenger trips. The final rule will do the same.

Some commenters suggested that the advance check-in time for persons delivering mobility aids for transportation in the baggage compartment should be 60 minutes before the regular check-in time for passengers, rather than 60 minutes before scheduled departure time. We agree, and we have changed the rule accordingly.

Some carrier comments noted that the existing and proposed regulatory language concerning luggage that doesn't make a flight because of the space taken by a wheelchair calls for the carrier to make best efforts to deliver the luggage within four hours. Commenters said that this often was not practical in international service, where flights may be scheduled at intervals of one a day or less. This is a fair comment; we have changed the language to say that such luggage must be placed on the carrier's next flight. We believe this is a reasonable standard for domestic as well as international flights.

The Department recognizes that there may be some circumstances in which it is not practical to stow an electric wheelchair, or some other sort of assistive device, in the baggage compartment. Only devices that fit and that meet all applicable hazardous materials and other safety regulations need be carried.

Some wheelchairs – such as those equipped with securely mounted non-spillable batteries or those for which the carriers remove the batteries and stow them separately under 49 CFR 175.10(a)(15) and (16) – are capable of being stowed in other than an upright position without damage to the wheelchair or batteries. However, if the physical size of the compartment – its actual dimensions, not crowding caused by other items – do not permit a wheelchair to be carried upright safely without risk of serious damage to the wheelchair, or a load imbalance caused by a large wheelchair in a small baggage compartment may violate weight and balance safety requirements, carriers could legitimately decline transportation of the item on that flight and should assist the passenger in identifying a flight using an aircraft that can accommodate the chair.

Given that the rule allows the carrier to require 48 hours' advance notice with respect to carrying electric wheelchairs, the carrier should use this time period to find an arrangement that will get the passenger and his or her chair to the intended destination. For example, when a change to a smaller aircraft the day before the flight's departure will preclude the passenger's wheelchair from being accommodated in the cargo hold (e.g., the cargo space dimensions are too small for the chair to fit), the carrier must either offer the passenger alternative transportation at a different time or provide a fare refund. In circumstances where the passenger accepts alternative transportation on a flight of a different carrier, the first carrier must, to the maximum extent feasible, provide assistance to the second carrier in providing the accommodation requested by the individual from the first carrier.

A disability group also raised the concern – which could apply to manual as well as electric wheelchairs – that if several wheelchair users were traveling on a small aircraft, like a commuter aircraft or a regional jet, there might not be room in the baggage compartment for everyone's wheelchair. This situation could occur, but we do not see a regulatory solution to it. If a group is traveling together, providing as much notice as possible to the carrier to work the problem is advisable. Otherwise, the carrier would probably have to put some passengers' wheelchairs on a subsequent flight. A carrier association said that carriers should only have to carry one motorized mobility device per passenger. We do not believe it is necessary to provide for this situation in the regulatory text. However, in a situation like the above where there was not room for all disabled passenger's wheelchairs, we agree that it would make sense for the carrier to take one mobility device for each passenger on the flight before taking a second device for some passengers.

Seating Accommodations

The Foreign Carriers NPRM proposed carrying forward and applying to foreign carriers the seating accommodations requirements of the current ACAA rule. These

provisions would require carriers to make available certain seat locations to individuals with certain types of disability calling for a particular seating accommodation.

Some disability community commenters suggested that, if adequate seating accommodations for a person with a disability were not present, the individual should be seated in business or first class without additional charge. Carriers generally opposed this idea. Under the current rule, carriers are not required to provide accommodations in a seating/service class for which a passenger has not bought a ticket (see section 382.38(i)). The final rule continues this approach. Carriers are responsible for making seating accommodations in the seating/service class for which someone has bought a ticket, but are not required to provide a higher level of seat or service because doing so would be more comfortable or convenient for a passenger with a disability. Likewise, the Department is continuing its existing approach that a person who requires two seats for any reason (e.g., because of obesity or a disability) can be required to pay for two seats.

Some carriers asked for an advance notice requirement for passengers needing a seating accommodation (e.g., 48 hours). While it is always a good idea for passengers and carriers to communicate about accommodations as early as possible, the Department's ACAA regulations and nondiscrimination policies have discouraged advance notice policies as an undue limitation of the ability of passengers with disabilities to travel freely and without discrimination. The experience of U.S. carriers with the existing seating accommodations provision suggests that carriers can provide needed seating accommodations without additional advance notice.

There were several miscellaneous comments concerning seating accommodations. One carrier commented that persons with fused legs could be transported more comfortably in a rear window seat rather than a bulkhead seat in some aircraft configurations. This approach appears consistent with section 382.81 of the final rule, which requires carriers to seat a passenger with a fused leg in a bulkhead seat "or other seat that provides greater legroom than other seats."

Another carrier mentioned that because it provides "soft bulkheads" and "inflatable seatbelts" in some seats, national safety regulations prohibit seating some persons with disabilities in those seats. In this case, the carrier would then have to accommodate a passenger with a fused leg in any other seat on the aircraft offering greater legroom. If due to a particular aircraft model's design, no seat on that model other than those prohibited by national regulations offered greater legroom, the carrier would have to apply for a conflict of law waiver. We do not believe it is appropriate, as some disability groups suggested, to require bulkhead row seating to be made available to all wheelchair users. The apparent rationale for this request was to make it more convenient for such passengers to access their personal wheelchairs quickly in order to transfer to another flight or exit the airport. The rationale of the bulkhead seating accommodation for people with fused legs, however, is to make seating on the flight itself less difficult or uncomfortable for passengers, rather than easing the passenger's exit. A disability group asked the Department to clarify that wheelchair users are not limited to sitting in aisle seats. We agree, like the existing ACAA rule, the final rule does

not allow carriers to limit seating options for passengers with disabilities, except where needed to comply with applicable safety rules (e.g., concerning exit rows).

Accommodations for Passengers Who Use Oxygen Devices

A. Passenger-Owned Respiratory Devices

1. Covered Entities

In the Oxygen NPRM, we proposed that the requirements concerning the evaluation and use of passenger-owned electronic devices that assist passengers with respiration apply to all operations worldwide of U.S. air carriers that conduct passenger carrying service other than on-demand air taxi operators. The Oxygen NPRM proposed to cover foreign carriers operating flights to and from the United States in as similar a fashion as possible to U.S. air carriers. We also specifically requested comment as to whether the Department should limit coverage of this section to carriers operating larger than 60-seat aircraft and whether flights operated by commuter carriers should be covered.

Consumers argued against an exception for aircraft with 60 or fewer seats and favored a regulation of general applicability because many carriers that operate "hub and spoke" service as well as many carriers that service smaller cities and less frequently traveled routes use small aircraft. Consumers also asserted that it would frustrate the purpose of the regulation to exempt flights operated by commuter carriers as many individuals who use medical oxygen fly on commuter carriers from small regional airports to larger airports to connect to a flight to their ultimate destination. However, small carriers supported an exception for aircraft with 60 or fewer seats because of the costs associated with the regulation, particularly the cost of testing to determine if the electronic respiratory assistive devices interfere with the navigation or communication systems of each model of aircraft operated by the carrier. These carriers explained that testing would be more costly for small carriers because they do not have the technical knowledge or personnel necessary for testing, necessitating the hiring of subcontractors for compliance testing. Small carriers also indicated concern with the onboard service obligations associated with permitting passengers to use electronic respiratory assistive devices on an aircraft since there is no flight attendant on aircraft with fewer than 20 seats and only one flight attendant on aircraft with 20 to 50 seats Further, small carriers asserted that allowing a passenger to use an electronic respiratory device such as a portable oxygen concentrator (POC) onboard small aircraft is of limited benefit because they contend that many regional flights are one hour in length and carriers can prohibit the use of electronic devices during take-off and landing which can take a total of approximately forty minutes, leaving the passenger with only twenty minutes to use his/her device.

After fully considering the comments received regarding the applicability of section 382.133 to carriers, the Department believes that it is reasonable to apply the

requirements of this section to U.S. and foreign carriers that conduct passenger carrying service other than on-demand air taxis and not to exempt carriers that only operate aircraft with 60 or fewer seats. The contention of small carriers that the costs associated with the requirements in this section would be unduly burdensome to them no longer carries the same weight, since this final rule shifts the responsibility for electromagnetic interference testing of the four types of electronic respiratory assistive devices from the carriers as proposed in the Oxygen NPRM to the manufacturers of these devices, as the manufacturers have a market incentive to test such devices. (See the discussion of industry comments on this issue in the section below entitled "Testing and Labeling of Electronic Respiratory Assistive Devices.") The Department is also not persuaded that there are onboard service obligations associated with permitting passengers to use electronic respiratory assistive devices that require the assistance of a flight attendant. We also find unpersuasive the argument that electronic respiratory devices such as POCs are of limited use onboard small aircraft because they tend to operate shorter flights during which passengers could only use their devices for a small portion of the total flight time as it presumes that the devices cannot be used during ascent and descent. A device's use during a particular phase of a flight (e.g., ascent and descent) should be prohibited only if the device cannot be safely used during that phase (e.g., interferes with navigation or communications equipment). Absent evidence of such interference gained from the required testing, this rule requires carriers to allow passengers to use their electronic respiratory assistive devices, including POCs approved by the Federal Aviation Administration (FAA), during all phases of flight if safe.

2. Types of Electronic Respiratory Assistive Devices

We proposed in the Oxygen NPRM to address the carriage of four types of portable electronic respiratory assistive devices excepted from coverage under applicable FAA regulations, e.g., 14 CFR 121.306, 135.144, 121.574, 135.91 and Special Federal Aviation Regulation No. 106 – ventilators, respirators, continuous positive airway pressure (CPAP) machines and portable oxygen concentrators. We sought information from foreign governments, foreign carriers and other interested parties regarding any foreign safety restrictions affecting the carriage and use of these electronic respiratory assistive devices. While commenters did not conclusively identify any particular device as being specifically prohibited by foreign safety rules, there was a suggestion that certain governments may view all POCs as containing hazardous materials and may not permit their carriage or use onboard aircraft. Commenters also identified a number of foreign carriers that prohibit the use of electronic devices (including the aforementioned electronic assistive devices) during take-off and landing. The commenters noted that most of these foreign carriers are required to submit their aircraft passenger policies to a government agency for approval and expressed concern that the Department may not consider a foreign carrier's prohibition on use of electronic devices during ascent and descent which has been approved by its government to be a foreign government safety requirement.

The Department recognizes that foreign carriers operate under a variety of laws and regulations. We have revised section 382.133 to clarify that foreign carriers need to permit the carriage and use of a ventilator, respirator, CPAP machine and POC only if

among other things, the device can be stowed and used in the passenger cabin consistent with applicable TSA, FAA, and PHMSA regulations and ***the safety or security regulations of its government.***. In addition, section 382.9 allows a foreign carrier to petition the Department for a waiver of compliance with any provision in Part 382, including section 382.133, if an applicable foreign law or regulation precludes a foreign carrier from complying with that provision. As noted earlier in this document, the Department employs a narrow definition of the phrases "the safety or security regulations of its government" and "foreign law or regulation." A carrier's policy, even if approved by its government, would not be considered a foreign nation's law and would not exempt the carrier from compliance with Part 382.

3. Testing and Labeling of Electronic Respiratory Assistive Devices

In the Oxygen NPRM, we proposed that a U.S. carrier that conducts passenger-carrying service other than an on-demand air taxi operator perform the necessary evaluation and testing of a ventilator, respirator, CPAP machine or FAA-approved POC to determine if the device causes interference with the navigation or communication systems of each model of aircraft the U.S. carrier operates. We also proposed requiring a foreign carrier that conducts passenger-carrying service other than an on-demand air taxi operator to perform the necessary evaluation and testing of these devices to ascertain whether such device can be used safely by passengers during a flight on each aircraft that the foreign carrier operates on flights to and from the U.S.

Industry commenters as well as some consumers said that the burden of testing should be shifted away from the carriers. The Air Transport Association and other industry commenters proposed that carriers only be required to permit the use of an electronic respiratory assistive device that has been tested and marked as approved by RTCA, Inc. (formerly the Radio Technical Commission for Aeronautics). These commenters argued that if carriers have the option of refusing to carry any device that is not tested and marked as approved by the RTCA then the device manufacturers would have an incentive to test their devices and produce safety testing results for the carriers to review. Other commenters suggested that the device manufacturers and the aircraft manufacturers should be required to conduct the testing and then label the device as approved for use aboard aircraft, as manufacturers have the greatest incentive to test devices. Industry commenters also requested that the FAA create a generic safety standard for testing respiratory devices as well as a uniform labeling system for all approved devices to cut down on confusion by carriers and passengers.

Having considered all of these comments, the Department is persuaded that responsibility for electromagnetic interference testing of the four types of electronic respiratory assistive devices covered in the Oxygen NPRM should be borne by the manufacturers of such devices rather than the carriers. However, this regulation does not mandate manufacturer testing. The FAA is considering whether to issue an NPRM in which the agency would propose to require manufacturers that want to market their ventilators, respirators, CPAP machines, and FAA-approved POCs for passenger use on aircraft to test those devices against FAA-prescribed performance standards and affix a label to each device stating that it meets the applicable standards prescribed in the federal

aviation regulations. If the FAA decides to issue such an NPRM, the NPRM would clarify that those manufacturers that do not intend to market their devices for use on aircraft would be under no obligation to conduct any testing and would not be permitted to affix a label indicating FAA approval. The manufacturers that want to market such devices for use on aircraft but whose devices fail to meet the performance standards would also not be permitted to affix a label indicating FAA approval. Moreover, the FAA will consider whether to include other proposals in that NPRM, including specifying how a carrier would "verify" whether the aforementioned electronic respiratory assistive devices meet FAA performance standards.

In this rulemaking, we are strongly encouraging manufacturers that market their electronic respiratory assistive devices for use by passengers on aircraft to test their devices to determine whether they meet FAA electromagnetic and radio frequency interference emission standards set forth in FAA Advisory Circular No. 91.21-1B, and if they do so, to label the devices as FAA-compliant. The label should indicate that the device is approved for air travel (i.e., the device can be used safely during all phases of travel). The FAA generally prohibits the operation of portable electronic devices aboard U.S. registered civil aircraft while operating under instrument flight rules. See 14 CFR 91.21. However, the FAA through its Advisory Circular No. 91.21-1B allows U.S. carriers to permit passengers to use onboard the aircraft specified portable electronic devices (including the four types of respiratory devices addressed in this rulemaking) that have been tested by the manufacturer and found to not exceed the maximum level of radiated radio frequency interference as described in section 21, Category M of RTCA Document (DO)-160 while in all modes of operation, without any further testing by the carrier to establish compliance with this performance standard. It is worth noting that the FAA does not have a prohibition on the operation of portable electronic devices aboard civil aircraft registered in a country other than the United States.

This rule requires U.S. carriers to permit individuals to use electronic respiratory assistive devices in the passenger cabin so long as the devices have been tested and labeled by their manufacturer(s) as meeting the applicable FAA requirements for medical portable electronic devices as described in FAA Advisory Circular No. 91.21-1B (the FAA-approved POCs would also be subject to the requirements of Special Federal Aviation Regulation 106) and the device can be stowed consistent with FAA cabin safety requirements. At present, a label indicating that the device complies with RTCA standards meets FAA requirements and need not specifically state that the device is FAA approved.

The final rule also requires foreign carriers to permit individuals to use electronic respiratory assistive devices in the passenger cabin if certain conditions are met. First, the device must have been tested and labeled by its manufacturer as meeting the requirements for medical portable electronic devices set by the foreign carrier's government. If the foreign carrier's government does not have applicable requirements, then the carrier may elect to apply requirements for medical portable electronic devices set by the FAA for U.S. carriers. It would be a violation of our rules for a foreign carrier to prohibit a passenger from using his/her ventilator, respirator, CPAP machine, or POC in the passenger cabin because its government has not issued applicable rules on the

testing or labeling of electronic respiratory assistive devices. We encourage foreign carriers to apply FAA requirements for medical portable electronics where the foreign carriers' government has not issued applicable rules. Otherwise, it is not clear how the foreign carrier can be assured that the electronic respiratory assistive device that it is accepting for use in the cabin is safe. Also, the electronic respiratory assistive device must be stowed and used in the passenger cabin consistent with any applicable U.S. regulations and the regulations of the carrier's government.

We expect that both U.S. and foreign carriers will inspect the device label at the departure gate to ensure that it is labeled by the manufacturer in accordance with the applicable regulations. U.S. carriers' internal procedures must ensure that approved devices bearing labels indicating that they meet the FAA requirements are accepted. For foreign carriers, devices containing labels indicating that the device meets requirements set by the foreign carrier's government or, if no such requirement exists, the requirements for medical portable electronics set by the FAA for U.S. carriers, should be accepted.

4. Passenger Information

We explained in the Oxygen NPRM that carriers would be required to inform passengers, on request, about any restrictions on using their personal respiratory assistive devices aboard the carrier's flights (e.g., device can only be used after takeoff and before landing, availability of electrical outlets). In this regard, we indicated that we thought carriers would need to maintain some type of list of approved or disapproved devices and sought comments as to what extent carriers should be required to provide information to disabled air travelers. We also asked about the issues that are raised if carriers are required to provide information on the limitation of the carriers' codeshare partners to accommodate the use of respiratory devices.

The Department received a number of comments from consumers strongly urging that a centralized list of approved and disapproved devices be provided by carriers, airports and/or the government. Industry comments varied, with some carriers indicating a willingness to provide this information, while others believed a list of approved and disapproved devices would be difficult to maintain and would open the airline up to liability. Many carriers suggested that the Department provide a list of approved devices through its website and by phone. Carriers also expressed concern about any requirement to provide information on the limitation of its codeshare partners to accommodate the use of respiratory devices. According to these carriers, some carriers have up to ten codeshare partners and the burden of knowing the limitation of its codeshare partners' ability to provide accommodations would be substantial.

Because this final rule shifts the responsibility for testing the electronic respiratory assistive devices from the carriers to the manufacturers of such devices and requires carriers to permit passengers to use these devices aboard aircraft only if appropriately labeled, we do not see a need for carriers or any other entity to produce a central list of approved or disapproved devices. A passenger can simply look to see if the label on his/her electronic respiratory assistive device indicates that the device has been approved for air travel (i.e., no restriction on the device's use during any phase of travel).

However, we do see a need for carriers, during the reservation process, to inform passengers who express a desire to use a respirator, ventilator, CPAP machine, or FAA-approved POC aboard an aircraft of the conditions that must be met before these devices can be approved for such use. For instance, this final rule requires carriers through their reservation agents to inform passengers of the maximum weight and dimensions of a device that can be accommodated in the aircraft cabin, the requirement that an electronic respiratory assistive device be labeled appropriately, any requirement for advance check-in, any requirement for the individual to contact the carrier before the scheduled departure to learn the expected maximum duration of his/her flight, the requirement to bring an adequate number of fully charged batteries (i.e., battery is charged to full capacity) to power the electronic respiratory device and to ensure that extra batteries are packaged properly, and the requirement that an individual who wishes to use a POC provide a physician's statement. While a carrier can require a physician's statement (i.e., medical certificate) from an individual who wishes to use a POC during flight, we note that it normally would not be appropriate for a carrier to ask for such a certificate from someone wishing to use a ventilator, respirator or CPAP machine aboard a flight. Consistent with section 382.23, a medical certificate should be required of an individual who uses a ventilator, respirator or CPAP machine only if the individual's medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight.

The Department understands the concerns expressed by carriers regarding the difficulty and the costs associated with providing information to passengers about the limitation on the ability of its codeshare partners to accommodate users of respiratory devices. The Department also believes that it is imperative that users of electronic respiratory assistive devices receive, in advance, accurate information concerning any limitation on the ability of the carrier to accommodate their need to use such a device in the cabin of the aircraft. The Department has tried to balance these somewhat conflicting concerns/needs. The final rule requires that, in a codeshare situation, the carrier whose code is used on the flight must either advise an individual who inquires about using his/her electronic respiratory assistive device onboard an aircraft to contact the carrier operating the flight for information about its requirements for use of such a device in the cabin, or provide such information on behalf of the codeshare carrier operating the flight. For example, consider a passenger who buys a codeshare ticket from carrier A for a connecting itinerary from New York to Cairo through London ,where carrier A operates the New York to London leg and carrier B operates the London to Cairo leg under carrier A's designator code. In this example, carrier A must upon inquiry from the passenger: (1) inform the passenger about carrier A's requirements for the use in the cabin of a ventilator, respirator, CPAP machine or POC and (2) inform the passenger about carrier B's requirements for the use in the cabin of the aforementioned devices or tell the passenger to contact carrier B directly to obtain this information.

5. Advance Notice

We sought comments in the Oxygen NPRM about operational reasons, if any, in support of permitting carriers to require a passenger with a disability to provide advance notice of his or her intention to use a battery-operated CPAP machine, an approved POC,

a respirator or a ventilator aboard a flight. We also asked whether carriers should be permitted to require a passenger to provide advance notice of his or her intention to use the aircraft electrical system as well as what would be a reasonable amount of advance notice.

Industry commenters provided a number of operational reasons why they said there should be advance notice requirements for individuals who wish to use electronic respiratory assistive devices aboard a flight. These commenters explained that advance notice is needed to: (1) ensure the device is approved for use onboard the aircraft; (2) ensure that a passenger brings an adequate battery supply to power his/her device; (3) ensure that the respiratory device is medically necessary; (4) ensure the pilot in command is apprised when a passenger is using a POC; and (5) ensure that the passenger has talked with his/her physician regarding fitness to fly with the respiratory assistive device. Many consumers also indicated that they were comfortable with an advance notice requirement for individuals who wish to use a battery-operated CPAP machine, an approved POC, a respirator or a ventilator aboard a flight. There was, however, disagreement as to what would constitute a reasonable amount of advance notice. While most consumer and industry comments indicated that 48 hours is a reasonable amount of advance notice, some industry comments asked for 96 hours advance notice for international flights and a few consumers stated that 24 hours is sufficient notification.

With respect to electrical outlets, industry comments strongly urged that electrical outlets not be relied upon by respiratory device users. According to these commenters, electronic device users cannot depend on the presence of an outlet, as most aircraft do not have electrical outlets; the electrical outlets that are available on aircraft may not be compatible with the passenger's device, as most respiratory assistive devices require more wattage; electrical outlets may be turned off during takeoff and landing; and the carrier may switch aircraft and use aircraft with no outlets at the last minute.

Based on the comments received and the Department's belief that providing 48 hours' advance notice would not be burdensome for consumers, this final rule permits carriers to require up to 48 hours' advance notice from individuals who wish to use electronic respiratory assistive devices aboard a domestic or international flight. The Department believes that a 48 hour advance notice is reasonable as that time period provides sufficient time for carriers to prepare for the accommodation. Further, in other sections of this Part where a carrier has been permitted to require a qualified individual with a disability to provide advance notice of his or her need for certain accommodations or of his or her disability as a condition of receiving the requested accommodation, that advance notice has been limited to 48 hours. The Department also believes, as comments provided by the industry representatives contend, that electrical outlets are generally not reliable sources of power for electronic respiratory assistive devices. Of course, if a carrier is confident that the electrical outlet on the aircraft is reliable (e.g., uninterrupted service), nothing in this rule prohibits the carrier from permitting a passengers to plug his/her electronic respiratory assistive device into such an outlet, consistent with applicable FAA safety rules.

6. Advance Check-in Time

The proposed rule asked questions about operational reasons, if any, for requiring passengers who request to use their respiratory assistive devices to comply with an advance check-in deadline. It also asked about issues passengers who use respiratory assistive devices would face if carriers were permitted to require an advance check-in deadline, as well as what would be a reasonable length of time for the advance check-in.

Comments provided by the industry to justify the need for advance check-in are similar to the justifications provided for advance notice (e.g., to ensure the device is safe for use on board, to ensure proper packaging of batteries, ensure an adequate supply of batteries). Consumers questioned whether advance check-in is necessary if a passenger provides advance notice of his/her intention to bring and use the electronic respiratory assistive devices. The consumers noted that they have other obligations and restrictions on their time and that advance check-in places significant burdens on their time. If advance check-in is required, consumer commenters favored a one hour advance check-in requirement. Industry comments supported one hour advance check-in for all domestic flights but two hour advance check-in for international flights. Carrier comments also sought the authority to deny boarding if a passenger has failed to comply with the carrier's procedural instructions on using electronic devices onboard.

The Department believes that it is necessary to permit carriers to require advance check-in to enable the carrier personnel to inspect the label on the electronic respiratory assistive device to ensure that it was labeled by the manufacturer in accordance with the applicable regulations and to ensure that a passenger is carrying an adequate number of properly packaged batteries to power his/her assistive device. The Department generally believes that one hour advance check-in is reasonable for both domestic and international flights, especially since "advance check-in" as used in this rule means checking in one hour before the carrier's normal check-in time for the general public. Thus, for example, if a carrier's normal check-in deadline for all passengers for an international flight is one hour before scheduled departure time, the carrier is free to require passengers who wish to use electronic respiratory assistive devices to check in two hours before scheduled departure time. That having been said, it would not be reasonable for a carrier to require one hour advance check-in in situations where a passenger is not able to check-in one hour in advance because the passenger's connecting flight arrived late. Consider the example, of a codeshare connecting itinerary from Washington, D.C. to Johannesburg through Rome, where carrier A operates the segment from Washington, D.C. to Rome and carrier B operates the segment from Rome to Johannesburg. If carrier B has a one hour advance check-in requirement and the passenger checks in for the flight to Johannesburg less than an hour before departure due to carrier A's late arrival in Rome, the passenger must be accepted on the flight to Johannesburg up until carrier B's general check-in deadline for all passengers on that flight. The Department is not persuaded by consumer comments that one hour advance check-in would be a significant burden on them, particularly since this rule would not permit carriers to require a one hour advance check-in for a passenger who is not able to meet that requirement due to his/her connecting flight arriving late. The Department is also not persuaded by industry comments that a two hour advance check-in is needed for international flights, in part

because the information that the carrier personnel will be verifying at the departure gate does not change based on whether the flight is a domestic flight or an international flight.

7. Seating Accommodations

In the Oxygen NPRM, we asked whether a passenger who uses a ventilator, respirator, CPAP machine or an FAA-approved POC should be given priority over users of other types of electronic equipment that are not assistive devices (e.g., laptops) with respect to obtaining power for the device from the aircraft's electrical outlets. Virtually all of the consumer comments stated that upon request airlines should be required to seat a passenger who self identifies as using an electronic respiratory assistive device next to an electrical outlet, if one is available on the aircraft. Industry comments on this issue varied. Some carriers supported providing priority seating while other industry commenters opposed this proposal. The industry commenters that opposed providing priority seating asserted that access to seats with electrical outlets is an aircraft amenity based on other considerations (e.g., frequent flier status) and explained that the cost of ensuring access to electric outlets is burdensome. Some of the costs attributed to implementing the proposed seating accommodation include the cost to a carrier of updating its seating maps to indicate the presence of electric outlets, updating its reservation system to allow blocking of seats near outlets for qualified disabled passengers, and training flight attendants and others regarding the location of each aircraft's electrical outlets. Also, as noted above, many industry comments emphasized that not all aircraft have outlets and the unreliability of electrical outlets on aircraft that do have them (e.g., outlets turned off during take off and landing, outlets often don't have sufficient wattage to power respiratory devices).

The Department is not convinced by the industry arguments opposing priority seating on the basis of costs associated with such a seating accommodation but is convinced that, for safety reasons, it would not be good policy to have any requirements concerning the use of electrical outlets when electrical outlets are not available on a number of aircraft and are generally not reliable sources of power for electronic respiratory assistive devices. Therefore, this rule does not mandate that carriers allow users of respiratory assistive devices to plug their devices into the aircraft's power supply or to provide priority seating near such outlets. The Department does encourage carriers to permit passengers to hook up the four types of respiratory assistive devices to the aircraft electrical power supply in circumstances where the carrier is confident that the electrical outlet on the aircraft is reliable (e.g., uninterrupted service).

8. Batteries

The Oxygen NPRM sought information about whether the rule should allow carriers to require users of electronic respiratory devices to carry a certain number of batteries. It also solicited comments about what action the Department should authorize the carrier to take if a passenger does not bring a sufficient number of batteries to power an electronic respiratory assistive device or a passenger does not ensure that the batteries for the device are packaged in a manner to allow them to be transported safely in the cabin.

Consumers generally agreed that it would be appropriate to require users of electronic respiratory assistive devices to carry a sufficient number of batteries to power the device for 1.5 times the length of the flight. Some carriers suggested that users of electronic respiratory assistive devices should carry enough batteries to power the device for the length of the flight plus an additional two hours. Other comments suggested enough batteries to power the device for 1.5 times the length of the flight plus one additional battery. There were also comments recommending that the passenger's physician should indicate the appropriate number of batteries in the prescription that indicates the passenger's medical need for the device. A number of carriers asked for the authority to refuse to carry a passenger who does not have an adequate number of batteries. A few carriers asked to be able to charge the passenger who does not carry a sufficient number of batteries for the cost of any resulting emergency action that may be required. Many industry comments also suggested that PHMSA and FAA should be involved in the discussion of the appropriate number of batteries to carry in the cabin to ensure that an excessive number of batteries is not carried onboard.

After fully considering the comments received and consulting with FAA and PHMSA personnel, the Department has determined that there is no need to place a limit on the number of batteries users of electronic respiratory devices transport in the cabin of an aircraft. The FAA and PHMSA are confident that batteries that are protected against short circuits and wrapped in strong outer packagings can safely be transported in the passenger cabin provided there are sufficient approved stowage locations available. On March 26, 2007, PHMSA published a safety advisory to inform the traveling public and airline employees about the importance of properly packing and handling batteries and battery-powered devices when they are carried aboard aircraft. Federal regulations require that electrical storage batteries or battery-powered devices carried aboard passenger aircraft be properly packaged or protected to avoid short-circuiting or overheating. In its safety advisory, PHMSA suggested various practical measures for complying with the regulations and minimizing transportation risks. Recommended practices include keeping batteries installed in electronic devices; packing spare batteries in carry-on baggage; keeping spare batteries in their original retail packaging; separating batteries from other metallic objects such as keys, coins and jewelry by packing individual batteries in a sturdy plastic bag; securely packing battery-powered equipment in a manner to prevent accidental activation; and ensuring batteries are undamaged and purchased from reputable sources.

The Department has decided to allow a carrier to require an individual who uses a ventilator, respirator, CPAP machine or FAA-approved POC to bring an adequate number of fully charged batteries onboard to operate the device for not less than 150% of the expected maximum flight duration. The appropriate number of batteries should be calculated using the manufacturer's estimate of the hours of battery life while the device is in use and the information provided in the physician's statement (e.g., flow rate for POCs). The expected maximum flight duration is defined as the carrier's best estimate of the total duration of the flight from departure gate to arrival gate, including taxi time to and from the terminals, based on the scheduled flight time and factors such as (a) wind and other weather conditions forecast; (b) anticipated traffic delays; (c) one instrument approach and possible missed approach at destination; and (d) any other conditions that

may delay arrival of the aircraft at the destination gate. This rule also makes it clear that a carrier may deny boarding, on the basis of safety, to an individual who does not carry the number of fully charged batteries prescribed in the rule or an individual who does not properly package the extra batteries needed to power his/her device. Information for passengers on how to safely travel with batteries is available at safetravel.dot.gov . However, a carrier may not deny boarding due to an inadequate number of batteries unless the carrier can provide information from a reliable source demonstrating that the number of batteries that the passenger has supplied will not provide adequate power for 150% of the expected maximum flight duration based on the battery life indicated in the manufacturer's specification when the device is operating at the flow rate specified in the physician's statement. It is also worth noting that the requirement to bring an adequate number of batteries to continuously operate the device for up to 150% of the expected maximum flight duration does not apply in circumstances where the passenger will be using an FAA approved POC while boarding or disembarking from the aircraft and will not be relying on the POC during flight because the passenger has contracted for carrier-supplied oxygen. In instances where the carrier denies boarding to an individual, the carrier must provide the individual a written statement of the reason for the refusal to provide transportation within 10 days of the incident.

B. Carrier-Supplied Oxygen

The Oxygen NPRM proposed to require certificated U.S. carriers operating aircraft that conduct passenger-carrying service with at least one aircraft having a designed seating capacity of more than 60 passengers and foreign 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 to provide passengers free in-flight medical oxygen in accordance with applicable safety rules. The Department is committed to providing individuals dependent on medical oxygen greater access to air travel, consistent with Federal safety and security requirements. However, in order to obtain additional information about the cost of carrier-supplied in-flight medical oxygen, the Department is deferring final action on this proposal.

Under existing Air Carrier Access Act interpretation and practice, carriers are not required to make modifications that would constitute an undue burden or fundamentally alter the nature of the carriers' service. As a matter of disability law, undue burden implies that there may necessarily be some burden (a "due burden") in accommodating someone's disability. Generally, an action is deemed to be an undue burden if it would require significant difficulty or expense on the part of the covered entity when considered in light of factors such as the overall size of the business, the financial resources of the business, the type of operation, and the nature and cost of the accommodation. There is no hard and fast rule about what is or is not an "undue burden." The portion of the cost of carrier-supplied oxygen that would constitute an undue burden could differ among carriers and could differ from one route to another with the same carrier. We do not currently have sufficient information available to determine if requiring a carrier to provide free in-flight medical oxygen would create an undue burden. The Department

will seek additional comment about the cost of carrier-supplied oxygen in a supplemental notice of proposed rulemaking (SNPRM) that it plans to issue. The preamble to the SNPRM will also discuss comments received on the Oxygen NPRM with respect to this issue. In the interim, carriers can continue to charge for in-flight medical oxygen that they choose to provide.

Service Animal Issues

The subject that attracted the most comments on the Foreign Carriers NPRM – over 1100 of the 1290 received – was service animals. Interestingly, most of these comments did not pertain to anything in the Foreign Carriers NPRM's proposed regulatory text, but rather to a guidance document concerning transportation of service animals that the Department had issued in May 2003. As an informational matter, this existing guidance document was published as an appendix to the November 2004 NPRM. The paragraph in the document that was the focus of most of the comments was the following:

> *If the service animal does not fit in the assigned location, you should relocate the passenger and the service animal to some other place in the cabin in the same class of service where the animal will fit under the seat in front of the passenger and not create an obstruction, such as the bulkhead. If no single seat in*
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> *the cabin will accommodate the animal and passenger without causing an obstruction, you may offer the option of purchasing a second seat, traveling on a later flight or having the service animal travel in the cargo hold. As indicated above, airlines may not charge passengers with disabilities for services required by part 382, including transporting their oversized service animals in the*
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> *cargo compartment.* (69 FR 64393)

During the one and a half years preceding the issuance of the Foreign Carriers NPRM during which the guidance had been available, and during the over three years since the Foreign Carriers NPRM has been issued, there have been few if any instances brought to the attention of the Department in which service animals have been denied transportation, separated from their owners, or charged for an extra seat. Despite this apparent lack of problems in the real world of air travel, hundreds of comments expressed the fear that the Department was proposing new regulations that would unfairly limit the travel opportunities of service animal users. Many of these comments suggested that there were no circumstances under which a service animal should be denied transportation in the cabin. If there were space limitations concerning accommodating larger animals, some commenters said, airlines should reconfigure their cabins to provide some larger spaces.

