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**Nondiscrimination on the Basis of
Disability in Air Travel; Proposed Rule**

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****14 CFR Part 382**

[Docket No. OST-2004-19482]

RIN 2105-AC97

Nondiscrimination on the Basis of Disability in Air Travel

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department proposes to revise its rule requiring nondiscrimination on the basis of disability in air travel to update, reorganize, and clarify the rule and to implement a statutory requirement to cover foreign air carriers under the Air Carrier Access Act.

DATES: *Comment Closing Date:* Comments must be received by February 2, 2005. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Please include the docket number of this document in all comments submitted to the docket. Written comments should be sent to Docket Clerk, Department of Transportation, 400 7th Street, SW., Room PL-401, Washington, DC 20590. For confirmation of the receipt of written comments, commenters may include a stamped, self-addressed postcard. The Docket Clerk will date-stamp the postcard and mail it back to the commenter. Comments will be available for inspection at this address from 10 a.m. to 5:30 p.m., Monday through Friday. Comments can also be reviewed through the Dockets Management System (DMS) pages of the Department's Web site (<http://dms.dot.gov>). Commenters may also submit comments electronically. Instructions appear on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., Room 10424, Washington DC, 20590. Phone 202-366-9310; TTY: 202-755-7687; Fax: 202-366-9313. E-mail: bob.ashby@ost.dot.gov.

SUPPLEMENTARY INFORMATION:**Background and Organization**

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 in a number of forms 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. Many carriers now use regional jets with a capacity of around 50 passengers for flights that formerly would have been served by larger aircraft. Preboarding announcements are not as universal a practice as they once were. Security screening has become a responsibility of the Transportation Security Administration (TSA), rather than that of the airlines. The Department has decided to update Part 382 to take changes in airline operations into account.

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 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.

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 air carriers. Such a rulemaking is not a simple matter of saying that the existing rule applies as a whole to foreign air carriers. The Department believes that it is important to review Part 382 on a section-by-section basis to apply particular requirements to foreign air carriers in a way that achieves the ACAA's nondiscrimination objectives while not imposing undue burdens on foreign carriers.

The over 14-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 NPRM, 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 proposal uses a question-answer format, with language specifically directing particular parties to 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 proposed 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

¹ The dates and citations for these amendments are the following: April 3, 1990; 55 FR 12341 June 11, 1990; 55 FR 23544 November 1, 1996; 61 FR 56422 January 2, 1997; 62 FR 17 March 4, 1998; 63 FR 10535 March 11, 1998; 63 FR 11954 August 2, 1999; 64 FR 41703 January 5, 2000; 65 FR 352 May 3, 2001; 66 FR 22115 July 3, 2003; 68 FR 4088.

significant rules in recent years, such as revisions of our disadvantaged business enterprise and drug and alcohol testing procedures rules.² The Department seeks comment on the clarity, format, and style of the NPRM, as well as any economic or other impacts, and solicits suggestions for improving it.

Many of the provisions of the current Part 382 are retained in this rule with little or no substantive change. To assist readers in finding where current provisions are located in the proposed regulatory text, we have provided a reference table at the end of this preamble. Preamble language and other guidance issued by the Department concerning provisions of the existing rule text that have not been substantively changed may remain useful as guidance to carriers and passengers, and the Department can continue to rely on this information.

For U.S. carriers, many compliance dates (e.g., with respect to including certain accessibility features on new aircraft, signing and implementing agreements with airports concerning boarding assistance provided by mechanical lifts) have already passed. The Department has restated these compliance dates in this proposed rule for the information of users. The Department seeks comment on whether doing so is necessary.

Section-by-Section Analysis

This portion of the preamble discusses each section of the proposed rule, highlighting where the Department proposes to make substantive changes from current Part 382.

Subpart A—General Provisions

Section 382.1 What Is the Purpose of This Rule?

This section makes a brief statement of the basic purposes of the ACAA and mentions that the ACAA's nondiscrimination and accessibility requirements apply to foreign as well as to U.S. carriers.

Section 382.3 What Do the Terms in This Rule Mean?

The definition of "air carrier" would change to include foreign as well as U.S. carriers. We would add a definition of the Air Carrier Access Act (ACAA) for clarity. The definition of "air transportation" would be changed to include the citation for the statutory definition of the term. We would add a definition of "assistive device,"

consistent with concepts used in connection with the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act of 1973. We have also added a definition of "direct threat," also drawn from the ADA and Department of Justice (DOJ) regulations implementing it. This concept is used in determining when it is appropriate to place restrictions on or deny service to individuals with disabilities. Here, as elsewhere in Part 382, we believe it is useful to harmonize ACAA practice with the ADA and other disability nondiscrimination authorities to the extent feasible.

The definition of "facility" would include a carrier's aircraft and any portion of an airport that the carrier owns, leases, or controls. "Controls," for this purpose, is understood to include control of the selection, design, construction, or alteration of the facility, as well as actual operational control.

In the definition of "qualified individual with a disability," the Department is introducing a new term, "passenger with a disability," which the proposed rule will use in all situations in which a qualified individual with a disability is or is trying to be a passenger. "Qualified individual with a disability" would continue to apply to non-passengers as well. Given that this rule concerns travel, we seek comment on whether "traveling" should be added to the standard list of "major life activities" that is part of the definition of "individual with a disability." Because of the important role that the Transportation Security Administration (TSA) now plays in air transportation, we are adding that agency to the definitions section.

Section 382.5 To Whom Do the Provisions of This Rule Apply?

This section contains some of the most important proposed changes in this NPRM, concerning how the Department will implement the AIR 21 amendment applying ACAA requirements to foreign air carriers. Paragraph (a) of the section, however, restates the existing application of the rule to U.S. carriers, regardless of where their operations takes place. As under the existing rule, a U.S. carrier's operations are subject to ACAA requirements whether they occur at a U.S. or foreign airport, or inside or outside of U.S. airspace (although certain airport accessibility obligations of air carriers apply only to their facilities at U.S. airports).

