

Initial Regulatory Flexibility Analysis

ACAA SNPRM Accessible Kiosks and Web sites

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Introduction and Summary

The U.S. Department of Transportation (DOT) is issuing a Supplemental Notice of Proposed Rulemaking (SNPRM) to ensure that automated airport kiosks and air travel Web sites are accessible to disabled air travelers. Carriers and airports (in the case of shared-use kiosks) would be required to begin ordering and installing accessible kiosks that comply with the technical standards set forth in the proposed rule.¹ The primary Web sites of U.S. carriers and those of foreign carriers that market air transportation to the general public in the U.S. would be required to meet the Level A and AA criteria included in the Web Content Accessibility Guidelines (WCAG) 2.0 standards for Web site accessibility. U.S. carriers and foreign carriers would be required to ensure that the Web sites of large travel agencies and tour operators selling air transportation on their behalf also meet the proposed accessibility standard. They would not be required to ensure that the Web sites of small travel agencies and tour operators acting as their agents are accessible, but would be required to ensure that these small entities provide Web-based discounts and Web-based amenities upon request to individuals with disabilities who are cannot use their Web sites due to their disability.

The Regulatory Flexibility Act of 1980, as amended, requires Federal agencies to conduct a separate analysis of the economic impact of rules on small entities. The Regulatory Flexibility Act requires that Federal agencies take the particular concerns of small entities into account when developing, writing, publicizing, promulgating, and enforcing regulations. To this end, the Act requires that agencies detail how they have met these concerns by including a Regulatory Flexibility Analysis (RFA). An initial RFA, which accompanies an NPRM or SNPRM, must include the following five elements:

1. A description of the reasons why action by the Agency is being considered.
2. A succinct statement of the objectives of, and legal basis for, the proposed rule.
3. A description of, and, where feasible, an estimate of the number of small entities to which the proposed rule would apply.
4. A description of the proposed reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that would be subject to the requirements and the type of professional skills necessary for preparing the report or record.
5. Identification, to the extent practicable, of all Federal rules that may duplicate, overlap, or conflict with the proposed rule.

In this Initial RFA, we provide the information on each of these five elements:

¹ Throughout this analysis, the term “kiosk” is specifically used to refer to an automated self-service transaction machine that is owned, operated, or leased by U.S. and foreign air carriers at a U.S. airport on either a proprietary or shared-use basis to enable customers to independently obtain flight-related services. The proposed requirements in the accompanying SNPRM would not apply to other types of electronic kiosks located in airports (e.g., ATMs, traveler information displays, vending machines).

1. In Section 1, we describe the current obstacles faced by travelers with disabilities who wish to use automated airport kiosks or air travel Web sites and summarize results from our review of the accessibility characteristics of U.S. and foreign carrier Web sites.
2. Under the Air Carrier Access Act (ACAA), the Department is obligated to take affirmative action to ensure that travelers with disabilities are provided equal access to air transportation services. Section 2 describes the ways in which the proposed requirements would help to meet this obligation.
3. Section 3 provides information on the types and numbers of small U.S. carriers, airports, travel agencies, and tour operators that would need to comply with the proposed accessibility requirements for kiosks or Web sites.
4. Small carriers that currently own, lease, or operate proprietary or shared-use automated kiosks would be responsible for the purchase, installation, operation, and maintenance of accessible kiosks after the effective date of the rule. A shared-use automated kiosk is a self-service transaction machine provided by an airport, a carrier, or an independent service provider with which any carrier having a compliant data set can collaborate to enable its customers to independently access the flight-related services it offers. Small carriers and small airports would also need to enter into agreements which delineate responsibilities for ensuring that shared-use kiosks ordered for each location in an airport comply with the proposed accessibility standard for automated kiosks. In some instances, these entities would be responsible for the purchase, installation, operation, and maintenance of accessible kiosks. Small U.S. carriers that market air transportation to the general public would also need to comply with the proposed Web site accessibility requirements. U.S. and foreign carriers would be responsible to ensure that small travel agencies and tour operators acting as their agents make discounted Web-based fares and other Web-based amenities available upon request to passengers who are unable to use their Web sites due to their disability. An expanded discussion of these requirements and the entities potentially affected by each of them is provided in Section 4.
5. In Section 5, we provide a brief summary of other applicable Federal standards and guidelines relating to self-service machines and Web sites that could potentially duplicate, overlap, or conflict with the proposed rule. It should be noted that the Department has coordinated, and continues to coordinate, the proposed technical standards for automated kiosks and air travel Web sites with the U.S. Access Board and the U.S. Department of Justice (DOJ) to ensure that they will be consistent with other potentially relevant standards.