The Department believes that the fears of these commenters are largely unfounded. Nevertheless, in order to avoid future misunderstanding, the Department is republishing its service animal guidance later in the preamble to this final rule and has revised the language in this guidance document concerning carriage of larger, but otherwise acceptable, service animals to read as follows:

The only situation in which the rule contemplates that a service animal would not be permitted to accompany its user at his or her seat is where the animal blocks a space that, per FAA or applicable foreign government safety regulations, must remain unobstructed (e.g., an aisle, access to an emergency exit) AND the passenger and animal cannot be moved to another location where such a blockage does not occur. In such a situation, the carrier should first talk with other passengers to find a seat location where the service animal and its user can be agreeably accommodated (e.g., by finding a passenger who is willing to share foot space with the animal). The fact that a service animal may need to use a reasonable portion of an adjacent seat's foot space—that does not deny another passenger effective use of the space for his or her feet—is not, however, an adequate reason for the carrier to refuse to permit the animal to accompany its user at his or her seat. Only if no other alternative is available should the carrier discuss less desirable options concerning the transportation of the service animal with the passenger traveling with the animal, such as traveling on a later flight with more room or carrying the animal in the cargo compartment. As indicated above, airlines may not charge passengers with disabilities for services required by Part 382, including transporting their oversized service animals in the cargo compartment.

In modifying this paragraph in the guidance, we deleted the phrase concerning the potential purchase of a second seat, since there are probably no circumstances under which this would happen. If a flight is totally filled, there would not be any seat available to buy. If the flight had even one middle seat unoccupied, someone with a service animal could be seated next to the vacant seat, and it is likely that even a large animal could use some of the floor space of the vacant seat, making any further purchase unnecessary. Of course, service animals generally sit on the floor, so it is unlikely that a service animal would ever actually occupy a separate seat.

We have not taken other steps recommended by some commenters, such as mandating that airlines accommodate coach passengers with service animals in first class or reconfigure cabins. We would regard such mandates as potentially requiring a fundamental alteration of airlines' operations, and consequently outside the scope of the statutory authority for this rule.

A second category of comments concerned the relationship of service animal requirements to Part 382's coverage of foreign carriers. Many foreign carriers and their organizations stated that foreign carriers often had policies more restrictive than those of the ACAA (e.g., only dogs, or only dogs certified by recognized training schools or associations, are accommodated; some carriers don't allow any animals in the cabin; service animals may be seated only in certain designated locations; there are number limits or advance notice requirements for service animals in the cabin). These commenters generally wished to maintain such restrictions.

As a general matter, foreign carrier policies with respect to service animals, like other foreign carrier policies, are subject to the conflict of laws waiver and equivalent alternative provisions of the final rule. Otherwise, modifying carrier policies to

accommodate U.S. civil rights requirements is something foreign carriers must accept as part of their obligation to comply with U.S. law when flying to and from the U.S.

In addition to wishing to maintain existing policies restricting the access of service animals, some commenters mentioned that some countries have quarantine rules that severely delay or limit the entrance of certain animals, or effectively prohibit, certain animals – even service animals – from entering those countries. The Department agrees that, if Country S prohibits a certain kind of animal from entering, an airline serving an airport in Country S could apply for a conflict of laws waiver to be relieved of carrying such an animal to that country. Such a waiver would be country-specific; however. If the same airline is asked to carry the same animal to Country R, which does not have such a prohibition, the carrier would have to transport the creature. The final rule also requires carriers to promptly take all steps necessary to comply with such foreign regulations as are necessary to legally transport service animals from the U.S. into foreign airports (e.g., the United Kingdom's Pet Travel Scheme).

Commenters mentioned that some persons may have religious or cultural objections to traveling in proximity to certain service animals. Other commenters raised the issue of passengers who may have allergies to certain animals. It has long been a principle of the Department's ACAA and other disability regulations that it is improper for a transportation provider to deny or restrict service to a passenger with a disability because doing so may offend or annoy other persons (see for instance current 14 CFR 382.31(b) and section 382.19(b) of the final rule). This principle is again articulated in the final's rule service animal section. Only if a safety problem amounting to a direct threat can be shown is restricting access required by Part 382 justifiable.

This principle applies to concerns about passengers who have allergies not rising to the level of a disability or cultural or personal objections to being on the same aircraft with a certain service animal. Their discomfort must yield to the nondiscrimination mandate of the ACAA. As stated in the Department's service animal guidance, to which we have added language concerning the handling of allergy issues, carriers should do their best to accommodate other passengers' concerns by steps like seating passengers with service animals and passengers who are uncomfortable with service animals away from one other. We note that, on flights operated by foreign carriers that are not subject to these rules, the carriers may, of course, apply their own policies with respect to carriage of service animals.

A number of commenters objected to the requirement that carriers accept animals as service animals on the basis of the "credible verbal assurances" of passengers, especially in the absence of credentials from a training school that the carrier recognizes.

Under U.S. law (the ADA as well as the ACAA), it is generally not permissible to insist on written credentials for an animal as a condition for treating it as a service animal. It would be inconsistent with the ACAA to permit a foreign carrier, for example, to deny passage to a U.S. resident's service animal because the animal had not been certified by an organization that the foreign carrier recognized. When flying to or from the United States, foreign carriers are subject to requirements of U.S. nondiscrimination law, though

carriers may avail themselves of the conflict of laws waiver and equivalent alternative provisions of this Part. We acknowledge that some foreign carriers may be unused to making the kinds of judgment calls concerning the credibility of a passenger's verbal assurances that the Department's service animal guidance describes, and which U.S. carriers have made for over 17 years. However, the comments do not provide any persuasive evidence that foreign carriers are incapable of doing so or that making such judgment calls will in any important way interfere with the operation of their flights.

A number of carriers commented that making provision for service animals on long (e.g., trans-oceanic) flights was especially problematic. The main concern focused on the animals' eating, drinking, and elimination functions. They pointed out that health and sanitation issues could arise. Some service animal users said that their animals were well trained to avoid creating sanitation problems on even a very long flight. The Department agrees that, on very long flights, carriers have a legitimate concern about sanitation issues that could arise if animals relieve themselves in the cabin. Consequently, the Department has added a provision to the regulatory text pertaining to a flight segment scheduled to take eight hours or more. For such a segment, the carrier may, if it chooses, require the passenger using the animal to provide documentation that the animal will not need to relieve itself on the flight or that the animal can do so in a way that does not create a health or sanitation issue. We agree with commenters that carriers should not have any responsibility for assisting with the eating, drinking, or elimination functions of service animals on board an aircraft.

Another important issue that a number of commenters raised concerned "emotional support animals." Unlike other service animals, emotional support animals are often not trained to perform a specific active function, such as pathfinding, picking up objects, carrying things, providing additional stability, responding to sounds, etc. This has led some service animal advocacy groups to question their status as service animals and has led to concerns by carriers that permitting emotional support animals to travel in the cabin would open the door to abuse by passengers wanting to travel with their pets.

The Department believes that there can be some circumstances in which a passenger may legitimately travel with an emotional support animal. However, we have added safeguards to reduce the likelihood of abuse. The final rule limits use of emotional support animals to persons with a diagnosed mental or emotional disorder, and the rule permits carriers to insist on recent documentation from a licensed mental health professional to support the passenger's desire to travel with such an animal. In order to permit the assessment of the passenger's documentation, the rule permits carriers to require 48 hours' advance notice of a passenger's wish to travel with an emotional support animal. Of course, like any service animal that a passenger wishes to bring into the cabin, an emotional support animal must be trained to behave properly in a public setting.

We have also noted a concern that there could be differences, in the airport terminal context, between the ACAA regulations that apply to airlines, and their facilities and services, contrasted with public accommodations like restaurants and stores. The DOJ Title III rules for places of public accommodation govern concession facilities of

this kind. As a consequence, a concession could, without violating DOJ rules, deny entry to a properly documented emotional support animal that an airline, under the ACAA, would have to accept. On the other hand, nothing in the DOJ rules would prevent a concession from accepting a properly documented emotional support animal. We urge all parties at airports to be aware that their services and facilities are intended to serve all passengers. Airlines, airport operators, and concessionaires should work together to ensure that all persons who are able to use the airport to access the air transportation system are able equally to use all services and facilities provided to the general public.

Because they make for colorful stories, accounts of unusual service animals have received publicity wholly disproportionate to their frequency or importance. Some (e.g., tales of service snakes, which grow larger with each retelling) have become the stuff of urban legends. A number of commenters nevertheless expressed concern about having to accommodate unusual service animals. To allay these concerns, the Department has added language to the final rule specifying that carriers need never permit certain creatures (e.g., rodents or reptiles) to travel as service animals. For others (e.g., miniature horses, pot-bellied pigs, monkeys), a U.S. carrier could make a judgment call about whether any factors (e.g., size and weight of the animal, any direct threat to the health and safety of others, significant disruption of cabin service) would preclude carrying the animal. Absent such factors, the carrier would have to allow the animal to accompany its owner on the flight. Any denial of transportation to a service animal would have to be explained, in writing, to the passenger within 10 days.

While it is possible that foreign air carriers may have safety-related reasons for objecting to service animals other than dogs, even ones that have been successfully accommodated on U.S. carriers, these reasons were generally not articulated in their comments to the docket. Nevertheless, to give foreign carriers a further opportunity to raise any safety-related objections specific to foreign airlines to carrying these animals, the final rule does not apply the requirement to carry service animals other than dogs to foreign airlines. However, foreign carriers could not, absent a conflict of laws waiver, impose certification or documentation requirements for dogs beyond those permitted to U.S. carriers. We intend to seek further comment on this subject in the forthcoming SNPRM.

A few comments suggested adding, to the section prohibiting carriers from requiring passengers to sign waivers or releases of liability, language specifically applying this prohibition to the loss, injury, or death of service animals. We believe that this is a sensible suggestion, and we have added the language.

Information for Passengers

The Foreign Carriers NPRM proposed that, similar to the current rule, carriers would have to make certain information available to passengers with disabilities upon request concerning the accommodations that were available to them for a particular flight. This includes the location of seats with a movable armrest as well as seats (e.g., those in an exit row) that are not available to passengers with a disability. It also includes information about any service limitation as well as the ability of an aircraft to

accommodate people with disabilities (e.g., limitations on boarding assistance, limitations on storage areas for mobility aids, presence or absence of an accessible lavatory). The Foreign Carriers NPRM recognized that there were circumstances (e.g., change of aircraft because of weather or mechanical problems) that could affect the accuracy of information provided at the time a passenger made a reservation.

Disability community comments supported these proposals, which did not propose significant substantive changes from the provisions of the ACAA that have been in effect since 1990. Some carrier comments objected to the provision to identify seats with movable armrests, saying that, given the variety of cabin configurations and aircraft, it would be too hard and too expensive to be able to know where these seats are located.

The final rule does not mandate that carriers reconfigure cabins on all aircraft in order to meet this requirement, as some commenters mistakenly appeared to conclude. Rather, carriers would provide the best information available at the time a passenger made a reservation or inquiry. If the location of movable armrest seats on the aircraft actually providing the flight did not match the information previously provided to the passenger, gate and flight crew personnel could modify the passenger's seating assignment prior to or at the time of boarding in order to ensure that the passenger could transfer to a seat with a movable armrest.

A carrier could make the necessary information about seating configurations of each aircraft available to its personnel for this purpose, noting locations of movable armrest seats. We note that there are at least two commercial web sites that make detailed information on characteristics of each seat of each configuration of most carriers' various aircraft models publicly available. While these sites do not include information on movable armrests, the detailed information they make available (e.g., the location of seats that have sockets available to plug in laptops) suggests that doing so would not pose an insurmountable technical problem. Carriers that found a computer-based system too challenging could use a low-cost, low-tech means of identifying the movable armrest seats for gate and flight crew personnel, such as placing unobtrusive stickers on the seats or a photocopied seating chart that flight attendants and gate agents could use.

Another proposal carried over from the existing rule into the Foreign Carriers NPRM would require carriers to make a copy of Part 382 available at all the airports that they serve (for flights to the U.S., in the case of foreign airports). The Department sought further comment on this matter in the DHH NPRM. We also proposed to require all carriers to give passengers information on how to obtain both a copy of Part 382 in an accessible format and disability-related assistance from the Department (*i.e.*, via the Disability Hotline or directly from the Aviation Consumer Protection Division). We solicited comment on our proposals and on the potential costs to carriers and benefits to passengers of a requirement that carriers have copies of Part 382 in accessible formats available at all airports involved in service to, from, or within the U.S.

A few disability community comments said that the rule should specify that the document be made available in other accessible formats as well as hard copy. Some foreign carrier comments objected to making copies of a U.S. regulation available,

though others did not. Most foreign carriers, however, opposed any requirement that they have copies of Part 382 available at airports in accessible formats as unreasonably burdensome and of little practical use to passengers who are not already aware of this regulation. Some foreign carriers objected to being required to have a copy of Part 382 at the foreign airports from which they fly to the U.S., on the grounds that the foreign jurisdictions have their own disability-related requirements for carriers serving them. Virtually all of them took the position that any passenger desiring a copy of Part 382 in an accessible format should obtain it from this Department rather than from a carrier. Some suggested that passengers should be made aware of Part 382 and its availability from the Department at the time of booking or at some other point before they actually go to the airport. One foreign carrier did not object to having a copy of Part 382 available at airports in its home country from which it flies to the U.S., but it did object to any requirement that it also have copies available at third-country airports that could be the U.S. passenger's origin or final destination. Another made a similar argument concerning airports that are endpoints of flights operated on a codeshare basis with a U.S. carrier.

While we agree that carriers should make a print copy of the rule available, so that passengers can refer to it to assist them in resolving any problems that arise at the airport, the final rule will not require copies to be made available in other accessible formats, or in languages other than English. We also will not adopt the proposed requirement in §382.45 that carriers provide information on the Department's Disability Hotline service or its Aviation Consumer Protection Division to passengers with disability-related complaints or concerns. Such a requirement is not necessary here, as other sections of the rule require carriers to tell passengers of their right to contact the Department as part of the resolution of complaints (*see* 14 CFR §§382.153, 382.155). We agree with those commenters who suggest that access to Part 382 is most useful to consumers before they reach the airport. We are therefore requiring carriers to include notice on their websites that consumers can obtain a copy of Part 382 in accessible format from the Department and information on how this may be done. The performance requirement that carriers effectively communicate with passengers – which carriers can meet in a variety of ways – should be sufficient to ensure that passengers can use the regulatory information. Making a copy of the regulations available in an airport, for the cost of a photocopy, should not unduly burden carriers.

Probably the most important proposal in this portion of the NPRM would require carriers and their agents to make their web sites accessible to people with vision impairments and other disabilities. Web sites are an increasingly important way in which passengers get information about airline service and make reservations. Some carriers make discounts available to web site users, or charge extra fees to persons who make reservations by other means. Disability community commenters strongly supported the proposed requirements. Many carriers and carrier organizations opposed it, primarily on the ground that it would be too difficult and expensive to accomplish. Many of these comments said the Department had underestimated the cost of web site accessibility.

The Department continues to believe that web site accessibility is extremely important to nondiscriminatory access to air travel for people with disabilities, and we

note that many existing carrier web sites provide a degree of accessibility. However, in order to obtain additional information about the costs and any technical issues involved, the Department is deferring final action on this proposal and seeking additional comment in the SNPRM that we are planning to issue. The preamble to the SNPRM will discuss comments on web site accessibility and the issues they raise in greater detail. In the meantime, in order to comply with the general nondiscrimination requirement of Part 382, carriers will be prohibited from charging fees, or not making web fare discounts available, to passengers with disabilities who cannot use inaccessible web sites and therefore must make phone or in-person reservations.

TTY Use

We proposed in the DHH NPRM to require carriers to ensure that the service and response times are equal for TTY information and reservation lines and non-TTY information and reservation lines, including the provision of a queue for the former if one is provided for the latter. (Since 1990, U.S. carriers that offer telephone reservations and information service to the general public have been required by §382.47 to offer TTY service as well.) TTY users should not be subject to longer wait times than other callers. We stated our belief that the cost to carriers of installing queuing features on their TTY lines would not be high. We solicited comments on this proposal.

The individuals and disability organizations that commented on this issue mostly supported all of our proposals. The carriers and carrier associations that filed comments expressed strong reservations about our proposal. Some foreign carriers opposed TTY requirements on the grounds that TTY access is technically infeasible in many countries. Some opposed the requirement of a queuing system for TTY calls, claiming that such systems are in fact quite costly and that the expense is not justified given the low incidence and low frequency of TTY calls that they receive (*i.e.*, no more than two to three calls per month). Some asserted that deaf and hard of hearing consumers are using the internet more and more to communicate with carriers and thus relying less and less on TTYs. Some opposed the requirement that response time for TTY users and other callers be "equivalent," arguing that the delay inherent in typing text rather than speaking it makes equivalent response times physically impossible.

The purpose of §382.43 is to put deaf and hard of hearing passengers on a substantially equivalent footing with the rest of the public in their ability to communicate with carriers by telephone regarding information and reservations. We aim to ensure substantial equivalence in both access to any carrier and wait time if an agent is not available when a connection is first made.

Regarding access, both the comments and our own further investigations into voice relay services have persuaded us that we need not require carriers to make TTY service available *per se*. Instead, we are requiring only that carriers make their telephone reservation and information services available to individuals who use a TTY. Carriers may of course meet this requirement by using TTYs themselves, but they may also do so by means of voice relay or any other available technology that permits TTY users to communicate with them. This requirement is set forth in §382.43(a). We are also adding

a new access requirement in §382.43(a)(4) to ensure that deaf and hard of hearing passengers are informed of how to reach carriers by TTY: in any medium in which a carrier states the telephone number of its information and reservation service for the general public, it must also state its TTY number if it has one, or if not, it must specify how TTY users can reach the information and reservation service (*e.g.*, via voice relay service). Such media include, for example, web sites, ticket jackets, telephone books, and print advertisements.

Regarding wait time, the comments and our own experiments with voice relay systems have persuaded us not to require carriers that use TTYs to implement a queuing system for TTY calls even if they do maintain one for calls from the rest of the public. Calls from a TTY to a carrier via a voice relay service are treated exactly the same as calls from conventional telephones. If an agent is available to take the call, the caller is connected to the agent. If not, if the carrier has a queuing system the call goes into the queue along with non-TTY calls. (If the carrier does not have a queuing system, any caller gets a busy signal.) Therefore, a TTY caller who calls the carrier's TTY number and gets a busy signal can hang up and immediately try the carrier's general public number through a voice relay service, where all calls receive identical treatment. We consider the timing in this scenario to be "substantially equivalent" to the timing for the rest of the public, the extra call notwithstanding. We do not intend for "substantially equivalent" to mean "exactly the same." As long as disparities in wait times between TTY users and the general public remain both low and infrequent, we will consider the treatment of these groups to be substantially equivalent. Of course, we can and will investigate allegations of routine or lengthy disparities and require corrective action where appropriate.

We are concerned, moreover, that given the reportedly high cost of implementing a TTY queuing service *vis-à-vis* the reportedly low incidence of TTY calls, if we required queuing systems for TTYs, carriers that currently maintain TTYs might have an incentive to discontinue them, as this rule will permit them to do, and opt instead to offer access to TTY callers only via voice relay. We do not wish to create disincentives that may deprive those TTY users who may prefer calling another TTY directly rather than using voice relay of this option, especially when the record in this proceeding contains no evidence that the incidence of busy signals in TTY-to-TTY calls is high or even moderate. We would expect any carrier that operates TTY service and whose TTY callers experience a high incidence of busy signals to find some way of accommodating the TTY callers so as to avoid violating the "substantially equivalent" standard. For example, rather than acquire and maintain a queuing system, the carrier could allow a TTY caller who cannot be accommodated immediately to leave a message and then have an agent promptly return the call.

In-Flight Audio and Video Services

We proposed in the DHH NPRM to broaden the existing requirements for accommodating individuals who are deaf and hard of hearing that apply to video displays on aircraft. First, we proposed to require U.S. and foreign carriers to caption all safety and informational videos on aircraft within set periods of time. The current rule,

§382.47(b), only requires that U.S. carriers make safety briefings on the aircraft that are presented by video accessible to persons who are deaf or hard of hearing, and it exempts cases where open captioning or an inset would interfere with the video presentation so as to render it ineffective or if the captioning or inset would itself be unreadable. The proposed rule, applicable to foreign carriers as well, would eliminate the exemption, require high-contrast captioning of informational videos as well as safety videos, require compliance for safety videos within 180 days of the rule's effective date, and require compliance for informational videos within an additional 60 days. Until the new rule's compliance dates, U.S. carriers would remain bound by the provisions of the existing rule. We solicited comment on the elimination of the exemption clause, on extending the captioning requirement to informational displays, and on the technical feasibility of captioning all safety and informational videos, DVDs, and other audio-visual displays in such a way that they will still be useful to individuals without hearing disabilities. We also solicited comment on the proposed timetable.

Second, we proposed to require U.S. and foreign carriers to provide high-contrast captioning on entertainment videos, DVDs, and other audio-visual displays on new aircraft, or aircraft ordered after the rule's effective date or delivered more than two years after that date. Aircraft on which the audio-visual machinery is replaced after that date would also be considered new for purposes of §382.69. We did not propose requiring the captioning of entertainment videos on existing aircraft, believing that the costs of such a requirement would exceed the benefits that would follow. We solicited comment on the costs and feasibility of both modifying and replacing equipment on existing aircraft and complying with the proposed rule with new aircraft.

The carriers and carrier groups that filed comments generally objected to the proposals. RAA opposes requiring videos on existing aircraft to be captioned, contending that the costs of modification would greatly exceed any potential benefits. One foreign carrier contended that this provision should not apply to foreign carriers. Some faulted the Department for not distinguishing between English and non-English products and maintained that the latter should be excluded from any captioning requirement. Some carriers argued that the exact content of any safety briefing provided by video can always be found in print in each seat pocket and maintain that the content of informational videos can be found in print both in seat pockets and elsewhere in the cabin. Most if not all carriers and carrier groups objected to allowing less time for compliance with the safety-video requirement than with the requirement for informational videos; some maintained that rather than a specific deadline, carriers should be permitted to comply if and when they replace video equipment in the normal course of operating the aircraft. Some claimed to have no control over the content of informational videos provided by third parties. Some opposed the requirement that captioning be high-contrast—*i.e.*, white letters on a consistent black background. Several commenters called for retention of the current rule's exemption for captioning a safety video when the captioning or inset would render the video ineffective.

All of the carriers and carrier groups opposed requiring captioning for all in-flight entertainment, advancing several arguments: with existing technology, the costs and difficulties of compliance are prohibitive; for overhead screens, the size of captioning

relative to the size of the screen would degrade the entertainment value of the video presentation for all passengers; on individual seat screens, current technology and cost do not permit the installation of systems that would let individual passengers choose whether to caption individual programs; captioning of all entertainment videos, regardless of what type of screen the aircraft features, is too costly and would increase the price of air transportation; in-flight entertainment is beyond the Department's jurisdiction to regulate, as it does not come within the purview of access to air transportation; film owners' restrictions on DVDs could make compliance impractical to impossible; in some cases, government censorship could make compliance illegal; the proposal does not specify whether or not captioning would be required in languages other than English, which would increase the costs and difficulties of complying. Many carriers endorsed the comments of the World Airline Entertainment Association ("WAEA"), which are summarized below, and many called for inclusion in any provision adopted of an exemption like the one in the current rule for safety videos—*i.e.*, for cases where captioning would interfere with the video presentation so as to render it ineffective or if the captioning would itself be unreadable.

The individuals and disability organizations that filed comments unanimously supported the proposed rule except insofar as they believed the compliance dates to be too far in the future. None of these commenters addressed the costs or difficulties of achieving compliance.

The WGBH Educational Foundation's National Center for Accessible Media ("the Center"), which reported that it is conducting a study on ways of making airline travel more accessible to passengers with sensory disabilities, filed comments on this proposal. The Center maintained that all safety videos are already being captioned and that pre-recorded informational videos are readily captionable, thus making the existing exemption unnecessary. It maintained that due to current technologies, the rule need not specify white letters on a black background to ensure that captions can be read, and given the number of production techniques available, a requirement that displayed text be "legible" or "readable" should suffice. The Center stated that the next generation of in-flight entertainment ("IFE") systems can be designed to accommodate captioning in various ways and that it is advances in these systems, not new aircraft, that will make captions readily available. It therefore recommended that the rule be tied to changes in IFE systems and not the purchase or modification of aircraft. Further, the Center reported that captioning on next-generation IFE systems is a work in progress based on new means of sending video signals through the aircraft cabin. Caption data for broadcast and cable television, it stated, are incompatible with the digital signals being routed to seat screens in the newest IFE systems, and while the transformation of these data for use on in-flight systems can be developed, the process is not yet automatic, nor is it trivial. A further complication, according to the Center, lies in the variety in types of video signals being provided in-flight. The Center stated that despite the small size of seat screens, properly rendered captions can be as effective on these screens as they are on home television sets. It reported that the portable IFE systems that some carriers use as alternatives to installed systems—for example, DVD players or hard disks—can accommodate closed captions as readily as installed systems can.

As mentioned above, the comments filed by WAEA were endorsed by many of the carriers. WAEA stated that its members include both airlines and suppliers to the IFE industry, the latter including aircraft manufacturers, major electronics manufacturers, motion picture studios, audio/video post-production labs, broadcast networks, licensing bodies, communications providers, and others, worldwide. WAEA took the position that some of the proposed captioning requirements and implementation timelines would impose undue and unacceptable financial burdens on the carriers and that some of the requirements are not even technologically or operationally feasible given the following: technical limitations of both old and new IFE systems, variations among proprietary IFE systems currently in service and being installed, limited space for and readability of captioning on both seat screens and on more distant communal screens, the intrusion factor of open captions for passengers without a sensory disability, limited cabin-server storage for additional captioned video files to complement up to eight languages offered onboard, and lengthy aircraft retrofit and fleet order cycles and IFE system design and certification timelines.

Among other things, WAEA agreed with the Center that the implementation of the proposed new requirements should be tied to IFE system development and not the aircraft. Given the limitations of video files that may be available on the aircraft, WAEA contended that the rule should apply only to English-language videos and only to entertainment videos exhibited "while in United States territory." WAEA reported that current IFE systems are typically based on proprietary rather than standard architectures and technologies and that they were not designed to accommodate broadcast closed-captioning signals and technologies. Given the limitations of IFE screens in terms of their size and distance from the viewer, WAEA opposed the requirement that captioning be white letters on a black background and supported instead the choice of using the same process as subtitling, which, it said, provides readable characters while keeping most of the picture visible and poses fewer risks of copyright infringement.

Based on the comments, we have made several changes to the final rule. We are retaining the requirement that safety and informational audio-visual displays played on the aircraft be high-contrast captioned, but we have revised the definition of that term to permit the use of captioning that is at least as easy to read as white letters on a consistent black background. The requirement will not apply, however, to informational videos that were not created under the carrier's control. The captioning need only be in the predominant language or languages in which the carrier communicates with passengers on the flight. If the carrier makes announcements both in English and another language, captions must be in both languages. We are retaining the compliance dates set forth in the DHH NPRM, based among other things on the Center's report that all safety videos are already being captioned and that pre-recorded informational videos can be captioned readily. This report also undercuts the carriers' arguments for retaining the current rule's exemption for cases in which captioning would interfere with the video presentation so as to render it ineffective or would itself be unreadable

We have reluctantly concluded, though, that we cannot adopt a regulation governing entertainment displays at this time. We reject the contention that access to in-flight entertainment falls outside the scope of the Air Carrier Access Act of 1986, as

amended, and that we therefore have no authority to regulate IFE. Remedial statutes such as the ACAA are properly construed broadly, for the benefit of the protected class, as we have consistently done via Part 382. (*See, e.g.*, §382.1 and §382.11-13 [formerly §382.7].) No party challenging our jurisdiction over IFE has provided any support for its position.

Notwithstanding our authority to regulate, however, the record in this proceeding does not provide a basis for adopting a captioning requirement for IFE at present. We cannot conclude on the basis of the comments that providing high-contrast captioning for entertainment displays is technically and economically feasible now, nor can we ascertain a date by which it most likely will be. Therefore, we will shortly be issuing an SNPRM to call for more current and more complete information on the cost and feasibility of providing high-contrast captioning for entertainment displays, information not only on current technology but also on the nature and pace of technological developments. Regarding the latter, we are aware that on March 6, 2007, after the conclusion of the period for commenting on the DHH NPRM, WAEA's Board of Directors adopted a new specification as part of an ongoing effort to establish a standard digital content delivery system for IFE. This new specification reflects progress toward development of a common methodology for delivering digital content and greater interoperability for in-flight entertainment systems.

Other Information for Individuals with Hearing or Vision Impairments

We proposed in the DHH NPRM to require carriers to provide the same information to deaf, hard of hearing, and deaf-blind individuals in airport terminals that they provide to other members of the public. We proposed that they must provide this information promptly when such individuals identify themselves as needing visual or auditory assistance, or both. The proposed rule set forth the following non-exhaustive list of covered topics: flight safety, ticketing, flight check-in, flight delays or cancellations, schedule changes, boarding, the checking and claiming of baggage, the solicitation of volunteers on oversold flights (*e.g.*, offers of compensation for surrendering a reservation), individuals being paged by airlines, aircraft changes that affect the travel of persons with disabilities, and emergencies (*e.g.*, fire, bomb threat). We proposed that the rule apply to U.S. carriers at each gate, baggage claim area, ticketing area, or other terminal facility that they own, lease, or control at any U.S. or foreign airport. The proposed rule would apply to foreign carriers at gates, baggage claim areas, ticketing areas, or other terminal facilities that they own, lease, or control at any U.S. airport and at terminal facilities of foreign airports that serve flights beginning or ending in the U.S. (We inadvertently neglected to include the phrase "that they own, lease, or control" in the NPRM regulatory text on foreign carriers at foreign airports.)

We explained in the DHH NPRM that we were proposing a performance standard, namely "prompt," rather than requiring carriers to use a particular medium (*e.g.*, LCD screens, wireless pagers, erasable boards, or handwritten notes) to allow carriers to design their own compliance plans in a manner that best suits their needs and serves their passengers. We solicited comment on whether the term "prompt," which we believe to be a higher standard than "timely," is sufficiently specific. We also stated our

concern that methods of communicating with deaf-blind individuals may not be readily available. We did not propose to require carriers to use any of the following methods: using a finger to trace block letters on the deaf-blind individual's palm or forearm, using an index card with raised letters, with the communicator placing the deaf-blind individual's index finger on each word's letters in sequence, or tactile signing or finger spelling where the deaf-blind individual places his or her hands on top of the signer's hands to feel the shape of the signs. We solicited comment on other less specialized methods of communicating with deaf-blind individuals and on whether, if none exists, we should limit the promptness requirement to individuals with vision *or* hearing impairments but not to apply it to an individual who has both of these disabilities.

The carriers and carrier groups that filed comments all supported the requirement that passengers needing special transmission of this information identify themselves to carrier personnel. Most asked the Department to use "timely" as a standard rather than "prompt." Some complain that any such standard is too subjective to provide effective guidance. One carrier suggested that the emphasis should be not on how swiftly carriers can transmit the information to the disabled passenger but on when the passenger needs to have it. Carriers shared considerable concern over the costs of compliance, both in terms of having personnel available at all of the areas listed in the proposal and in terms of potential technical solutions. One carrier opposed making the requirements applicable at foreign airports, arguing that foreign carriers are not likely to have the leverage they would need to comply. Several contended that the cost estimates in the initial Regulatory Evaluation were unrealistically low. Some proposed limiting the required "promptness" to individuals with either hearing or visual impairment, not both, who are traveling without a companion; one stated that it communicates the information at issue here to deaf-blind passengers through their traveling companions. Some objected to the list of types of information that must be provided promptly. (The list represents an expansion of the list in the existing rule, 14 CFR §382.45(c), which up to this time has applied only to U.S. carriers, and which is explicitly not exhaustive.) One U.S. carrier association was particularly concerned about the financial burdens that it assumes the rule would impose on its regional-airline members. It asserted that adoption of much of the technology discussed in the proposal is impossible at small airports and states that in any case its members report very few deaf-blind passengers flying from these airports. The costs of compliance, it contended, far exceed any putative benefits and could result in the reduction or even elimination of service.

The individuals and disability organizations that filed comments had a very different perspective. Most of these commenters objected to the requirement of self-identification. Many took the position that carriers should have reliable methods in place for conveying information to all passengers at all times. Several supported requiring simultaneous visual transmission of any information disseminated over a public address system. Some related that in the past self-identification has failed to result in this type of information's being transmitted at all, much less "promptly" or even in a "timely" manner.

Based on the comments, we have made several changes to the proposal in the final rule. First, we are adding the language that we inadvertently omitted in the

proposed rule to limit the requirements for foreign carriers at foreign airports to areas that these carriers own, lease, or control. Second, we have determined that it is not appropriate at this time to require carriers to provide the information covered in §382.53 to deaf-blind passengers. The information at issue is constantly changing, and we know of no methods of communicating with deaf-blind individuals that allow for prompt transmission of the information and do not require highly specialized training. We do encourage members of the public to petition the Department for a rulemaking to amend this rule in the future if and when technology becomes available that would permit the prompt and efficient transmission of the covered information to deaf-blind individuals. We also encourage carriers to acquire and use such technology on their own initiative.

Third, we have determined that the costs of requiring prompt transmission of the covered information at all of the terminal areas listed in the DHH NPRM exceed the benefits. We are therefore limiting the requirement to gates, ticketing areas, and customer service desks. For purposes of the rule, a customer service desk is a location in the terminal that a carrier dedicates to addressing customer problems that are not addressed at the gate or the ticket counter, most commonly the rerouting of passengers affected by a delayed or canceled flight. Fourth, we are adding a provision for information about baggage. This information must be transmitted to passengers who have identified themselves as having hearing or vision impairment no later than the time that it is transmitted to the other passengers. For example, assuming that information on collection of baggage is given to arriving passengers at the baggage claim area, carriers can comply with this rule by giving the information to self-identifying passengers before the others—*e.g.*, onboard the flight or at the gate—or at the baggage claim area at the same time as the others. Fifth, as in the case of §382.51, in cases where a U.S. airport has actual control over the gates, ticketing areas, and customer service desks, we are making the airport and the carrier jointly responsible.

We are retaining the self-identification requirement, because we believe that requiring simultaneous visual transmission of the information along with each and every public-address announcement would saddle carriers with undue costs. In this regard, passengers with impaired hearing or vision must identify themselves to carrier personnel at the gate area or the customer service desk even if they have already done so at the ticketing area.

We are also retaining the "prompt" standard. It requires carriers to provide the information to self-identifying passengers with hearing or vision impairment as close as possible to the time that the information is transmitted to the general public. For example, when gate agents announce a flight cancellation or gate change, if they provide the information to self-identifying passengers with impaired hearing or vision either immediately before or immediately after they make a general announcement, the carrier will be complying with §382.53. If a gate change is announced fifteen minutes before a scheduled departure but the gate agents do not provide effective notice to a passenger with impaired hearing until it is too late for that individual to reach the gate in time to board, or if they delay providing the information long enough that the individual reasonably believes that he or she will probably miss the flight, the carrier is violating the rule. The rule requires that carrier personnel notify a self-identifying passenger with

impaired hearing that he or she has been paged immediately after making the announcement over a public address system unless the same information is displayed visually on a screen. If a flight is oversold and the carrier is soliciting volunteers to relinquish their seats in exchange for compensation, to comply with this rule carrier personnel must notify self-identifying passengers with impaired hearing or vision in time for them to take advantage of the offer—*i.e.*, well before the quota has been filled by other volunteers. The rule does not require carriers to provide a sign language interpreter in the gate area or elsewhere to ensure that a deaf passenger receives all pertinent information simultaneously with other passengers.