The Department believes that the intended scope of the statutory coverage of foreign air carriers, consistent with international law, focuses on traffic to or

from the United States. In our view, it would exceed the scope of the Department's authority to attempt to apply ACAA requirements to all the operations of a foreign air carrier. Consequently, in paragraph (b) we propose to cover only those flights operated by a foreign air carrier that begin or end at a U.S. airport. Aircraft accessibility requirements would apply only to those aircraft that are used for these flights.

What is such a flight? We propose that it would be a continuous journey beginning or ending at a U.S. airport, using the same aircraft and/or flight number. For example, suppose a foreign carrier operates a nonstop flight between Paris and Chicago. This flight, and all the services connected with it, would be required to meet ACAA requirements. The aircraft would have to meet ACAA accessibility requirements.

In another example, suppose a foreign carrier operates service between New York and Cairo. The plane is refueled and gets a new crew in London, and continues on its way. Even though this is not a nonstop flight, it is a continuous journey on the same aircraft. Consequently, both segments of the flight would be covered under the ACAA. This would still be true even if there were a change of aircraft in London (sometimes called "change of gauge"), as long as the flight number remained the same.

However, if there is a change of both aircraft and flight numbers, the picture would change. Suppose, for example, that a foreign carrier operates a nonstop flight from Washington, DC, to Frankfurt. A passenger then changes to a German domestic flight from Frankfurt to Berlin, with a different aircraft and flight number. The Washington-Frankfurt leg would be covered by ACAA requirements; the Frankfurt-Berlin leg would not. The aircraft used for the former would be subject to ACAA aircraft accessibility requirements; the aircraft used for the latter would not.

One of the situations this section addresses is "code-sharing" between a U.S. and foreign air carrier. A flight that, through a code-sharing agreement, is listed as the flight of a U.S. carrier is covered under the ACAA under the requirements that apply to U.S. carriers, even if the flight is operated with a foreign carrier's aircraft and crew. If a flight is advertised as the flight of a U.S. carrier, and the U.S. carrier or another party sells tickets to passengers on that basis, then it is reasonable for all the ACAA requirements applicable to other flights held out to the public as flights

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).

of that carrier to apply in this case as well. The U.S. carrier and its foreign carrier code-sharing partner would work out between themselves the details of how to meet the ACAA requirements.

Under this proposed section, if a foreign carrier operates an aircraft solely between foreign points, even if that aircraft is part of a code-shared flight or another covered flight (e.g., the aircraft used for the Frankfurt—Berlin flight in the code-sharing example above, assuming the aircraft is used solely for operations between two points outside the U.S.), ACAA aircraft accessibility requirements would not apply to that aircraft. Other ACAA requirements (e.g., service requirements) would apply, however.

The Department believes that these provisions would implement AIR-21 requirements without unduly burdening foreign carriers. The Department seeks comment on both the basic principle of this provision and on specific applications. In particular, given the variety of carriers, aircraft, destinations, airports, and relationships between U.S. and foreign carriers, the Department requests suggestions for any more specific provisions that might be necessary to apply this principle to the range of flights that this rule would cover, including any unusual situations in which its application could cause problems.

Section 382.7 What May Foreign Carriers Do If They Believe a Provision of a Foreign Nation's Law Precludes Compliance With a Provision of This Part?

The Department recognizes that foreign air carriers operate under a variety of laws and regulations. If an applicable foreign law or regulation precludes a foreign carrier from complying with a provision of the Department's ACAA rule, this section would allow the foreign carrier to petition the Department for a waiver of compliance with the ACAA provision.

As proposed, this waiver authority would apply only to a direct conflict between the ACAA and foreign law (e.g., an ACAA provision requires aircraft to have movable aisle armrests; a legal requirement of Country X prohibits its aircraft from having movable aisle armrests). This waiver provision would not cover situations in which another country's laws or regulatory provisions may have different requirements from those of the ACAA, or give a foreign carrier discretion to take steps that differ from those of the ACAA, but do not actually preclude compliance with the ACAA. For example, the ACAA rule requires the

use of boarding lifts at U.S. airports in almost all instances where level-entry boarding is not otherwise available. A foreign law might give carriers discretion to provide boarding by hand-carrying in these instances. This hypothetical law permits a boarding method that the ACAA regulations prohibit but does not prohibit the use of lifts, which the ACAA regulation requires. Under these circumstances, the foreign carrier would not be able to obtain a waiver. The Department seeks comment on whether broader waiver authority would be justified, and to what circumstances any broader waiver provision should apply.

It is important to note that a grant of a waiver under this provision would be contingent on the carrier providing an alternative means to effectively achieve the objective of the waived ACAA provision, consistent with the foreign law involved, or to demonstrate that no alternative means of achieving the objective was legally permitted. Also, a carrier's obligation to comply with the rule would not be stayed while a waiver request was pending. The carrier's authority to implement an alternative means to achieve the objective of an ACAA provision begins only when the Department approves the waiver.

We believe that this waiver provision may be very useful in addressing issues raised by legally binding aviation regulations of foreign nations. We are aware that, in many situations, foreign aviation regulations, rather than FAA or TSA rules, govern the actions of foreign carriers. In many cases, these foreign regulations are likely to be compatible with implementing Part 382. However, there may be instances in which a carrier believes that foreign regulations preclude it from implementing a provision of Part 382. In such cases, this waiver mechanism permits the Department to examine the basis for the asserted conflict between Part 382 and the foreign regulation. We believe having the Department make case-by-case decisions on waiver requests is an important safeguard of the rights of passengers with disabilities under Part 382.