1. Need for the Proposed Requirements

Kiosk Accessibility

Carriers and airport operators are not currently required to ensure that automated airport kiosks are accessible and usable by travelers with various types of disabilities. As noted in the preliminary regulatory impact analysis (RIA):

Use of airport kiosks typically reduces check-in waits and, in some cases, reduces the fees paid by passengers for checked baggage. However, current-generation kiosk systems pose significant obstacles to use by travelers with various types of disabilities. The installation configurations often make access by passengers in wheelchairs difficult or impossible. Typical automated kiosks also pose some specific challenges to air passengers with visual impairments, cognitive disabilities, or problems with motor skills.

At present, none of the estimated 11,000 automated kiosks in U.S. airports are accessible to persons with severe vision disabilities or to those in wheelchairs, although at least one vendor is currently marketing a demonstration version of an automated airport kiosk that has a variety of accessibility features.

Web Site Accessibility

Only one of the 12 reporting U.S. carriers that markets air transportation to the general public appears to have a specific option which converts its default home page into a version adapted for screen readers and other technologies that make it more accessible for blind people and those with severe vision impairments. The current full versions of other carrier and ticket agent Web sites afford different degrees of accessibility for consumers with various types of disabilities.

We conducted an evaluation of carrier Web site accessibility characteristics in the course of developing the preliminary RIA. The following table summarizes the number of programming issues found in various carrier Web site home pages, the number of different WCAG 2.0 guidelines violated, and the number of issues identified that are specific to the degree of conformance (“Level AA”) that the Department is proposing to require:²

² This research included reviews of 6 small carrier Web sites and 11 very small carrier Web sites. More information on the accessibility reviews conducted is available in the preliminary RIA Appendix.

Table 1 - Accessibility Testing of Carrier Web Site Home Pages

Carrier Category		Average Number of Violations (WCAG 2.0 A/AA Level)		
		Total Issues	Total Guidelines	AA Level Issues
Domestic	reporting carriers	80	11	12
	other large carriers (> 60 seat aircraft)	116	12	31
	small carriers (30-60 seat aircraft)	59	9	6
	very small carriers (only < 30 seat aircraft)	46	8	15
Foreign	carriers with > 1 million U.S. passengers/year	67	9	7
	carriers < 1 million U.S. passengers/year	78	9	20

Source: Econometrica, Inc., site testing using Qcompliance add-in on Firefox 3.6 browser, April-May 2011.

These results indicate that there is a broad spectrum of Web site programming issues that would need to be addressed to provide complete access to even the home page of carrier Web sites. This conclusion is equally applicable to the Web sites of both large and small U.S. carriers and to carriers based in foreign countries as well.

2. Objectives and Legal Basis for the Proposed Rule

The Department issued a final rule in 1990 implementing the 1986 Air Carrier Access Act (ACAA), which prohibits discrimination in the provision of airline service on the basis of disability. The regulations implementing the statute have been revised and extended on numerous occasions, most recently in a final rule published on May 13, 2008. In that rule, the Department indicated that it intended to issue a subsequent SNPRM that would address, among other issues, accessibility requirements for automated airport kiosks and air travel Web sites.

Kiosk Accessibility

The proposed accessibility requirements for automated airport kiosks will help to mitigate the physical barriers faced by travelers with mobility or fine motor skill disabilities, as well as make them usable by those with vision disabilities.

Carriers have previously been required to provide equivalent service to disabled passengers who cannot use automated airport kiosks under the ACAA (49 U.S.C. § 41705). The implementing regulations (14 CFR Part 382) would be amended to require carriers to ensure that all new orders for automated airport kiosks are for models that meet the proposed accessibility standard. Airport facilities are covered under 49 CFR Part 27, which stipulates that programs or activities that receive Federal financial assistance must not discriminate on the basis of disability. The Department is proposing to amend these requirements to refer explicitly to automated airport kiosks as a specific type of airport facility under Part 27 that must meet the accessibility standard.

Web Site Accessibility

The proposed accessibility requirements for air travel Web sites are primarily directed at addressing the need to provide those with vision disabilities with access to online information and services related to air travel. However, compliance with the WCAG 2.0 Level AA standards would improve the usability of carrier and ticket agent Web sites for those with a number of other types of disabilities as well.