As for passengers with impaired vision, for example, the rule requires carriers to notify a visually impaired passenger orally where his or her baggage can be claimed if the information is otherwise only posted on visual displays, and the notification must take place no later than the posting. At the time when a visually impaired passenger identifies himself or herself to an agent at the gate, the rule requires the agent to notify him or her of any change that has occurred that affects his or her itinerary even if the change has already been announced and is now posted on a screen. If a gate change is posted on the screen but not announced orally, as soon as possible after the posting a gate agent must notify any passenger who has identified himself or herself as having impaired vision.

We are retaining the entire list of types of information that carriers must provide even though it contains more items than the list in the current rule. In our view, since the list in the current rule is expressly non-exhaustive, the new items on the list in this section were never excluded obligations. Having them explicitly stated informs the carriers more effectively of their responsibilities.

In the DHH NPRM, we proposed a somewhat similar requirement for providing information aboard aircraft to the proposed requirements pertaining to information in airport terminals. U.S. and foreign carriers would be required, upon request, to provide deaf, hard of hearing, and deaf-blind individuals with the same information provided to other passengers in a prompt manner. We again proposed a non-exhaustive list of types of information to be covered by the rule: flight safety, procedures for take-off or landing, flight delays, schedule or aircraft changes that affect the travel of persons with disabilities, diversion to a different airport, scheduled departure and arrival times, boarding information, weather conditions, beverage and menu information, connecting gate assignments, baggage claim, individuals being paged by airlines, and emergencies (*e.g.*, fire or bomb threat). The proposal differs from the current rule in that it changes the timing requirement from "timely" to "prompt" and expands the current rule's list, also non-exhaustive, of covered types of information. We solicited comment on whether the change from "timely" to "prompt" is appropriate for providing information aboard the aircraft and on the proposed new list.

The carriers and carrier groups that filed comments generally objected to the proposal as too broad and too prescriptive, particularly the expanded list of types of information for which accommodation would be required. The Air Transport Association of America ("ATA") argued that the expanded list would create a tension between crew members' obligations to provide information to disabled passengers and their duties

related to safety and concluded that if busy crew members are further burdened with having to transcribe every in-flight announcement for passengers with impaired hearing, only safety announcements mandated by the FAA will be made. Such a result, according to ATA, would work to the detriment of all passengers and constitute an undue burden not required by the ACAA. ATA proposed limiting the covered information to critical flight and safety information. Some commenters contended that they (or their members) already give passengers with hearing or vision impairment the same relevant information that they announce aloud. The International Air Transport Association ("IATA") contended that the proposal would not allow carriers enough flexibility to make individual assessments and that compliance would require retraining of all staff, redrafting of training manuals, and dramatic changes in procedures at high cost to the carriers and with little benefit to passengers. Some carriers took the position that individuals who are not capable of communicating with the flight crew orally or in writing should be required to travel with a companion who can establish communication. RAA characterized the scope of information in the proposed list as excessive and maintained that the "prompt" standard should only apply to information about flight safety procedures for take-off or landing. RAA said that 80 percent of airplanes operated by regional carriers either have only one flight attendant or none at all.

The individuals and disability organizations that filed comments unanimously supported the proposed rule, including the expanded list of topics. Most objected to the requirement that individuals with hearing impairments identify themselves to the carrier and request accommodation. Most supported a requirement that all oral announcements made aboard the aircraft be simultaneously transmitted visually; some claimed that in practice, sporadic requests for accommodation are not honored.

With minor clarifying changes to the language of the proposed rule, we are adopting its substance as proposed. As with §382.53, however, we have determined that it is not appropriate at this time to require carriers to provide the information covered in §382.119 to deaf-blind passengers. As stated above, the information is constantly changing, and we know of no methods of communicating with deaf-blind individuals that allow for prompt transmission of information and do not require highly specialized training. Also as with §382.53, we encourage members of the public to petition the Department for a rulemaking to amend this rule if and when technology becomes available that would permit the prompt and efficient transmission of the information to deaf-blind individuals.

We are also following our approach in §382.53 with regard to maintaining the self-identification requirement, the standard of promptness, and the list of types of information that the rule covers. Here, as there, we believe that at this time, requiring simultaneous visual transmission of the information along with every spoken announcement would saddle the carriers with undue costs. Here, as there, carriers must provide the information to self-identifying passengers with hearing or vision impairment as close as possible to the time that the information is announced aloud. Here, as there, expanding the list in the current rule does not impose additional requirements on U.S. carriers, because the current rule's list is explicitly non-exhaustive and would thus cover

the items added here. Specifying our expectation informs the carriers more completely of what the rule encompasses.

Finally, the carriers' concerns that compliance with the requirements of section 382.119 could keep their flight crews from performing their duties related to safety are misplaced. The rule expressly relieves the crew from complying when this would interfere with their safety duties under FAA and foreign regulations. There is similar language in §382.53, though, given the duties of such personnel as gate agents, ticket agents, and baggage claim personnel, the likelihood of any conflict between normal duties and legally-mandated safety duties is probably lower than in the air crew context, outside, perhaps of an unusual emergency situation.

Training

The Foreign Carriers NPRM proposed that carriers operating aircraft with 19 or more passenger seats must train its personnel to proficiency concerning ACAA requirements and providing services to passengers with disabilities. One element of the carrier's training efforts would be to consult with organizations representing persons with disabilities in developing training programs. Refresher training to maintain proficiency would also be required. Complaints resolution officials (CROs) would have to be trained in their duties by the effective date of the rule. Training for current employees would generally have to be accomplished within one year. New crewmembers would have to be trained before starting their duties, and other new employees would have to be trained within 60 days of starting their duties. For foreign carriers, training requirements would apply only to employees who are involved with flights to and from U.S. points. Carriers would incorporate procedures implementing Part 382 requirements into their manuals, but they would not need to submit these materials or a certification of compliance to DOT for review.

Disability community commenters generally supported the proposed training requirements, though several said that U.S. carriers were not providing adequate training. Some commenters said that they had rarely, if ever, encountered carrier personnel who, when asked, recalled getting ACAA training. Some of these commenters, as well as some carriers, asked for a stronger DOT role in providing training (e.g., preparing a training curriculum, developing training materials, or providing funding for training). One association representing foreign carriers suggested a forum at which carriers and the Department could discuss implementation issues before the effective date of the rule.

Some foreign carriers mentioned that they already had disability-related training programs for their employees, and suggested that these programs should be recognized as equivalent to the proposed requirements. A few foreign carriers said that the proposed training time frames were too short. Other foreign carriers objected to training their employees to meet U.S. requirements, since they already trained their personnel to meet applicable requirements of their home countries. Several of these commenters particularly objected to consulting with disability groups, some suggesting that the requirement should be waived if they could not find a local disability group to consult.

(Disability groups expressed different views on this point, most suggesting such a waiver was unnecessary because the U.S.-based staff of the airline could consult with U.S. groups if necessary, while another group suggested such a waiver could be acceptable if the carrier showed it had made good faith efforts to consult.) An association of U.S. carriers cautioned that any waiver available to foreign carriers should also be available to U.S. carriers.

The Department regards thorough training of carrier personnel who interact with passengers with disabilities as vital to good service to those passengers and to compliance with the ACAA. We recognize that many foreign carriers already have disability-related training programs. Since specific ACAA requirements do not yet apply to these carriers, it is very likely that these training programs would need to be amended, for those personnel who serve flights to and from the U.S., in order to ensure that the personnel understand ACAA requirements. Personnel serving U.S.-related flights would not have to be retrained from scratch, only provided additional training on ACAA-specific matters. To respond to concerns about the time it would take to train employees, the final rule provides foreign carriers a year from the effective date of the rule to complete the process. Since there will be a year between publication of the final and its effective date, any carriers still concerned about the length of training time frames can get a head start by beginning to train employees during the year prior to the effective date.

While U.S. disability groups can undoubtedly be a useful resource for both U.S. and foreign carriers, we do not believe it would be realistic to require foreign carriers to seek out U.S. disability groups for consultation (in many cases, U.S.-based personnel of these carriers would be operations staff, not management and training officials). Consequently, we have modified the language of this provision to refer to seeking disability groups in the home country of the airline. If home country disability groups are not available, a carrier could consult individuals with disabilities or international organizations representing individuals with disabilities. We do not believe that a waiver provision is needed, since it is unlikely that a carrier would be completely unable to find anyone – home country or international disability groups, individuals with disabilities – with whom to consult. As a matter of enforcement policy, however, the Department would take into consideration a situation in which a carrier with an otherwise satisfactory training program documented it had made good faith efforts to consult but was unable to find anyone with whom to consult.

The Department has posted a model training program based on the current Part 382 at http://airconsumer.ost.dot.gov/training/index.htm, and we will consider whether it would be useful to produce additional training materials. Our staff have long experience in working with carriers on training and compliance issues, and they will continue to work with both U.S. and foreign carriers on training-related issues. We believe the idea of one or more forums to discuss implementation issues in the interval between the publication and effective dates of the rule is a good one, and we are now planning to hold such a meeting in June 2008.

We understand the concern of disability group commenters that some carrier personnel do not seem to have been trained to proficiency or at all. In an industry

environment in which there is considerable personnel turbulence, carriers and the Department must both be vigilant to ensure that training takes place as required.

Because of the concern that some carrier employees may not be current in their knowledge of ACAA requirements, the final rule will require refresher training at least every three years. Carriers will have to develop a program for this purpose. Refresher training is intended to assist employees in maintaining proficiency, both by reminding them of ACAA requirements and their carriers' procedures for implementing them and by providing updated information about new developments, additional guidance etc. While the Department will not require such programs to be submitted for approval, carriers will be required to retain records concerning both initial and refresher training, including the instructional materials and individual employee training records, for three years. These records will be subject to inspection by the Department.

We also think that it is important to understand the relationship between compliance with the "trained to proficiency" requirement and compliance with other provisions of the rule. In the Department's view, a pattern or practice by a carrier of noncompliance with operational provisions of the ACAA rule (e.g., wheelchair stowage in the cabin, boarding or connecting assistance) may reveal that the carrier's personnel have not been trained to proficiency with respect to the provision in question. Training to proficiency seems inconsistent, on its face, with systemic mistakes in providing required accommodations. Consequently, where the Department sees widespread implementation problems, our staff may also examine the adequacy of the carrier's training, and we may take enforcement action and require corrective action in the carrier's training activities.

Carriers generally supported the proposal to not require submission of material in manuals and procedures to DOT for review. The Department believes, based on the experience of reviewing carrier submissions at the time the original Part 382 went into effect, that mandating such submissions is not productive, so we will not impose such a requirement. Some disability community commenters supported the idea of submitting certificates of compliance. However, the Department believes that doing so would result in increasing information collection burdens without giving the Department a significant additional amount of information about carriers' actual compliance status. We believe it is sufficient for the Department to be able to review materials carriers have on file as part of our compliance and enforcement process.

In the DHH NPRM, we proposed to require carriers to train their employees to recognize the requests for communication accommodation by passengers with impaired vision or hearing and to use the most common methods that are readily available for communicating with these passengers. The required training would be for proficiency in basic visual and auditory methods for communicating with passengers whose disabilities affect communication. We explained that we were not proposing to require carriers to train their employees to use sign language. Rather, employees would be trained in methods that are readily mastered and of which one or more can be used as required to communicate with an individual who is deaf or hard of hearing (*e.g.*, handwritten notes). We solicited comment on whether the terms "common methods" and "readily available" give carriers sufficient guidance for complying fully with this training requirement. We

also solicited comment on what kind of training would meet the requirement and on the effect, feasibility, and necessity of expanding the proposal to require that employees also be trained to communicate with deaf-blind individuals.

The carriers and carrier associations that filed comments generally characterized the proposed requirements as far too vague and potentially too costly. Most objected to requiring training for all personnel and contractors that deal with the traveling public. One carrier suggested that a better approach would be to train all personnel to better awareness of communications needs and give carriers discretion to choose how to satisfy those needs—for example, by ensuring that proficient communicators can be made available on short notice. Foreign carriers generally argued that any training requirement should only apply to their employees in the United States. One carrier association noted that a person without training would naturally resort to writing to communicate with a deaf person and wondered what more would be taught in formal training. One carrier questioned the existence of universally established or internationally accepted methods in which to train carrier personnel. RAA asked that training requirements not apply to aircraft carrying 30 or fewer passengers and that training to communicate with deaf-blind individuals not be required.

The individuals and disability organizations that filed comments all supported training requirements. One organization argued that training in sign language should be required as well as training in how to operate any technology used to provide visual access—for example, captioning controls on video monitors or LCD terminals. One individual called for carrier personnel to be trained in how to handle people with service or guide dogs, including not to pet or feed the dogs. One organization maintained that trainers of carrier personnel should be individuals with hearing loss and that they should focus on imparting an understanding of the barriers that deaf, hard of hearing, and deaf-blind passengers face. This organization also suggested that effective communication might involve visual communication, appropriate seating arrangements, lighting to ensure a clear line of sight to visual information displays, and attention-getting techniques such as gentle tapping on the shoulder.

In the final rule, we are retaining the proposed training requirement with some clarification and one addition. Carriers must train those employees who come into contact with passengers whose hearing or vision is impaired or who are deaf-blind both to recognize these passengers' requests for accommodation in communicating and to communicate with these passengers in ways that are common and readily available. For example, employees should be able to communicate with passengers whose hearing or vision is impaired via written notes or clear enunciation, respectively. We are adding a requirement that the training also cover deaf-blind passengers. Examples of communication accommodations for the latter include passing out Braille cards (which this rule does not require), reading any information sheet that a passenger provides, and communicating with the passenger through an interpreter. Given that what we are requiring is fairly rudimentary, the training costs should not be high, nor should compliance otherwise be burdensome.

Complaints

Like the existing rule, the Foreign Carriers NPRM emphasized the role of CROs. These are individuals trained to be the carrier's experts in ensuring that carrier personnel correctly implement ACAA requirements and that problems of passengers with disabilities are resolved in a way that is consistent with Part 382. The purpose of having a CRO is to resolve passengers' problems as quickly as possible, without resort to formal DOT enforcement procedures and, we hope, in many cases, before a violation occurs.

Under the Foreign Carriers NPRM, there would have to be a CRO available to passengers with disabilities at every airport the U.S. carrier serves and at every airport where a foreign carrier operates a flight to or from the U.S,, whether in person or by phone. Carrier personnel would have to refer a passenger with a disability-related complaint or problem to a CRO. The Foreign Carriers NPRM also would tell carriers to provide the number of the DOT Disability Hotline to such passengers. CROs have the authority to direct other carrier personnel (except pilots-in-command with respect to safety matters) to take actions to resolve problems so as to comply with the ACAA. Carriers and CROs would have to respond to consumer complaints in a timely manner.

Disability community comments generally supported the proposed rule, though some comments suggested that CROs and carriers should have to respond faster to consumer complaints than the Foreign Carriers NPRM proposed. Some carriers, on the other hand, thought that the time frames in the Foreign Carriers NPRM were too short, especially if a lengthy investigation were needed in order to respond. Disability community commenters also strongly supported the proposal to direct carriers to refer passengers who raise disability-related issues to a CRO, since many individuals may not know about the availability of CROs otherwise.

A number of carriers said that they thought that having CROs available to passengers at every airport was not cost-effective and that existing customer service offices could meet the need. One foreign carrier thought that its personnel could not be successfully trained to carry out the CRO role. Some carriers thought that they should not have to refer passengers to the DOT Hotline, saying that this would undermine the purpose of having CROs resolve problems as close to the scene of the action as possible.

Some commenters objected to providing TTY service as a means of permitting hearing-impaired passengers to contact a CRO, saying that this was impractical in some places (e.g., an airport in a country where TTY service was unavailable). Some comments said the Foreign Carriers NPRM's proposal to allow 18 months after the event for a passenger to file a complaint with DOT was too long.

The final rule retains the role and functions of the CRO. Our experience supports the proposition that the use of CROs is crucial to prompt and efficient solution of passengers' problems. However, we are making a few clarifications and changes in response to comments. Carriers may use other accessible technologies in lieu of TTYs to permit hearing-impaired passengers to communicate with CROs. The proposed requirement for carriers to refer passengers to the DOT Hotline has been dropped. The

time frame for a carrier to respond to an oral complaint to a CRO has been expanded to 30 days, making it consistent with the time frame for responding to written complaints. The final rule clarifies that with respect to CROs and complaint responses, carriers providing scheduled service, and carriers providing nonscheduled service using aircraft with 19 or more passenger seats, are covered. When the rule speaks of "immediate" responses by carriers, it means prompt and timely referral to a CRO when passengers raise a disability-related problem or complaint that cannot be quickly resolved by carrier personnel on the spot (e.g., a gate agent, a flight attendant). We have reduced from 18 months to six months the period after an event in which a passenger may file a complaint with DOT.

A few foreign carriers said that it was improper to permit non-U.S. citizens to have access to the U.S. DOT through the complaint process. In the commenters' view, this implied improper extraterritorial jurisdiction under a law that was intended to create rights only for U.S. citizens. We do not agree. First, the ACAA protects "individuals with disabilities," with no limitation on the nationality of those individuals. Second, the Department has a legitimate interest in ensuring that its legal requirements are implemented. It does not matter to the Department who brings a problem to its attention. Once we know about the problem, it is up to the Department, working with the carrier, to correct the problem, and civil penalties are one of the Department's tools for helping to correct a problem.

An association representing U.S. carriers objected to a proposed exception to the 45-day limitation on accepting written complaints for complaints referred by the Department of Transportation. The commenter also suggested that carriers be allowed to limit the means through which a disability-related complaint is transmitted to them to the means used to accept non-disability-related complaints. In the Department's view, if we think a complaint is important enough to refer to an air carrier, it is important enough for the carrier to respond. We also believe that, in attempting to enforce rights under a nondiscrimination statute, passengers should be able to send a complaint by any reasonable means available to them, without limitations placed by carriers on the transmission of other sorts of consumer complaints. These features of the proposed rule will be included in the final rule without change.

SECTION-BY-SECTION ANALYSIS

The purpose of this portion of the preamble is to describe each of the sections of the final rule. The focus of the descriptions is on new or changed material.

382.1 What is the purpose of this Part? The section is amended to include foreign carriers.

382.3 What do the terms in this rule mean? This definitions section makes several additions or changes to the definitions in the current rule. A new definition of "carrier" includes both U.S. and foreign carriers. A new definition of "CPAP machine" or

continuous positive airway pressure machine, a type of respiratory assistive device, has also been added. There are new definitions of "direct threat," which concerns the standard that may permit carriers to take otherwise prohibited actions with respect to passengers with a disability, and "equivalent alternative," which concerns the standard used in 382.10 for carriers to adopt policies, practices or other accommodations in lieu of compliance with the letter of provisions of the rule. "Indirect air carrier" refers to a person not directly involved with the operation of aircraft who sells transportation services to the general public other than as the agent of a carrier. Two agencies concerned with safety and security aspects of flight are also recognized in this section: the Pipeline and Hazardous Materials Safety Administration of DOT and the Transportation Security Administration of the Department of Homeland Security. In the definition of "qualified individual with a disability," the final rule specifically mentions the term "passenger with a disability" that is frequently used throughout the rule. Finally, there is a new definition of "portable oxygen concentrator" (POC), a device used to provide oxygen to passengers who need it during flight.

We have also included in the final rule a definition of "commuter carrier" and "on-demand air taxi" as an understanding of those terms is essential to an understanding of the applicability of section 382.133. The Department also decided to include a definition of "expected maximum flight duration" in the final rule as commenters had a number of questions regarding how a carrier should determine if a passenger has a sufficient number of batteries available to power an electronic respiratory assistive device. In this final rule, the Department explains that a carrier may require an individual to bring enough fully charged batteries to power the device for not less than 150% of the expected maximum flight duration. The definition of "expected maximum flight duration" provides carriers a list of factors that they must take into account in determining the total length of a flight.

We proposed in the DHH NPRM to change the phrase, "telecommunication device for the deaf," and its acronym, "TDD," to "text telephone" and "TTY," respectively. All who commented on this proposal supported it, so we are using the new phraseology in the final rule.

In the DHH NPRM, we proposed not to include a definition of "hard of hearing, deaf, and deaf-blind" in the rule, reasoning that the definition of an "individual with a disability" is broad enough to cover individuals who are hard of hearing, deaf, or deaf-blind. We did, however, solicit comments on this issue. We also proposed not to include a definition of "captioning," but we solicited comments on this issue as well. We further proposed not to include a definition of "informational," but we stated in the preamble that we intended that word to apply to all videos, DVDs, and other audio-visual displays that do not qualify as safety or entertainment displays, including but not limited to the following: videos, DVDs, and other audio-visual displays addressing weather, shopping, frequent flyer programs, customs and immigration information, carrier routes, and other general customer service presentations. We also solicited comments on this issue.

Of those who commented on §382.3, the carriers and carrier associations generally opposed a definition of "hard of hearing, deaf, and deaf-blind," agreeing with

the Department that such individuals are covered by the definition of an "individual with a disability." They opposed any definition of "captioning" that might be difficult to meet or that would not allow for innovation, and they agreed that "informational" need not be defined. One of the disability organizations argued for a definition of "hard of hearing, deaf, and deaf-blind" in order to cover the "entire spectrum" of hearing disabilities. All disability organizations supported a definition of captioning that makes all audio-visual displays easily readable, and they agreed with the proposal to explain the purport of "informational" in the preamble. One of these organizations asked the Department to add safety, entertainment, and other materials that are communicated to passengers who can see and hear normally.

The final rule includes a definition of the term "indirect air carrier." For readers' information, an indirect air carrier is an entity that indirectly engages in "air transportation" as that term is defined in the governing statute by engaging the services of a "direct air carrier"(an airline). For example, when a tour operator or an air freight forwarder contracts for space on a wholesale level with an airline and the tour operator or air freight forwarder then re-sells space on that flight on a retail basis, setting his own price and terms, bearing the entrepreneurial risk of profit or loss rather than acting as an agent, and controlling the inventory and schedule, that tour operator or air freight forwarder is acting as an "indirect air carrier" as defined in the statute. Conversely, a retail travel agent who sells the product of a disclosed principal (e.g., a seat on a scheduled airline or on a charter flight), offering it at the price and terms set by that principal, is acting as an agent rather than a principal and is not an indirect air carrier. Nor are other participants in the air travel system (concessionaires, suppliers) considered indirect air carriers.

The final rule will not include definitions of "hard of hearing, deaf, and deaf-blind" or "informational." The comments have not persuaded us of the need for a separate definition to cover hearing and vision problems: the definition of an "individual with a disability" logically includes individuals with the whole spectrum of hearing and vision impairments. Similarly, the comments do not show a need for a definition of "informational" in the rule. As we stated in the DHH NPRM, by "informational" displays we mean all videos, DVDs, and other audio-visual displays that do not qualify as safety or entertainment displays, including but not limited to the following: videos, DVDs, and other audio-visual displays addressing weather, shopping, frequent flyer programs, customs and immigration information, carrier routes, and other general customer service presentations. We exclude safety and entertainment displays: these are covered elsewhere, in §§382.53, 382.69, and 382.119.

As for captioning, we have determined that we should consistently use the term "high-contrast captioning" in the rule and define it in §382.3 rather than do so whenever it occurs elsewhere. In our definition we are adopting a pragmatic approach. Defining "high-contrast captioning" as "captioning that is at least as easy to read as white letters on a consistent black background" not only ensures that captions will be effective but also allows carriers to use existing or future technologies to achieve captions that are as effective as white on black or more so. Some of the comments indicate that such technology already exists, and we think it would be poor public policy not to allow for

innovation and improvement. The high-contrast captioning may be either open—*i.e.*, text that is recorded directly in the video and cannot be turned off at a user's discretion—or closed—*i.e.*, text that can be toggled on or off at the user's choice.

382.5 When are U.S. and foreign carriers required to begin complying with the provisions of this Part? Both U.S. and foreign carriers must begin complying with the new final rule on its effective date, which will be a year from the date on which the rule is published in the Federal Register. This phase-in period is intended to give carriers time to take the steps they need to comply as well as to submit to the Department, in a timely fashion, requests for conflict of laws waivers and requests for equivalent alternative determinations.

382.7 To whom do the provisions of this Part apply? The rule applies to all U.S. carriers, regardless of where their operations take place, except where otherwise provided in the rule. With respect to foreign carriers, the application of the rule is more limited. Only flights of foreign carriers that begin or end at a U.S. airport, and aircraft used in these operations, are covered. A flight means a continuous journey of a passenger in the same aircraft or using the same flight number. The rule provides several examples of what constitutes a "flight" and what does not. Notably, a foreign carrier is not covered under the rule with respect to an operation between two foreign points, even if, under a code-sharing arrangement with a U.S. carrier, the foreign carrier transports passengers flying under the U.S. carrier's code. The U.S. carrier, however, is covered under the rule with respect to the passengers traveling under its code on such a flight, such that if there is a violation of the Part 382 rights of a passenger traveling under the U.S. carrier's code, the Department would hold the U.S. carrier, not the foreign carrier, responsible. Finally, a charter flight on a foreign carrier from a foreign airport to a U.S. airport and back would not be covered if the carrier did not pick up any passengers in the U.S.

In the DHH NPRM, we proposed that the provisions concerning deaf, hard of hearing, and deaf-blind passengers apply to all U.S. carrier operations and to all flights operated by foreign carriers that begin or end at a U.S. airport. We proposed that in the case of flights operated by foreign carriers between two foreign points that are codeshared with a U.S. carrier, the service-related requirements of the rule would apply to the U.S. carrier whose code is used but not the aircraft accessibility and equipment requirements. In addition, we observed in the Preamble that §382.51, which governs audio-video displays at airports, carves out an exception for U.S. and foreign carriers at foreign airports: §382.51 applies by its terms only to U.S. airport terminal facilities owned, leased, or controlled by U.S. or foreign carriers. We solicited comments on the cost and feasibility of requiring U.S. carriers to modify equipment, space, or both at foreign airport terminals that they lease, own, or control.

Consistent with their comments on the Foreign Carriers NPRM, foreign carriers and carrier associations that filed comments generally criticized the Department, saying that it had acted unilaterally in this area. Some contended that Part 382 should not apply to flights that are not part of a single journey to or from the United States in the same aircraft with the same flight number. One U.S. carrier, Delta, expressed concern that its foreign codeshare partners might find the requirements so onerous that they will end the

code-sharing rather than comply, precipitating declines in service and competition. One association of U.S. carriers supported the applicability of Part 382 to foreign carriers, as did the disability groups and individuals that commented. The Regional Airline Association ("RAA") asked the Department to exempt all aircraft of up to 30 seats from the rule because its requirements will create excessive burdens for operators of small aircraft.

The individuals and disability organizations that filed comments generally favored making the rule applicable to all foreign carrier flights that originate or end at a U.S. airport and to foreign carrier flights between two foreign airports that are codeshared with a U.S. carrier.

We find unpersuasive the foreign carriers' suggestions that in applying these requirements to them we are somehow exceeding our authority. As we explained in the Foreign Carriers and DHH NPRMs, in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Congress amended the Air Carrier Access Act (ACAA) to include foreign carriers in the prohibition against discriminating against otherwise qualified individuals with disabilities. This rulemaking merely implements that law. This Department's authority to issue regulations that apply to foreign carriers is well-established. This general issue is discussed at greater length in the "Response to Comments" portion of the preamble above. In that section, the Department explains the final rule's approach to the issue of code-sharing, which applies to deaf and hard-of-hearing issues as well as to other provisions of Part 382.

The service-related requirements regarding deaf, hard of hearing, and deaf-blind passengers that apply to U.S. carriers on codeshare flights operated by their foreign-carrier partners between two foreign points are those listed in §382.119. Although we are not applying these requirements to the foreign carrier operating these flights, the U.S. carrier will be subject to enforcement action if the foreign carrier fails to provide the required information promptly to "qualified individuals with a disability who identify themselves as needing visual and/or hearing assistance" and whose tickets bear the code of the U.S. carrier. The aircraft-accessibility requirements set forth in §382.69 do not apply on such flights. Part 382 has no equipment requirements specific to deaf, hard of hearing, and deaf-blind passengers.

As for RAA's request, the evidence in the record does not provide a basis for a blanket exemption from Part 382 for aircraft with 30 or fewer seats. If an airport or aircraft operator does not use a particular technology, sections concerning that technology would not apply. Normal provisions concerning exemptions from Office of the Secretary rules (see 49 CFR Part 5) could be used if a carrier or airport believes an exemption is needed in a particular situation.

382.9 What may foreign carriers do if they believe a provision of a foreign nation's law prohibits compliance with a provision of this Part? This provision creates a conflict of laws waiver mechanism to give appropriate consideration to requirements of foreign law applicable to foreign carriers. It is important to note that this mechanism is intended to apply only to genuine conflicts with legally binding foreign legal mandates.

A foreign law that requires a foreign carrier to do something prohibited by this rule, or that prohibits a foreign carrier from doing something required by this rule, is an appropriate subject for a conflict of laws waiver. A foreign carrier's or foreign government's policy, authorized practice, recommendation, or preference is not. However, if a foreign government officially informs a carrier that it plans to take enforcement action (e.g., impose a civil penalty) against a carrier for failing to implement a provision of a government policy, guidance document, or recommendation, the Department would view the enforcement action as creating a legal mandate that could be addressed under this section.

If, as a legal matter, the foreign carrier has no choice but to act contrary to this rule, the Department would grant a waiver. If the foreign carrier, as a matter of law, has any discretion in the matter, it must exercise that discretion by complying with this rule, even if contrary to the carrier's policy or the recommendation of a foreign government, and the Department would not grant a waiver. A waiver request would have to include the carrier's proposal for an alternative means of achieving the rule's objectives with respect to any provision that is waived.

The Department wants to ensure that waiver requests are submitted and granted or denied in a timely manner, avoiding the dilemma for foreign carriers of having to choose between compliance with this rule and with conflicting foreign laws when the rule goes into effect a year after its publication. We encourage foreign carriers to make any waiver requests within 120 days of the rule's publication. The Department commits to deciding requests made in this time period before the rule goes into effect. If we are late, then the foreign carrier may continue to carry out the policy or practice involved until we do respond, and if the request is denied the Department would not take any enforcement action against the carrier with respect to activities that took place prior to the denial. Even with respect to waiver requests submitted after the 120-day period, the Department will do its best to respond before the effective date of the rule. Again, the carrier can choose to continue to follow the policy or practice that is the subject of the request until the Department does respond. However, if such a request is denied, the carrier risks enforcement action with respect to the period between the effective date of the rule and the date of the Department's response. The Department has established this two-stage waiver consideration process to help avoid a situation in which a foreign carrier would delay submission of a waiver request until shortly before the effective date of the rule, in an attempt to delay compliance with the rule while the Department considered its late-filed request.

We also recognize that new foreign legal mandates can arise. If a new mandate is created after the initial 120-day period following publication of the rule (<u>not</u> an existing legal mandate that is subsequently discovered or goes into effect subsequently), then a foreign carrier may submit a waiver request and continue to implement the policy or practice involved until the Department responds. In this case, the carrier would not be subject to enforcement action for the period prior to the Department's response.

This section also notes that if a foreign carrier submits a frivolous or dilatory waiver request, has not submitted a waiver request with respect to a particular policy or

practice, or continues to follow a policy or practice concerning which a waiver request has been denied, the carrier could be subject to DOT enforcement action. For example, if the Department initiates enforcement action because we believe a foreign carrier's practice is contrary to the rule, the carrier could not defend against the enforcement by claiming a conflict with an existing foreign legal mandate if the carrier had not previously submitted a waiver request concerning the practice, or the request had been denied.

Finally, the Department recognizes that a U.S. carrier may wish to file a waiver request on behalf of a foreign carrier. This may occur, for example, in the case of U.S. carriers who must ensure compliance with the service-related provisions of this Part on code share flights between two foreign points operated by their foreign code share partners on behalf of passengers traveling under the U.S. carriers' codes. Where a U.S. carrier believes a foreign law conflicts with a service-related provision of this Part and bars compliance on a code-share flight operated by its foreign code share partner, the U.S. carrier may file a waiver request on behalf of its foreign code-share partner(s) subject to that law. The waiver request should include a proposal for an alternative means of compliance with the Part 382 provision or a justification of why it would be impossible to achieve the objective. If granted, the responsibility of the U.S. carrier with respect to code-share flights operated by its foreign partner(s) will be limited in accordance with the terms of the waiver.

382.10 How does a U.S. or foreign carrier obtain a determination that it is providing an equivalent alternative to passengers with disabilities? While the concept of equivalent facilitation has been a part of DOT Americans with Disabilities Act (ADA) rules since 1991 (see 49 CFR 37.7 – 37.9), it has not previously been part of ACAA rules. The use of "equivalent alternative" in this rule is somewhat broader than the use of "equivalent facilitation" in DOT or DOJ ADA rules or in the Americans with Disabilities Act Accessibility Guidelines issued by the U.S. Access Board, which focused on "hardware" modifications to vehicles and facilities. In the ACAA context, equivalent alternative can also refer to policies, practices, or other accommodations to passengers with disabilities.

The key point of this section is that, in order to be viewed as an equivalent alternative, a policy, practice, accommodation, or piece of equipment must really provide substantially equivalent accessibility to passengers with disabilities than compliance with a provision of the rule. It isn't enough for a carrier's proposed alternative to be different from a provision of the rule. Alternatives that provide less accessibility than the provisions of the rule, or that impose greater burdens on passengers with disabilities, cannot be considered an equivalent alternatives. Equivalent alternatives also pertain only to specific requirements of the rule. The Department would not entertain an equivalent alternative request that asked us to find that an entire foreign regulatory scheme was equivalent to this rule, for example.

Similar to the conflict of laws waiver provision, the equivalent alternative provision is structured to provide an incentive to carriers to file timely requests. If a carrier submits its request within 120 days of the publication date of this Part, the Department will try to respond before the effective date of the rule. The carrier can

implement the policy or practice it requests as an equivalent alternative beginning on the effective date of the rule until the Department does respond. (A U.S. carrier subject to the current rule could not begin implementing an equivalent alternative it had requested within the 120-day time period until the new rule goes into effect, since the current rule does not provide for equivalent alternatives.) If a carrier submits its request after the 120-day period following publication, the carrier must comply with the provision of the regulation pending the Department's response.

382.11 What is the general nondiscrimination requirement of this Part?

382.13 Do carriers have to modify policies, practices, and facilities to ensure nondiscrimination? These sections are very similar to section 382.7 of the current regulation. One difference is that the new rule specifies that carriers may require preboarding as a condition of receiving certain seating or in-cabin stowage accommodations. The requirement to make modifications of policies, practices, and facilities has been broken out into a separate section. This requirement recognizes that there can be times when, in order to provide nondiscriminatory service to a particular individual, carriers must change or make an exception to an otherwise acceptable general policy or practice for that individual. It should be emphasized that this provision is not intended to require carriers to make generally applicable changes in policies for all passengers, or all passengers with disabilities. The provision focuses on the carrier doing what it needs to do – short of incurring an undue burden or making a fundamental alteration in its services – to make sure that a passenger with a disability can take the trip for which he or she is ticketed.