We also note that, as an Office of the Secretary rule, Part 382 is subject to the exemption procedure of 49 CFR 5.11–5.13. Under these procedures, anyone may request an exemption from (or an amendment to) an Office of the Secretary rule. Long-standing DOT standards provide that a party requesting an exemption must demonstrate that unique or special circumstances, not contemplated in the rulemaking and not likely to be generalizable, make it impracticable for

the party to comply with the rule as written. As with the waiver provision described above, the applicant would need to present alternative means of achieving the objective of the provision from which the exemption is sought.

Section 382.9 When Are Carriers Required To Begin Complying With the Provisions of This Rule?

This provision states that, as a general matter, carriers to which the rule applies must comply with its provisions beginning on the effective date of the rule. There is an important exception. Various individual provisions of the rule have delayed effective dates, especially for foreign carriers, to permit a reasonable phase-in period for requirements that are new to these carriers. We have designed these delayed effective dates to give foreign carriers phase-in periods equivalent to those that U.S. carriers had when the Department first issued its ACAA rule in 1990.

Subpart B—Nondiscrimination and Access to Services and Information

Section 382.11 What Is the General Nondiscrimination Requirement of This Rule?

Section 382.13 Do Carriers Have To Modify Policies, Practices, and Facilities To Ensure Nondiscrimination?

These sections carry forward the provisions of current § 382.7. While the language is modified for greater clarity, the Department is not proposing substantive changes in the present rule.

Section 382.15 Do Carriers Have To Make Sure That Contractors Comply With the Requirements of This Part?

This section carries forward the provisions of current § 382.9. In addition to modifying the language for greater clarity, the proposed language also contains statements codifying the Department's interpretations of this provision: that contractors (including airports) must meet the same requirements that would apply to the carrier itself in providing the services in question, that a contractor's noncompliance with its assurance of compliance is a material breach of its contract with the carrier, that the assurance must commit the contractor to complying with all applicable provisions of the rule with respect to all activities performed for the carrier, that the carrier remains responsible for the contractor's compliance, and that carriers cannot defend against DOT enforcement actions by saying that their noncompliance was the contractor's fault.

Paragraph (c) continues language concerning carriers' contracts or agreements of appointment with travel agents. As drafted, this language would apply only to U.S. carriers with respect to U.S. travel agents. The reason for not proposing to cover foreign airlines or foreign travel agents under this provision is that rules concerning relationships between U.S. carriers and foreign travel agents, or foreign carriers and their travel agents, could prove very difficult to monitor and enforce. The Department seeks comment on this aspect of the section. In addition, the Department also seeks comment on whether there should be additional or specific requirements added to this section concerning on-line travel agencies (e.g., web sites that provide schedule and fare information and ticketing services for many air carriers).

Section 382.17 May Carriers Limit the Number of Passengers With a Disability on a Flight?

This language carries forward, without substantive change, the prohibition on number limits that is found in current § 382.31(c). We have added a cross reference to proposed § 382.27(a)(7), which incorporates the provision of current § 382.33(a)(7) allowing carriers to require advance notice in situations where 10 or more passengers with a disability make reservations to travel as a group.

Section 382.19 May Carriers Refuse To Provide Transportation on the Basis of Disability?

For the most part, this section carries forward the prohibition of refusal to provide transportation found in current § 382.31, without substantive change. However, the proposed language would clarify the basis on which an air carrier may deny transportation to a passenger. In addition to updating the citations to statutory and regulatory provisions that provide a basis for excluding passengers from a flight and including a reference to TSA as well as FAA regulations, the NPRM uses the concept of "direct threat" as the standard for when a carrier may conclude that there is a safety basis for excluding a passenger from a flight. The use of this concept is consistent with current law and practice under section 504 of the Rehabilitation Act of 1973 and the ADA, and it includes the point that if mitigating measures short of exclusion are available to deal with the direct threat to safety of others, then exclusion is not appropriate. In a situation where a foreign carrier believed that foreign law (including a foreign air safety regulation) precluded it from complying

with this provision (i.e., directed the carrier to exclude a passenger with a given disability that this section requires the carrier to transport), the foreign carrier could seek a waiver under § 382.7.

As under the current Part 382, this section is not intended to preclude pilots-in-command from exercising their authority over the operation of a flight. However, if the action of a pilot-in-command is inconsistent with these rules, the airline may be subject to subsequent enforcement action by the Department.

We have added clarifying language that relates refusals to provide transportation to the passenger's "originally scheduled flight." The purpose of this language is to make sure that everyone understands that if a carrier improperly refuses to allow a passenger to fly as originally scheduled on the basis of disability, the action is still a "refusal" even if the carrier places the individual on a subsequent flight. Of course, the prohibition of refusals applies to subsequent flights as well (e.g., when the originally scheduled flight is cancelled for weather or mechanical reasons, the passenger is rebooked, and the carrier then refuses to carry the passenger on the rebooked flight).

Section 382.21 May Carriers Limit Access to Transportation on the Basis That a Passenger Has a Communicable Disease or Other Medical Condition?

Section 382.23 May Carriers Require a Passenger With a Disability To Provide a Medical Certificate?

These provisions carry forward the substance of current §§ 382.51–382.53, which prohibit carriers from requiring a passenger with a disability to provide a medical certificate or a doctor's note except as specifically permitted by this rule. The placement and wording have been changed for greater clarity. In Appendix A, the Department's guidance states that carriers may ask for documentation with respect to emotional support animals. We seek comment on whether it would be helpful to refer to this documentation in § 382.23.

Section 382.25 May a Carrier Require a Passenger With a Disability To Provide Advance Notice That He or She Is Traveling on a Flight?

Section 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?