The Department considers it a violation of the ACAA (49 U.S.C. § 41705), as well as an unfair and deceptive trade practice (49 U.S.C. § 41712), for carrier Web sites not to be accessible to individuals with disabilities. Further, the Department's statutory authority under 49 U.S.C. § 41712 to prohibit unfair and deceptive trade practices and unfair methods of competition applies not only to carriers but also to "ticket agents." The Department considers the publication of Web sites by ticket agents that are not accessible to individuals with disabilities to be an unfair and deceptive practice. However, the Department is not proposing to require small ticket agents to make their Web sites accessible under these statutes. Rather, the Department proposes to require U.S. and foreign carriers to ensure that the small entities acting as their agents provide Web-based discounts and other Web-based amenities upon request to passengers with a disability who are unable to use their Web sites due to their disability.

3. Types and Numbers of Potentially Affected Small Entities

This section describes the types and numbers of small entities in each of the sectors that would be affected by the proposed requirements.

3.1. Small U.S. Air Carriers

Kiosk Accessibility

The proposed kiosk accessibility requirements would apply to all U.S. and foreign carriers that own, operate, or lease automated kiosks at U.S. airports. Small U.S. and foreign carriers with proprietary systems would need to ensure that all new orders for automated airport kiosks are for models that meet the proposed accessibility standard. Small carriers may also incur costs associated with the installation of shared-use kiosks in certain airport locations.

However, based on a preliminary canvas of airport and carrier Web sites, it does not appear that any small U.S. carriers own, lease, or operate proprietary or shared-use automated airport kiosks at present.

Web Site Accessibility

The proposed Web site accessibility requirements would apply to all U.S. and foreign carriers that operate passenger service flights to and from destinations in the United States. There are as many as 12 small domestic carriers that provide passenger service using at least one aircraft with between 30 and 60 seats (but none larger than 60 seats). As many as 38 U.S. carriers providing passenger service exclusively with planes that have fewer than 30 seats would also be affected by these proposed requirements.

Table 2 - Number of U.S. Carriers by Size Class, 2009

Group	Seat Criterion	Total in 2009 T-100*	Charter-only**	Scheduled Service	Contract Carriers	Other
Small	30 - 60	12	0	12	6	6
Very Small	< 30	38	10	28	1	27

*Excludes carriers that were no longer operating independently by the end of 2010.

**Six charters offered some scheduled service in 2009; all are very small Alaska or sightseeing tour carriers.

DOT defines small carriers based on the standard published in 14 CFR 399.73:

For the purposes of the Department's implementation of chapter 6 of title 5, United States Code (Regulatory Flexibility Act), a direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft as defined in §298.3 of this chapter (up to 60 seats/18,000 pound payload capacity).

Small foreign carriers that provide scheduled passenger service only with aircraft with fewer than 61 seats would also need to comply with these proposed requirements. It appears that only one foreign carrier operating scheduled passenger service to and from the United States with aircraft that have between 30 and 60 seats (but none larger than 60 seats) and four that provide scheduled or nonscheduled passenger service exclusively with planes that have fewer than 30 seats.³

3.2. Airports

The Department proposal would require carriers and airports to enter into agreements specifying each party's responsibilities for ensuring that all new orders for automated shared-use airport kiosks are for models that meet the proposed accessibility standard. These requirements would not apply to automated shared-use kiosks located in commercial airports that have fewer than 10,000 passenger enplanements annually.

The Federal Aviation Administration (FAA) categorizes airports based on the number of passengers departing annually ("enplanements"):

³ Cite to "The Enhancing Airline Passenger Protections (EAPP) 2 Final RFA."

Table 3 - Passenger Enplanements by Size of Airport, 2009

Category	Minimum % or # of Passengers	# of Airports	Passengers (millions)	% of Total	Average # of Passengers/Airport
Large Hub	>1% of total	29	491.7	69.3%	17.0 million
Medium Hub	>0.25% of total	37	138.0	19.4%	3.7 million
Small Hub	>0.05% of total	69	56.7	8.0%	821,000
Non-Hub	>10,000/year	250	22.9	3.2%	91,000
Other Commercial	>2,500/year	180	0.9	0.1%	5,000
Total		565	710.1	100.0%	1.3 million

Source: BTS T-100 Segment Database, 2009.