382.15 Do carriers have to make sure that contractors comply with the requirements of this Part? It is a basic principle of nondiscrimination law that while a regulated party can contract out its functions, it cannot contract away its responsibilities. Consequently, a carrier that contracts out any functions concerning passengers with disabilities must ensure that the contractors comply with the provisions of this Part, just as if the carrier were performing the functions itself. Assurances and contract conditions in the agreements between carriers and their contractors are a key measure to carriers' compliance with this section. Noncompliance with these contract conditions by the contractor must be stated in the contract as being a material breach of the contract. The Department expects carriers to monitor the performance of contractors to ensure that the contractors' performance complies with the requirements of this Part and to take appropriate contract action against contractors that breach their contracts by failing to comply. The Department would view a carrier's failure to do so as noncompliance with the carrier's obligations under this rule, and a carrier cannot defend against an enforcement action by the Department by claiming that a contractor erred. The carrier remains responsible.

382.19 May carriers refuse to provide transportation on the basis of disability? This section continues, and extends to foreign carriers, the key nondiscrimination requirement of the ACAA and the existing Part 382. With narrow exceptions, a carrier is prohibited from denying transportation to a passenger on the basis of disability. Carriers retain their authority, under 49 U.S.C. 44902 and 14 CFR 121.533, to deny transportation

to any passenger, disabled or not, on the basis of safety or whose carriage would violate FAA or TSA requirements.

If the carrier's reason for excluding a passenger on the basis of safety is that the individual's disability creates a safety problem, the carrier's decision must be based on a "direct threat" analysis. This concept, grounded in the Americans with Disabilities Act, calls on carriers to make an individualized assessment (e.g., as opposed to a generalization or stereotype about what a person with a given disability can or can't do) of the safety threat the person is thought to pose. In doing so, the carrier must take into account the nature, duration and severity of the risk; the probability that the potential harm will actually occur; and whether reasonable mitigating measures can reduce the risk to the point where the individual no longer poses a direct threat. In using its authority to make a direct threat determination and exclude a passenger, a carrier must not act inconsistently with other provisions of Part 382. Direct threat determinations must not be used as a sort of de facto exception to specific requirements of this Part (e.g., the prohibition on number limits).

Exclusion of a passenger because his disability-related appearance or involuntary behavior may offend, annoy, or inconvenience other persons – as distinct from creating a direct threat to safety – is an important part of this nondiscrimination mandate. The rationale for this requirement was stated in the preamble to the 1990 ACAA rule, and it remains valid (see 55 FR 8027; March 6, 1990).

382.21 May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition? As a general matter, carriers may not exclude or impose other requirements or conditions on a passenger on the basis that the passenger has a communicable disease. However, if the passenger poses a direct threat, the carrier may take appropriate action to safeguard the health and safety of other persons on the flight.

The Department has added regulatory language codifying the Department's guidance on how airlines should determine whether someone's disease presents a direct threat. To be a direct threat, a condition must be both able to be readily transmitted by casual contact in the course of a flight AND have severe health consequences (e.g., SARS, active tuberculosis). If a condition is readily transmissible but does not typically have severe health consequences (e.g., the common cold), or has severe health consequences but is not readily transmitted by casual conduct in the course of a flight (e.g., HIV), its presence would not create a direct threat. Carriers may also rely on directives issued by public health authorities (e.g., in the context of a future flu pandemic).

If a passenger who is deemed to present a direct threat cannot travel at his or her scheduled time as a result, the carrier must allow the passenger to travel at a time up to 90 days from the date of postponed travel at the same price or, if the passenger prefers, provide a refund. Consequently, cancellation or rebooking fees or penalties would not apply in this situation, and the passenger would not be subject to any fare increases that

may occur in the meantime or any increase in that passenger's fare due to the non-availability of a seat in the fare class on his or her original ticket.

382.23 May carriers require a passenger with a disability to provide a medical certificate? Like the medical certificates section in the current rule, this section generally prohibits carriers from requiring medical certificates (i.e., written statements from a doctor saying that a passenger is capable of completing a flight safely, without requiring extraordinary medical assistance during the flight). People with disabilities have functional impairments with respect to walking, seeing, hearing etc. These impairments, by and large, are not sicknesses requiring medical treatment or clearance (though, of course, persons with disabilities can have illnesses like everyone else). At the same time, airlines and their personnel are not medical service providers, and it is not reasonable to expect them to perform medical services. This provision is intended to balance these realities.

Oxygen users and people traveling in a stretcher or incubator can be required to produce a medical certificate. The situation that most commonly would result in a call for a medical certificate is one in which carrier personnel have a reasonable doubt that someone can complete the flight safely, without requiring extraordinary medical assistance. In such a case, carrier personnel can require a medical certificate in order to provide assurance that the passenger will not need such assistance. The rule clarifies that a medical certificate must be recent (within 10 days of the passenger's departing flight).

There is also a relationship between this section and the communicable diseases provision. Section 382.21 (a)(4) allows a carrier to require a medical certificate if the carrier determines that the passenger has a communicable disease that could pose a direct threat. Under section 382.23(c), the passenger would then have to produce a medical certificate, to the effect that the passenger's condition would not be communicable to other persons during the normal course of the flight. If it is potentially transmissible during the flight but this can be prevented if certain conditions or precautions are implemented, the certificate would have to describe those conditions or precautions. Unlike the situation with respect to medical certificates under paragraph (b)(3), a medical certificate in the situation of a communicable disease under paragraph (d) would have to be dated within 10 days of the flight for which it is presented (not 10 days prior only to the passenger's initial departing flight). Under paragraph 382.21(c), if the section 382.23(c)(2) medical certificate provides measures for preventing the transmission of a disease, the carrier must provide transportation to the passenger – carrying out the prescribed measures – unless the carrier determines that it is unable to carry out the measures. If the carrier is unable to do so, it can deny transportation to the passenger. In this event, the carrier's written explanation to the passenger under section 382.21(e) would include an explanation of why it was not able to carry out the measures identified in the medical certificate.

A carrier may elect to subject a passenger with a medical certificate to additional medical review (e.g., by the carrier's physician) if the carrier believes either that there has been a significant adverse change in the passenger's medical condition since the issuance of the medical certificate or that the certificate significantly understates the passenger's

risk to the health of other persons on the flight. If this additional review shows that the passenger is unlikely to be able to complete the flight without extraordinary medical assistance or would pose a direct threat to other passengers, the carrier could, notwithstanding the medical certificate, deny or restrict the passenger's transportation.

We also note that, under section 382.117(e), airlines can require passengers traveling with emotional support or psychiatric service animals to provide certain documentation. This information is not a medical certificate in the sense articulated in section 382.23, but airlines are entitled to obtain this documentation as a condition of permitting the emotional support or psychiatric service animal to travel in the cabin with the passenger.

382.25 May a carrier require a passenger with a disability to provide advance notice that he or she is traveling on a flight?

382.27 May a carrier require a passenger with a disability to provide advance notice in order to obtain specific services in connection with a flight?

Carriers may not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight. That is, a carrier cannot say to a passenger, in effect, "You have a disability; therefore, you must let me know in advance that you are going to fly on my aircraft, Flight XXX."

On the other hand, there is a series of accommodations that many passengers with disabilities may need or want that carriers reasonably require time to arrange. For these services, carriers may require up to 48 hours' advance notice (i.e., 48 hours before the scheduled departure time of the flight) AND a check-in time one hour before the check-in time for the general public. That is, if passengers generally are told to arrive at the gate one hour before the scheduled departure time of the flight to check in, the carrier may tell passengers seeking one of these listed accommodations to check in two hours before the scheduled departure time for the flight. If the passenger with a disability meets the advance notice and check-in time requirements, the carrier must provide the requested accommodation. If not, the carrier must still provide the accommodation if it can do so by making reasonable efforts, without delaying the flight.

Most of the services or accommodations for which a carrier can require advance notice are the same as under the existing regulation (e.g., transportation of an electric wheelchair on a flight scheduled to be made on an aircraft with fewer than 60 seats, accommodation for a group of 10 or more passengers with a disability who make reservations to travel as a group). It is important to note that, with respect to the onboard use of supplemental oxygen, advance notice can be required of a passenger whether the carrier provides the oxygen (i.e., via POC or containerized oxygen,) or the passenger brings his or her own POC for use during the flight. It should also be noted that when requesting carrier-supplied supplemental oxygen, advance notice of up to 48 hours for domestic flights and up to 72 hours for international flights may be required.

There are a few new situations in which the rule permits carriers to require advance notice. These include transportation of an emotional support or psychiatric service animal, transportation of any service animal on a flight scheduled to take eight hours or more, and accommodation of an individual who has both severe vision and hearing impairments.

382.29 May a carrier require a passenger with a disability to travel with a safety assistant? The terminology of this section has been changed from "attendant" to "safety assistant" to more accurately reflect the role of the person accompanying the passenger. A safety assistant is not a personal care attendant who looks after the personal care needs of a passenger. A carrier cannot require a personal care attendant to travel with a passenger with a disability. Rather, the safety assistant is someone who would assist the passenger to exit the aircraft in case of an emergency evacuation or to establish communication with carrier personnel for purposes of the required safety briefing. People like passenger volunteers, an individual selected by the passenger, or deadheading crew members remain appropriate candidates to act as safety assistants.

This section generally follows the model of the corresponding section of the existing regulation. However, with respect to the situation of a passenger with a severe mobility impairment, the criterion for permitting the carrier to require a safety assistant has been clarified to address circumstances where the passenger is unable to physically assist in his or her own evacuation. This change is made to avoid potential confusion that a passenger could assist in his or her own evacuation simply by calling for help.

The "Response to Comments" section of the preamble describes in greater detail other changes, including a new advance notice requirement, that would apply to passengers who have both severe vision and hearing impairments. In section 382.29(b)(4), it is mentioned that a passenger with both severe hearing and vision impairments is responsible for explaining how he or she can establish communication adequate to permit transmission of the safety briefing and to enable the passenger to assist in his or her own evacuation of the aircraft in the event of an emergency. The new 48-hours' advance notice requirement is intended to give the carrier time to make any arrangements necessary to accommodate the passenger following this explanation. The language in section 382.29(b)(4) concerning the ability of a passenger to assist in his or her own evacuation refers to being able to establish, at or around the time of the safety briefing, a means by which the passenger can receive a instructions concerning an emergency evacuation. For example, the passenger and air carrier could arrange a hand or touch signal that the passenger knows means "get up and follow passengers to an emergency exit."

When a passenger with a disability cannot travel on a flight because there is no seat available for a safety assistant that the carrier has determined to be necessary, the passenger must be compensated in an amount to be calculated under the Department's denied boarding compensation (DBC) rule, 14 CFR Part 250, where Part 250 applies. The DBC rule applies to both U.S. and foreign carriers with respect to domestic and international scheduled-service nonstop flight segments departing from a U.S. airport. It

does not apply to flights departing from a foreign airport, whether operated by a U.S. or foreign carrier.

382.31 May carriers impose special charges on passengers with a disability for providing services and accommodations required by this rule? Carriers may not impose charges on passengers for accommodations required by the rule. However, if a carrier voluntarily provides a service that this rule does not require, the carrier may charge a passenger with a disability for that service.

The issue of carrier web site accessibility requirements has been deferred to a forthcoming SNPRM. While that issue is being considered, the Department is adding a provision to address potentially discriminatory effects of their web site-related policies on passengers with disabilities who cannot use a carrier's web site because it is not accessible. If a carrier charges people who make reservations by phone or in person more than people who make reservations on the web site, this surcharge cannot be applied to persons with disabilities who must make reservations by another means because the web site is inaccessible to them. Likewise, if there are "web only" discounts or special offers made available to passengers on the carrier's web site, passengers with disabilities who cannot use the web site must be offered the same terms when they seek to book a flight by other means.

382.33 May carriers impose other restrictions on passengers with a disability that they do not impose on other passengers?

382.35 May carriers require passengers with a disability to sign waivers or releases?

Carriers must not impose requirements or restrictions on passengers with a disability that they do not impose on other passengers, except where this regulation explicitly permits the carrier to do so (e.g., advance notice for certain services). We hope that many of the practices specifically banned in this section are only of historical interest (e.g., making passengers with disabilities sit on blankets or restricting such passengers to so-called "corrals" in terminals), but we believe they are still useful examples of the sort of discriminatory treatment that is unacceptable in the context of a nondiscrimination statute. Waivers of liability or releases either for passengers themselves or for loss or damage of wheelchairs and other assistive devices are among the forbidden practices, although as we have stated in the past, carriers are free to note pre-existing damage to an assistive device to the same extent that carriers do this with respect to other checked baggage.

382.41 What flight-related information must carriers provide to qualified individuals with a disability? This provision is very similar to the corresponding provision of the existing rule. Carriers must provide information about the accessibility features of aircraft (e.g., the presence and location of seats that can be accessed through movable armrests, and seats not available to passengers with disabilities). In addition,

carriers must provide information about any service limitations in accommodating a passenger with a disability. When level-entry boarding is not available on a particular flight, carriers must also provide information about boarding assistance requiring the use of a ramp or lift to all passengers who indicate that they will use a wheelchair for boarding, whether or not they specifically ask for the information.

As a general matter under Part 382, when an agent acting on behalf of an airline provides inaccurate information to a passenger with a disability concerning a disability-related accommodation, in most instances the airline will be responsible for any resulting information-related violation of the law. It should also be noted that when a carrier agrees to provide a service not specifically required under this Part to accommodate a particular passenger's disability, the carrier is obliged to provide that service to the passenger or risk being found in violation of section 382.41. .For example, if a carrier informs a passenger that it will accommodate his or her peanut allergy by not serving peanuts on his or her flight itinerary, the carrier must ensure that peanuts are not served on those flights or it will be in violation of section 382.41.

382.43 Must information and reservation services of carriers be accessible to individuals with hearing impairments? The "Response to Comments" section of the preamble discusses the requirements that will apply to carriers with respect to TTY or telephone relay communication between users of TTYs and carriers. As noted in that discussion, the purpose of §382.43 is to put deaf and hard of hearing passengers on a substantially equivalent footing with the rest of the public in their ability to communicate with carriers by telephone regarding information and reservations. We aim to ensure substantial equivalence in both access to any carrier and wait time if an agent is not available when a connection is first made.

Carriers may meet this requirement by using TTYs themselves, but they may also do so by means of voice relay or any other available technology that permits TTY users to communicate with them. This requirement is set forth in §382.43(a). We are also adding a new access requirement in §382.43(a)(4) to ensure that deaf and hard of hearing passengers are informed how to reach carriers by TTY: in any medium in which a carrier states the telephone number of its information and reservation service for the general public, it must also state its TTY number if it has one, or if not, it must specify how TTY users can reach the information and reservation service (e.g., via call relay service). Such media include, for example, web sites, ticket jackets, telephone books, and print advertisements.

Based on comments to the docket, we are also adding §382.43(b), which states that the requirements of §382.43(a) do not apply to carriers in any country in which the telecommunications infrastructure does not readily permit compliance.

For foreign carriers, these requirements apply only with respect to information and reservation services for flights covered by section 382.5. With respect to TTY services, the requirement applies to foreign carriers only with respect to flights for which reservation phone calls from the U.S. are accepted.

Please see the "Response to Comments" section for further information about the requirement that a copy of Part 382 be made available in airports served by carriers subject to this rule.

382. 45 Must carriers make copies of this Part available to passengers? U.S. carriers must keep a copy of Part 382 at each airport they serve and make it available to anyone who asks for it. Foreign carriers must do this at any airport serving a flight that begins or ends at a U.S. airport. An English-language copy of the rule is sufficient for this purpose. Carriers are not required to translate the document into other languages. Although carriers are not required to make a copy of Part 382 available in accessible formats at airports, carriers that provide information to the public on a website must place information on that website telling passengers that they can obtain an accessible copy of the rule from DOT.

382. 51 What requirements must carriers meet concerning the accessibility of airport facilities? The principal substance of airport facility accessibility requirements is the same for both U.S. and foreign carriers. Certain aspects of the requirements differ depending on whether the facility in question is located in the U.S. or in a foreign country.

U.S. facilities that a carrier owns, controls, or leases must meet requirements applicable to Title III facilities under the Americans with Disabilities Act. The requirements are those of the Americans with Disabilities Act Accessibility Guidelines (ADAAG), as incorporated in Department of Justice (DOJ) ADA regulations implementing Title III. There must be an accessible path between gate and boarding area when level entry boarding is not available to an aircraft. The ADAAG reference in paragraph (a)(2) is to the former version of the ADAAG, which is still the version incorporated in the DOJ rules. When DOJ incorporates the new version of ADAAG in their Title III rules, we will update this reference.

Inter-terminal and intra-terminal transportation owned, leased, or controlled by a carrier at a U.S. airport must meet DOT ADA rules. Since DOT has already incorporated the new version of ADAAG into its regulations, the new ADAAG's provision will apply to any features covered by the DOT rules. One new requirement at U.S. airports is to provide, in cooperation with the airport operator, animal relief areas for service animals that accompany passengers who are departing, arriving, or connecting at the facility.

At foreign airports, to which the ADAAG do not apply, Part 382 applies a performance requirement to make sure that passengers with a disability can readily use the facilities the carrier owns, leases, or controls at the airport. For foreign carriers, this requirement applies only to terminal facilities that serve flights that begin or end in the U.S (i.e., those covered by section 382.5). Both U.S. and foreign carriers must meet the requirements at foreign airports within one year after the effective date of the rule. As noted elsewhere in the preamble, carriers may rely on the facility accessibility services provided by airport operators at foreign airports, supplementing where needed to ensure full compliance with this rule.

In the DHH NPRM, we proposed several requirements for U.S. and foreign carriers at terminal facilities that they own, lease, or control at any U.S. airport. First, we proposed a requirement that carriers enable any existing captioning feature (preferably high-contrast) on all televisions and other audio-visual displays providing safety, information, or entertainment content in those portions of the airport that are open to the general public and that they keep this captioning feature on at all times. Second, we proposed a requirement that in areas of restricted passenger access such as club rooms, carriers enable any existing captioning function on televisions and other audio and visual displays upon request. Third, we proposed a requirement that carriers replace any televisions and other audio-visual displays that do not have a high-contrast captioning function with ones that do as these devices are replaced in the normal course of operations or when the airport facilities undergo substantial renovation or expansion. Fourth, we proposed a requirement that newly acquired televisions and other audio-visual displays be equipped with high-contrast captioning capability. We solicited comments both on these proposals and on whether any carriers have leases for terminal facilities at a U.S. airport whereby the airport retains control over the televisions and other audio-visual displays in that facility. If so, we said, we would consider requiring the carriers and airports to work together to enable captioning on equipment that has captioning capability and to replace equipment that does not have high-contrast captioning capability with equipment that does. (We also noted that all televisions with screens of at least 13 inches made or sold in the U.S. since July 1, 1993, have been required to have captioning capabilities.) We further solicited comment on whether televisions and other audio-visual displays equipped with captioning features would necessarily have high-contrast captioning (*e.g.*, white letters on a consistent black background), whether such equipment may have some type of captioning other than "high-contrast," and whether the availability of high-contrast captioning, as opposed to low- or medium-contrast captioning, depends on the age, cost, or screen size of the equipment.

None of the comments addressed the question of high- versus medium- versus low-contrast captioning. Most of the carriers and carrier groups that filed comments claimed not to have control over the audio-visual equipment at their terminal facilities. The individuals and disability organizations that filed comments strongly objected to different standards for audio-visual equipment in areas open to all passengers versus areas with restricted access, and all support captioning on all such equipment at all times.

We are modifying the language of the proposed §382.51 to make our intentions clearer, and based on the comments, we are also adding language that places joint responsibility for compliance on the carrier and the airport in cases where the latter has control over the televisions and other audio-visual equipment that this section addresses. (To this end, we will also be amending 49 CFR Part 27, Subpart B, to codify the requirement for airports.) We have determined, based both on the comments from individuals and disability groups and on the lack of objections from carriers and carrier groups, that the same standard should apply to all equipment, whether it be in areas to which the general public has access or in areas to which access is limited. If such equipment has captioning capability, that capability must be enabled at all times. These requirements do not apply to either U.S. or foreign carriers at foreign airports.

382.53 What information must carriers give individuals with a vision or hearing impairment at airports? With some variations for the situations of U.S. and foreign airports, and U.S. and foreign carriers, the basic point of this section is that at each gate, ticketing area, and customer service desk that a carrier owns, leases, or controls, a carrier must ensure that passengers with a disability who identify themselves as persons needing visual or hearing assistance have prompt access to the same information provided to other passengers. This requirement applies to a wide variety of information, concerning such subjects as flight safety, ticketing, flight check-in, flight delays or cancellations, schedule changes, boarding information, connections, gate assignments, checking baggage, volunteer solicitation on oversold flights (*e.g.*, offers of compensation for surrendering a reservation), individuals being paged by airlines, aircraft changes that affect the travel of persons with disabilities, and emergencies (*e.g.*, fire, bomb threat).

382.55 May carriers impose security screening procedures for passengers with disabilities that go beyond TSA requirements or those of foreign governments? All passengers are subject, at U.S. airports, to TSA screening procedures and, at foreign airports, to screening procedures established by the law of the country in which the airport is located. If a carrier wants to go beyond those mandated procedures, it must make sure that it treats passengers with disabilities equally with other passengers. Security personnel may examine assistive devices and must provide, on request, private screenings for passengers with disabilities requiring secondary screening.

382.57 What services must carriers provide if their automated kiosks are inaccessible? The Department will seek further comment on kiosk accessibility issues in an SNPRM. Meanwhile, if existing kiosks are inaccessible (e.g., to wheelchair users because of height or reach issues, to visually-impaired passengers because of issues related to visual displays or touch screens), carriers must ensure equal treatment for persons for disabilities who cannot use them. This can be done in a variety of ways. For example, a passenger who cannot use the kiosk could be allowed to come to the front of the line at the check-in counter, or carrier personnel could meet the passenger at the kiosk and help the passenger use the kiosk.

382.61 What are the requirements for movable aisle armrests? This section is very similar to the movable aisle armrest provisions of the present rule. Armrests on at least half the aisle seats in rows containing seats in which passengers with mobility impairments are permitted to sit under FAA rules must be movable. If there are no seats in which a person with a mobility impairment can sit under FAA rules (e.g., an exit row), then that row does not constitute part of the base from which the calculation of half the rows is made, and of course such a row is not one in which a movable armrest is needed.

The provision clarifies that movable aisle armrests must be provided proportionately in all classes of service. As discussed elsewhere in the preamble, if the seats in a given class of service, such as first class, can be accessed by a wheelchair user without a movable aisle armrest being provided, the carrier may request an equivalent alternative determination. Consistent with section 382.41, carriers must find ways of

ensuring that passengers with disabilities can locate specific seats they can access with movable armrests.

A carrier wishing to submit an equivalent alternative request concerning movable armrests must show the Department that, in fact, persons with mobility impairments using aisle and boarding wheelchairs can transfer horizontally into a given seat without being lifted over an armrest or other obstacle. The Department would not make such a determination based solely on the representation of the carrier that such transfers were possible. "Show your work" is the appropriate maxim. Diagrams could be one useful part of such a showing. What the Department recommends, however, is a video of a demonstration showing carrier personnel actually transferring passengers with disabilities – preferably, passengers of various sizes -- into the seat or row in question from an aisle or boarding chair.

Carriers are not required to retrofit cabins of existing aircraft to install movable armrests. However, if a carrier replaces any of an aircraft's aisle seats with newly manufactured seats, at least half the replacement seats must have movable armrests. For example, if a carrier replaces four aisle seats with newly manufactured seats, then two of these seats have to have movable armrests. If the carrier is replacing an odd number of seats, a majority of the newly manufactured aisle seats installed must have movable armrests. For example, if the carrier is replacing five old aisle seats with newly manufactured seats, at least three of the newly manufactured aisle seats must have movable armrests. The Department does not intend this provision to require carriers to have more than 50% movable armrests in the cabin, however. For example, suppose an aircraft has 40 aisle seats, 20 of which have movable armrests. The carrier decides to replace five aisle seats that do not have movable armrests with newly manufactured seats. These new seats would not have to include movable armrests.

The timing of the application of these requirements is as follows: Foreign carriers must comply with "new aircraft" requirements with respect to planes ordered after the effective date of this Part or delivered more than one year after the effective date of this Part. Foreign carriers must comply with the requirement for replacement seats (paragraph (e)) beginning on the effective date of the rule. U.S. carriers are already subject to the requirements of this section, except the proportionality requirement (paragraph (c)) with respect to aircraft ordered after April 5, 1990 or delivered after April 5, 1992. When we say "new aircraft" in this context, we mean aircraft that were new at the time they were ordered by or delivered to the U.S. carrier. U.S. carriers will have to comply with paragraph (c) for new aircraft ordered after the effective date of this Part or which are delivered more than one year after the effective date of this Part. With respect to the purchase of used aircraft, in this section and similar places, the date the aircraft was originally ordered from the manufacturer or initially delivered by the manufacturer determines whether the aircraft is subject to the aircraft accessibility requirements of this Part.

382. 63 What are the requirements for accessible lavatories? As under the present rule, only aircraft with more than one aisle must have an accessible lavatory. U.S. carriers are already subject to these requirements for new aircraft they ordered after April

5, 1990, or which were delivered after April 5, 1992. Foreign carriers must comply with respect to new aircraft ordered after the effective date of the rule or delivered more than one year after the effective date.

Also, if a carrier replaces a lavatory on an aircraft with more than one aisle it must replace the lavatory with an accessible unit. A carrier need not have more than one accessible lavatory on an aircraft, however. This requirement already applies to U.S. carriers for new aircraft they ordered after April 5, 1990, or which were delivered after April 5, 1992. It will begin to apply to foreign carriers on the effective date of the rule.

382. 65 What are the requirements concerning on-board wheelchairs? These requirements are also patterned on the existing rule. In aircraft with more than 60 passenger seats, carriers must provide an on-board wheelchair if the aircraft has an accessible lavatory. In an aircraft that has 60 or more seats that does not have an accessible lavatory, the carrier must provide an on-board wheelchair on the request, with advance notice, of a person who can use the inaccessible lavatory but cannot reach it from his or her seat without use of an on-board wheelchair. U.S. carriers are already subject to these requirements. Foreign carriers must meet these requirements by a date one year after the rule's effective date.

Under the current rule, the Department had granted exemptions to the requirement for providing a requested on-board wheelchair to two aircraft models, the ATP and the ATR-72. These exemptions will remain in force under the new rule.

382.67 What is the requirement for priority space in the cabin to store a passenger's wheelchair? The most important change in this section from the present regulation is that carriers are no longer required to stow any kind of electric wheelchair in the cabin. Only manual wheelchairs are required to be stored there. The section provides that there must be a priority space in the cabin capable of stowing at least one adult-size manual wheelchair of the stated dimensions. This requirement applies to aircraft with 100 or more passenger seats. The space must be in addition to the normal under-seat and overhead compartment storage made available for carry-on luggage. Where a carrier plans to use a closet or other storage area to comply with this requirement, we emphasize that in saying priority storage we mean that the space for a wheelchair trumps other possible uses for that closet or other storage area, including passenger hanging bags and crew luggage. This requirement to stow a passenger's wheelchair in the cabin is in addition to the carrier's on-board wheelchair as required under section 382.65. This requirement already applies to U.S. carriers for new aircraft they ordered after April 5, 1990, or which were delivered after April 5, 1992. Foreign carriers must comply with respect to new aircraft ordered after the effective date of the rule or delivered more than one year after the effective date.

382.69 What requirements must carriers meet concerning the accessibility of videos, DVDs, and other audio-visual presentations shown on aircraft to individuals who are deaf or hard of hearing? This section requires carriers to ensure that all new videos, DVDs, and other audio-visual displays played on aircraft for safety purposes, and all such audio-visual displays played on aircraft for informational purposes that were

created under the carrier's control, are high-contrast captioned. The captioning must be in the predominant language or languages in which the carrier communicates with passengers on the flight. If the carrier communicates regularly in more than one language (e.g., French and English on a Canadian air carrier), then the captioning must be in all of those languages. By saying that this section applies to "new" videos, we mean that carriers are not required to retrofit or replace existing videos.

For purposes of this section, we view a video as being controlled by a carrier not only if the carrier directly produces it, but if a contractor or other party produces the video for the carrier's use, with the carrier having significant editorial control or approval of the video's content. Note that the provision about carrier control of a video applies only to informational materials. Safety materials must be captioned in all cases.

The requirements of this section go into effect 180 days after the effective date of the rule with respect to safety videos, and 240 days after the effective date of the rule with respect to informational videos. This timing is the same for both U.S. and foreign carriers. The corresponding section of the current version of Part 382 permits carriers to use a non-video alternative only if neither open captioning nor a sign language interpreter inset can be used without so interfering with the video as to render it ineffective. This exception is not included in the new rule. The overall effective date of the rule is one year after the rule is published, but, as indicated above, carriers are not required to implement the provision concerning videos in the new rule until 180 to 240 days after that overall effective date. Consequently, starting on the overall effective date (i.e., one year after the rule is published) there would be no requirement in effect on this subject for U.S. carriers. In order to avoid such a situation, as a bridge between the current Part 382 and the new Part 382 U.S. carriers are required to comply with a requirement identical to the current rule's provision on safety videos between the effective date of the new rule and 180 days after that date.

382.71 What other aircraft accessibility requirements apply to carriers? This provision, like its counterpart in the existing rule, requires maintenance of accessibility features in proper working order and tells carriers to ensure that any replacement or refurbishing of cabin features does not reduce existing accessibility to a level below that specified for new aircraft in this Part.

382.81 For which passengers must carriers make seating accommodations?

382.83 Through what mechanisms do carriers make seating accommodations?

382.85 What seating accommodations must carriers make to passengers in circumstances not covered by section 382.81 (a) through (d)? Carriers must provide a seat that will accommodate a passenger with a disability other than one listed in section 382.81 (a) – (d) when the passenger self-identifies and requests the accommodation in order to readily access and use the carrier's air transportation service.

382.87 What other requirements pertain to seating for passengers with a disability? These provisions are essentially the same as their counterparts in the existing regulation.

The provisions are broken out into additional sections for clarity. The rule requires carriers to ensure an adequate number of seats to handle a reasonably expectable demand for seating accommodations of various kinds and emphasizes the need for passengers to self-identify in order to get seating accommodations. The provisions already apply to U.S. carriers and will apply to foreign carriers on the effective date of the rule. The one-year delay in the effective date of the rule following publication should be sufficient for foreign carriers to design procedures to carry out these requirements.

382.91 What assistance must carriers provide to passengers with a disability in moving within the terminal? With respect to connecting assistance, the basic mandate is the same as under the existing rule. The arriving carrier (i.e., the one that operates the first of the two flights that are connecting) has the responsibility for connecting assistance. It is permissible for the two carriers to mutually agree that the carrier operating the departing connecting flight (i.e., the second flight of the two) will provide this assistance, but the carrier operating the arriving flight remains responsible under this section for ensuring that the assistance is provided.

The requirements concerning movement through the terminal are clarified to say that the carrier's assistance responsibility starts at the terminal entrance and goes through the airport to the gate for a passenger arriving to take a flight, and vice-versa for a passenger leaving the airport after a flight.

One addition concerns enroute stops at the entrance to a rest room. If the passenger is being assisted along the basic route from entrance to gate or vice-versa, or to make a connection, and the route goes by a rest room, the person assisting the passenger must stop and allow the passenger to use the amenity, if doing so will not result in unreasonable delay. To receive this assistance, the passenger must self-identify. It could also be very helpful to a passenger to be able to stop at a takeout food or beverage vendor that was enroute, if doing so would not result in an unreasonable delay. The final rule does not require a stop for this purpose, but we believe that airlines and airports interested in good customer service would should allow a brief stop for this purpose.

Another addition, applicable only in U.S. airports, is that a carrier would, on request, and in cooperation with the airport operator, have to escort a passenger to a service animal relief area. Finally, carriers would have to assist passengers with disabilities in transporting their carry-on or gate-checked luggage to or from the gate. This obligation would arise only if the passenger could make credible verbal assurances of his or her inability to carry the item due to his or her disability. If the passenger's verbal assurances to the carrier are not credible, the carrier may require the passenger to produce documentation as a condition of providing the service. All the services mentioned in this paragraph would be provided only on request of a passenger with a disability.

At foreign airports, as mentioned in connection with the terminal accessibility section, airport operators may be the basic providers of terminal services. The carrier may rely on these services, but would have to supplement them if they did not fully comply with the provisions of this Part.

382. 93 Must carriers offer preboarding to passengers with a disability? Carrier must offer an opportunity for preboarding to passengers with a disability who self-identify at the gate as needing additional time or assistance to board, stow accessibility equipment, or be seated. This obligation exists regardless of the carriers' preboarding policies for other persons (e.g., families with small children). Carriers are not required to make general announcements about preboarding in the gate area specifically for passengers with disabilities, where no preboarding announcements are made for other types of passengers. However, as a matter of general nondiscrimination principles, a carrier that makes a preboarding announcement in the gate area for other types or classes of passengers would have to make the announcement for persons with disabilities as well.

382.95 What are carriers' general obligations with respect to boarding and deplaning assistance? Carriers must promptly provide assistance to passengers in getting on and getting off aircraft. The assistance can use a variety of means to accomplish the section's objective; examples are listed in paragraph (a). This obligation exists at both U.S. and foreign airports.

At U.S. airports with 10,000 or more annual enplanements, boarding assistance must be provided through the use of lifts or ramps, where level-entry boarding is not otherwise available (paragraph (b)).

382.97 To which aircraft does the requirement to provide boarding and deplaning assistance through the use of lifts apply? At U.S. airports where lift or ramp boarding is required, the requirement applies to aircraft with 19 or more passenger seats, with a few stated exceptions. The Department reserves the option to expand the list of aircraft to which the requirement does not apply, if we determine that there is no model of boarding device on the market that will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to persons, or that there are internal barriers in the aircraft that would preclude passengers who use a boarding or aisle chair from reaching a non-exit row seat. The Department need not amend this rule in order to make such a determination.

382.99 What agreements must carriers have with the airports they serve? Consistent with the present rule, carriers serving U.S. airports must have agreements with the airport operators to provide, operate, and maintain lifts and ramps used to meet the boarding requirement of section 382.95(b). This requirement already applies to U.S. carriers. Foreign carriers would have a year from the effective date of the rule to enter into such agreements. Foreign carriers serving a particular airport may be able to join existing agreements among the airport and U.S. carriers serving it, rather than starting from scratch. Foreign carriers would have two years from the effective date of the rule to ensure that the boarding assistance called for in this rule was actually being provided.

Carriers may require passengers needing lift assistance for boarding to check in for the flight an hour before the standard check-in time for the flight.

382.101 What other boarding and deplaning assistance must carriers provide? When level-entry boarding is not required, carriers must still take whatever actions are

necessary to assist people with disabilities to get on and off aircraft. For example, boarding and deplaning assistance using lifts is not required at smaller U.S. airports and foreign airports, or when severe weather or unexpected mechanical breakdowns prevent the use of a lift. In those circumstances, airlines must still provide enplaning and deplaning assistance by other available means, such as by placing the passenger in a boarding chair and carrying him or her up the boarding stairs unless the design of the aircraft (e.g., the Fairchild Metro, the Jetstream 31 and 32, the Beech 1900 (C and D models) and the Embraer EMB-120) makes this impossible. The only limitation on the means of providing this assistance is that hand-carrying by carrier personnel as defined in that section is prohibited, except in situations of an emergency evacuation where no other timely means of assistance is available.

3**82.103 May a carrier leave a passenger unattended in a wheelchair or other device?** The carrier and its contractors may not leave a passenger unattended in a wheelchair or other device in which the passenger is not independently mobile for more than 30 minutes.