These sections carry forward the substance of current § 382.33. Proposed § 382.25 is separated from the rest of the text to emphasize the basic principle that no passenger with a disability is required to provide advance notice of the fact that he or she is a passenger with a disability traveling on a flight. The only situations in which carriers are authorized (never required) to insist that passengers provide advance notice is when the passengers want certain services or accommodations specified in this section. When a carrier is permitted to insist on advance notice, the advance notice cannot exceed 48 hours. The carrier may also require the passenger to check in an hour before the scheduled departure time for the flight.

There are some services an air carrier is not required to provide at all, but if an air carrier does provide them, the carrier may require advance notice. The most notable of these is medical oxygen for use of passengers. The Department has been aware, for many years, of the extensive difficulties faced by passengers who use oxygen. The problem results from DOT hazardous materials safety regulations that prohibit passengers from bringing their own personal oxygen supplies into the cabin and that provide that only oxygen supplied by carriers may be used on aircraft. Not all carriers provide medical oxygen, and those that do often charge high prices. This can make travel for persons who use oxygen very costly, in some cases prohibitively so.

This NPRM does not propose provisions to address this problem. However, over the last two years, the Department has been actively working on solutions to this problem with parties including the airline industry, medical organizations, disability groups, and oxygen equipment manufacturers and oxygen suppliers, to examine whether state-of-the-art technology for oxygen delivery systems could be accommodated within the existing regulatory structure. Because these efforts have not yet resolved difficulties encountered in air travel by users of medical oxygen, the Department has begun work to develop proposals to make travel for oxygen users much easier in the future. These proposals

would be reflected in future DOT rulemaking or other initiatives.

Section 382.29 May a Carrier Require a Passenger With a Disability To Travel With a Safety Assistant?

This section uses the term “safety assistant” rather than the current term “attendant” because the new term more accurately describes the role of such an individual. The section is otherwise substantively the same as current § 382.35.

A safety assistant is someone who accompanies a passenger with a disability in order to provide assistance in the event of an emergency, such as an evacuation of the aircraft. This term should help everyone keep in mind the distinction between the quite different roles of the safety assistant and a personal care attendant (PCA) or other person accompanying a passenger with a disability. Under this proposed section, as well as current § 382.35, it is never appropriate for an air carrier to insist that a passenger with a disability travel with a PCA or other person to help the passenger with personal functions or activities.

Section 382.31 May Carriers Impose Special Charges on Passengers With a Disability for Providing Services and Accommodations Required by This Rule?

This section is based on current § 382.57. It makes two clarifications. First, if a carrier provides a service that is not required by this rule, the carrier may charge for it (e.g., oxygen). Second, if a passenger actually occupies more than one seat, the carrier can charge for the number of seats he or she occupies. For example, a person who is large enough that he or she needs two seats can be charged for two seats, even if the individual has a disability. This would not be considered a prohibited special charge under the rule. This provision carries forward the Department’s long-standing requirement of § 382.38(i).

Section 382.33 May Carriers Impose Other Restrictions on Passengers With a Disability That They Do Not Impose on Other Passengers?

This section is based in part on current § 382.55(b) and (c) and on long-standing interpretations of the Department’s rule. This section stresses that the enumerated practices that are prohibited are not an exhaustive list. As a general matter, except where otherwise authorized by Part 382 or required by an FAA or TSA rule, carriers may never impose restrictions or requirements on passengers with disabilities that they do not impose on

similarly situated passengers who do not have disabilities. We are proposing adding one specific prohibition to the list, namely the practice of requiring ambulatory blind passengers or other persons who can walk to use a wheelchair in order to be provided assistance. This practice is unnecessary and offensive to many passengers. As noted above, if a foreign carrier believes it is required by foreign law to impose restrictions on passengers with disabilities that Part 382 does not permit, the carrier may apply for a waiver under § 382.7

Section 382.35 May Carriers Require Passengers With a Disability To Sign Waivers or Releases?

This section concerns a specific type of restriction or requirement that carriers are not allowed to impose on passengers with disabilities. Carriers would be prohibited under this section from making passengers with a disability sign a waiver of liability or release as a condition of being allowed to travel or to receive required accommodations for a disability. This prohibition specifically includes waivers or releases pertaining to the loss of or damage to wheelchairs and other assistive devices. This latter requirement is currently found in § 382.43(c). Carriers could, if they wish, make notes of pre-existing damage to wheelchairs and other assistive devices.

Subpart C—Information for Passengers

Section 382.41 What Flight-Related Information Must Carriers Provide to Qualified Individuals With a Disability?

This provision is based on current § 382.45(a), and adds a few clarifications. Information about seat locations must be made available by specific row and seat number, and any limitations on storage capacity must include information concerning storage of a passenger’s assistive devices.

Section 382.43 Must Information and Reservation Services of Carriers be Accessible to Individuals With Hearing and Vision Impairments?

The portion of this section concerning telephonic communications with persons who are deaf or hard-of-hearing is derived from current § 382.47(a), and it provides that a carrier who makes telephone information or reservation service available to the public must make that service available to deaf or hard-of-hearing persons through use of a TTY. U.S. carriers are already required to meet this requirement under the current rule. Foreign carriers would have a year from the effective date of the

final rule to ensure that their phone information and reservation services were accessible to deaf and hard-of-hearing persons. The Department seeks comment on whether there are countries the communications infrastructures of which do not readily permit the use of TTYs, such that another means of making information and reservations available to these persons would be necessary. If so, what alternative means should be authorized, and under what circumstances?

There are other issues concerning provision of services to deaf and hard-of-hearing individuals that this NPRM does not address, such as requirements for visual information displays or assistive listening devices in airport terminals or on aircraft, and the captioning of movies and other entertainment videos on aircraft. The Department has held a public meeting on this subject, and we are working through a memorandum of understanding (MOU) with the National Council on Disability (NCD) to develop recommendations in this area. The Department anticipates that, after receiving recommendations through this process, we will be in a position to undertake further rulemaking on this subject.