Small Business Administration (SBA) size standards define privately-owned airports as small businesses if their annual revenues do not exceed \$7 million. Publicly-owned airports are categorized as small entities if they are owned by jurisdictions with fewer than 50,000 inhabitants. Of the 319 small hub and non-hub airports with more than 10,000 passenger enplanements in 2009, 54 met this classification, including 2 small hub airports (Burlington International Airport in Vermont and Sanford-Orlando International Airport in Florida).⁴

Based on a preliminary canvas of carrier and airport Web sites, it does not appear that any small airports own, lease, or operate shared-use automated kiosks at this time. However, one or more of these airport authorities may begin installing automated kiosks either before or after the effective date of the proposed rule.

3.3. Travel Agencies and Tour Operators

The proposed Web site accessibility requirements would not apply directly to small travel agencies and tour operators (collectively, “ticket agents”), but carriers would be required to ensure that these ticket agents make discounted Web-based fares and other Web-based amenities available upon request to passengers who are unable to use an agent’s Web site due to their disability.

The numbers of small firms in the travel agency and tour operator sectors have been estimated from 2007 Economic Census data, as follows:

Table 4 - Travel Agencies and Tour Operators, 2007

	Total Firms	Online Sales Capability	Offline Sales Only	Large Businesses (SBA Definition)	Small Businesses (SBA Definition)
Travel Agencies	11,953	2,032	9,921	328	11,625
Tour Operators	2,814	478	2,336	94	2,720

Sources: Bureau of the Census, Economic Census, 2007; PhoCusWright, *The Role and Value of the Global Distribution Systems in Travel Distribution*, 2009.

⁴ Although the majority of small U.S. airports are located in Alaska, few of the small Alaska airports are considered small entities because most are owned by the State Department of Transportation.

The applicable SBA size standards designate travel agencies with no more than \$3.5 million in annual revenues and tour operators with no more than \$7.0 million as small businesses.

According to the 2007 Economic Census, there were 11,953 travel agencies operating for at least part of the year. The largest 220 of these had revenues in excess of \$5 million. There were also 216 firms with revenues in the \$2.5-5 million range. Approximately one-half (108) of these firms could be expected to have had revenues that exceeded \$3.5 million. All of these firms can be assumed to have online booking capability. A 2009 white paper on global distribution systems (GDSs) estimated that 2,032 travel agencies have online sales capability.⁵ Subtracting the 328 large firms identified from the Census data, this means that carriers would have to ensure that an estimated 1,704 small travel agencies with online sales capability make discounted Web-based fares and other Web-based amenities available upon request to passengers who are unable to use the agent's Web site due to their disability. Carriers would also have to ensure that as many as 9,921 small travel agencies without online sales capability will make any discounted fares advertised on their Web sites and any other amenities that may be offered on these Web sites available upon request to passengers who are unable to use the travel agency's site because of their disability.

The 2007 Economic Census estimates that there were 2,814 tour operators in business for at least part of the year. The largest 55 of these had revenues in excess of \$10 million. There were also 78 firms with estimated revenues in the \$5-10 million range. Approximately one-half (39) of these firms could be expected to have had revenues that exceeded \$7 million. All of these firms can be assumed to have online booking capability. The 2009 GDS white paper estimated that there were 478 tour operators which have online sales capability. Subtracting the 94 large firms identified from the Census data, this means that carriers would have to ensure that an estimated 384 small tour operators with online sales capability make discounted Web-based fares and other Web-based amenities available upon request to passengers who are unable to use the agent's Web site due to their disability. Carriers would also have to ensure that as many as 2,336 small tour operators without online sales capability will make any discounted fares advertised on their Web sites and any other amenities that may be offered on these Web sites available upon request to passengers who are unable to use the tour operator's site because of their disability.

4. Nature and Impact of Proposed Requirements on Small Entities

Kiosk Accessibility

The Department proposal would require carriers and airports to enter into agreements specifying each party's responsibilities for ensuring that all new orders for automated shared-use airport kiosks are for models that meet the proposed accessibility standard. Small carriers and small airport authorities would potentially need to develop and maintain records and reports in connection with executing and implementing these agreements and to verify that all new and replacement kiosk purchases comply with the applicable standards.

⁵ PhoCusWright, *The Role and Value of the Global Distribution Systems in Travel Distribution*, 2009.