382.105 What is the responsibility of carriers at foreign airports at which airport operators have responsibility for enplaning, deplaning, or connecting assistance? This section reemphasizes that at a foreign airport where airport operators have this responsibility, both U.S and foreign carriers can rely on the airport operator's services. If these services do not fully meet the requirements of this Part, then the carrier must supplement the airport operator's services to ensure that the requirements are met. If a carrier believes that it is legally precluded from supplementing the airport operator's services, it can apply for a conflict of laws waiver.

382.111 What services must carriers provide to passengers with a disability on board the aircraft?

382.113 What services are carriers not required to provide to passengers with a disability on board the aircraft? These sections are parallel to their counterparts in the existing rule. Personal care services like assistance in actual eating and drinking are not required, but more limited assistance such as assisting with the opening of packages is required.

382.115 What requirements apply to on-board safety briefings? This provision also parallels its counterpart in the existing rule.

382.117 Must carriers permit passengers with a disability to travel with service animals? This section has been made more detailed than the current rule's service animal provision, in response to the comments discussed earlier in the preamble. Further guidance to carriers and passengers concerning service animals follows the Section-by-Section Analysis.

The general rule is that service animals must be allowed to accompany their users. Carriers cannot deny transportation to a service animal because its presence may offend or annoy other passengers (e.g., by causing an allergic reaction that does not rise to the

level of a disability or by offending someone's cultural or personal preferences). When another passenger is uncomfortable with proximity to a service animal, the carrier should do its best to satisfy all passengers by offering the uncomfortable passenger the opportunity to sit elsewhere. Forcing the passenger with the service animal to move to another seat to make another passenger more comfortable, let alone denying transportation in the cabin to the service animal or its user, is not an option.

If a flight segment is scheduled to take eight hours or more, the carrier may require documentation that the service animal will not need to relieve itself or can do so in a way that will not create a health or sanitation issue on the flight.

The only acceptable reason for not allowing a service animal to accompany its user at the user's seat is that the animal will block a space that, according to FAA or equivalent foreign safety regulations, must remain unobstructed. If, for this reason, the animal cannot be accommodated at the user's seat, the carrier must allow the passenger and the animal to sit elsewhere on the aircraft, if an appropriate place exists.

There are new, more detailed procedures for the carriage of emotional support and psychiatric service animals. The carrier may require the passenger to provide current documentation from a licensed mental health professional (e.g., a medical doctor that is treating the passenger's mental or emotional disability or a licensed clinical social worker) caring for the passenger that the passenger has a specific, recognized mental or emotional disability and that the passenger needs to be accompanied by the specific emotional support or psychiatric service animal in question, either on the flight or at the passenger's destination.

Certain unusual service animals need never be accommodated (e.g., rodents, snakes). Other uncommonly used animals (e.g., miniature horses, monkeys) can travel as service animals on U.S. carriers, but the carrier can decide to exclude a particular animal on a case-by-case basis if it is too large or heavy to be accommodated on a given flight. Foreign carriers are not required to carry service animals other than dogs. We will seek further comment in the SNPRM on whether there are safety-related reasons for excluding animals that may be specific to foreign carriers.

Near the end of this preamble, the Department has included a revised guidance document containing further discussion of service animal matters. With the exception of changes discussed earlier in the preamble, this guidance document incorporates the guidance the Department issued on service animal matters in May 2003. As guidance, it does not have independent mandatory effect, but rather describes how the Department understands the requirements of section 382.117. It also makes suggestions and recommendations concerning how carriers can best accommodate service animals and their users.

The guidance document notes that carriers can properly apply the same policies to "psychiatric service animals" as they do for emotional support animals. This is because carriers and the Department have encountered instances of attempted abuse of service animal transportation policies by persons traveling with animals in both categories.

Should the Department encounter a pattern of abuse concerning service animals in other categories, we can consider additional safeguards with respect to those categories as well.

We would call also readers' attention to recent DOT guidance concerning the transportation of service animals into the United Kingdom. "Guidance Concerning the Carriage of Services Animals in Air Transportation Into the United Kingdom" (February 26, 2007) discusses the transportation of service dogs and cats into the U.K. via U.S. and foreign carriers. To transport service animals into the U.K., carriers must participate in the U.K. Pet Travel Scheme. A supplementary DOT guidance document, "Carriage of Service Animals in Air Transportation Into the United Kingdom and Foreign Health Documentation Requirements for Service Animals in Air Transportation" (July 17, 2007), provides further information for carriers and the public concerning carriage of, and documentation needed for, carriage of service animals into countries other than the U.K. These documents may be found on the Department's Aviation Consumer Protection Division website.

382.119 What information must carriers give individuals with vision or hearing impairment on aircraft? This section requires that carriers ensure that passengers with a disability who identify themselves as needing visual or hearing assistance have prompt access to the same information provided to other passengers on the aircraft. In providing this information, carriers are not required to take steps that would interfere with crewmembers' safety duties as set forth in FAA and applicable foreign regulations.

The covered information includes, but is not limited to, information concerning flight safety, procedures for takeoff and landing, flight delays, schedule or aircraft changes that affect the travel of persons with disabilities, diversion to a different airport, scheduled departure and arrival time, boarding information, weather conditions at the flight's destination, beverage and menu information, connecting gate assignments, baggage claim (e.g., at which carousel an arriving flight's bags may be retrieved), individuals being paged by airlines, and emergencies (*e.g.*, fire or bomb threat). The requirement of this section applies whether the information is provided to passengers by the carrier in the aircraft or in the terminal (e.g., the gate area).

We intend to require carriers to provide information that a reasonable consumer would deem important, even if it falls outside the list in §382.119(b). Conversely, carriers are not required to provide information that a reasonable consumer would not deem important. For example, we do not consider information on sightseeing at the flight's destination or an announcement that the aircraft is flying over the Grand Canyon to be covered by this rule.

382.121 What mobility aids and other assistive devices may passengers with a disability bring into the aircraft cabin? Passengers may bring manual, but not electric wheelchairs, other mobility aids (e.g., canes, including those used by blind passengers), and other assistive devices (e.g., POCs), as well as prescription medications and any medical devices needed to administer them (e.g., syringes, auto-injectors), as long as they comply with applicable safety, security and hazardous materials rules. These devices and aids cannot be counted against the airline's carry-on limits.

382.123 What are the requirements concerning priority cabin stowage for wheelchairs and other assistive devices? This section is related to the requirements for priority stowage spaces in section 382.67 and an opportunity to preboard in section 382.93. A passenger who takes advantage of the offer to preboard can stow his or her wheelchair in the aircraft's priority stowage area, with priority over other passengers' items brought onto the aircraft at the same airport, consistent with applicable safety and security regulatory requirements. The passenger's wheelchair also takes priority over items that may be stowed in the space by the carrier and its personnel, such as on-board wheelchairs or crew luggage, even if these items came on board at an earlier stop of the plane's itinerary. If such items are in the space when a wheelchair user comes on board, they must be moved to accommodate the passenger's wheelchair. Carriers must also offer this opportunity for other assistive devices, though wheelchairs retain priority. Passengers with wheelchairs or other assistive devices who do not preboard must still be allowed to use the priority stowage areas for their devices, but their use of the space is on a first-come-first-served basis with respect to other passengers' items.

Some U.S. carriers have used the so-called "seat-strapping" method of securing passengers' wheelchairs in the cabin, usually in situations in which, contrary to the existing rule in some cases, aircraft did not have closets or other spaces capable of accommodating the wheelchairs. The Department does not believe that this is a good long-term approach to carrying passenger wheelchairs in the cabin, especially in these times of frequently full flights. The Department emphasizes that providing priority stowage spaces as required by section 382.67 is essential. To limit the ability of carriers to use the seat-strapping method as a way of getting around the designated priority stowage requirement, carriers may not use the seat-strapping method in any aircraft ordered after the effective date of this Part or delivered more than two years after the rule's effective date.

382.125 What procedures do carriers follow when wheelchairs, other mobility aids, and other assistive devices must be stowed in the cargo compartment? As under the current rule, electric wheelchairs and other devices that are not required to be stowed in the cabin must be transported in the cargo compartment. These items have priority over other passengers' items. If other passengers' items are bumped as a result, the carrier must use its best efforts to ensure that they are delivered to the passenger's destination on the carrier's next flight. This may be a flight within an hour or two with respect to a domestic destination; it could be a matter of days with respect to some carriers' international flights.

382.127 What procedures apply to the stowage of battery-powered mobility aids? This provision does not make substantive changes from its counterpart in the existing rule, except to say that carriers may require a passenger wishing to check his or her device to check in an hour before the standard check-in time for the flight. DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) has issued a special permit which may affect procedures for handling power wheelchairs (see PHMSA "Special Permit 14548" dated October 5, 2007, and revised on October 30, 2007.)

382.129 What other requirements apply when passengers' wheelchairs, other mobility aids, and other assistive devices must be disassembled for stowage?

382.131 Do baggage liability limits apply to mobility aids and other assistive devices?

These provisions are substantively the same as their counterparts in the existing rule. Carriers and passengers should note that section 382.131 applies only to domestic U.S. travel. Baggage liability limits for international travel, including flights of U.S. carriers, are governed by the Montreal Convention and other international agreements, rather than by 14 CFR Part 254.

382.133 What are the requirements concerning the evaluation and use of passenger-owned electronic devices that assist passengers with respiration in the cabin during flight and do not contain hazardous materials? The basic point of this section is that, with minor exceptions, carriers must permit passengers with a disability to use a portable oxygen concentrator (POC) and other respiratory assistive devices in the cabin. Such devices must meet FAA or foreign government requirements, as applicable, and display a manufacturer's label that indicates that the device meets the FAA or foreign government requirements.

When a passenger asks a carrier about bringing his or her electronic respiratory assistive device, the carrier must tell the passenger about the requirements for carrying such a device on board, touching on such matters as meeting FAA requirements, having the manufacturer's label, bringing an adequate number of fully charged batteries, any check-in or advance notice requirements, medical certificate requirements, and the expected duration of the flight. Carriers may insist on passengers bringing on board fully charged batteries adequate to last for 150 percent of the expected maximum flight duration. If a passenger does not comply with the conditions outlined in the rule, the carrier can deny him or her transportation on the flight.

382.141 What training are carriers required to provide for their personnel? This section continues, for the most part, the requirements of the existing rule. There are a few differences, in view of the rule's application to foreign carriers. The requirement to consult with disability groups now focuses on disability groups in the carrier's home country. If such groups are not available, consulting with individuals with disabilities or disability groups in other countries is appropriate.

382.143 When must carriers complete training for their personnel? Employees of U.S. carriers that have already received initial training must be trained on changes to Part 382 at their next recurrent training after the rule goes into effect or within one year after the effective date of the rule, whichever comes first. New crewmembers have to be trained before they assume their duties. Other employees new to a position must be trained within 60 days after starting their jobs. Current employees of foreign carriers that serve flights covered by the rule must be trained within a year after the effective date of the rule. After that date, new crewmembers must be trained before assuming their duties, and other new employees within 60 days after when they assume their duties. For

employees who fall in between these categories – those who start work during the first year after the effective date of the rule – training must occur before the second anniversary of the effective date of the rule or 60 days from their start date, whichever is later.

While the rule provides a reasonable amount of time for employees to be trained, carriers are nevertheless responsible for violations that occur between the effective date of the rule and the training deadlines. We strongly encourage carriers to expedite their training schedules so that as many employees as possible are trained by the final rule's effective date.

To ensure that foreign carriers have resource persons to deal with disability issues as soon as possible, foreign carriers will have to complete training for CROs, and U.S. carriers will have to complete training for CROs about changes in Part 382, by the effective date of the rule. Given the critical role played by CROs in carriers' implementation of the rule, it is essential for CROs to be trained before the rule becomes effective. U.S. carriers have been subject to requirements to train CROs under the existing rule, and additional training for these CROs should be limited in scope, since it would need only to cover changes between the existing rule and this final rule. Since foreign carriers will have a year between the publication of the rule and its effective date, they too should have adequate time to train CROs by the effective date of the rule.

382.145 What records concerning training must carriers retain? Carriers must maintain records of the procedures they use to comply with this rule, including those portions of manuals and other instructional materials concerning Part 382 compliance, and individual employee training records. Training records must be retained for three years. Carriers are not to send these materials to DOT for review, but it must be made available to the Department if we ask to look at it. If we determine that something in these materials needs to be changed in the interest of compliance with the rule, the carrier must make the changes the Department directs.

382.151 What are the requirements for providing Complaints Resolution Officials?

The CRO requirement is essentially the same as under the current rule. U.S. carriers must make a CRO available – either in person or via telephone – at each airport the carrier serves, at all times the carrier is operating at the airport. Foreign carriers must make a CRO available at each airport serving flights the carrier operates that begin or end at a U.S. airport. The Department realizes that, in some cases, carriers operate covered flights infrequently. For example, a foreign carrier may fly from Dulles to a foreign airport only at 5 p.m. on Mondays and Thursdays. On other days, and on Monday and Thursday mornings for that matter, the foreign airline would not have to make a CRO available to persons at Dulles. CRO services would have to be made available in languages in which the carrier provides services to the general public.

This rule clarifies that carriers are responsible for making passengers aware of the availability of a CRO in some circumstances even if the passenger does not say "I want to talk to a CRO." If a passenger raises a disability-related concern, and the carrier's

personnel do not immediately resolve the issue to the customer's satisfaction, the carrier must say, in effect, "We have a CRO available that you can talk to about this problem if you want to. The CRO is our resource person who can help solve disability-related issues. Here is where you can find, or call, our CRO."

CROs must have authority to definitively resolve complaints. This means they must have the power to overrule decisions of other carrier personnel, except that they are not required to have authority to countermand a safety decision of a pilot-in-command of an aircraft. Of course, even decisions of pilots, if they later are shown to be in noncompliance with this rule, can subject the carrier to DOT enforcement action.

38.153 What actions do CROs take on complaints?

382.155 How must carriers respond to written complaints?

CROs are to promptly take action to resolve complaints made to them. In some cases, CROs can take quick action to prevent a potential violation (e.g., a threatened denial of service) from becoming a real violation. If a CRO determines that a violation has already occurred, the CRO must write the complainant and describe the carrier's corrective action. Of course, not all complaints have merit, and if the CRO decides that a violation did not occur, the CRO must also write the complainant and explain this determination. CRO responses are due 30 days from the date of the complaint.

Often, complaints to carriers may be made in writing (letters, e-mails etc.). These complaints may or may not have been processed through the carrier's CRO, though they need to state whether a CRO was involved. Except for complaints DOT refers to a carrier, the carrier is not required to respond to a complaint transmitted more than 45 days after the incident in question. The carrier must respond within 30 days.

382.157 What are carriers obligations for recordkeeping and reporting on disability-related complaints? This section is identical to the current regulatory provision on disability-related complaint reporting. The language referring to carriers "covered by this Part" is not intended to change the scope of the existing provision, which refers to carriers conducting passenger operations with at least one aircraft having a designed seating capacity of more than 60 seats on flights to, from, or in the United States.

382.159 How are complaints filed with DOT? Changes from the corresponding provision of the existing regulation include a time frame for filing informal complaints, a change of postal address for sending an informal complaint by mail, and the web address for filing an informal complaint on the Air Consumer website.

Appendix A Disability Complaint Reporting Form

This appendix contains the form carriers use to submit disability-related complaint data.

Appendix B – Cross-Reference Table

This appendix provides, for the convenience of readers, information on where material found in a given section of the existing version of Part 382 is found in the new version of Part 382.

GUIDANCE CONCERNING SERVICE ANIMALS

Introduction

In 1990, the U.S. Department of Transportation (DOT) promulgated the official regulations implementing the Air Carrier Access Act (ACAA). Those rules are entitled Nondiscrimination on the Basis of Disability in Air Travel (14 CFR Part 382). Since then the number of people with disabilities traveling by air has grown steadily. This growth has increased the demand for air transportation accessible to all people with disabilities and the importance of understanding DOT's regulations and how to apply them. This document expands on an earlier DOT guidance document published in 1996[3], which was based on an earlier Americans with Disabilities Act (ADA) service animal guide issued by the Department of Justice (DOJ) in July 1996. The purpose of this document is to aid airline employees and people with disabilities in understanding and applying the ACAA and the provisions of Part 382 with respect to service animals in determining:

(1) whether an animal is a service animal and its user a qualified individual with a disability;

(2) how to accommodate a qualified person with a disability with a service animal in the aircraft cabin; and

(3) when a service animal legally can be refused carriage in the cabin.

This guidance will also be used by Department of Transportation staff in reviewing the implementation of §382.117 of this Part by carriers.

Background

The 1996 DOT guidance document defines a service animal as "any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If the animal meets this definition, it is considered a service animal regardless of whether it has been licensed or certified by a state or local government." This document refines DOT's previous definition of service animal[4] by making it clear that animals that assist persons with disabilities by providing emotional support qualify as service animals and ensuring that, in situations concerning emotional support animals and psychiatric service animals, the authority of airline personnel to require documentation of the individual's disability and the medical necessity of the passenger traveling with the animal is understood.

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[3] 61 FR 56409, 56420 (Nov. 1, 1996).

[4] See Glossary for definition of this and other terms.

Today, both the public and people with disabilities use many different terms to identify animals that can meet the legal definition of "service animal." These range from umbrella terms such as "assistance animal" to specific labels such as "hearing," "signal," "seizure alert," "psychiatric service," "emotional support" animal, etc. that describe how the animal assists a person with a disability.

When Part 382 was first promulgated, most service animals were guide or hearing dogs. Since then, a wider variety of animals (e.g., cats, monkeys, etc.) have been individually trained to assist people with disabilities. Service animals also perform a much wider variety of functions than ever before (e.g., alerting a person with epilepsy of imminent seizure onset, pulling a wheelchair, assisting persons with mobility impairments with balance). These developments can make it difficult for airline employees to distinguish service animals from pets, especially when a passenger does not appear to be disabled, or the animal has no obvious indicators that it is a service animal. Passengers may claim that their animals are service animals at times to get around airline policies that restrict the carriage of pets. Clear guidelines are needed to assist airline personnel and people with disabilities in knowing what to expect and what to do when these assessments are made.

Since airlines also are obliged to provide all accommodations in accordance with FAA safety regulations, educated consumers help assure that airlines provide accommodations consistent with the carriers' safety duties and responsibilities. Educated consumers also assist the airline in providing them the services they want, including accommodations, as quickly and efficiently as possible.

General Requirements of Part 382

In a nutshell, the main requirements of Part 382 regarding service animals are:

- Carriers shall permit dogs and other service animals used by persons with disabilities to accompany the persons on a flight. See §382.117(a).
    - Carriers shall accept as evidence that an animal is a service animal identifiers such as identification cards, other written documentation, presence of harnesses, tags or the credible verbal assurances of a qualified individual with a disability using the animal.
    - Carriers shall permit a service animal to accompany a qualified individual with a disability in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation or to comply with FAA regulations.
- If a service animal cannot be accommodated at the seat location of the qualified individual with a disability whom the animal is accompanying, the carrier shall offer the passenger the opportunity to move with the animal to a seat location in the same class of service, if present on the aircraft, where the animal can be

accommodated, as an alternative to requiring that the animal travel in the cargo hold (see §382.117(c)).

- Carriers shall not impose charges for providing facilities, equipment, or services that are required by this Part to be provided to qualified individuals with a disability (see §382.31).

Two Steps for Airline Personnel

To determine whether an animal is a service animal and should be allowed to accompany its user in the cabin, airline personnel should:

1. Establish whether the animal is a pet or a service animal, and whether the passenger is a qualified individual with a disability; and then

2. Determine if the service animal presents either

   - a "direct threat to the health or safety of others," or

   - a significant threat of disruption to the airline service in the cabin (i.e., a "fundamental alteration" to passenger service). See §382.19(c).

<u>Service Animals</u>

How do I know it's a service animal and not a pet?

Remember: In most situations <u>the key is TRAINING.</u> Generally, a service animal is individually trained to perform functions to assist the passenger who is a qualified individual with a disability. In a few extremely limited situations, an animal such as a seizure alert animal may be capable of performing functions to assist a qualified person with a disability without individualized training. Also, an animal used for emotional support need not have specific training for that function. Similar to an animal that has been individually trained, the definition of a service animal includes: an animal that has been shown to have the innate ability to assist a person with a disability; or an emotional support animal.

These five steps can help one determine whether an animal is a service animal or a pet:

1. <u>Obtain credible verbal assurances</u>: Ask the passenger: ***"Is this your pet?"*** If the passenger responds that the animal is a service animal and not a pet, but uncertainty remains about the animal, appropriate follow-up questions would include:

   - ***"What tasks or functions does your animal perform for you?"*** or

   - ***"What has it been trained to do for you?"***

- ***"Would you describe how the animal performs this task (or function) for you?"***

    - As noted earlier, functions include, but are not limited to:

        A. helping blind or visually impaired people to safely negotiate their surroundings;

        B. alerting deaf and hard-of-hearing persons to sounds;

        C. helping people with mobility impairments to open and close doors, retrieve objects, transfer from one seat to another, maintain balance; or

        D. alert or respond to a disability-related need or emergency (e.g., seizure, extreme social anxiety or panic attack).

    - Note that to be a service animal that can properly travel in the cabin, the animal need not necessarily perform a function for the passenger during the flight. For example, some dogs are trained to help pull a passenger's wheelchair or carry items that the passenger cannot readily carry while using his or her wheelchair. It would not be appropriate to deny transportation in the cabin to such a dog.

    - If a passenger cannot provide credible assurances that an animal has been individually trained or is able to perform some task or function to assist the passenger with his or her disability, the animal might not be a service animal. In this case, the airline personnel may require documentation (see Documentation below).

    - There may be cases in which a passenger with a disability has personally trained an animal to perform a specific function (e.g., seizure alert). Such an animal may not have been trained through a formal training program (e.g., a "school" for service animals). If the passenger can provide a reasonable explanation of how the animal was trained or how it performs the function for which it is being used, this can constitute a "credible verbal assurance" that the animal has been trained to perform a function for the passenger.

2. <u>Look for physical indicators on the animal</u>: Some service animals wear harnesses, vests, capes or backpacks. Markings on these items or on the animal's tags may identify it as a service animal. It should be noted, however,

that the absence of such equipment does not necessarily mean the animal is not a service animal. Similarly, the presence of a harness or vest on a pet for which the passenger cannot provide such credible verbal assurance may not be sufficient evidence that the animal is, in fact, a legitimate service animal.

3. Request documentation for service animals other than emotional support or psychiatric service animals: The law allows airline personnel to ask for documentation as a means of verifying that the animal is a service animal, but DOT's rules tell carriers not to require documentation as a condition for permitting an individual to travel with his or her service animal in the cabin unless a passenger's verbal assurance is not credible. In that case, the airline may require documentation as a condition for allowing the animal to travel in the cabin. This should be an infrequent situation. The purpose of documentation is to substantiate the passenger's disability-related need for the animal's accompaniment, which the airline may require as a condition to permit the animal to travel in the cabin. Examples of documentation include a letter from a licensed professional treating the passenger's condition (e.g., physician, mental health professional, vocational case manager, etc.)

4. Require documentation for emotional support and psychiatric service animals: With respect to an animal used for emotional support (which need not have specific training for that function but must be trained to behave appropriately in a public setting), airline personnel may require current documentation (i.e., not more than one year old) on letterhead from a licensed mental health professional, including a medical doctor that is treating the passenger's mental or emotional disability stating (1) that the passenger has a mental health-related disability listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV); (2) that having the animal accompany the passenger is necessary to the passenger's mental health or treatment; (3) that the individual providing the assessment of the passenger is a licensed mental health professional and the passenger is under his or her professional care; and (4) the date and type of the mental health professional's license and the state or other jurisdiction in which it was issued. Airline personnel may require this documentation as a condition of permitting the animal to accompany the passenger in the cabin. The purpose of this provision is to prevent abuse by passengers that do not have a medical need for an emotional support animal and to ensure that passengers who have a legitimate need for emotional support animals are permitted to travel with their service animals on the aircraft. Airlines are not permitted to require the documentation to specify the type of mental health disability, e.g., panic attacks.

There is a separate category of service animals generally known as "psychiatric service animals." These animals may be trained by their owners, sometimes with the assistance of a professional trainer, to perform tasks such as fetching medications, reminding the user to take medications, helping people with balance problems caused by medications or an underlying condition, bringing a phone to the user in an emergency or activating a

specially equipped emergency phone, or acting as a buffer against other people crowding too close). As with emotional support animals, it is possible for this category of animals to be a source of abuse by persons attempting to circumvent carrier rules concerning transportation of pets. Consequently, it is appropriate for airlines to apply the same advance notice and documentation requirements to psychiatric service animals as they do to emotional support animals.

5. Observe behavior of animals: Service animals are trained to behave properly in public settings. For example, a properly trained guide dog will remain at its owner's feet. It does not run freely around an aircraft or an airport gate area, bark or growl repeatedly at other persons on the aircraft, bite or jump on people, or urinate or defecate in the cabin or gate area. An animal that engages in such disruptive behavior shows that it has not been successfully trained to function as a service animal in public settings. Therefore, airlines are not required to treat it as a service animal, even if the animal performs an assistive function for a passenger with a disability or is necessary for a passenger's emotional well-being.

What about service animals in training?

Part 382 requires airlines to allow service animals to accompany their handlers[5] in the cabin of the aircraft, but airlines are not required otherwise to carry animals of any kind either in the cabin or in the cargo hold. Airlines are free to adopt any policy they choose regarding the carriage of pets and other animals (e.g., search and rescue dogs) provided that they comply with other applicable requirements (e.g., the Animal Welfare Act). Although "service animals in training" are not pets, the ACAA does not include them, because "in training" status indicates that they do not yet meet the legal definition of service animal. However, like pet policies, airline policies regarding service animals in training vary. Some airlines permit qualified trainers to bring service animals in training aboard an aircraft for training purposes. Trainers of service animals should consult with airlines, and become familiar with their policies.

What about a service animal that is not accompanying a qualified individual with a disability?

When a service animal is not accompanying a passenger with a disability, the airline's general policies on the carriage of animals usually apply. Airline personnel should know their company's policies on pets, service animals in training, and the carriage of animals generally. Individuals planning to travel with a service animal other than their own should inquire about the applicable policies in advance.

[5] Service animal users typically refer to the person who accompanies the animal as the "handler."

Qualified Individuals with Disabilities[6]

How do I know if a passenger is a qualified individual with a disability who is entitled to bring a service animal in the cabin of the aircraft if the disability is not readily apparent?

- Ask the passenger about his or her disability as it relates to the need for a service animal. Once the passenger identifies the animal as a service animal, you may ask, ***"How does your animal assist you with your disability?"*** Avoid the question "What is your disability?" as this implies you are asking for a medical label or the cause of the disability, which is intrusive and inconsistent with the intent of the ACAA. Remember, Part 382 is intended to facilitate travel by people with disabilities by requiring airlines to accommodate them on an individual basis.

- Ask the passenger whether he or she has documentation as a means of verifying the medical necessity of the passenger traveling with the animal. **Keep in mind that you can ask but cannot require documentation as proof of service animal status UNLESS (1) a passenger's verbal assurance is not credible and the airline personnel cannot in good faith determine whether the animal is a service animal without documentation, or (2) a passenger indicates that the animal is to be used as an emotional support or psychiatric service animal.**

- Using the questions and other factors above, you must decide whether it is reasonable to believe that the passenger is a qualified individual with a disability, and the animal is a service animal.

Denying a Service Animal Carriage in the Cabin

What do I do if I believe that carriage of the animal in the cabin of the aircraft would inconvenience non-disabled passengers?

Part 382 requires airlines to permit qualified individuals with a disability to be accompanied by their service animals in the cabin, as long as the animals do not 1) pose a direct threat to the health or safety of others (e.g., animal displays threatening behaviors by growling, snarling, lunging at, or attempting to bite other persons on the aircraft) or 2) cause a significant disruption in cabin service (i.e. a "fundamental alteration" to passenger service). Offense or inconvenience to other passengers (e.g., a cultural or personal discomfort with being in proximity to certain kinds of animals, allergies that do not rise to the level of a disability, reasonable limitations on foot space) is not sufficient grounds to deny a service animal carriage in the cabin. However, carriers should try to accommodate the wishes of other passengers in this situation, such as by relocating them to a different part of the aircraft.

[6] See Glossary.

What do I do if a passenger claims that he or she is allergic to someone else's service animal?

* First, remember that not all allergies rise to the level of a disability. The fact that someone may have a stuffy nose or sneeze when exposed to dog or cat dander does not necessarily mean that the individual has a disability.

* If a passenger expresses discomfort or annoyance because of an allergic reaction to the presence of a service animal nearby, you can offer the uncomfortable passenger the opportunity to change to a seat further away from the animal. Passengers who state they have allergies or other animal aversions should be located as far away from the service animal as practicable. Each individual's needs should be addressed to the fullest extent possible under the circumstances and in accordance with the requirements of Part 382 and company policy.

* If a passenger provides credible verbal assurances, or medical documentation, that he or she has an allergy to a particular sort of animal that rises to the level of a disability (e.g., produces shock or respiratory distress that could require emergency or significant medical treatment), and there is a service animal of that kind seated nearby, the carrier should try to place as much distance as possible between the service animal and the individual with the allergy. Depending on where the passengers are initially seated, this could involve moving both passengers. For example, if both are seated toward the center of the cabin, one could be moved to the front and the other to the back.

* It is unlikely that the mere presence of an animal in the same cabin would, by itself, even if located at a distance from an allergic passenger, produce a severe allergic reaction rising to the level of a disability. However, if there was strong evidence that this was the case, it could be necessary to rebook one of the passengers on another flight. Since one disability does not trump another, the carrier should consider a disability-neutral means of determining which passenger would have to be rebooked (e.g., which passenger made the earlier reservation). We emphasize that we expect any such situation to be extremely rare, and that carriers should not rebook a passenger absent strong evidence that the mere presence of an animal in the cabin, even in a location distant from the allergic passenger, would produce an allergic reaction rising to the level of a disability.

* There may be situations in which, with respect to a passenger who brings a very serious potential allergy situation to the attention of your personnel, it is appropriate to seek a medical certificate for the passenger.

What do I do if I believe that a passenger's assertions about having a disability or a service animal are not credible?

- Ask if the passenger has documentation that satisfies the requirements for determining that the animal is a service animal (see discussion of "Documentation" above).

- If the passenger has no documents, then explain to the passenger that the animal

cannot be carried in the cabin, because it does not meet the criteria for service animals. Explain your airline's policy on pets (i.e., will or will not accept for carriage in the cabin or cargo hold), and what procedures to follow.

- If the passenger does not accept your explanation, avoid getting into an argument. Ask the passenger to wait while you contact your airline's **complaint resolution official (CRO)**. Part 382 requires all airlines to have a CRO available at each airport they serve during all hours of operation. The CRO may be made available by telephone. The CRO is a resource for resolving difficulties related to disability accommodation.

- Consult with the CRO immediately, if possible. The CRO normally has the authority to make the final decision regarding carriage of service animals. In the rare instance that a service animal would raise a concern regarding flight safety, the CRO may consult with the pilot-in-command. If the pilot-in-command makes a decision to restrict the animal from the cabin or the flight for safety reasons, the CRO cannot countermand the pilot's decision. This does not preclude the Department from taking subsequent enforcement action, however, if it is determined that the pilot's decision was inconsistent with Part 382.

- If a CRO makes the final decision not to accept an animal as a service animal, then the CRO must provide a written statement to the passenger within 10 days explaining the reason(s) for that determination. If carrier personnel other than the CRO make the final decision, a written explanation is not required; however, because denying carriage of a legitimate service animal is a potential civil rights violation, it is recommended that carrier personnel explain to the passenger the reason the animal will not be accepted as a service animal. A recommended practice may include sending passengers whose animals are not accepted as service animals a letter within 10 business days explaining the basis for such a decision.

In considering whether a service animal should be excluded from the cabin, keep these things in mind:

- Certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders) pose unavoidable safety and/or public health concerns and airlines are not required to transport them.

- In all other circumstances for U.S. carriers, each situation must be considered individually. Do not make assumptions about how a particular unusual animal is likely to behave based on past experience with other animals. You may inquire, however, about whether a particular animal has been trained to behave properly in a public setting. Note that, under the 2008 final rule, foreign carriers are not required to carry animals other than dogs.

- Before deciding to exclude the animal, you should consider and try available means of mitigating the problem (e.g., muzzling a dog that barks frequently, allowing the passenger a reasonable amount of time under the circumstances to correct the

disruptive behavior, offering the passenger a different seat where the animal won't block the aisle.)

If it is determined that the animal should not accompany the disabled passenger in the cabin at this time, offer the passenger alternative accommodations in accordance with Part 382 and company policy (e.g., accept the animal for carriage in the cargo compartment at no cost to the passenger).

What about unusual service animals?

- As indicated above, certain unusual service animals, (e.g., snakes, other reptiles, ferrets, rodents, and spiders) pose unavoidable safety and/or public health concerns and airlines are not required to transport them. The release of such an animal in the aircraft cabin could result in a direct threat to the health or safety of passengers and crewmembers. For these reasons, airlines are not required to transport these types of service animals in the cabin, and carriage in the cargo hold will be in accordance with company policies on the carriage of animals generally.

- Other unusual animals such as miniature horses, pigs, and monkeys should be evaluated on a case-by-case basis by U.S. carriers. Factors to consider are the animal's size, weight, state and foreign country restrictions, and whether or not the animal would pose a direct threat to the health or safety of others, or cause a fundamental alteration (e.g., significant disruption) in the cabin service. If none of these factors apply, the animal may accompany the passenger in the cabin. In most other situations, the animal should be carried in the cargo hold in accordance with company policy. Under the 2008 final rule, foreign carriers are not required to transport animals other than dogs.

Miscellaneous Questions

What about the passenger who has two or more service animals?

- A single passenger legitimately may have two or more service animals. In these circumstances, you should make every reasonable effort to accommodate them in the cabin in accordance with Part 382 and company policies on seating. This might include permitting the passenger to purchase a second seat so that the animals can be accommodated in accordance with FAA safety regulations. You may offer the passenger a seat on a later flight if the passenger and animals cannot be accommodated together at a single passenger seat. Airlines may not charge passengers for accommodations that are required by Part 382, including transporting service animals in the cargo compartment. If carriage in the cargo compartment is unavoidable, notify the destination station to return the service animal(s) to the passenger at the gate as soon as possible, or to assist the passenger as necessary to retrieve them in the appropriate location.

Are there any situations in which an animal would not be permitted to accompany its user on the flight?

The only situation in which the rule contemplates that a service animal would not be permitted to accompany its user at his or her seat is where the animal blocks a space that, per FAA or applicable foreign government safety regulations, must remain unobstructed (e.g., an aisle, access to an emergency exit) AND the passenger and animal cannot be moved to another location where such a blockage does not occur. In such a situation, the carrier should first talk with other passengers to find a seat location in the cabin where the service animal and its user can be agreeably accommodated (e.g., by finding a passenger who is willing to share foot space with the animal). The fact that a service animal may need to use a reasonable portion of an adjacent seat's foot space that does not deny another passenger effective use of the space for his or her feet by taking all or most of the passenger's foot space is not, however, an adequate reason for the carrier to refuse to permit the animal to accompany its user at his or her seat. Only if no other alternative is available should the carrier discuss less desirable options concerning the transportation of the service animal with the passenger traveling with the animal, such as traveling on a later flight with more room or carrying the animal in cargo. As indicated above, airlines may not charge passengers with disabilities for services required by Part 382, including transporting their oversized service animals in the cargo compartment.