Proposed paragraph (b) is new, and concerns the accessibility of web sites, which have become an increasingly important means through which the public obtains information from and makes reservations with air carriers. Not only is using an airline web site often the fastest and most convenient way for consumers to learn about and book flights, but these web sites are also often the only places where passengers have access to certain fares or specials. At the time the Department originally issued Part 382, the internet was not yet an important means of interaction between airlines and their customers. It is important to update this rule to take this important change into account, and to ensure that passengers with vision impairments have nondiscriminatory access to airline web sites.

Consequently, the Department proposes that airlines must make their web sites accessible to all members of the public, including those who are blind or visually impaired. We propose that standards for accessibility be those in 36 CFR Part 1194, which implements section 508 of the Rehabilitation Act of 1973, as amended. Section 508 applies to activities of the Federal government, and does not on its own terms cover airlines. However, we believe that the standards developed under section 508 are generally the appropriate standards for web site accessibility. Use of these

standards would result in compliance with an airline's obligations under the ACAA to make its services accessible to passengers with disabilities. The Department seeks comment on whether these standards should be modified in any way in the airline web site context and on whether there are any other standards—domestic or foreign—that would also be appropriate. In this context, we note that the Access Board considered and rejected use of private sector web accessibility standards such as those developed by the World Wide Web Consortium Web Accessibility Initiative, believing that such standards were sometimes too subjective and would be difficult to enforce.

In *Access Now v. Southwest Airlines* (227 F.Supp.2d; S.D. Fl., 2002), the District Court concluded that an airline was not required to make its web site accessible on the authority of Title III of the ADA. (The 11th Circuit Court of Appeals dismissed an appeal on procedural grounds.) The court's decision was based on its view that Title III requires accessibility modifications of *physical* places of public accommodation and that a web site is not such a place. However, the ACAA contains no such limitation. The ACAA requires that all airline services to the public be accessible to persons with disabilities and provided in a nondiscriminatory manner. This applies whether the service is provided in person, over the phone, or on the internet.

New web sites going on-line after the effective date of this rule would have to be accessible from the outset. Existing web sites would have two years to comply. It should be pointed out that under this proposal, web sites that act as affiliates, agents, or contractors for a number of carriers (e.g., Orbitz, Expedia, Travelocity) would be required to be accessible, no less than web sites serving only a single carrier.

If a carrier provides written information to the public (i.e., in hard copy), this section would require that the information must be communicated effectively to persons with disabilities, upon request, including people who are blind or have vision impairments. This effective communication requirement could be met in a variety of ways. The Department notes that, in the Department of Justice Title III ADA regulation for places of public accommodation, the auxiliary aids that could be provided to communicate effectively with persons with impaired vision include qualified readers, taped texts, audio recordings, brailled materials, large print materials, and other effective methods of making

visually delivered materials available to individuals with visual impairments (see 28 CFR § 36.303(b)(2)). No one particular method of providing effective communication would be required in all instances. In addition, information would have to be made available in the languages in which the same information is made available to the general public. The Department seeks comment on whether there should be greater specificity in this requirement and suggestions for how, if at all, the rule should define the scope of this obligation.

One of the services that carrier web sites may provide is the ability to select seat assignments or various special services (e.g., special meals). Where web sites provide services of this kind, it would seem reasonable that the web sites should also allow passengers to request accommodations for disabilities (e.g., assistance in connecting to another flight or services for which carriers are permitted to require advance notice under this rule). The Department seeks comment on whether the final rule should include a requirement that carrier web sites that allow passengers to request special services should also permit passengers to request accommodations for disabilities. Such a capability would have to be accessible to visually-impaired persons and other users with disabilities.

U.S. carriers would have to meet all the requirements of this section with respect to all their systems and activities. Consistent with the coverage of foreign carriers outlined in § 382.5, foreign carriers' obligations could be somewhat more limited. They would have to comply only with respect to flights and related activities covered under § 382.5. For example, only portions of a web site pertaining to flights beginning or ending at a U.S. airport would have to meet the internet accessibility requirement of proposed paragraph (b). It would be up to the foreign carrier to decide whether it made sense to segregate its U.S.-related operations from its other operations in this way.

Section 382.45 Must Carriers Make Copies of This Rule Available to Passengers?

This section, based on current § 382.45(d), clarifies that the carrier must have a current, up-to-date, copy of Part 382 available for review not only by individuals with disabilities but by any member of the public who requests it. It must be available at each airport the carrier serves. In the case of a foreign carrier, this means it must be available at any airport serving flights that begin

or end at a U.S. airport. It would be sufficient if the carrier has one copy that passengers can review. It is not necessary for them to have multiple copies to hand out. The effective communication requirement of § 382.43 would apply to the provision of the rule to a requesting passenger, except that translations of the rule into foreign languages would not be required. As noted in the discussion of § 382.43 above, this effective communication requirement could be met in a variety of ways, including but not limited to the provision of materials in alternative formats (e.g., in some circumstances it could include reading information to passengers who asked for it). The Department seeks comment on whether there should be greater specificity in this requirement and suggestions for how, if at all, the rule should define the scope of this obligation.

Subpart D—Accessibility of Airport Facilities

Section 382.51 What Requirements Must Carriers Meet Concerning the Accessibility of Airport Facilities?

Paragraph (a) concerns accessibility requirements for terminal facilities at U.S. airports. It applies equally to foreign or U.S. carriers with respect to the terminal facilities they own, lease, or control at a U.S. airport. The substantive requirements of the proposed paragraph are based on current § 382.23, with some additional elaboration (e.g., that an accessible path is one meeting accessible path guidelines in the Americans with Disabilities Act Accessibility Guidelines).

