



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

**THE USE OF PASSENGER-SUPPLIED ELECTRONIC RESPIRATORY ASSISTIVE
DEVICES ON AIRCRAFT**

NOTICE

October 28, 2009

This notice provides further guidance for foreign and U.S. carriers (carriers) and the traveling public regarding the obligation of carriers under the Air Carrier Access Act (ACAA) and its implementing regulation, 14 CFR Part 382 (Part 382), to allow the use of four types of passenger-supplied electronic respiratory assistive devices (i.e., ventilators, respirators, continuous positive airway pressure (CPAP) machines, and portable oxygen concentrators (POCs)) on aircraft.

On May 13, 2009, the U.S. Department of Transportation's (Department) Aviation Enforcement Office issued a frequently asked questions (FAQ) document to address questions and comments expressed to the Department by the aviation industry and consumers regarding the Department's revision of Part 382.¹ In this document, among other matters, we answered questions related to the use and stowage of the four types of passenger-supplied electronic assistive devices. We acknowledged that carriers could legally refuse to allow the in-flight use of a Federal Aviation Administration (FAA)-approved POC that does not have a manufacturer's label indicating that the device complies with the standards of RTCA/DO-160 or other applicable FAA or foreign

¹ Answers to Frequently Asked Questions Concerning Air Travel of People with Disabilities Under the Amended Air Carrier Access Act Regulation (May 13, 2009) is available at <http://airconsumer.ost.dot.gov/rules/rules.htm>.

requirements for portable medical electronic devices, but strongly encouraged airlines not to do so. The in-flight use of FAA-approved POCs, whether or not labeled, poses no safety danger so long as the carriage of the POC is in accordance with the instruction provided by the FAA.²

Since the issuance of the amended Part 382 rule, many consumers have contacted the Department and expressed concerns that prior to May 13, 2009, the effective date of the amended rule, carriers allowed the use of non-labeled but FAA-approved POC's in-flight. However, after the effective date of the rule, some carriers have denied passengers the use of such POCs because the devices were not labeled.³ Therefore, we want to reiterate our encouragement to carriers that they allow passengers to use any FAA-approved POC provided that the conditions in Special Federal Aviation Regulation 106 (SFAR 106) for use of portable oxygen concentrator systems onboard aircraft are followed even if the device has not been labeled.

To date, the FAA has reviewed tests of seven POCs and determined that these POCs meet safety requirements for medical portable electronic devices and are safe for use in-flight subject to certain conditions.⁴ Should the FAA in the future deem other POC brands and models acceptable for use on board aircraft by passengers who use medical oxygen, these brands/models would also be included as an acceptable device in SFAR 106.

Another area of concern regarding POCs is the provision in the amended Part 382 rule which allows carriers to require a passenger who wishes to use an FAA-approved POC to provide a

² Use of Certain Portable Oxygen Concentrator Devices Onboard Aircraft, Special Federal Aviation Regulation 106, 70 FR 40156 (July 12, 2005); Also see Information for Operators InFO 090POC (May 1, 2009), http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/media/2009/info09006.pdf.

³ 14 CFR 382.133 requires carriers to permit individuals to use electronic respiratory assistive devices in the cabin so long as the devices have been tested and labeled by their manufacturer(s) as meeting the requirements for medical portable electronic devices set by the FAA or the foreign carrier's government.

⁴ The following POCs have been approved for in-flight use by the FAA: (1) AirSep Lifestyle; (2) AirSep FreeStyle; (3) Inogen One; (4) SeQual Eclipse; (5) Respironics EverGo; (6) Delphi Medical Systems' RS-00400; and (7) Invacare Corporation's XPO2. See 70 Fed. Reg. 40156 (July 12, 2005); 71 Fed. Reg. 53954 (Sept. 12, 2006); and 74 Fed. Reg. 2351 (Jan. 15, 2009).

medical certificate dated within 10 days of the scheduled date of the passenger's initial flight.⁵ The Department's Aviation Enforcement Office encourages carriers not to require such documentation be provided within 10 days of the scheduled date of the passenger's initial flight. Our intention when the new Part 382 was drafted had been to allow carriers to impose the 10-day time limit to medical certificates for passengers with communicable diseases, not to other individuals such as passengers who need supplemental oxygen. Therefore, we recommend that carriers not enforce a strict 10-day standard for POC users, but rather evaluate the individual's condition to determine 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. The Department expects to address this matter more fully in a rulemaking to be issued in the near future.

With respect to ventilators, respirators, and CPAP machines, the FAA has not itself tested or reviewed any tests which may have been conducted by manufacturers or independent testing laboratories on such units. Therefore, such a device should not be allowed to be used in the passenger cabin unless it displays a manufacturer's label that indicates the device meets safety requirements for medical portable electronic devices⁶ or carriers have voluntarily conducted the necessary testing to determine whether or not the device complies with applicable safety standards. In that regard, to the extent that a carrier has already conducted testing on a particular ventilator, respirator, or CPAP machine and determined that it is safe for in-flight use, we encourage carriers to permit the use of such a device even if the device has not been labeled.

Finally, with respect to respiratory assistive devices other than ventilators, respirators, CPAP machines, and POCs, carriers must allow passengers to use such devices within the cabin consistent with FAA, Pipeline and Hazardous Materials Safety Administration (PHMSA), Transportation Security Administration (TSA), or applicable foreign government requirements

⁵ 14 CFR 382.23(b)(3) states that a medical certificate for a passenger with a disability who needs medical oxygen must be dated within 10 days of the scheduled date of the passenger's initial departing flight to be valid.

⁶ If a manufacturer labels a medical portable electronic device as safe for use on aircraft because it meets the Radio Technical Commission for Aeronautics (RTCA) Document (DO) 160, section 21, Category M standards, the carrier is not required to perform additional tests but is still responsible for showing that the device has been tested and meets the applicable standard. Carriers will often need the manufacturer's test results to verify whether the device is safe to use onboard its aircraft.

concerning security, safety, and hazardous materials. Devices that fit within this category are not required, under Part 382, to display a manufacturer's label that indicates the device meets FAA requirements.

ISSUED THIS 28th DAY OF OCTOBER, 2009, IN WASHINGTON D.C.

/s/

Samuel Podberesky
Assistant General Counsel
for Aviation Enforcement and Proceedings

*An electronic version of this document is available on the World Wide Web at
<http://airconsumer.dot.gov>*