Should passengers provide advance notice to the airline concerning multiple or large service animals?

In most cases, airlines may not insist on advance notice or health certificates for service animals under the ACAA regulations. However, it is very useful for passengers to contact the airline well in advance if one or more of their service animals may need to be transported in the cargo compartment. The passenger will need to understand airline policies and should find out what type of documents the carrier would need to ensure the safe passage of the service animal in the cargo compartment and any restrictions for cargo travel that might apply (e.g., temperature conditions that limit live animal transport).

Accommodating Passengers With Service Animals in the Cabin

How can airline personnel help ensure that passengers with service animals are assigned and obtain appropriate seats on the aircraft?

- Let passengers know the airline's policy about seat assignments for people with disabilities. For instance: (1) should the passenger request preboarding at the gate? or (2) should the passenger request an advance seat assignment (a priority seat such as a bulkhead seat or aisle seat) up to 24 hours before departure? or (3) should the passenger request an advance seat assignment at the gate on the day of departure? When assigning priority seats, ask the passenger what location best fits his/her needs.

- Passengers generally know what kinds of seats best suit their service animals. In

certain circumstances, passengers with service animals must either be provided their pre-requested priority seats, or if their requested seat location cannot be made available, they must be assigned to other available priority seats of their choice in the same cabin class. Part 382.81(c) requires airlines to provide a bulkhead seat or a seat other than a bulkhead seat at the request of an individual traveling with a service animal.

- Passengers should comply with airline recommendations or requirements regarding when they should arrive at the gate before a flight. This may vary from airport to airport and airline to airline. Not all airlines announce preboarding for passengers with special needs, although it may be available. If you wish to request preboarding, tell the agent at the gate.

- A timely request for preboarding by a passenger with a disability must be honored (see sections 382.83(c) and 382.93)

Part 382 does not require carriers to make modifications that would constitute an undue burden or would fundamentally alter their programs (382.13 (c)). Therefore, the following are <u>not required</u> in providing accommodations for users of service animals

- Requiring another passenger to give up all or a most of the space in front of his or her seat to accommodate a service animal. (There is nothing wrong with asking another passenger if the passenger would mind sharing foot space with a service animal, as distinct from telling the passenger that he or she must do so. Indeed, finding a passenger willing to share space is a common, and acceptable, method of finding an appropriate place for someone traveling with a service animal that may not be able to be seated in his or her original seat location.)

- Denying transportation to any individual on a flight in order to provide an accommodation to a passenger with a service animal;

- Furnishing more than one seat per ticket; and

- Providing a seat in a class of service other than the one the passenger has purchased. (While a carrier is not required to do so, there could be situations in which the carrier could voluntarily reseat a passenger with a service animal in a different seating class. For example, suppose that the economy cabin is completely full and no alternate seat location in that cabin can be found for a service animal that cannot be seated at the passenger's original seat location. If the business or first class cabin has vacant space, the carrier could choose to move the passenger and animal into the vacant space, rather than make the passenger and animal take a later flight.)

Are airline personnel responsible for the care and feeding of service animals?

Airline personnel are not required to provide care, food, or special facilities for service animals. The care and supervision of a service animal is solely the responsibility of the passenger with a disability whom the animal is accompanying.

May a carrier charge a maintenance or cleaning fee to passengers who travel with service animals?

Part 382 prohibits carriers from imposing special charges for accommodations required by the regulation, such as carriage of a service animal. However, a carrier may charge passengers with a disability if a service animal causes damage, as long as it is its regular practice to charge non-disabled passengers for similar kinds of damage. For example, it could charge a passenger with a disability for the cost of repairing or cleaning a seat damaged by a service animal, assuming that it is its policy to charge when a non-disabled passenger or his or her pet causes similar damage.

Advice for Passengers with Service Animals

- Ask about the airline's policy on advance seat assignments for people with disabilities. For instance: (1) should a passenger request preboarding at the gate? or (2) should a passenger request an advance seat assignment (a priority seat such as a (bulkhead seat or aisle seat)) up to 24 hours before departure? or (3) should a passenger request an advance seat assignment at the gate on the day of departure?

- Although airlines are not permitted to automatically require documentation for service animals other than emotional support or psychiatric service animals, if you think it would help you explain the need for a service animal, you may want to carry documentation from your physician or other licensed professional confirming your need for the service animal. Passengers with unusual service animals also may want to carry documentation confirming that their animal has been trained to perform a function or task for them.

- If you are traveling with an emotional support or psychiatric service animal, you may be required by the airline to provide 48 hours' advance notice.

- If you need a specific seat assignment for yourself and your service animal, make your reservation as far in advance as you can, and identify your need at that time.

- You may have to be flexible if your assigned seat unexpectedly turns out to be in an emergency exit row. When an aircraft is changed at the last minute, seating may be reassigned automatically. Automatic systems generally do not recognize special needs, and may make inappropriate seat assignments. In that case, you may be required by FAA regulations to move to another seat.

- Arrive at the gate when instructed by the airline, typically at least one hour before departure, and ask the gate agent for preboarding -- if that is your desire.

- Remember that your assigned seat may be reassigned if you fail to check in on time; airlines typically release seat assignments not claimed 30 minutes before scheduled departure. In addition, if you fail to check in on time you may not be able to take advantage of the airline's preboard offer.

- If you have a very large service animal or multiple animals that might need to be transported in the cargo compartment, contact the airline well in advance of your travel date. In most cases, airlines cannot insist on advance notice, except for emotional support or psychiatric service animals, or on health certificates for service animals under the ACAA regulations. However, it is very useful for passengers to contact the airline well in advance if one or more of their service animals may need to be transported in the cargo compartment. The passenger will need to understand airline policies and should find out what type of documents the carrier would need to ensure the safe passage of the service animal in the cargo compartment and any restrictions for cargo travel that might apply (e.g., temperature conditions that limit live animal transport).

- If you are having difficulty receiving an appropriate accommodation, ask the airline employee to contact the airline's CRO. Part 382 requires all airlines to have a CRO available during all hours of operation. The CRO is a resource for resolving difficulties related to disability accommodations.

- Another resource for resolving issues related to disability accommodations is the U.S. Department of Transportation's Disability Hotline. The toll-free number is 1-800-778-4838 (voice) and 1-800-455-9880 (TTY).

Glossary

Direct Threat to the Health or Safety of Others

A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Fundamental Alteration

A modification that substantially alters the basic nature or purpose of a program, service, product or activity.

Individual with a Disability

"Any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment." (Section 382.5)

Qualified Individual with a Disability

Any individual with a disability who:

(1) "takes those actions necessary to avail himself or herself of facilities or services offered by an carrier to the general public with respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies";

(2) "offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain . . . a ticket" "for air transportation on an carrier"; or

(3) "purchases or possesses a valid ticket for air transportation on an carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers." (Section 382.5).

Service Animal

Any animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well being of a passenger.

Sources

In addition to applicable provisions of Part 382, the sources for this guidance include the following: "Guidance Concerning Service Animals in Air Transportation," (61 FR 56420-56422, (November 1, 1996)), "Commonly Asked Questions About Service Animals in Places of Business" (Department of Justice, July, 1996), and "ADA Business Brief: Service Animals" (Department of Justice, April 2002).

REGULATORY ANALYSES AND NOTICES

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

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures. It extends regulatory coverage under the ACAA to foreign carriers for the first time and adds requirements concerning passengers who use medical oxygen and accommodations for deaf and hard-of-hearing passengers. These are areas of considerable importance to passengers and air carriers and are of interest to the public and members of Congress.

The costs and benefits of the rule are summarized in the following tables, taken from the regulatory evaluation. It is very important to keep in mind that, in the Department's view, this rule has very significant nonquantifiable benefits, which these tables do not address. These nonquantifiable benefits include increased opportunities for individuals with disabilities to access the air travel system without discrimination and with fewer unnecessary barriers. This access opens up business and personal travel opportunities and the personal and economic benefits that result from the increased chance to travel. These nonquantifiable benefits make the rule cost-beneficial, even without considering the significant economic benefits displayed in the tables below.

Table A: Summary of Foreign Carrier Cost and Benefit Estimates (Millions 2005$)

	Boarding Equipment (lifts/ramps, chairs)	On-Board Wheelchairs	Cabin Stowage Area for On-Board Wheelchair and Passenger's Folding Wheelchair	Accessible Lavatories	Personnel Training Costs	Total Costs ($M)	Total Carrier Benefits High MC Case ($M)	Net Carrier Benefits High MC Case ($M)	Total Carrier Benefits Low MC Case ($M)	Net Carrier Benefits Low MC Case ($M)
Low Impact Case:										
Present Value over 20 years	$1.161	$2.507	$0.260	$138.373	$22.959	$165.3	$112.0	-$53.3	$179.2	$13.9
Year 20 undiscounted	$0.010	$0.061	$0.044	$32.132	$2.769	$35.0	$35.8	$0.8	$57.2	$22.2
High Impact Case:										
Present Value over 20 years	$2.245	$3.051	$0.260	$276.747	$45.917	$328.2	$224.0	-$104.2	$358.4	$30.2
Year 20 undiscounted	$0.013	$0.075	$0.044	$64.264	$5.539	$69.9	$71.5	$1.6	$114.5	$44.5

Table B: Summary of Deaf and Hard-of Hearing Cost and Benefit Estimates (Millions 2005$)

	Assistants' Fares Forgone	Reservation TTY	Copy of Part 382	Captioning in Waiting Areas	Public Announce-ments	Awareness Training	Total Costs ($M)	Total Carrier Benefits High MC Case ($M)	Net Carrier Benefits High MC Case ($M)	Total Carrier Benefits Low MC Case ($M)	Net Carrier Benefits Low MC Case ($M)
Low Impact Case:											
Present Value over 20 years	$3.500	$2.420	$0.108	$0.250	$1.400	$80.000	$87.7	$110.1	$22.4	$176.2	$88.5
Year 20 undiscounted	$0.500	$0.080	$0.000	$0.017	$0.000	$6.400	$7.0	$16.4	$9.4	$26.2	$19.2
High Impact Case:											
Present Value over 20 years	$7.000	$4.840	$0.216	$0.500	$2.800	$160.000	$175.4	$220.2	$44.9	$352.4	$177.0
Year 20 undiscounted	$1.000	$0.160	$0.000	$0.034	$0.000	$12.800	$14.0	$32.7	$18.7	$52.3	$38.3

Table C: Summary of Medical Oxygen Cost and Benefit Estimates (Millions 2005$)

	Total Costs ($M)	Total Carrier Benefits High MC Case ($M)	Net Carrier Benefits High MC Case ($M)	Total Carrier Benefits Low MC Case ($M)	Net Carrier Benefits Low MC Case ($M)
Low Impact Case:					
Present Value over 20 years	$97.2	$449.8	$352.6	$719.7	$622.5
Year 20 undiscounted	$15.9	$76.3	$60.4	$122.2	$106.3
High Impact Case:					
Present Value over 20 years	$194.4	$899.6	$705.2	$1,439.4	$1,245.0
Year 20 undiscounted	$31.8	$152.7	$120.9	$244.3	$212.5

Table D: Aggregate Cost and Benefit Estimates

(Millions 2005$)

	Total Costs ($M)	Total Carrier Benefits High MC Case ($M)	Net Carrier Benefits High MC Case ($M)	Total Carrier Benefits Low MC Case ($M)	Net Carrier Benefits Low MC Case ($M)
Low Impact Case:					
Present Value over 20 years	$350.1	$671.9	$321.8	$1,075.1	$724.9
Year 20 undiscounted	$57.9	$128.5	$70.6	$205.6	$147.6
High Impact Case:					
Present Value over 20 years	$698.0	$1,343.9	$645.9	$2,150.2	$1,452.2
Year 20 undiscounted	$115.7	$256.9	$141.2	$411.1	$295.4

B. 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. A direct air carrier or a foreign carrier is a small business if it provides air transportation only with small aircraft (i.e., aircraft with up to 60 seats/18,000 pound payload capacity). See 14 CFR 399.73. Our analysis identified 338 small businesses potentially affected by the requirements of the final rule.

We project that about 30 small foreign carriers would incur costs related to boarding equipment (small U.S. carriers already are subject to this requirement). These costs represent a total present value ranging from $1.161 million to $2.245 million, or from $39,000 to $75,000 per carrier, almost entirely in the first two years. When more than one small carrier uses the same airport, however, a sharing arrangement may be more efficient. The affected airlines are, it should be noted, the larger small carriers, those which use aircraft with more than 19 seats and which serve a greater number of airports.

Both small U.S. and small foreign carriers would incur costs related to training. We project that U.S. carriers would need to provide two hours of training to each of their employees with respect to new requirements concerning oxygen and deaf and hard-of-hearing passengers. On this assumption, the present value of training costs would be $2.6 million or $7,738 for each of the 338 carriers affected by the rule.

Our analysis estimates that training costs for foreign carriers would amount to a present value of $0.8 million to $1.6 million over 20 years. Assuming the number of carriers affected to be 30, the cost would be $27,000 to $54,000 per carrier.

With small carriers handling 2.8 percent of the estimated medical oxygen reservations at a cost of $25 each, we would project small carrier costs as being a total present value of $5.4 million, or $16,000 per carrier. This figure is probably overstated, because many small carriers are affiliated with larger airlines that process reservations for them.

Following the line of argument adopted throughout Department's overall regulatory evaluation, these costs should be offset by an expected increase in the number of PWDs willing and able to fly on small carriers.

We note that, while we have examined the effects of the rule on small foreign as well as small U.S. carriers, the Regulatory Flexibility Act does not apply to foreign entities. On the basis of this examination, the Department certifies that this rule will not have a significant economic impact on a significant number of small entities.

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C. 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 include any provision 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.

D. 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 on them, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Paperwork Reduction Act

The final rule does contain a new information collection requirement that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. § 2507 et seq.). Specifically, section 382.145 includes record retention requirements for information concerning training. The Department will pursue OMB approval for this requirement during the year between the publication and effective dates of the rule.

Section 382.157 involves disability-related complaint reporting to the Department. This provision is identical to a provision of the existing Part 382, and it is subject to an existing Paperwork Reduction Act approval by OMB. No further approvals are needed for this section at the present time.

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 28th DAY OF APRIL, 2008, AT WASHINGTON D.C.

_____

Mary E. Peters

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 revises 14 CFR Part 382 as follows:

PART 382 [REVISED]

NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

Sec. Contents

Subpart F Seating Accommodations

Subpart G Boarding, Deplaning, and Connecting Assistance

Subpart H Services on Aircraft

Subpart I Stowage of Wheelchairs, Other Mobility Aids, and Other Assistive Devices

Subpart J Training and Administrative Provisions

Subpart A General Provisions

§382.1 What is the purpose of this Part?

The purpose of this Part is to carry out the Air Carrier Access Act of 1986, as amended. This rule prohibits both U.S. and foreign carriers from discriminating against passengers on the basis of disability; requires carriers to make aircraft, other facilities, and services accessible; and requires carriers to take steps to accommodate passengers with a disability.

§382.3 What do the terms in this rule mean?

In this regulation, the terms listed in this section have the following meanings:

Air Carrier Access Act or *ACAA* means the Air Carrier Access Act of 1986, as amended, the statute that provides the principal authority for this Part.

Air transportation means interstate or foreign air transportation, or the transportation of mail by aircraft, as defined in 49 U.S.C. 40102.

Assistive device means any piece of equipment that assists a passenger with a disability to cope with the effects of his or her disability. Such devices are intended to assist a passenger with a disability to hear, see, communicate, maneuver, or perform other functions of daily life, and may include medical devices and medications.

Battery-powered mobility aid means an assistive device that is used by individuals with mobility impairments such a wheelchair, a scooter, or a Segway when it is used as a mobility device by a person with a mobility-related disability.

Carrier means a U.S. citizen ("U.S. carrier") or foreign citizen ("foreign carrier") that undertakes, directly or indirectly, or by a lease or any other arrangement, to engage in air transportation.

Commuter carrier means an air taxi operator as defined in 14 CFR Part 298 that carries passengers on at least 5 round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week and places between which those flights are performed.

CPAP machine means a continuous positive airway pressure machine.

Department or *DOT* means the United States Department of Transportation.

Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Equivalent alternative means a policy, practice, or other accommodation that provides substantially equivalent accessibility to passengers with disabilities, compared to compliance with a provision of this Part.

Expected maximum flight duration means the carrier's best estimate of the total duration of the flight from departure gate to arrival gate, including taxi time to and from the terminals, based on the scheduled flight time and factors such as (a) wind and other weather conditions forecast; (b) anticipated traffic delays; (c) one instrument approach and possible missed approach at destination; and (d) any other conditions that may delay arrival of the aircraft at the destination gate.

FAA means the Federal Aviation Administration, an operating administration of the Department of Transportation.

Facility means a carrier's aircraft and any portion of an airport that a carrier owns, leases, or controls (e.g., structures, roads, walks, parking lots, ticketing areas, baggage drop-off and retrieval sites, gates, other boarding locations, loading bridges) normally used by passengers or other members of the public.

High-contrast captioning means captioning that is at least as easy to read as white letters on a consistent black background.

Indirect carrier means a person not directly involved in the operation of an aircraft who sells air transportation services to the general public other than as an authorized agent of a carrier.

Individual with a disability means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) *Has a record of such impairment* means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment means*:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

On-demand air taxi means an air taxi operator that carries passengers or property and is not a commuter carrier as defined in this section.

PHMSA means the Pipeline and Hazardous Materials Safety Administration, an operating administration of the Department of Transportation.

POC means portable oxygen concentrator.

Qualified individual with a disability means an individual with a disability --

(a) Who, as a passenger (referred to as a “passenger with a disability”),

(1) With respect to obtaining a ticket for air transportation on a carrier, offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain such a ticket;

(2) With respect to obtaining air transportation, or other services or accommodations required by this Part,

(i) Buys or otherwise validly obtains, or makes a good faith effort to obtain, a ticket for air transportation on a carrier and presents himself or herself at the airport for the purpose of traveling on the flight to which the ticket pertains; and

(ii) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers; or

(b) Who, with respect to accompanying or meeting a traveler, using ground transportation, using terminal facilities, or obtaining information about schedules, fares, reservations, or policies, takes those actions necessary to use facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier.

Scheduled service means any flight scheduled in the current edition of the *Official Airline Guide,* the carrier's published schedule, or the computer reservation system used by the carrier.

TSA means the Transportation Security Administration, an agency of the Department of Homeland Security.

United States or *U.S.* means the United States of America, including its territories and possessions.

§382.5 When are U.S. and foreign carriers required to begin complying with the provisions of this Part?

As a U.S. or foreign carrier, you are required to comply with the requirements of this Part on May 13, 2009, except as otherwise provided in individual sections of this Part.

§382.7 To whom do the provisions of this Part apply?

(a) If you are a U.S. carrier, this Part applies to you with respect to all your operations and aircraft, regardless of where your operations take place, except as otherwise provided in this Part.

(b) If you are a foreign carrier, this Part applies to you only with respect to flights you operate that begin or end at a U.S. airport and to aircraft used for these flights. For purposes of this Part, a "flight" means a continuous journey in the same aircraft or with one flight number that begins or ends at a U.S. airport. The following are some examples of the application of this term:

> EXAMPLE 1 to paragraph (b): A passenger books a nonstop flight on a foreign carrier from New York to Frankfurt, or Frankfurt to New York. Each of these is a "flight" for purposes of this Part.

EXAMPLE 2 to paragraph (b): A passenger books a journey on a foreign carrier from New York to Prague. The foreign carrier flies nonstop to Frankfurt. The passenger gets off the plane in Frankfurt and boards a connecting flight (with a different flight number), on the same foreign carrier or a different carrier, which goes to Prague. The New York-Frankfurt leg of the journey is a "flight" for purposes of this Part; the Frankfurt-Prague leg is not. On the reverse routing, the Prague-Frankfurt leg is not a covered flight for purposes of this Part, while the Frankfurt-New York leg is.

EXAMPLE 3 to paragraph (b): A passenger books a journey on a foreign carrier from New York to Prague. The plane stops for refueling and a crew change in Frankfurt. If, after deplaning in Frankfurt, the passengers originating in New York reboard the aircraft (or a different aircraft, assuming the flight number remains the same) and continue to Prague, they remain on a covered flight for purposes of this Part. This is because their transportation takes place on a direct flight between New York and Prague, even though it had an interim stop in Frankfurt. This example would also apply in the opposite direction (Prague to New York via Frankfurt).

EXAMPLE 4 to paragraph (b): In Example 3, the foreign carrier is not subject to coverage under this Part with respect to a Frankfurt-originating passenger who boards the aircraft and goes to Prague, or a Prague-originating passenger who gets off the plane in Frankfurt and does not continue to New York.

(c) As a foreign carrier, you are not subject to the requirements of this Part with respect to flights between two foreign points, even with respect to flights involving code-sharing arrangements with U.S. carriers. As a U.S. carrier that participates in a code-sharing arrangement with a foreign carrier with respect to flights between two foreign points, you (as distinct from the foreign carrier) are responsible for ensuring compliance with the service provisions of subparts A through C, F through H, and K with respect to passengers traveling under your code on such a flight.

EXAMPLE 1 to this paragraph (c): A passenger buys a ticket from a U.S. carrier for a journey from New York to Prague. The ticket carries the U.S. carrier's code and flight number throughout the entire journey. There is a change of carrier and aircraft in Frankfurt, and a foreign carrier operates the Frankfurt-Prague segment. The foreign carrier is not subject to the provisions of Part 382 for the Frankfurt-Prague segment. However, the U.S. carrier must ensure compliance with the applicable provisions of Part 382 on the Frankfurt-Prague segment with respect to passengers flying under its code, and the Department could take enforcement action against the U.S. carrier for acts or omissions by the foreign carrier.

(d) As a foreign carrier, if you operate a charter flight from a foreign airport to a U.S. airport, and return to a foreign airport, and you do not pick up any passengers in the U.S., the charter flight is not a flight subject to the requirements of this Part.

(e) Unless a provision of this Part specifies application to a U.S. carrier or a foreign carrier, the provision applies to both U.S. and foreign carriers.

(f) If you are an indirect carrier, §§ 382.17 through 382.157 of this Part do not apply, except insofar as §382.11(b) applies to you.

(g) Notwithstanding any provisions of this Part, you must comply with all FAA safety regulations, TSA security regulations, and foreign safety and security regulations having legally mandatory effect that apply to you.

§382.9 What may foreign carriers do if they believe a provision of a foreign nation's law conflicts with compliance with a provision of this Part?

(a) If you are a foreign carrier, and you believe that an applicable provision of the law of a foreign nation precludes you from complying with a provision of this Part, you may request a waiver of the provision of this Part.

(b) You must send such a waiver request to the following address:

Assistant General Counsel for Aviation Enforcement and Proceedings, C-70

U.S. Department of Transportation

1200 New Jersey Avenue, S.E., Room W96-322

Washington, D.C. 20590

(c) Your waiver request must be in English and include the following elements:

(1) A copy, in the English language, of the foreign law involved;

(2) A description of how the foreign law applies and how it precludes

compliance with a provision of this Part;

(3) A description of the alternative means the carrier will use, if the waiver is granted, to effectively achieve the objective of the provision of this Part subject to the waiver or, if applicable, a justification of why it would be impossible to achieve this objective in any way.

(d) The Department may grant the waiver request, or grant the waiver request subject to conditions, if it determines that the foreign law applies, that it does preclude compliance with a provision of this Part, and that the carrier has provided an effective alternative means of achieving the objective of the provisions of this Part subject to the waiver or have demonstrated by clear and convincing evidence that it would be impossible to achieve this objective in any way.

(e) (1) If you submit a waiver request on or before September 10, 2008, the Department will, to the maximum extent feasible, respond to the request before May 13, 2009. If the Department does not respond to the waiver request by May 13, 2009, you may continue to implement the policy or practice that is the subject of your request until the Department does respond. The

Department will not take enforcement action with respect to your implementation of the policy or practice during the time prior to the Department's response.

(2) If you submit a waiver request after September 10, 2009, the Department will, to the maximum extent feasible, respond to the request by May 13, 2009 or within 180 days of receiving it, whichever is later. If the Department does not respond to the waiver request by this date, you may continue to implement the policy or practice that is the subject of your request until the Department does respond. However, the Department may take enforcement action with respect to your implementation of the policy or practice during the time between May 13, 2009 and the date of the Department's response.

(3) If you submit a waiver request after September 10, 2008, and the request pertains to an applicable provision of the law of a foreign nation that did not exist on September 10, 2008, you may continue to implement the policy or practice that is the subject of your request until the Department responds to the request. The Department will, to the maximum extent feasible, respond to such requests within 180 days of receiving them. The Department will not take enforcement action with respect to your implementation of the policy or practice during the time prior to the Department's response.

(f) Notwithstanding any other provision of this section, the Department may commence enforcement action at any time after May 13, 2009 with respect to the policy or practice that is the subject of the request if it finds the request to be frivolous or dilatory.

(g) If you have not submitted a request for a waiver under this section with respect to a provision of this Part, or such a request has been denied, you cannot raise the alleged existence of such a conflict as a defense to an enforcement action.

382.10 How does a U.S. or foreign carrier obtain a determination that it is providing an equivalent alternative to passengers with disabilities?

(a) As a U.S. or foreign carrier, you may apply to the Department for a determination that you are providing an equivalent alternative to passengers with disabilities.

(b) You must send your application for an equivalent alternative determination to the following address:

Assistant General Counsel for Aviation Enforcement and Proceedings (C-70)

U.S. Department of Transportation

1200 New Jersey Avenue, S.E., Room W96-322

Washington, D.C. 20590

(c) Your application must be in English and include the following elements:

(1) A citation to the specific provision of this Part concerning which you are proposing an equivalent alternative.

(2) A detailed description of the alternative policy, practice, or other accommodation you are proposing to use in place of compliance with the provision of this Part that you cite, and an explanation of how it provides substantially equivalent accessibility to passengers with disabilities.

(d) The Department may grant the application, or grant the application subject to conditions, if it determines that the proposed facilitation does provide substantially equivalent accessibility to passengers with disabilities, compared to compliance with the provision of this Part in question

(e) If your application is granted, you will be deemed to be in compliance with this Part through implementing the equivalent alternative. If your application is denied, you must implement this Part as written.

(f)(1) If you submit your application on or before September 10, 2008, the Department will respond to the request before May 13, 2009 to the maximum extent feasible. If the Department does not respond to the application by May 13, 2009, you may implement your policy or practice that is the subject of your application until the Department does respond.

(2) With respect to an application you make after September 10, 2008, you must comply with the provisions of this Part without change from May 13, 2009 until the Department responds to your application.

Subpart B Nondiscrimination and Access to Services

§382.11 What is the general nondiscrimination requirement of this Part?

(a) As a carrier, you must not do any of the following things, either directly or through a contractual, licensing, or other arrangement:

(1) You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation;

(2) You must not require a qualified individual with a disability to accept special services (including, but not limited to, preboarding) that the individual does not request. However, you may require preboarding as a condition of receiving certain seating or in-cabin stowage accommodations, as specified in §§382.83(c), 382.85(b), and 382.123(a) of this Part.

(3) You must not exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, except where specifically permitted by this Part. This is true even if there are separate or different services available for individuals with a disability, except when specifically permitted by another section of this Part; and

(4) You must not take any adverse action against an individual (e.g., refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this Part or the Air Carrier Access Act.

(b) If, as an indirect carrier, you provide facilities or services for other carriers that are covered by sections 382.17 through 382.157, you must do so in a manner consistent with those sections.

§382.13 Do carriers have to modify policies, practices, and facilities to ensure nondiscrimination?

(a) As a carrier, you must modify your policies, practices, and facilities when needed to provide nondiscriminatory service to a particular individual with a disability, consistent with the standards of section 504 of the Rehabilitation Act, as amended.

(b) This requirement is part of your general nondiscrimination obligation, and is in addition to your duty to make the specific accommodations required by this Part.

(c) However, you are not required to make modifications that would constitute an undue burden or would fundamentally alter your program.

§382.15 Do carriers have to make sure that contractors comply with the requirements of this Part?

(a) As a carrier, you must make sure that your contractors that provide services to the public (including airports where applicable) meet the requirements of this Part that would apply to you if you provided the services yourself.

(b) As a carrier, you must include an assurance of compliance with this Part in your contracts with any contractors that provide services to the public that are subject to the requirements of this Part. Noncompliance with this assurance is a material breach of the contract on the contractor's part.

(1) This assurance must commit the contractor to compliance with all applicable provisions of this Part in activities performed on behalf of the carrier.

(2) The assurance must also commit the contractor to implementing directives issued by your CROs under §§382.151 – 153.

(c) As a U.S. carrier, you must also include such an assurance of compliance in your contracts or agreements of appointment with U.S. travel agents. You are not required to include such an assurance in contracts with foreign travel agents.

(d) You remain responsible for your contractors' compliance with this Part and for enforcing the assurances in your contracts with them.

(e) It is not a defense against an enforcement action by the Department under this Part that your noncompliance resulted from action or inaction by a contractor.

§382.17 May carriers limit the number of passengers with a disability on a flight?

As a carrier, you must not limit the number of passengers with a disability who travel on a flight. (See also §382.27(c)(6) of this Part.)

§382.19 May carriers refuse to provide transportation on the basis of disability?

(a) As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this Part.

(b) You must not refuse to provide transportation to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) You may refuse to provide transportation to any passenger on the basis of safety, as provided in 49 U.S.C. 44902 or 14 CFR 121.533, or to any passenger whose carriage would violate FAA or TSA requirements or applicable requirements of a foreign government.

(1) You can determine that there is a disability-related safety basis for refusing to provide transportation to a passenger with a disability if you are able to demonstrate that the passenger poses a direct threat (see definition in §382.3). In determining whether an individual poses a direct threat, you must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

(i) the nature, duration, and severity of the risk;

(ii) the probability that the potential harm to the health and safety of others will actually occur; and

(iii) whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(2) If you determine that the passenger does pose a direct threat, you must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others. For example, you must not refuse transportation to the passenger if you can protect the health and safety of others by means short of a refusal.

(3) In exercising this authority, you must not act inconsistently with the provisions of this Part.

(4) If your actions are inconsistent with any of the provisions of this Part, you are subject to enforcement action under Subpart K of this Part.

(d) If you refuse to provide transportation to a passenger on his or her originally-scheduled flight on a basis relating to the individual's disability, you must provide to the person a written statement of the reason for the refusal. This statement must include the specific basis for the carrier's opinion that the refusal meets the standards of paragraph (c) of this section or is otherwise specifically permitted by this Part. You must provide this written statement to the person within 10 calendar days of the refusal of transportation.

§382.21 May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition?

(a) You must not do any of the following things on the basis that a passenger has a communicable disease or infection, unless you determine that the passenger's condition poses a direct threat:

(1) Refuse to provide transportation to the passenger;

(2) Delay the passenger's transportation (e.g., require the passenger to take a later flight);

(3) Impose on the passenger any condition, restriction, or requirement not imposed on other passengers; or

(4) Require the passenger to provide a medical certificate.

(b) In assessing whether the passenger's condition poses a direct threat, you must apply the provisions of §382.19(c)(1) – (2) of this subpart.

(1) In making this assessment, you may rely on directives issued by public health authorities (e.g., the U.S. Centers for Disease Control or Public Health Service; comparable agencies in other countries; the World Health Organization).

(2) In making this assessment, you must consider the significance of the consequences of a communicable disease and the degree to which it can be readily transmitted by casual contact in an aircraft cabin environment.

> EXAMPLE 1 TO THIS PARAGRAPH (b)(2): The common cold is readily transmissible in an aircraft cabin environment but does not have severe health consequences. Someone with a cold would not pose a direct threat.
>
> EXAMPLE 2 TO THIS PARAGRAPH (b)(2): AIDS has very severe health consequences but is not readily transmissible in an aircraft cabin environment. Someone would not pose a direct threat because he or she is HIV-positive or has AIDS.
>
> EXAMPLE 3 TO THIS PARAGRAH (b)(2): SARS may be readily transmissible in an aircraft cabin environment and has severe health consequences. Someone with SARS probably poses a direct threat.

(c) If a passenger with a communicable disease meeting the direct threat criteria of this section gives you a medical certificate of the kind outlined in §382.23(c)(2) describing measures for preventing transmission of the disease during the normal course of the flight, you must provide transportation to the passenger, unless you are unable to carry out the measures.

(d) If your action under this section results in the postponement of a passenger's travel, you must permit the passenger to travel at a later time (up to 90 days from the date of the postponed travel) at the fare that would have applied to the passenger's originally scheduled trip without penalty or, at the passenger's discretion, provide a refund for any unused flights, including return flights.

(e) If you take any action under this section that restricts a passenger's travel, you must, on the passenger's request, provide a written explanation within 10 days of the request.

§382.23 May carriers require a passenger with a disability to provide a medical certificate?

(a) Except as provided in this section, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation.

(b)(1) You may require a medical certificate for a passenger with a disability --

(i) Who is traveling in a stretcher or incubator;

(ii) Who needs medical oxygen during a flight; or

(iii) Whose medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing the flight safely, without requiring extraordinary medical assistance during the flight.

(3) To be valid, a medical certificate under this paragraph must be dated within 10 days of the scheduled date of the passenger's initial departing flight.

> EXAMPLE to this paragraph (b)(3):
>
> A passenger who schedules a flight from New York to London on January 15 with a return on April 15 would have to show a medical certificate dated January 5 or later. The passenger would not have to show a second medical certificate dated April 5 or later.

(c)(1) You may also require a medical certificate for a passenger if he or she has a communicable disease or condition that could pose a direct threat to the health or safety of others on the flight.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the disease or infection would not, under the present conditions

in the particular passenger's case, be communicable to other persons during the normal course of a flight. The medical certificate must state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the normal course of a flight. A medical certificate under this paragraph must be dated within 10 days of the date of the flight for which it is presented.

(d) As a carrier, you may require that a passenger with a medical certificate undergo additional medical review by you if there is a legitimate medical reason for believing that there has been a significant adverse change in the passenger's condition since the issuance of the medical certificate or that the certificate significantly understates the passenger's risk to the health of other persons on the flight. If the results of this medical review demonstrate that the passenger, notwithstanding the medical certificate, is likely to be unable to complete the flight without requiring extraordinary medical assistance (e.g., the passenger has apparent significant difficulty in breathing, appears to be in substantial pain, etc.) or would pose a direct threat to the health or safety of other persons on the flight, you may take an action otherwise prohibited under §382.23(a) of this Part.

§382.25 May a carrier require a passenger with a disability to provide advance notice that he or she is traveling on a flight?

As a carrier, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight.

§382.27 May a carrier require a passenger with a disability to provide advance notice in order to obtain certain specific services in connection with a flight?

(a) Except as provided in paragraphs (b) and (c) of this section and sections 382.133(c)(3) and 382.133(d)(3), as a carrier you must not require a passenger with a disability to provide advance notice in order to obtain services or accommodations required by this Part.

(b) You may require a passenger with a disability to provide up to 72 hours' advance notice and check in one hour before the check-in time for the general public to receive carrier- supplied in-flight medical oxygen on international flights, 48 hours' advance notice and check-in one hour before the check-in time for the general public to receive carrier-supplied in-flight medical oxygen on domestic flights, and 48 hours' advance notice and check-in one hour before the check-in time for the general public to use his/her ventilator, respirator, CPAP machine or POC.