Paragraph (b) states requirements pertaining to foreign airports. It would apply to both U.S. and foreign carriers for facilities they lease, own, or operate at foreign airports. Consistent with the proposed requirements for foreign carriers generally, this requirement applies to foreign carriers only with respect to terminal facilities serving flights that begin or end at a U.S. airport. It is obvious that, for air travel to points outside the U.S. to be accessible to passengers with disabilities, accessible airport facilities are essential at both the U.S. and foreign airports involved in a flight. If a carrier's airport facilities at the U.S. end of a flight are accessible, but the carrier's facilities at the foreign end of the flight are inaccessible, a passenger with a disability will be unable to complete the journey. Such a denial of access to the air travel system is incompatible with the purposes of the ACAA. The Department is aware that there may be

situations at some foreign airports in which a U.S. or foreign carrier does not own, lease, or control facilities that are important to passenger accessibility. We seek comment on how, if at all, the rule should address such situations.

For both U.S. and foreign carriers, the NPRM proposes a performance requirement, rather than a facilities accessibility requirement, as such: passengers must be able to move through the airport readily and get to and from the gate they will be using. Carriers 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. The Department proposes to adopt this performance standard, rather than requiring compliance with the ADAAGs or other U.S. accessibility standards, because it is questionable whether it would be legally and practically sound to impose these standards on facilities located on foreign soil. The Department does not consider physically hand-carrying a passenger (*i.e.*, picking the person up bodily in the arms of carrier personnel to move them through the terminal) to be consistent with passengers' safety and dignity. This practice would be prohibited under proposed § 382.101, as it is prohibited now under current § 382.39(a)(2).

Paragraph (c) establishes compliance dates for the requirements of this section. Foreign carriers would have a year to comply, both at U.S. and foreign airports. U.S. carriers are already required to comply with these requirements at U.S. airports, and would have a year to comply at foreign airports. The Department seeks comment on whether this time frame is feasible.

One feature now found at airports that was not present when the original ACAA rule was issued in 1990 is the electronic ticketing kiosk. Particularly for passengers who are traveling without checked luggage, these kiosks can save considerable time by avoiding the need to wait in long lines at the ticket counter. The Department seeks comment on the accessibility of these devices. In terms of approachability, height of screens and controls, location of slots for credit cards and dispensing of boarding passes, are kiosks sufficiently accessible to passengers with mobility impairments? Is use of the devices accessible to persons with mobility or vision impairments? Should the final ACAA rule contain specific accessibility requirements for them and, if so, what should the requirements be? In this context, we note 36 CFR 1194.25,

part of the Access Board's section 508 standards for "self-contained closed products." This provision requires independent access for persons with hearing or vision impairments and that machines be within specified reach ranges. The Department seeks comment on whether the final rule should adopt these standards by reference for electronic kiosks.

Section 382.53 What Accommodations Are Required in Airports for Individuals With a Vision Impairment and Individuals Who Are Deaf or Hard-of-Hearing?

This provision is derived from current § 382.45(c), as it pertains to airport facilities. Foreign carriers would have a year to comply, both at U.S. and foreign airports. U.S. carriers are already required to comply with these requirements at U.S. airports, and would have a year to comply at foreign airports. Again, the Department seeks comment on whether this time frame is feasible. As mentioned above, the Department is working on a follow-on NPRM specifically concerning accommodations for deaf and hard-of-hearing passengers. The future NPRM will consider such accommodations in greater detail. Meanwhile, the current NPRM proposes to retain the existing requirements for such accommodations and would apply them to foreign air carriers.

Section 382.55 What Requirements Apply to Carriers' Security Screening Procedures?

At the time of the publication of the original ACAA rule, security screening procedures were controlled by air carriers and consequently subject to regulation under Part 382. However, the Transportation Security Administration now controls security screening at U.S. airports. As a Federal agency, it is not subject to regulation under the ACAA. Likewise, there may be foreign legal requirements for security screening at foreign airports that are not subject to ACAA regulation.

Proposed § 382.55 recognizes the role of these authorities. However, it is possible that some air carriers may choose to conduct security screening procedures that go beyond those carried out under TSA or foreign legal requirements. The Department wants to ensure that additional air carrier security screening procedures do not discriminate against passengers with a disability. Consequently, for such additional carrier-imposed procedures, we propose to carry forward the substance of current § 382.49. The Department seeks comment on whether

this is necessary and, if so, whether the provisions should be modified to reflect the kind of additional security screening procedures that carriers impose. For example, if a carrier interviews passengers as part of its security screening process, how should it ensure effective communication in the interview with a passenger having a hearing or vision impairment?

Subpart E—Accessibility of Aircraft

Section 382.61 What Are the Requirements for Movable Aisle Armrests?

This section is based on current § 382.21(a)(1). It would make a number of clarifications to the existing language. The basic requirement of movable aisle armrests on half the aisle seats on the aircraft remains the same. The rule would specify that the base number of passenger aisle seats from which the 50 percent requirement is calculated would not include seats in exit rows or any other place where an FAA safety rule precludes a passenger with a mobility impairment from sitting.

Paragraph (c) would state explicitly that movable aisle armrests must be provided proportionately in all classes of service in the entire passenger cabin. For example, if 80 percent of the aisle seats on the aircraft 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. The proposed rule would provide a phase-in period for U.S. as well as foreign air carriers, to prevent undue hardship in cases where carriers had not previously installed movable armrests in all classes of service.

Paragraph (d) carries forward an existing requirement from § 382.21(a)(1)(iii). We would note that, consistent with § 382.41, this information must be provided specifically by seat and row number.

The current rule includes an exception for types of seats in which incorporating movable aisle armrests would not be feasible. The Department is proposing to delete this exception. The Department has not seen evidence showing that any particular sort of seat truly makes the use of movable aisle armrests infeasible. Moreover, the Department believes that this exception has led to a lack of movable armrests in some classes of service for some carriers. The Department seeks comment on this issue.