As noted above, it does not appear that small carriers or airports currently own, lease or operate any automated kiosks. However, it is possible that some small carriers or airports may install new automated kiosks either before or after the effective date of the proposed rule. Small entities that do so would incur costs associated with purchasing, installing, and maintaining accessible automated kiosks. Input and comment on this issue is expressly solicited in the accompanying SNPRM.

Web Site Accessibility

Small carriers will incur direct, indirect, and opportunity costs for increasing Web site accessibility. There are direct costs associated with programming and site redesign for greater accessibility, indirect costs related to program management and training, and potential opportunity costs in applying technical resources towards accessibility rather than other Web-based business strategies (e.g., social networking).

Small carriers already have to comply with a number of Web site requirements under current Department regulations. It is reasonable to expect that these carriers have staff members or contractors with the professional skills to meet the proposed requirements, since small carriers already use the services of programmers to publish and maintain their current Web sites. However, it is not clear that these employees or contractors have the specific expertise and professional skills that may be required to ensure that air travel Web sites would comply with the proposed accessibility requirements.

While the Department is not proposing to require carriers to ensure that their small ticket agents comply with the Web site accessibility requirements, carriers would be required to ensure that these agents make discounted Web-based fares and other Web-based amenities available upon request to passengers who are unable to use the agent's Web site due to their disability. While the accompanying regulatory evaluation includes the costs to ticket agents from the proposed requirement for carriers to ensure that their agents make their Web sites accessible, it does not address any costs incurred by agents in providing Web-based amenities to passengers who cannot access their Web sites due to a disability. While a substantial number of small ticket agents would be affected indirectly by this requirement on carriers, the economic impact on such agents of providing this assistance is not likely to be significant. The Department is seeking public comment on this matter in the SNPRM with the intent of addressing the economic impact more specifically in the final rule.

5. Other Applicable Federal Regulations

The preliminary RFA provides a brief summary of the current regulatory standards and guidelines that are applicable to automatic self-service machines, such as automated kiosks, and Web sites. There are two sets of standards for kiosks other than those used for flight-related services at airports, each of which applies to different categories of affected entities:

Section 707 of the ADA Accessibility Guidelines. Revised regulations for Titles II and III of the Americans with Disabilities (ADA) were published on September 15, 2010. Requirements for automatic teller machines (ATMs) and fare machines are provided in Section 707 of the 2004

ADA Accessibility Guidelines (ADAAG), which are incorporated into both Title II and Title III of the 2010 Standards. While interactive transaction machines (ITMs), other than ATMs, are not covered by Section 707, the technical standard that the Department is proposing for automated airport kiosks is based in large part on the Section 707 requirements.

Section 508 of the Rehabilitation Act. The Access Board's accessibility standards for electronic and information technology are compiled in its regulation implementing Section 508 of the Rehabilitation Act of 1973. The requirements in Part 1194.25 of Section 508 pertain to "self contained, closed products," which include automated self-service machines such as kiosks. Part 1194.22 of Section 508 covers Web-based Intranet and Internet information and applications. In 2010, the Access Board issued an Advanced Notice of Proposed Rulemaking (ANPRM) to solicit comment on revising or "refreshing" the current Section 508 standards. However, the timeframe for final publication of these revisions is uncertain at present. Elements of Section 508 standards have been incorporated into the automated airport kiosk requirements proposed in the accompanying SNPRM. In addition, in the same ANPRM, the Access Board stated that it was giving consideration to harmonizing the section 508 Web site accessibility standard with the WCAG 2.0 accessibility standard and sought public comment on a specific technical approach to doing so.

28 CFR Part 35 and 28 CFR Part 36 - ADA Title II and III Regulations. The Department of Justice also issued an ANPRM in 2010 seeking comment on requiring Web site accessibility for entities covered by ADA titles II and III. DOJ specifically requested comment on applying the WCAG 2.0 accessibility standard to the Web sites of covered entities and on an implementation schedule that would require full Web site accessibility after two years.

In developing the proposed requirements, the Department has worked to coordinate the accessibility standards for both automated kiosks and Web sites with the government agencies responsible for developing and enforcing the standards and guidelines that apply to entities outside the air transportation sector. This effort has included a series of meetings with the Access Board and Department of Justice; development of proposed kiosk accessibility standards based on existing requirements in Section 707 of the ADAAG and the applicable parts of Section 508; and consultation with both agencies concerning reliance on international consensus standards on Web site accessibility (WCAG 2.0) in the proposed requirements.