(c) You may require a passenger with a disability to provide up to 48 hours' advance notice and check in one hour before the check-in time for the general public to receive the following services and accommodations. The services listed in paragraphs (c)(1) through (c)(3) of this paragraph are optional; you are not required to provide them, but you may choose to do so.

(1) Carriage of an incubator;

(2) Hook-up for a respirator, ventilator, CPAP machine or POC to the aircraft electrical power supply;

(3) Accommodation for a passenger who must travel in a stretcher;

(4) Transportation for an electric wheelchair on an aircraft with fewer than 60 seats;

(5) Provision of hazardous materials packaging for batteries or other assistive devices that are required to have such packaging;

(6) Accommodation for a group of ten or more qualified individuals with a disability, who make reservations and travel as a group; and

(7) Provision of an on-board wheelchair on an aircraft with more than 60 seats that does not have an accessible lavatory.

(8) Transportation of an emotional support or psychiatric service animal in the cabin;

(9) Transportation of a service animal on a flight segment scheduled to take 8 hours or more;

(10) Accommodation of a passenger who has both severe vision and hearing impairments (see sec. 382.29(b)(4)).

(d) If the passenger with a disability provides the advance notice you require, consistent with this section, for a service that you must provide (see paragraphs (c)(4) through (10) of this section) or choose to provide (see paragraphs (c)(1) through (c)(3) of this section), you must provide the requested service or accommodation.

(e) Your reservation and other administrative systems must ensure that when passengers provide the advance notice that you require, consistent with this section, for services and accommodations, the notice is communicated, clearly and on time, to the people responsible for providing the requested service or accommodation.

(f) If a passenger with a disability provides the advance notice you require, consistent with this section, and the passenger is forced to change to another flight (e.g., because of a flight cancellation), you must, to the maximum extent feasible, provide the accommodation on the new flight. If the new flight is another carrier's flight, you must provide the maximum feasible assistance to the other carrier in providing the accommodation the passenger requested from you.

(g) If a passenger does not meet advance notice or check-in requirements you establish consistent with this section, you must still provide the service or accommodation if you can do so by making reasonable efforts, without delaying the flight.

§382.29 May a carrier require a passenger with a disability to travel with a safety assistant?

(a) Except as provided in paragraph (b) of this section, you must not require that a passenger with a disability travel with another person as a condition of being provided air transportation.

(b) You may require a passenger with a disability in one of the following categories to travel with a safety assistant as a condition of being provided air transportation, if you determine that a safety assistant is essential for safety:

(1) A passenger traveling in a stretcher or incubator. The safety assistant for such a person must be capable of attending to the passenger's in-flight medical needs;

(2) A passenger who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from carrier personnel, including the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4) or 14 CFR 135.117(b) or the safety regulations of a foreign carrier's government, as applicable;

(3) A passenger with a mobility impairment so severe that the person is unable to physically assist in his or her own evacuation of the aircraft;

(4) A passenger who has both severe hearing and severe vision impairments, if the passenger cannot establish some means of communication with carrier personnel that is adequate both to permit transmission of the safety briefing required by 14 CFR 121.57(a)(3) and (a)(4), 14 CFR 135,117(b) or the safety regulations of a foreign carrier's government, as applicable, and to enable the passenger to assist in his or her own evacuation of the aircraft in the event of an emergency. You may require a passenger with severe hearing and vision impairment who wishes to travel without a safety assistant to notify you at least 48 hours in advance to provide this explanation. If the passenger fails to meet this notice requirement, however, you must still accommodate him or her to the extent practicable.

(c) (1) If you determine that a person meeting the criteria of paragraph (b)(2), (b)(3) or (b)(4) of this section must travel with a safety assistant, contrary to the individual's self-assessment that he or she is capable of traveling independently, you must not charge for the transportation of the safety assistant. You are not required to find or provide the safety assistant, however.

(2) For purposes of paragraph (b)(4) of this section, you may require, contrary to the individual's self-assessment, that an individual with both severe hearing and vision impairments must travel with a safety assistant if you determine that --

(i) the means of communication that the individual has explained to you does not adequately satisfy the objectives identified in paragraph (b)(4) of this section; or

(ii) the individual proposes to establish communication by means of finger spelling and you cannot, within the time following the individual's notification, arrange for a flight crew member who can communicate using this method to serve the passenger's flight.

(3) If a passenger voluntarily chooses to travel with a personal care attendant or safety assistant that you do not require, you may charge for the transportation of that person.

(d) If, because there is not a seat available on a flight for a safety assistant whom the carrier has determined to be necessary, a passenger with a disability holding a confirmed reservation is unable to travel on the flight, you must compensate the passenger with a disability in an amount to be calculated as provided for instances of involuntary denied boarding under 14 CFR Part 250, where Part 250 applies.

(e) For purposes of determining whether a seat is available for a safety assistant, you must deem the safety assistant to have checked in at the same time as the passenger with a disability.

(f) Concern that a passenger with a disability may need personal care services (e.g., assistance in using lavatory facilities or with eating) is not a basis for requiring the passenger to travel with a safety assistant. You must explain this clearly in training or information you provide to your employees. You may advise passengers that your personnel are not required to provide such services.

§382.31 May carriers impose special charges on passengers with a disability for providing services and accommodations required by this rule?

(a) Except as otherwise provided in this Part you must not, as a carrier, impose charges for providing facilities, equipment, or services that this rule requires to be provided to passengers with a disability. You may charge for services that this Part does not require.

(b) You may charge a passenger for the use of more than one seat if the passenger's size or condition (e.g., use of a stretcher) causes him or her to occupy the space of more than one seat. This is not considered a special charge under this section.

(c) If your web site that passengers use to make reservations or purchase tickets is not accessible to a passenger with a disability, you must not charge a fee to the passenger who is consequently unable to make a reservation or purchase a ticket on that site for using another booking method (e.g., making a reservation by phone). If a discount is made available to a passenger who books a flight using an inaccessible web site, you must make that discount available to a passenger with a disability who cannot use the web site and who purchases a ticket from you using another method.

§382.33 May carriers impose other restrictions on passengers with a disability that they do not impose on other passengers?

(a) As a carrier, you must not subject passengers with a disability to restrictions that do not apply to other passengers, except as otherwise permitted in this Part (e.g., advance notice requirements for certain services permitted by §382.27).

(b) Restrictions you must not impose on passengers with a disability include, but are not limited to, the following:

(1) Restricting passengers' movement within the terminal;

(2) Requiring passengers to remain in a holding area or other location in order to receive transportation, services, or accommodations;

(3) Making passengers sit on blankets on the aircraft;

(4) Making passengers wear badges or other special identification (e.g., similar to badges worn by unaccompanied minors); or

(5) Otherwise mandating separate treatment for passengers with a disability, unless permitted or required by this Part or other applicable Federal requirements.

§382.35 May carriers require passengers with a disability to sign waivers or releases?

(a) As a carrier, you must not require passengers with a disability to sign a release or waiver of liability in order to receive transportation or to receive services or accommodations for a disability.

(b) You must not require passengers with a disability to sign waivers of liability for damage to or loss of wheelchairs or other assistive devices, or for the loss of, death of, or injury to service animals. Carriers may note pre-existing damage to an assistive device to the same extent that carriers do this with respect to other checked baggage.

Subpart C – Information for Passengers

§382.41 What flight-related information must carriers provide to qualified individuals with a disability?

As a carrier, you must provide the following information, on request, to qualified individuals with a disability or persons making inquiries on their behalf concerning the accessibility of the aircraft expected to make a particular flight. The information you provide must be specific to the aircraft you expect to use for the flight unless it is unfeasible for you to do so (e.g., because unpredictable circumstances such as weather or a mechanical problem require substitution of another aircraft that could affect the location or availability of an accommodation). The required information is:

(a) The specific location of seats, if any, with movable armrests (i.e., by row and seat number);

(b) The specific location of seats (i.e., by row and seat number) that the carrier, consistent with this Part, does not make available to passengers with a disability (e.g., exit row seats);

(c) Any aircraft-related, service-related or other limitations on the ability to accommodate passengers with a disability, including limitations on the availability of level-entry boarding to the aircraft at any airport involved with the flight. You must provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information.

(d) Any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other assistive devices commonly used by passengers with a disability, including storage in the cabin of a passenger's wheelchair as provided in §§382.67 and 382.123 of this Part;

(e) Whether the aircraft has an accessible lavatory; and

(f) The types of services to passengers with a disability that are or are not available on the flight.

382.43 Must information and reservation services of carriers be accessible to individuals with hearing impairments?

(a) If, as a carrier, you provide telephone reservation and information service to the public, you must make this service available to individuals who use a text telephone (TTY), whether via your own TTY, voice relay, or other available technology, as follows:

(1) You must provide access to TTY users during the same hours as the telephone service is available to the general public.

(2) You must ensure that the response time for answering calls and the level of service provided to TTY users is substantially equivalent to the response time and level of service provided to the general public (*i.e.*, non-TTY users).

(3) You must not subject TTY users to charges exceeding those that apply to non-TTY users of telephone information and reservation service.

(4) In any medium in which you list the telephone number of your information and reservation service for the general public, you must also list your TTY number if you have one. If you do not have a TTY number, you must state how TTY users can reach your information and reservation service (*e.g.*, via a voice relay service).

(5) If you are a foreign carrier, you must meet this requirement by May 13, 2010.

(b) The requirements of paragraph (a) do not apply to you in any country in which the telecommunications infrastructure does not readily permit compliance.

§382.45 Must carriers make copies of this Part available to passengers?

(a) As a carrier, you must keep a current copy of this Part at each airport you serve. As a foreign carrier, you must keep a copy of this Part at each airport serving a flight you operate that begins or ends at a U.S. airport. You must make this copy available for review by any member of the public on request.

(b) If you have a website, it must provide notice to consumers that they can obtain a copy of this Part in an accessible format from the Department of Transportation by any of the following means:

(1) for calls made from within the United States, by telephone via the Toll-Free Hotline for Air Travelers with Disabilities at 1-800-778-4838 (voice) or 1-800-455-9880 (TTY),

(2) by telephone to the Aviation Consumer Protection Division at 202-366-2220 (voice) or 202-366-0511 (TTY),

(3) by mail to the Air Consumer Protection Division, C-75, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building, Room W96-432, Washington, DC 20590, and

(4) on the Aviation Consumer Protection Division's website (http://airconsumer.ost.dot.gov).

Subpart D – Accessibility of Airport Facilities

§382.51 What requirements must carriers meet concerning the accessibility of airport facilities?

(a) As a carrier, you must comply with the following requirements with respect to all terminal facilities you own, lease, or control at a U.S. airport:

(1) You must ensure that terminal facilities providing access to air transportation are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. You are deemed to comply with this obligation if the facilities meet requirements applying to places of public accommodation under Department of Justice (DOJ) regulations implementing Title III of the Americans with Disabilities Act (ADA).

(2) With respect to any situation in which boarding and deplaning by level-entry loading bridges or accessible passenger lounges to and from an aircraft is not available, you must ensure that there is an accessible route between the gate and the area from which aircraft are boarded (e.g., the tarmac in a situation in which level-entry boarding is not available). An accessible route is one meeting the requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG), sections 4.3.3 – 4.3.10.

(3) You must ensure that systems of intra- and inter-terminal transportation, including, but not limited to, moving sidewalks, shuttle vehicles and people movers, comply with applicable requirements of the Department of Transportation's ADA rules (49 CFR Parts 37 and 38).

(4) Your contracts or leases with airport operators concerning the use of airport facilities must set forth your airport accessibility responsibility under this Part and that of the airport operator under applicable section 504 and ADA rules of the Department of Transportation and Department of Justice.

(5) In cooperation with the airport operator and in consultation with local service animal training organization(s), you must provide animal relief areas for service animals that accompany passengers departing, connecting, or arriving at an airport on your flights.

(6) You must enable captioning at all times on all televisions and other audio-visual displays that are capable of displaying captions and that are located in any portion of the terminal to which any passengers have access on May 13, 2009. The captioning must be high-contrast insofar as is feasible.

(7) You must replace any televisions and other audio-visual displays providing passengers with safety briefings, information, or entertainment that do not have high-contrast captioning capability with equipment that does have such capability whenever such equipment is replaced in the normal course of operations and/or whenever areas of the terminal in which such equipment is located are undergoing substantial renovation or expansion.

(8) If you newly acquire televisions and other audio-visual displays for passenger safety briefings, information, or entertainment on or after (the effective date of the rule), such equipment must have high-contrast captioning capability.

(b) As a carrier, you must ensure that passengers with a disability can readily use all terminal facilities you own, lease, or control at a foreign airport. In the case of foreign carriers, this requirement applies only to terminal facilities that serve flights covered by section 382.7 of this Part.

(1) This means that passengers with a disability must be able to move readily through such terminal facilities to get to or from the gate and any other area from which passengers board the aircraft you use for such flights (e.g., the tarmac in the case of flights that do not use level-entry boarding). This obligation is in addition to your obligation to provide enplaning, deplaning, and connecting assistance to passengers.

(2) You may meet this obligation through any combination of facility accessibility, auxiliary aids, equipment, the assistance of personnel, or other appropriate means consistent with the safety and dignity of passengers with a disability.

(c) As a foreign carrier, you must meet the requirements of this section by May 13, 2010 except as otherwise indicated in paragraph (a). As a U.S. carrier, you must meet the requirements of paragraph (b) of this section by May 13, 2010.

§382.53 What information must carriers give individuals with a vision or hearing impairment at airports?

(a)(1) As a U.S. carrier, you must ensure that passengers with a disability who identify themselves as persons needing visual or hearing assistance have prompt access to the same information provided to other passengers at each gate, ticketing area, and customer service desk that you own, lease, or control at any U.S. or foreign airport, to the extent that this does not interfere with employees' safety and security duties as set forth in FAA, TSA, and applicable foreign regulations.

(2) As a foreign carrier, you must make this information available at each gate, ticketing area, and customer service desk that you own, lease, or control at any U.S. airport. At foreign airports, you must make this information available only at gates, ticketing areas, or customer service desks that you own, lease, or control and only for flights that begin or end in the U.S.

(3) As a U.S. or foreign carrier, at any U.S. airport covered by this paragraph where the airport has effective control over the covered gates, ticketing areas, and customer service desks, you and the airport are jointly responsible for compliance.

(b) The information you must provide under paragraph (a) of this section includes, but is not limited to, the following: information concerning flight safety, ticketing, flight check-in, flight delays or cancellations, schedule changes, boarding information, connections, gate assignments, checking baggage, volunteer solicitation on oversold flights (*e.g.*, offers of compensation for surrendering a reservation), individuals being paged by airlines, aircraft changes that affect the travel of persons with disabilities, and emergencies (*e.g.*, fire, bomb threat).

(c) With respect to information on claiming baggage, you must provide the information to passengers who identify themselves as persons needing visual or hearing assistance no later than you provide this information to other passengers.

§382.55 May carriers impose security screening procedures for passengers with disabilities that go beyond TSA requirements or those of foreign governments?

(a) All passengers, including those with disabilities, are subject to TSA security screening requirements at U.S. airports. In addition, passengers at foreign airports, including those with disabilities, may be subject to security screening measures required by law of the country in which the airport is located.

(b) If, as a carrier, you impose security screening procedures for passengers with disabilities that go beyond those mandated by TSA (or, at a foreign airport, beyond the law of the country in which the airport is located), you must ensure that they meet the following requirements:

(1) You must use the same criteria for applying security screening procedures to passengers with disabilities as to other passengers.

(2) You must not subject a passenger with a disability to special screening procedures because the person is traveling with a mobility aid or other assistive device if the person using the aid or device clears the security system without activating it.

(i) However, your security personnel may examine a mobility aid or assistive device which, in their judgment, may conceal a weapon or other prohibited item.

(ii) You may conduct security searches of qualified individuals with a disability whose aids activate the security system in the same manner as for other passengers.

(3) You must not require private security screenings of passengers with a disability to a greater extent, or for any different reason, than for other passengers.

(c) Except as provided in paragraph (d) of this section, if a passenger with a disability requests a private screening in a timely manner, you must provide it in time for the passenger to enplane.

(d) If you use technology that can conduct an appropriate screening of a passenger with a disability without necessitating a physical search of the person, you are not required to provide a private screening.

382.57 What services must carriers provide if their automated kiosks are inaccessible?

As a carrier, if your automated kiosks in airport terminals cannot readily be used by a passenger with a disability for such functions as ticketing and obtaining boarding passes that the kiosks make available to other passengers, you must provide equivalent service to the passenger (e.g., by assistance from your personnel in using the kiosk or allowing the passenger to come to the front of the line at the check-in counter).

Subpart E Accessibility of Aircraft

§382.61 What are the requirements for movable aisle armrests?

(a) As a carrier, you must ensure that aircraft with 30 or more passenger seats on which passenger aisle seats have armrests are equipped with movable aisle armrests on at least one-half of the aisle seats in rows in which passengers with mobility impairments are permitted to sit under FAA or applicable foreign government safety rules.

(b) You are not required to provide movable armrests on aisle seats of rows which a passenger with a mobility impairment is precluded from using by an FAA safety rule.

(c) You must ensure that these movable aisle armrests are provided proportionately in all classes of service in the cabin. For example, if 80 percent of the aisle seats in which passengers with mobility impairments may sit are in coach, and 20 percent are in first class, then 80 percent of the movable aisle armrests must be in coach, with 20 percent in first class.

(d) For aircraft equipped with movable aisle armrests, you must configure cabins, or establish administrative systems, to ensure that passengers with mobility impairments or other passengers with a disability can readily identify and obtain seating in rows with movable aisle armrests. You must provide this information by specific seat and row number.

(e) You are not required to retrofit cabin interiors of existing aircraft to comply with the requirements of this section. However, if you replace any of an aircraft's aisle seats with newly manufactured seats, the new seats must include movable aisle armrests as required by this section. However, an aircraft is never required to have movable aisle armrests on more than one half of the aisle seats.

(f) As a foreign carrier, you must comply with the requirements of paragraphs (a) through (d) of this section with respect to new aircraft you operate that were initially ordered after May 13, 2009 or which are delivered after May 13, 2010. As a U.S. carrier, the requirements of paragraphs (a), (b), (d), and (e) apply to you with respect to new aircraft you operate that were initially ordered after April 5, 1990, or which are delivered after April 5, 1992**.** As a U.S. carrier, paragraph (c) of this section applies to you with respect to new aircraft you operate that were initially ordered after May 13, 2009 or which were delivered after May 13, 2010.

(g) As a foreign carrier, you must comply with the requirements of paragraph (e) of this section with respect to seats ordered after May 13, 2009.

§382.63 What are the requirements for accessible lavatories?

(a) As a carrier, you must ensure that aircraft with more than one aisle in which lavatories are provided shall include at least one accessible lavatory.

(1) The accessible lavatory must permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair.

(2) The accessible lavatory must afford privacy to persons using the on-board wheelchair equivalent to that afforded ambulatory users.

(3) The lavatory shall provide door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments.

(b) With respect to aircraft with only one aisle in which lavatories are provided, you may, but are not required to, provide an accessible lavatory.

(c) You are not required to retrofit cabin interiors of existing aircraft to comply with the requirements of this section. However, if you replace a lavatory on an aircraft with more than one aisle, you must replace it with an accessible lavatory.

(d) As a foreign carrier, you must comply with the requirements of paragraph (a) of this section with respect to new aircraft you operate that were initially ordered after May 13, 2009 or which are delivered after May 13, 2010. As a U.S. carrier, this requirement applies to you with respect to new aircraft you operate that were initially ordered after April 5, 1990, or which were delivered after April 5, 1992.

(e) As a foreign carrier, you must comply with the requirements of paragraph (c) of this section beginning May 13, 2009. As a U.S. carrier, these requirements apply to you with respect to new aircraft you operate that were initially ordered after April 5, 1990, or which were delivered after April 5, 1992.

§382.65 What are the requirements concerning on-board wheelchairs?

(a) As a carrier, you must equip aircraft that have more than 60 passenger seats, and that have an accessible lavatory (whether or not having such a lavatory is required by §382.63 of this Part) with an on-board wheelchair. The Aerospatiale/Aeritalia ATR-72 and the British Aerospace Advanced Turboprop (ATP), in configurations having between 60 and 70 passenger seats, are exempt from this requirement.

(b) If a passenger asks you to provide an on-board wheelchair on a particular flight, you must provide it if the aircraft being used for the flight has more than 60 passenger seats, even if the aircraft does not have an accessible lavatory.

(1) The basis of the passenger's request must be that he or she can use an inaccessible lavatory but cannot reach it from a seat without using an on-board wheelchair.

(2) You may require the passenger to provide the advance notice specified in §382.27 to receive this service.

(c) You must ensure that on-board wheelchairs meet the following standards:

(1) On-board wheelchairs must include footrests, armrests which are movable or removable, adequate occupant restraint systems, a backrest height that permits assistance to passengers in transferring, structurally sound handles for maneuvering the occupied chair, and wheel locks or another adequate means to prevent chair movement during transfer or turbulence.

(2) The chair must be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which it is to be used, and to be easily pushed, pulled, and turned in the cabin environment by carrier personnel.

(d) As a foreign carrier, you must meet this requirement as of May 13, 2010. As a U.S. carrier, you must meet this requirement by May 13, 2009.

§382.67 What is the requirement for priority space in the cabin to store passengers' wheelchairs?

(a) As a carrier, you must ensure that there is a priority space in the cabin of sufficient size to stow at least one typical adult-sized folding, collapsible, or break-down manual passenger wheelchair, the dimensions of which are within a space of 13 inches by 36 inches by 42 inches without having to remove the wheels or otherwise disassemble it. This requirement applies to any aircraft with 100 or more passenger seats; and

(b) This space must be other than the overhead compartments and under-seat spaces routinely used for passengers' carry-on items.

(c) As a foreign carrier, you must meet the requirement of paragraph (a) of this section for new aircraft ordered after May 13, 2009 or delivered after May 13, 2010. As a U.S. carrier, this requirement applies to you with respect to new aircraft you operate that were ordered after April 5, 1990, or which were delivered after April 5, 1992.

§382.69 What requirements must carriers meet concerning the accessibility of videos, DVDs, and other audio-visual presentations shown on- aircraft to individuals who are deaf or hard of hearing?

(a) As a carrier, you must ensure that all new videos, DVDs, and other audio-visual displays played on aircraft for safety purposes, and all such new audio-visual displays played on aircraft for informational purposes that were created under your control, are high-contrast captioned. The captioning must be in the predominant language or languages in which you communicate with passengers on the flight.

(b) The requirements of paragraph (a) of this section go into effect with respect to audio-visual displays used for safety purposes on November 10, 2009.

(c) Between May 13, 2009 and November 9, 2009, U.S. carriers must ensure that all videos, DVDs, and other audio-visual displays played on aircraft for safety purposes have open captioning or an inset for a sign language interpreter, unless such captioning or inset either would interfere with the video presentation so as to render it ineffective or would not be large enough to be readable, in which case these carriers must use an equivalent non-video alternative for transmitting the briefing to passengers with hearing impairments.

(d) The requirements of paragraph (a) of this section go into effect with respect to informational displays on January 8, 2010.

§382.71 What other aircraft accessibility requirements apply to carriers?

(a) As a carrier, you must maintain all aircraft accessibility features in proper working order.

(b) You must ensure that any replacement or refurbishing of the aircraft cabin or its elements does not reduce the accessibility of that element to a level below that specified for new aircraft in this Part.

Subpart F – Seating Accommodations

§382.81 For which passengers must carriers make seating accommodations?

As a carrier, you must provide the following seating accommodations to the following passengers on request, if the passenger self-identifies to you as having a disability specified in this section and the type of seating accommodation in question exists on the particular aircraft. Once the passenger self-identifies to you, you must ensure that the information is recorded and properly transmitted to personnel responsible for providing the accommodation.

(a) For a passenger who uses an aisle chair to access the aircraft and who cannot readily transfer over a fixed aisle armrest, you must provide a seat in a row with a movable aisle armrest. You must ensure that your personnel are trained in the location and proper use of movable aisle armrests, including appropriate transfer techniques. You must ensure that aisle seats with movable armrests are clearly identifiable.

(b) You must provide an adjoining seat for a person assisting a passenger with a disability in the following circumstances:

(1) When a passenger with a disability is traveling with a personal care attendant who will be performing a function for the individual during the flight that airline personnel are not required to perform (e.g., assistance with eating);

(2) When a passenger with a vision impairment is traveling with a reader/assistant who will be performing functions for the individual during the flight;

(3) When passenger with a hearing impairment is traveling with an interpreter who will be performing functions for the individual during the flight; or

(4) When you require a passenger to travel with a safety assistant (see §382.29).

(c) For a passenger with a disability traveling with a service animal, you must provide, as the passenger requests, either a bulkhead seat or a seat other than a bulkhead seat.

(d) For a passenger with a fused or immobilized leg, you must provide a bulkhead seat or other seat that provides greater legroom than other seats, on the side of an aisle that better accommodates the individual's disability.

§382.83 Through what mechanisms do carriers make seating accommodations?

(a) If you are a carrier that provides advance seat assignments to passengers (i.e., offer seat assignments to passengers before the day of the flight), you must comply with the requirements of §382.81 of this Part by any of the following methods:

(1) You may "block" an adequate number of the seats used to provide the seating accommodations required by §382.81.

(i) You must not assign these seats to passengers who do not meet the criteria of §382.81 until 24 hours before the scheduled departure of the flight.

(ii) At any time up until 24 hours before the scheduled departure of the flight, you must assign a seat meeting the requirements of this section to a passenger with a disability meeting one or more of the requirements of §382.81 who requests it, at the time the passenger initially makes the request.

(iii) If a passenger with a disability specified in §382.81 does not make a request at least 24 hours before the scheduled departure of the flight, you must meet the passenger's request to the extent practicable, but you are not required to reassign a seat assigned to another passenger in order to do so.

(2) You may designate an adequate number of the seats used to provide seating accommodations required by §382.81 as "priority seats" for passengers with a disability.

(i) You must provide notice that all passengers assigned these seats (other than passengers with a disability listed in §382.81 of this Part) are subject to being reassigned to another seat if necessary to provide a seating accommodation required by this section.

(ii) You may provide this notice through your computer reservation system, verbal information provided by reservation personnel, ticket notices, gate announcements, counter signs, seat cards or notices, frequent-flier literature, or other appropriate means.

(iii) You must assign a seat meeting the requirements of this section to a passenger with a disability listed in §382.81 of this Part who requests the accommodation at the time the passenger makes the request. You may require such a passenger to check in and request the seating accommodation at least one hour before the standard check-in time for the flight. If all designated priority seats that would accommodate the passenger have been assigned to other passengers, you must reassign the seats of the other passengers as needed to provide the requested accommodation.

(iv) If a passenger with a disability listed in §382.81 does not check in at least an hour before the standard check-in time for the general public, you must meet the individual's request to the extent practicable, but you are not required to reassign a seat assigned to another passenger in order to do so.

(b) If you assign seats to passengers, but not until the date of the flight, you must use the “priority seating” approach of paragraph (a)(2) of this section.

(c) If you do not provide advance seat assignments to passengers, you must allow passengers specified in §382.81 to board the aircraft before other passengers, including other "preboarded" passengers, so that the passengers needing seating accommodations can select seats that best meet their needs.

(d) As a carrier, if you wish to use a different method of providing seating assignment accommodations to passengers with disabilities from those specified in this subpart, you must obtain the written concurrence of the Department of Transportation. Contact the Department at the address cited in §382.159 of this Part.

§382.85 What seating accommodations must carriers make to passengers in circumstances not covered by §382.81 (a) – (d)?

As a carrier, you must provide the following seating accommodations to a passenger who self-identifies as having a disability other than one in the four categories listed in §382.81 (a) – (d) of this Part and as needing a seat assignment accommodation in order to readily access and use the carrier's air transportation services:

(a) As a carrier that assigns seats in advance, you must provide accommodations in the following ways:

(1) If you use the "seat-blocking" mechanism of §382.83(a)(1) of this Part, you must implement the requirements of this section as follows:

(i) When a passenger with a disability not described in §382.81(a) – (d) of this Part makes a reservation more than 24 hours before the scheduled departure time of the flight, you are not required to offer the passenger one of the seats blocked for the use of passengers with a disability listed under §382.81.

(ii) However, you must assign to the passenger any seat, not already assigned to another passenger that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(2) If you use the "designated priority seats" mechanism of §382.83(a)(2) of this Part, you must implement the requirements of this section as follows:

(i) When a passenger with a disability not described in §382.81 makes a reservation, you must assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request. You may require a passenger making such a request to check in one hour before the standard check-in time for the flight.

(ii) If such a passenger is assigned to a designated priority seat, he or she is subject to being reassigned to another seat as provided in §382.83(a)(2)(i) of this subpart.

(b) On flights where advance seat assignments are not offered, you must provide seating accommodations under this section by allowing passengers to board the aircraft before other passengers, including other "preboarded" passengers, so that the individuals needing seating accommodations can select seats that best meet their needs.

(c) If you assign seats to passengers, but not until the date of the flight, you must use the "priority seating" approach of section 382.83(a)(2).

§382.87 What other requirements pertain to seating for passengers with a disability?

(a) As a carrier, you must not exclude any passenger with a disability from any seat or require that a passenger with a disability sit in any particular seat, on the basis of disability, except to comply with FAA or applicable foreign government safety requirements.

(b) In responding to requests from individuals for accommodations under this subpart, you must comply with FAA and applicable foreign government safety requirements, including those pertaining to exit seating (see 14 CFR §§121.585 and 135.129).

(c) If a passenger's disability results in involuntary active behavior that would result in the person properly being refused transportation under §382.19, and the passenger could be transported safely if seated in another location, you must offer to let the passenger sit in that location as an alternative to being refused transportation.

(d) If you have already provided a seat to a passenger with a disability to furnish an accommodation required by this subpart, you must not (except in the circumstance described in §382.85(a)(2)(ii)) reassign that passenger to another seat in response to a subsequent request from another passenger with a disability, without the first passenger's consent.

(e) You must never deny transportation to any passenger in order to provide accommodations required by this subpart.

(f) You are not required to furnish more than one seat per ticket or to provide a seat in a class of service other than the one the passenger has purchased in order to provide an accommodation required by this Part.

Subpart G Boarding, Deplaning, and Connecting Assistance

§382.91 What assistance must carriers provide to passengers with a disability in moving within the terminal?

(a) As a carrier, you must provide or ensure the provision of assistance requested by or on behalf of a passenger with a disability, or offered by carrier or airport operator personnel and accepted by a passenger with a disability, in transportation between gates to make a connection to another flight. If the arriving flight and the departing connecting flight are operated by different carriers,

the carrier that operated the arriving flight (i.e., the one that operates the first of the two flights that are connecting) is responsible for providing or ensuring the provision of this assistance, even if the passenger holds a separate ticket for the departing flight. It is permissible for the two carriers to mutually agree that the carrier operating the departing connecting flight (i.e., the second flight of the two) will provide this assistance, but the carrier operating the arriving flight remains responsible under this section for ensuring that the assistance is provided.

(b) You must also provide or ensure the provision of assistance requested by or on behalf of a passenger with a disability, or offered by carrier or airport operator personnel and accepted by a passenger with a disability, in moving from the terminal entrance (or a vehicle drop-off point adjacent to the entrance) through the airport to the gate for a departing flight, or from the gate to the terminal entrance (or a vehicle pick-up point adjacent to the entrance after an arriving flight).

(1) This requirement includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage claim.

(2) This requirement also includes a brief stop upon the passenger's request at the entrance to a rest room (including an accessible rest room when requested). As a carrier, you are required to make such a stop only if the rest room is available on the route to the destination of the enplaning, deplaning, or connecting assistance and you can make the stop without unreasonable delay. To receive such assistance, the passenger must self-identify as being an individual with a disability needing the assistance.

(c) As a carrier at a U.S. airport, you must, on request, in cooperation with the airport operator, provide for escorting a passenger with a service animal to an animal relief area provided under §382.51(a)(5) of this Part.

(d) As part of your obligation to provide or ensure the provision of assistance to passengers with disabilities in moving through the terminal (e.g., between the terminal entrance and the gate, between gate and aircraft, from gate to a baggage claim area), you must assist passengers who are unable to carry their luggage because of a disability with transporting their gate-checked or carry-on luggage. You may request the credible verbal assurance that a passenger cannot carry the luggage in question. If a passenger is unable to provide credible assurance, you may require the passenger to provide documentation as a condition of providing this service.

§382.93 Must carriers offer preboarding to passengers with a disability?

As a carrier, you must offer preboarding to passengers with a disability who self-identify at the gate as needing additional time or assistance to board, stow accessibility equipment, or be seated.

§382. 95 What are carriers' general obligations with respect to boarding and deplaning assistance?

(a) As a carrier, you must promptly provide or ensure the provision of assistance requested by or on behalf of passengers with a disability, or offered by carrier or airport operator personnel and accepted by passengers with a disability, in enplaning and deplaning. This assistance must include, as needed, the services of personnel and the use of ground wheelchairs, accessible motorized carts, boarding wheelchairs, and/or on-board wheelchairs where provided in accordance with this Part, and ramps or mechanical lifts.

(b) As a carrier, you must, except as otherwise provided in this subpart, provide boarding and deplaning assistance through the use of lifts or ramps at any U.S. commercial service airport with 10,000 or more annual enplanements where boarding and deplaning by level-entry loading bridges or accessible passenger lounges is not available.

§382.97 To which aircraft does the requirement to provide boarding and deplaning assistance through the use of lifts apply?

The requirement of section 382.95(b) of this Part to provide boarding and deplaning assistance through the use of lifts applies with respect to all aircraft with a passenger capacity of 19 or more, with the following exceptions:

(a) Float planes;

(b) The following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31 and 32, the Beech 1900 (C and D models), and the Embraer EMB-120;

(c) Any other aircraft model determined by the Department of Transportation to be unsuitable for boarding and deplaning assistance by lift, ramp, or other suitable device. The Department will make such a determination if it concludes that –

(1) No existing boarding and deplaning assistance device on the market will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees, or

(2) Internal barriers are present in the aircraft that would preclude passengers who use a boarding or aisle chair from reaching a non-exit row seat.

§382.99 What agreements must carriers have with the airports they serve?

(a) As a carrier, you must negotiate in good faith with the airport operator of each U.S. airport described in §382.95(b) to ensure the provision of lifts for boarding and deplaning where level-entry loading bridges are not available.

(b) You must have a written, signed agreement with the airport operator allocating responsibility for meeting the boarding and deplaning assistance requirements of this subpart between or

among the parties. For foreign carriers, with respect to all covered aircraft, this requirement becomes effective May 13, 2010.

(c) For foreign carriers, the agreement with a U.S. airport must provide that all actions necessary to ensure accessible boarding and deplaning for passengers with a disability are completed as soon as practicable, but no later than May 13, 2011.

(d) Under the agreement, you may, as a carrier, require that passengers wishing to receive boarding and deplaning assistance requiring the use of a lift for a flight check in for the flight one hour before the standard check-in time for the flight. If the passenger checks in after this time, you must nonetheless provide the boarding and deplaning assistance by lift if you can do so by making a reasonable effort, without delaying the flight.

(e) The agreement must ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(f) All carriers and airport operators involved are jointly and severally responsible for the timely and complete implementation of the agreement.

(g) You must make a copy of this agreement available, on request, to representatives of the Department of Transportation.

§382.101 What other boarding and deplaning assistance must carriers provide?