U.S. carriers are already subject to most of the requirements of this section. We propose to require foreign carriers to

comply on the effective date of the final rule with respect to new aircraft they order after that date, or which are delivered to them beginning two years after the effective date. (Only aircraft that would be used in service to U.S. airports would be subject to this requirement.) This gives foreign carriers the same phase-in time that the Department made available to U.S. carriers when we issued the original ACAA rule.

Section 382.63 What Are the Requirements for Accessible Lavatories?

This section carries forward the requirements of current § 382.21(a)(3). It would make explicit that carriers may, but are not required to, install accessible lavatories in single-aisle aircraft. It also points out that while retrofit is not required, if a lavatory unit is replaced on an existing aircraft with more than one aisle, it must be replaced with an accessible unit. The same would hold true for the replacement of a lavatory component, even if the entire unit is not replaced. As with movable aisle armrests, foreign carriers must comply with the requirement for new aircraft ordered after the effective date of the final rule or delivered beginning two years after that date. U.S. carriers are already required to comply with respect to all aircraft ordered or delivered after the dates specified in the original Part 382.

The Department is aware that the absence of accessible lavatories on single-aisle aircraft can create inconvenience and difficulty for some passengers with disabilities. The Department has refrained from proposing to require accessible lavatories in single-aisle aircraft primarily out of concern that the cost of installing these lavatories could impose an undue financial burden on air carriers. This potential burden relates not only to the cost of the lavatory units themselves but also, and more importantly, to the continuing revenue losses that airlines would encounter because they would probably have to reduce the seating capacity of the aircraft to accommodate the larger lavatory unit. Nevertheless, we ask for comment on whether it would be desirable and feasible, practically and economically, to require accessible lavatories on at least some new single-aisle aircraft (e.g., those above a certain seating capacity). Of course, as in other areas of this regulation, the Department would not contemplate requiring retrofit of existing aircraft.

For some years, the Department has had available guidance on the design of accessible lavatories both for use in

single-aisle and double-aisle aircraft. This guidance is posted on the Department's Web site (<http://ostpxweb.dot.gov>).

Section 382.65 What Are the Requirements Concerning On-Board Wheelchairs?

This section carries forward the requirements of current § 382.21(a)(4), which requires carriers to have a full-time on-board wheelchair in the cabin of some aircraft, and to provide an on-board wheelchair on any flight using an aircraft with more than 60 seats on the advance request of a passenger. It would propose one substantive change, applying on-board wheelchair requirements to aircraft with 50 or more seats, rather than more than 60 seats as is the case under the current rule. This change is proposed in light of the growing prominence in airline fleets of regional jets, which often have a seating capacity of 50 passengers.

U.S. carriers are already required to comply with this requirement with respect to aircraft with more than 60 seats. We would provide a year phase-in period with respect to aircraft having 50–60 seats. We would also give foreign carriers two years from the effective date of the rule to come into compliance.

Section 382.67 What Is the Requirement for Priority Space in the Cabin To Store Passenger Wheelchairs?

This section carries forward the requirements of current § 382.21(a)(2), which requires newer aircraft with 100 or more seats to have priority space in the cabin for stowage of at least one passenger's folding wheelchair. This refers to a different wheelchair and a different space than the carrier-supplied on-board wheelchair and space described in current § 382.21(a)(4) and proposed § 382.65 above. In some situations, a carrier must accommodate both a passenger's folding wheelchair (to minimize the chance of damage and to make return of the chair to the passenger quicker and more convenient) and a carrier-supplied on-board wheelchair (to allow a passenger with a mobility impairment to get to the lavatory during the flight). U.S. carriers are already required to comply; we would give foreign carriers two years from the effective date of the rule to come into compliance.

The Department has always intended, and the rule has always meant, that the storage space for the passenger's wheelchair must be sufficient for a typical adult-size folding wheelchair that belongs to a passenger. Recently, however, some carriers appear to have misunderstood the current rule,

suggesting that the rule could be interpreted to mean that a carrier could comply by providing space only for a child-size wheelchair, the carrier's own on-board wheelchair, or a multi-piece break-down wheelchair, the components of which could be stored in the overhead compartments and under-seat spaces normally used for carry-on luggage. We have revised the regulatory text to make sure that such misunderstandings will not arise in the future. We seek comment on whether any additional language is needed. We also propose specific dimensions for a passenger wheelchair that would fit into the designated space. These dimensions have been used in DOT enforcement actions. We seek comment on whether the dimensions provide sufficient space for typical passenger folding wheelchairs and are otherwise appropriate.

Current DOT enforcement policy permits carriers to comply with the requirements for passenger wheelchair stowage space across two or three seats using a strap kit approved by the FAA, rather than to retrofit an aircraft, possibly involving the removal of seats, to provide the designated wheelchair space. If it is necessary to bump passengers to accommodate a passenger wheelchair carried in this fashion, the bumped passengers receive compensation equivalent to denied boarding compensation. This approach is not mentioned in the current or proposed rule text. We seek comment on whether the rule text should codify this policy or whether the rule should require a closet in each aircraft (or, at least, each new aircraft) that is capable of accommodating a passenger's folding wheelchair.

If a carrier wishes to use this or another alternative means to meet the passenger wheelchair stowage requirement, it should request approval from the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 7th Street, SW., Washington DC 20590. Approval would be contingent on FAA concurrence, where applicable. The Department proposes to continue to make this compliance option available under the proposed rule.

Section 382.71 What Other Aircraft Accessibility Requirements Apply to Carriers?

This section carries forward administrative requirements now found in § 382.21(d)–(f).