When level-entry boarding and deplaning assistance is not required to be provided under this subpart, you must, as a carrier, provide or ensure the provision of boarding and deplaning assistance by any available means to which the passenger consents. However, you must never use hand-carrying (i.e., directly picking up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft), even if the passenger consents, unless this is the only way of evacuating the individual in the event of an emergency. The situations in which level-entry boarding is not required but in which you must provide this boarding and deplaning assistance include, but are not limited to, the following:

(a) The boarding or deplaning process occurs at a U.S. airport that is not a commercial service airport that has 10,000 or more enplanements per year;

(b) The boarding or deplaning process occurs at a foreign airport;

(c) You are using an aircraft subject to an exception from the lift boarding and deplaning assistance requirements under §382.97 (a) – (c) of this subpart;

(d) The deadlines established in §382.99(c) have not yet passed; and

(e) Circumstances beyond your control (e.g., unusually severe weather; unexpected mechanical problems) prevent the use of a lift.

§382.103 May a carrier leave a passenger unattended in a wheelchair or other device?

As a carrier, you must not leave a passenger who has requested assistance required by this subpart unattended by the personnel responsible for enplaning, deplaning, or connecting assistance in a ground wheelchair, boarding wheelchair, or other device, in which the passenger is not independently mobile, for more than 30 minutes. This requirement applies even if another person (e.g., family member, personal care attendant) is accompanying the passenger, unless the passenger explicitly waives the obligation.

§ 382.105 What is the responsibility of carriers at foreign airports at which airport operators have responsibility for enplaning, deplaning, and connecting assistance?

At a foreign airport at which enplaning, deplaning, or connecting assistance is provided by the airport operator, rather than by carriers, as a carrier you may rely on the services provided by the airport operator to meet the requirements of this subpart. If the services provided by the airport operator are not sufficient to meet the requirements of this subpart, you must supplement the airport operator's services to ensure that these requirements are met. If you believe you are precluded by law from supplementing the airport operator's services, you may apply for a conflict of laws waiver under §382.9 of this Part.

Subpart H – Services on Aircraft

§382.111 – What services must carriers provide to passengers with a disability on board the aircraft?

As a carrier, you must provide services within the aircraft cabin as requested by or on behalf of passengers with a disability, or when offered by carrier personnel and accepted by passengers with a disability, as follows:

(a) Assistance in moving to and from seats, as part of the enplaning and deplaning processes;

(b) Assistance in preparation for eating, such as opening packages and identifying food;

(c) If there is an on-board wheelchair on the aircraft, assistance with the use of the on-board wheelchair to enable the person to move to and from a lavatory;

(d) Assistance to a semi-ambulatory person in moving to and from the lavatory, not involving lifting or carrying the person; or

(e) Assistance in stowing and retrieving carry-on items, including mobility aids and other assistive devices stowed in the cabin (see also 382.91(c)). To receive such assistance, the passenger must self-identify as being an individual with a disability needing the assistance.

(f) Effective communication with passengers who have vision impairments and/or who are deaf or hard-of-hearing, so that these passengers have timely access to information the carrier provides to other passengers (e.g., weather, on-board services, flight delays, connecting gates at the next airport).

§382.113 What services are carriers not required to provide to passengers with a disability on board the aircraft?

As a carrier, you are not required to provide extensive special assistance to qualified individuals with a disability. For purposes of this section, extensive special assistance includes the following activities:

(a) Assistance in actual eating;

(b) Assistance within the restroom or assistance at the passenger's seat with elimination functions; and

(c) Provision of medical services.

§382.115 What requirements apply to on-board safety briefings?

As a carrier, you must comply with the following requirements with respect to on-board safety briefings:

(a) You must conduct an individual safety briefing for any passenger where required by 14 CFR 121.571 (a)(3) and (a)(4), 14 CFR 135.117(b), or other FAA requirements.

(b) You may offer an individual briefing to any other passenger, but you may not require an individual to have such a briefing except as provided in paragraph (a) of this section.

(c) You must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that carrier personnel impose such a requirement on all passengers with respect to the general safety briefing. You must not take any action adverse to a qualified individual with a disability on the basis that the person has not "accepted" the briefing.

(d) When you conduct an individual safety briefing for a passenger with a disability, you must do so as inconspicuously and discreetly as possible.

(e) The accessibility requirements for onboard video safety presentations that carriers must meet are outlined in section 382.69.

§382.117 Must carriers permit passengers with a disability to travel with service animals?

(a) As a carrier, you must permit a service animal to accompany a passenger with a disability.

(1) You must not deny transportation to a service animal on the basis that its carriage may offend or annoy carrier personnel or persons traveling on the aircraft.

(2) On a flight segment scheduled to take 8 hours or more, you may, as a condition of permitting a service animal to travel in the cabin, require the passenger using the service animal to provide documentation that the animal will not need to relieve itself on the flight or that the animal can relieve itself in a way that does not create a health or sanitation issue on the flight.

(b) You must permit the service animal to accompany the passenger with a disability at any seat in which the passenger sits, unless the animal obstructs an aisle or other area that must remain unobstructed to facilitate an emergency evacuation.

(c) If a service animal cannot be accommodated at the seat location of the passenger with a disability who is using the animal, you must offer the passenger the opportunity to move with the animal to another seat location, if present on the aircraft, where the animal can be accommodated.

(d) As evidence that an animal is a service animal, you must accept identification cards, other written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal.

(e) If a passenger seeks to travel with an animal that is used as an emotional support or psychiatric service animal, you are not required to accept the animal for transportation in the cabin unless the passenger provides you current documentation (i.e., no older than one year from the date of the passengers scheduled initial flight) on the letterhead of a licensed mental health professional including a medical doctor specifically treating the passenger's mental or emotional disability (e.g., psychiatrist, psychologist, licensed clinical social worker) stating the following:

(1) The passenger has a mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition (DSM IV);

(2) The passenger needs the emotional support or psychiatric service animal as an accommodation for air travel and/or for activity at the passenger's destination;

(3) The individual providing the assessment is a licensed mental health professional, and the passenger is under his or her professional care; and

(4) The date and type of the mental health professional's license and the state or other jurisdiction in which it was issued.

(f) You are never required to accommodate certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders) as service animals in the cabin. With respect to all other animals, including unusual or exotic animals that are presented as service animals (e.g., miniature horses, pigs, monkeys), as a carrier you must determine whether any factors preclude

their traveling in the cabin as service animals (e.g., whether the animal is too large or heavy to be accommodated in the cabin, whether the animal would pose a direct threat to the health or safety of others, whether it would cause a significant disruption of cabin service, whether it would be prohibited from entering a foreign country that is the flight's destination). If no such factors preclude the animal from traveling in the cabin, you must permit it to do so. However, as a foreign carrier, you are not required to carry service animals other than dogs.

(g) Whenever you decide not to accept an animal as a service animal, you must explain the reason for your decision to the passenger and document it in writing. A copy of the explanation must be provided to the passenger either at the airport, or within 10 calendar days of the incident.

(h) You must promptly take all steps necessary to comply with foreign regulations (e.g., animal health regulations) needed to permit the legal transportation of a passenger's service animal from the U.S. into a foreign airport.

(i) Guidance concerning the carriage of service animals generally is found in the preamble to this rule. Guidance on the steps necessary to legally transport service animals on flights from the U.S. into the United Kingdom is found in 72 FR 8268-8277, (February 26, 2007).

§382.119 What information must carriers give individuals with vision or hearing impairment on aircraft?

(a) As a carrier, you must ensure that passengers with a disability who identify themselves as needing visual or hearing assistance have prompt access to the same information provided to other passengers on the aircraft as described in paragraph (b) of this section, to the extent that it does not interfere with crewmembers' safety duties as set forth in FAA and applicable foreign regulations.

(b) The covered information includes but is not limited to the following: information concerning flight safety, procedures for takeoff and landing, flight delays, schedule or aircraft changes that affect the travel of persons with disabilities, diversion to a different airport, scheduled departure and arrival time, boarding information, weather conditions at the flight's destination, beverage and menu information, connecting gate assignments, baggage claim, individuals being paged by airlines, and emergencies (*e.g.*, fire or bomb threat).

Subpart I – Stowage of Wheelchairs, Other Mobility Aids, and Other Assistive Devices

§382.121 What mobility aids and other assistive devices may passengers with a disability bring into the aircraft cabin?

(a) As a carrier, you must permit passengers with a disability to bring the following kinds of items into the aircraft cabin, provided that they can be stowed in designated priority storage areas

or in overhead compartments or under seats, consistent with FAA, PHMSA, TSA, or applicable foreign government requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(1) Manual wheelchairs, including folding or collapsible wheelchairs;

(2) Other mobility aids, such as canes (including those used by persons with impaired vision), crutches, and walkers; and

(3) Other assistive devices for stowage or use within the cabin (e.g., prescription medications and any medical devices needed to administer them such as syringes or auto-injectors, vision-enhancing devices, and POCs, ventilators and respirators that use non-spillable batteries, as long as they comply with applicable safety, security and hazardous materials rules).

(b) In implementing your carry-on baggage policies, you must not count assistive devices (including the kinds of items listed in paragraph (a) of this section) toward a limit on carry-on baggage.

§382.123 What are the requirements concerning priority cabin stowage for wheelchairs and other assistive devices?

(a) The following rules apply to the stowage of passengers' wheelchairs or other assistive devices in the priority stowage area provided for in §382.67 of this Part:

(1) You must ensure that a passenger with a disability who uses a wheelchair and takes advantage of the opportunity to preboard the aircraft can stow his or her wheelchair in this area, with priority over other items brought onto the aircraft by other passengers or crew enplaning at the same airport, consistent with FAA, PHMSA, TSA, or applicable foreign government requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items. You must move items that you or your personnel have placed in the priority stowage area (e.g., crew luggage, an on-board wheelchair) to make room for the passenger's wheelchair, even if these items were stowed in the priority stowage area before the passenger seeking to stow a wheelchair boarded the aircraft (e.g., the items were placed there on a previous leg of the flight).

(2) You must also ensure that a passenger with a disability who takes advantage of the opportunity to preboard the aircraft can stow other assistive devices in this area, with priority over other items (except wheelchairs) brought onto the aircraft by other passengers enplaning at the same airport consistent with FAA, PHMSA, TSA, or applicable foreign government requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(3) You must ensure that a passenger with a disability who does not take advantage of the opportunity to preboard is able to use the area to stow his or her wheelchair or other assistive device on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the area.

(b) If a wheelchair exceeds the space provided for in §382.67 of this Part while fully assembled but will fit if wheels or other components can be removed without the use of tools, you must remove the applicable components and stow the wheelchair in the designated space. In this case, you must stow the removed components in areas provided for stowage of carry-on luggage.

(c) You must not use the seat-strapping method of carrying a wheelchair in any aircraft you order after May 13, 2009 or which are delivered after May 13, 2011. Any such aircraft must have the designated priority stowage space required by section 382.67, and you must permit passengers to use the space as provided in this section 382.123.

§382.125 What procedures do carriers follow when wheelchairs, other mobility aids, and other assistive devices must be stowed in the cargo compartment?

(a) As a carrier, you must stow wheelchairs, other mobility aids, or other assistive devices in the baggage compartment if an approved stowage area is not available in the cabin or the items cannot be transported in the cabin consistent with FAA, PHMSA, TSA, or applicable foreign government requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(b) You must give wheelchairs, other mobility aids, and other assistive devices priority for stowage in the baggage compartment over other cargo and baggage. Only items that fit into the baggage compartment and can be transported consistent with FAA, PHMSA, TSA, or applicable foreign government requirements concerning security, safety, and hazardous materials with respect to the stowage of items in the baggage compartment need be transported. Where this priority results in other passengers' baggage being unable to be carried on the flight, you must make your best efforts to ensure that the other baggage reaches the passengers' destination on the carrier’s next flight to the destination.

(c) You must provide for the checking and timely return of passengers' wheelchairs, other mobility aids, and other assistive devices as close as possible to the door of the aircraft, so that passengers may use their own equipment to the extent possible, except

(1) Where this practice would be inconsistent with Federal regulations governing transportation security or the transportation of hazardous materials; or

(2) When the passenger requests the return of the items at the baggage claim area instead of at the door of the aircraft.

(d) In order to achieve the timely return of wheelchairs, you must ensure that passengers' wheelchairs, other mobility aids, and other assistive devices are among the first items retrieved from the baggage compartment.

§382.127 What procedures apply to stowage of battery-powered mobility aids?

(a) Whenever baggage compartment size and aircraft airworthiness considerations do not prohibit doing so, you must, as a carrier, accept a passenger's battery-powered wheelchair or other similar mobility device, including the battery, as checked baggage, consistent with the requirements of 49 CFR 175.10(a)(15) and (16) and the provisions of paragraphs (b) - (f) of this section.

(b) You may require that passengers with a disability wishing to have battery-powered wheelchairs or other similar mobility devices transported on a flight check in one hour before the check-in time for the general public. If the passenger checks in after this time, you must nonetheless carry the wheelchair or other similar mobility device if you can do so by making a reasonable effort, without delaying the flight.

(c) If the battery on the passenger's wheelchair or other similar mobility device has been labeled by the manufacturer as non-spillable as provided in 49 CFR 173.159(d)(2), or if a battery-powered wheelchair with a spillable battery can be loaded, stored, secured and unloaded in an upright position, you must not require the battery to be removed and separately packaged. Notwithstanding this requirement, you must remove and package separately any battery that is inadequately secured to a wheelchair or, for a spillable battery, is contained in a wheelchair that cannot be loaded, stowed, secured and unloaded in an upright position, in accordance with 49 CFR 175.10(a)(15) and (16). A damaged or leaking battery should not be transported.

(d) When it is necessary to detach the battery from the wheelchair, you must, upon request, provide packaging for the battery meeting the requirements of 49 CFR 175.10(a)(15) and (16) and package the battery. You may refuse to use packaging materials or devices other than those you normally use for this purpose.

(e) You must not disconnect the battery on wheelchairs or other mobility devices equipped with a non-spillable battery completely enclosed within a case or compartment integral to the design of the device unless an FAA or PHMSA safety regulation, or an applicable foreign safety regulation having mandatory legal effect, requires you to do so.

(f) You must not drain batteries.

§382.129 What other requirements apply when passengers' wheelchairs, other mobility aids, and other assistive devices must be disassembled for stowage?

(a) As a carrier, you must permit passengers with a disability to provide written directions concerning the disassembly and reassembly of their wheelchairs, other mobility aids, and other assistive devices. You must carry out these instructions to the greatest extent feasible, consistent with FAA, PHMSA, TSA, or applicable foreign government requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(b) When wheelchairs, other mobility aids, or other assistive devices are disassembled by the carrier for stowage, you must reassemble them and ensure their prompt return to the passenger.

You must return wheelchairs, other mobility aids, and other assistive devices to the passenger in the condition in which you received them.

§382.131 Do baggage liability limits apply to mobility aids and other assistive devices?

With respect to transportation to which 14 CFR Part 254 applies, the limits to liability for loss, damage, or delay concerning wheelchairs or other assistive devices provided in Part 254 do not apply. The basis for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device shall be the original purchase price of the device.

§ 382.133 What are the requirements concerning the evaluation and use of passenger-supplied electronic devices that assist passengers with respiration in the cabin during flight?

(a) Except for on-demand air taxi operators, as a U.S. carrier conducting passenger service you must permit any individual with a disability to use in the passenger cabin during air transportation, a ventilator, respirator, continuous positive airway pressure machine, or an FAA-approved portable oxygen concentrator (POC) on all flights operated on aircraft originally designed to have a maximum passenger capacity of more than 19 seats, unless:

(1) the device does not meet applicable FAA requirements for medical portable electronic devices and does not display a manufacturer's label that indicates the device meets those FAA requirements, or

(2) the device cannot be stowed and used in the passenger cabin consistent with applicable TSA, FAA, and PHMSA regulations.

(b) Except for foreign carriers conducting operations of a nature equivalent to on-demand air taxi operations by a U.S. carrier, as a foreign carrier conducting passenger service you must permit any individual with a disability to use a ventilator, respirator, continuous positive airway pressure machine, or portable oxygen concentrator (POC) of a kind equivalent to an FAA-approved POC for U.S. carriers in the passenger cabin during air transportation to, from or within the United States, on all aircraft originally designed to have a maximum passenger capacity of more than 19 seats unless:

(1) the device does not meet requirements for medical portable electronic devices set by the foreign carrier's government if such requirements exist and/or it does not display a manufacturer's label that indicates the device meets those requirements, or

(2) the device does not meet requirements for medical portable electronic devices set by the FAA for U.S. carriers and does not display a manufacturer's label that indicates the device meets those FAA requirements in circumstances where requirements for medical portable electronic devices have not been set by the foreign carrier's government and the foreign carrier elects to apply FAA requirements for medical portable electronic devices, or

(3) the device cannot be stowed and used in the passenger cabin consistent with applicable TSA, FAA and PHMSA regulations, and the safety or security regulations of the foreign carrier's government.

(c) As a U.S. carrier, you must provide information during the reservation process as indicated in paragraphs (c)(1) through (c)(6) of this section upon inquiry from an individual concerning the use in the cabin during air transportation of a ventilator, respirator, continuous positive airway machine, or an FAA-approved POC. The following information must be provided:

(1) the device must be labeled by the manufacturer to reflect that it has been tested to meet applicable FAA requirements for medical portable electronic devices;

(2) the maximum weight and dimensions (length, width, height) of the device to be used by an individual that can be accommodated in the aircraft cabin consistent with FAA safety requirements;

(3) the requirement to bring an adequate number of batteries as outlined in paragraph (f)(2) of this section and to ensure that extra batteries carried onboard to power the device are packaged and protected from short circuit and physical damage in accordance with SFAR 106, Section 3 (b)(6);

(4) any requirement, if applicable, that an individual contact the carrier operating the flight 48 hours before scheduled departure to learn the expected maximum duration of his/her flight in order to determine the required number of batteries for his/her particular ventilator, respirator, continuous positive airway pressure machine, or POC;

(5) any requirement, if applicable, of the carrier operating the flight for an individual planning to use such a device to check-in up to one hour before that carrier's general check-in deadline; and

(6) for POCs, the requirement of paragraph 382.23(b)(1)(ii) of this Part to present to the operating carrier at the airport a physician's statement (medical certificate) prepared in accordance with applicable federal aviation regulations.

(d) As a foreign carrier operating flights to, from or within the United States, you must provide the information during the reservation process as indicated in paragraphs (d)(1) through (d)(7) of this section upon inquiry from an individual concerning the use in the cabin during air transportation on such a flight of a ventilator, respirator, continuous positive airway machine, or POC of a kind equivalent to an FAA-approved POC for U.S. carriers:

(1) the device must be labeled by the manufacturer to reflect that it has been tested to meet requirements for medical portable electronic devices set by the foreign carrier's government if such requirements exist;

(2) the device must be labeled by the manufacturer to reflect that it has been tested to meet requirements for medical portable electronic devices set by the FAA for U.S. carriers if requirements for medical portable electronic devices have not been set by the foreign carrier's government and the foreign carrier elects to apply FAA requirements for medical portable electronic devices;

(3) the maximum weight and dimensions (length, width, height) of the device to be used by an individual that can be accommodated in the aircraft cabin consistent with the safety regulations of the foreign carrier's government;

(4) the requirement to bring an adequate number of batteries as outlined in paragraph (f)(2) of this section and to ensure that extra batteries carried onboard to power the device are packaged in accordance with applicable government safety regulations;

(5) any requirement, if applicable, that an individual contact the carrier operating the flight 48 hours before scheduled departure to learn the expected maximum duration of his/her flight in order to determine the required number of batteries for his/her particular ventilator, respirator, continuous positive airway pressure machine, or POC;

(6) any requirement, if applicable, of the carrier operating the flight for an individual planning to use such a device to check-in up to one hour before that carrier's general check-in deadline; and

(7) any requirement, if applicable, that an individual who wishes to use a POC onboard an aircraft present to the operating carrier at the airport a physician's statement (medical certificate).

(e) In the case of a codeshare itinerary, the carrier whose code is used on the flight must either inform the individual inquiring about using a ventilator, respirator, CPAP machine or POC onboard an aircraft to contact the carrier operating the flight for information about its requirements for use of such devices in the cabin, or provide such information on behalf of the codeshare carrier operating the flight.

(f)(1) As a U.S. or foreign carrier subject to paragraph (a) or (b) of this section, you must inform any individual who has advised you that he or she plans to operate his/her device in the aircraft cabin, within 48 hours of his/her making a reservation or 24 hours before the scheduled departure date of his/her flight, whichever date is earlier, of the expected maximum flight duration of each segment of his/her flight itinerary.

(2) You may require an individual to bring an adequate number of fully charged batteries onboard, based on the battery manufacturer's estimate of the hours of battery life while the device is in use and the information provided in the physician's statement, to power the device for not less than 150% of the expected maximum flight duration.

(3) If an individual does not comply with the conditions for acceptance of a medical portable electronic device as outlined in this section, you may deny boarding to the individual in accordance with 14 CFR 382.19(c) and in that event you must provide a written explanation to the individual in accordance with 14 CFR 382.19(d).

Subpart J - Training and Administrative Provisions

§382.141 What training are carriers required to provide for their personnel?

(a) As a carrier that operates aircraft with 19 or more passenger seats, you must provide training, meeting the requirements of this paragraph, for all personnel who deal with the traveling public, as appropriate to the duties of each employee.

(1) You must ensure training to proficiency concerning:

(i) The requirements of this Part and other applicable Federal regulations affecting the provision of air travel to passengers with a disability;

(ii) Your procedures, consistent with this Part, concerning the provision of air travel to passengers with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability; and

(iii) For those personnel involved in providing boarding and deplaning assistance, the use of the boarding and deplaning assistance equipment used by the carrier and appropriate boarding and deplaning assistance procedures that safeguard the safety and dignity of passengers.

(2) You must also train such employees with respect to awareness and appropriate responses to passengers with a disability, including persons with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of individuals with a disability.

(3) You must also train these employees to recognize requests for communication accommodation from individuals whose hearing or vision is impaired and to use the most common methods for communicating with these individuals that are readily available, such as writing notes or taking care to enunciate clearly, for example. Training in sign language is not required. You must also train these employees to recognize requests for communication accommodation from deaf-blind passengers and to use established means of communicating with these passengers when they are available, such as passing out Braille cards if you have them, reading an information sheet that a passenger provides, or communicating with a passenger through an interpreter, for example.

(4) You must consult with organizations representing persons with disabilities in your home country when developing your training program and your policies and procedures. If such organizations are not available in your home country, you must consult with individuals with disabilities and/or international organizations representing individuals with disabilities.

(5) You must ensure that all personnel who are required to receive training receive refresher training on the matters covered by this section, as appropriate to the duties of each employee, as needed to maintain proficiency. You must develop a program that will result in each such employee receiving refresher training at least once every three years. The program must describe how employee proficiency will be maintained.

(6) You must provide, or ensure that your contractors provide, training to the contractors' employees concerning travel by passengers with a disability. This training is required only for those contractor employees who deal directly with the traveling public, and it must be tailored to the employees' functions. Training for contractor employees must meet the requirements of paragraphs (a)(1) through (a)(5) of this section.

(7) The employees you designate as CROs, for purposes of §382.151 of this Part, must receive training concerning the requirements of this Part and the duties of a CRO.

(8) Personnel subject to training required under this Part, who are already employed on May 13, 2009, must be trained one time in the changes resulting from the reissuance of this Part.

(b) If you are a carrier that operates only aircraft with fewer than 19 passenger seats, you must provide training for flight crewmembers and appropriate personnel to ensure that they are familiar with the matters listed in paragraphs (a)(1) and (a)(2) of this section and that they comply with the requirements of this Part.

§382.143 When must carriers complete training for their personnel?

(a) As a U.S. carrier, you must meet the training requirements of §382.141 by the following times.

(1) Employees designated as CROs shall receive training concerning the requirements of this Part and the duties of a CRO before assuming their duties under §382.151 (see §382.141(a)(7)). You must ensure that all employees performing the CRO function receive annual refresher training concerning their duties and the provisions of this regulation. The one-time training for CROs about the changes to Part 382 must take place by May 13, 2009. For employees who have already received CRO training, this training may be limited to changes from the previous version of Part 382.

(2) The one-time training for existing employees about changes to Part 382 (see §382.141(a)(8)) must take place for each such employee no later than the next scheduled recurrent training taking place after May 13, 2009, or within one year after May 13, 2009, whichever comes first.

(3) For crewmembers subject to training requirements under 14 CFR Part 121 or 135 whose employment in any given position commences after May 13, 2009, before they assume their duties; and

(4) For other personnel whose employment in any given position commences after May 13, 2009, within 60 days after the date on which they assume their duties.

(b) As a foreign carrier that operates aircraft with 19 or more passenger seats, you must provide training meeting the requirements of §382.141(a) for all personnel who deal with the traveling public in connection with flights that begin or end at a U.S. airport, as appropriate to the duties of each employee. You must ensure that personnel required to receive training complete the training by the following times:

(1) Employees designated as CROs shall receive training in accordance with paragraph (a)(1) of this section, by May 13, 2009.

(2) For crewmembers and other personnel who are employed on May 13, 2009, within one year after that date;

(3) For crewmembers whose employment commences after May 13, 2010, before they assume their duties;

(4) For other personnel whose employment in any given position commences after May 13, 2010, or within 60 days after the date on which they assume their duties; and

(5) For crewmembers and other personnel whose employment in any given position commences after May 13, 2009, but before May 13, 2010, by May 13, 2010 or a date 60 days after the date of their employment, whichever is later.

§382.145 What records concerning training must carriers retain?

(a) As a carrier that operates aircraft with 19 or more passenger seats, you must incorporate procedures implementing the requirements of this Part in the manuals or other guidance or instructional materials provided for the carrier and contract personnel who provide services to passengers, including, but not limited to, pilots, flight attendants, reservation and ticket counter personnel, gate agents, ramp and baggage handling personnel, and passenger service office personnel. You must retain these records for review by the Department on the Department's request. If, upon such review, the Department determines that any portion of these materials must be changed in order to comply with this Part, DOT will direct you to make appropriate changes. You must incorporate and implement these changes

(b) You must retain for three years individual employee training records demonstrating that all persons required to receive initial and refresher training have done so.

Subpart K Complaints and Enforcement Procedures

§382.151 What are the requirements for providing Complaints Resolution Officials?

(a) As a carrier providing scheduled service or a carrier providing nonscheduled service using aircraft with 19 or more passenger seats, you must designate one or more CROs.

(b) As a U.S. carrier, you must make a CRO available at each airport you serve during all times you are operating at that airport. As a foreign carrier, you must make a CRO available at each airport serving flights you operate that begin or end at a U.S. airport. You may make the CRO available in person at the airport or via telephone, at no cost to the passenger. If a telephone link to the CRO is used, TTY service or a similarly effective technology must be available so that persons with hearing impairments may readily communicate with the CRO. You must make

CRO service available in the language(s) in which you make your services available to the general public.

(c) You must make passengers with a disability aware of the availability of a CRO and how to contact the CRO in the following circumstances:

(1) In any situation in which any person complains or raises a concern with your personnel about discrimination, accommodations, or services with respect to passengers with a disability, and your personnel do not immediately resolve the issue to the customer's satisfaction or provide a requested accommodation, your personnel must immediately inform the passenger of the right to contact a CRO and then contact a CRO on the passenger's behalf or provide the passenger a means (e.g., a phone, a phone card plus the location and/or phone number of the CRO available at the airport). Your personnel must provide this information to the passenger in a format he or she can use.

(2) Your reservation agents, contractors, and web sites must provide information equivalent to that required by paragraph (c)(1) of this section to passengers with a disability using those services who complain or raise a concern about a disability-related issue.

(d) Each CRO must be thoroughly familiar with the requirements of this Part and the carrier's procedures with respect to passengers with a disability. The CRO is intended to be the carrier's "expert" in compliance with the requirements of this Part.

(e) You must ensure that each of your CROs has the authority to make dispositive resolution of complaints on behalf of the carrier. This means that the CRO must have the power to overrule the decision of any other personnel, except that the CRO is not required to be given authority to countermand a decision of the pilot-in-command of an aircraft based on safety.

§382.153 What actions do CROs take on complaints?

When a complaint is made directly to a CRO for a carrier providing scheduled service, or a carrier providing nonscheduled service using aircraft with 19 or more passenger seats (e.g., orally, by phone, TTY), the CRO must promptly take dispositive action as follows:

(a) If the complaint is made to a CRO before the action or proposed action of carrier personnel has resulted in a violation of a provision of this Part, the CRO must take, or direct other carrier personnel to take, whatever action is necessary to ensure compliance with this Part.

(b) If an alleged violation of a provision of this Part has already occurred, and the CRO agrees that a violation has occurred, the CRO must provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(c) If the CRO determines that the carrier's action does not violate a provision of this Part, the CRO must provide to the complainant a written statement including a summary of the facts and the reasons, under this Part, for the determination.

(d) The statements required to be provided under this section must inform the complainant of his or her right to pursue DOT enforcement action under this Part. The CRO must provide the statement in person to the complainant at the airport if possible; otherwise, it must be forwarded to the complainant within 30 calendar days of the complaint.

§382.155 How must carriers respond to written complaints?

(a) As a carrier providing scheduled service, or a carrier providing nonscheduled service using aircraft with 19 or more passenger seats, you must respond to written complaints received by any means (e.g., letter, fax, e-mail, electronic instant message) concerning matters covered by this Part.

(b) As a passenger making a written complaint, you must state whether you had contacted a CRO in the matter, provide the name of the CRO and the date of the contact, if available, and enclose any written response you received from the CRO.

(c) As a carrier, you are not required to respond to a complaint postmarked or transmitted more than 45 days after the date of the incident, except for complaints referred to you by the Department of Transportation.

(d) As a carrier, you must make a dispositive written response to a written disability complaint within 30 days of its receipt. The response must specifically admit or deny that a violation of this Part has occurred.

(1) If you admit that a violation has occurred, you must provide to the complainant a written statement setting forth a summary of the facts and the steps, if any, you will take in response to the violation.

(2) If you deny that a violation has occurred, your response must include a summary of the facts and your reasons, under this Part, for the determination.

(3) Your response must also inform the complainant of his or her right to pursue DOT enforcement action under this Part.

§382.157 What are carriers' obligations for recordkeeping and reporting on disability-related complaints?

(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 carrier's services.

(b) If you are a carrier covered by this Part, conducting passenger operations with at least one aircraft having a designed seating capacity of more than 60 passengers, this section applies to

you. As a foreign carrier, you 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) You must categorize disability-related complaints that you 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) You must submit an annual report summarizing the disability-related complaints that you received during the prior calendar year using the form specified at the following internet address: http://382reporting.ost.dot.gov. You must submit this report by the last Monday in January of each year for complaints received during the prior calendar year. You must make submissions through the World Wide Web except for situations where you can demonstrate that you would suffer undue hardship if 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 your authorized representative: "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) You must 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. You must make these records available to Department of Transportation officials at their request.

(f)(1) As either carrier in a codeshare relationship, you must comply with paragraphs (c) through (e) of this section for—

(i) Disability-related complaints you receive from or on behalf of passengers with respect to difficulties encountered in connection with service you provide;

(ii) Disability-related complaints you receive from or on behalf of passengers when you are unable to reach agreement with your codeshare partner as to whether the complaint involves service you provide or service your codeshare partner provides; and

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

(2) As either carrier in a codeshare relationship, you must forward to your codeshare partner disability-related complaints you receive from or on behalf of passengers with respect to difficulties encountered in connection with service provided by your code-sharing partner.

(g) Each carrier, except for carriers in codeshare 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 date specified in paragraph (d) of this section, to the following address: U.S. Department of Transportation, Aviation Consumer Protection Division (C-75), 1200 New Jersey Avenue, SE, West Building, Room W96-432, Washington, DC 20590.

§382.159 How are complaints filed with DOT?

(a) Any person believing that a carrier has violated any provision of this Part may seek assistance or file an informal complaint at the Department of Transportation no later than 6 months after the date of the incident by either:

(1) going to the web site of the Department's Aviation Consumer Protection Division at http://airconsumer.ost.dot.gov and selecting "Air Travel Problems and Complaints," or

(2) writing to Department of Transportation, Aviation Consumer Protection Division (C-75), 1200 New Jersey Avenue, SE, Washington, DC 20590.

(b) Any person believing that a carrier has violated any provision of this Part may also file a formal complaint under the applicable procedures of 14 CFR Part 302.

(c) You must file a formal complaint under this Part within six months of the incident on which the complaint is based in order to ensure that the Department of Transportation will investigate the matter.

APPENDIX A TO PART 382 – REPORT OF DISABILITY-RELATED COMPLAINT DATA

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 Accomm-													

	Vision Impaired	Hearing Impaired	Vision & Hearing Impaired	Paraplegic	Quadriplegic	Other wheelchair	Oxygen	Stretcher	Other Disability	Other Assistive Device	Mentally Impaired	Communicable Disease	Allergies
odation													
Failure to Provide Assistance													
Damage to Assistive Device													
Storage and Delay of Assistive Device													
Service Animal Problem													
Unsatisfac-tory 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: _____

The valid OMB control number for this information collection is 2105-0551. The time required to complete this information is estimated to average 30 minutes per response.

APPENDIX B CROSS-REFERENCE TABLE

The Department is providing the following table to assist users familiar with the current Part 382 in finding material in the new, renumbered Part 382.

Section numbers: Old and New Rules

Old section (382.x)	*New section (382.x)*	*Subject*
General provisions		
1	1	Purpose.
3	7	Applicability.
5	3	Definitions.
7	11, 13	Non-discrimination generally.
9	15	Contractors.
Aircraft accessibility		
21(a)(1)	61	Movable armrests.
21(a)(2)	67	Stowage space in cabin for passenger wheelchair.
21(a)(3)	63	Accessible lavatories.
21(a)(4)	65	Carrier-supplied on-board wheelchair.
21(e) and (f)	71	Aircraft accessibility: miscellaneous.
Airport accessibility		
23	51	General.
(New)	53	Vision/hearing impairments.

Services and information

31	19	Refusal of transportation.
31(c)	17	Number limits.
33	25, 27	Advance notice requirements.
35	29	Safety assistants (formerly “attendants”).
37	87(a)	Seat assignments.
38	81 through 87	Seating accommodations.
39(a)	91 through 105	Enplaning, deplaning and connecting assistance.
39(b)	111 through 119	Assistance in cabin.
40 and 40a	95, 99	Mechanical lifts.
41	121 through 133	Stowage of assistive devices, POCs and other respiratory assistive devices.
43(a)	129(b)	Timely return of assistive devices.
43(b)	131	Liability limits.
43(c)	35	Liability waivers.
45(a)	41	Access to information (general).
45(b)	115	Individual safety briefings.
45(c)	119	Access to information in airport and aircraft.
45(d)	45	Availability of copy of rule.
47(a)	43	TTY’s and reservations systems.
47(b)	69	Accessibility of videos on aircraft.
49	55	Security screening.
51	21	Communicable diseases.
53	23	Medical certificates.

55(a)	117	Service animals.
55(b)	33	Sitting on blankets.
55(c)	33	Restricting movement.
55	31	Charges for accommodations.

Administrative provisions

61	141, 143	Training.
63(c) and (d)	145	Manuals; directed changes.
65(a)	151, 153	Complaints Resolution Officials.
65(b)	155, 157	Written complaints to carriers.
65(c) and (d)	159	Complaints to DOT.