Subpart F—Seating Accommodations

Section 382.81 For Which Passengers Must Carriers Make Seating Accommodations?

Section 382.83 Through What Mechanisms do Carriers Make Seating Accommodations?

Section 382.85 What Seating Accommodations Must Carriers Make to Passengers in Circumstances not Covered by § 382.81 (a) Through (d)?

These sections carry forward the requirements of current § 382.38, restructured for greater clarity. The existing language that § 382.81(d) incorporates provides that the seating accommodation for a person with a fused or immobilized leg would be “on the side of an aisle that better accommodates the individual’s disability.” The Department seeks comment on whether there have been any problems under this provision concerning passengers extending a leg into the aisle and interfering with service carts or pedestrians using the aisle. If there have been such problems, we seek comment on how to avoid them while still accommodating passengers in this situation. In addition, we note that by an “immobilized” leg, we mean one in which there is a severely limited range of motion in the knee, such that the passenger cannot flex the joint readily to any significant degree. We also seek comment on whether other seating accommodations should be added to fill gaps, if any, in the existing provision.

Section 382.87 What Other Requirements Pertain to Seating for Passengers With a Disability?

This provision carries forward the provisions of current § 382.37(a) and (b). Current § 382.37(c), concerning seating for persons traveling with a service animal, has been moved to the service animal section of the rule (proposed § 382.117(c)).

Proposed § 382.87(c) concerns one of the grounds for excluding a passenger from a flight. If the passenger’s involuntary active behavior would create a direct threat in one seat location, but the passenger could be transported if seated safely in another location (*e.g.*, somewhere away from other passengers on a flight that was not full), then the carrier would have the obligation to offer a seat change to the passenger as an alternative to being refused transportation.

Paragraphs (d)–(f) codify existing interpretations and the requirements of current § 382.38 (h) and (i). With one exception, passengers with a disability

are not required to give up a seating accommodation they already have to accommodate another passenger with a disability, and no one is ever denied transportation on a flight to provide accommodations required by this subpart (except in the “strapping” policy situation discussed in connection with § 382.67). Carriers are not required to furnish more than one seat per ticket (see discussion of § 382.31 above) and carriers would not be required 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. The Department seeks comment on whether there should be any exceptions to this principle (*e.g.*, when a documented medical condition would preclude a passenger traveling in the space available to passengers in coach, but the additional room in business or first class would permit the individual to travel). If any such exceptions were permitted, what safeguard should be included to prevent abuse or undue burdens to the carrier or other passengers?

Paragraph (a) of this section prohibits carriers from excluding a passenger with a disability from a seat, except to comply with FAA regulations. If a foreign carrier believes that a foreign legal requirement precludes it from complying with this section, the carrier could apply for a waiver under § 382.7.

Section 382.89 When Do the Requirements of This Subpart Begin Applying to Carriers?

These requirements already apply to U.S. carriers. The proposal would give foreign carriers six months to come into compliance. We suggest six months, rather than a longer period, since compliance does not require physical alterations to aircraft or other facilities.

Subpart G—Boarding, Deplaning, and Connecting Assistance

Section 382.91 What Assistance Must Carriers Provide to Passengers With a Disability in Moving Within the Terminal?

This provision would require carriers to provide assistance to passengers with disabilities in moving around the terminal. It includes assistance with connections between flights; as under the current rule, the carrier that operates the arriving flight is responsible for the assistance, even if the connecting flight is with another carrier, and even if the passenger is traveling on two separate tickets and with separate reservations.

The proposed rule would also propose requirements concerning

assistance in moving through the terminal other than in connecting flight situations. The carrier on whose flight the passenger is departing (at the beginning of a journey) or arriving (at the end of a journey) would be responsible for assisting the passenger between terminal entrance and gate, as well as with accessing ticket and baggage locations, rest rooms, or food service concessions. As in all aspects of carrier assistance to passengers, carrier personnel or their contractors are not expected to provide personal care attendant services, such as assistance with eating or using a bathroom. The Department seeks comment on whether, in the situation where a passenger is arriving at an airport to begin a journey, it is reasonable for the carrier to be able to require advance notice for meeting the passenger to provide the assistance required in this section.

Paragraph (c) proposes a new requirement, related to the requirement to assist passengers in moving through the terminal. It would obligate carrier and contractor personnel to assist passengers with disabilities with carry-on and gate-checked luggage as they go between connecting flights or between terminal entrance and gate. We believe that this obligation is implicit in the responsibility to assist passengers with disabilities in moving through terminals, but we believe it is useful to state the obligation explicitly to avoid any misunderstanding. We also seek comment on whether it would be reasonable to place limits on this obligation (*e.g.*, should the requirement apply to individuals other than those with mobility impairments?).

Section 382.93 Must Carriers Offer Preboarding to Passengers With a Disability?

When the Department published the original ACAA rules in 1990, it was an almost invariable carrier practice to offer preboarding to passengers with disabilities, as well as to families with small children and other persons needing a little more time to get settled into their seats. Some provisions of the rule (*e.g.*, concerning stowage of wheelchairs in the cabin) were explicitly premised on the availability of this service. It also stood to reason that this practice would accommodate the many situations in which passengers with disabilities needed more time or assistance than other passengers to complete seating (*e.g.*, a passenger who had to stow crutches or a cane, a blind passenger who needed assistance in finding a seat, a passenger who needed assistance from carrier personnel to

stow a carry-on bag in the overhead compartment).

In recent years, however, some carriers, at least for some flights, have abandoned or partially abandoned the practice of offering preboarding. The ACAA does not concern itself with families with small children or other situations in which non-disabled passengers might need additional time for seating. However, the Department believes that providing a preboarding option for passengers is an essential accommodation for seating, stowage, and other activities that are more difficult for passengers with disabilities than other people. For this reason, the Department is proposing to require a preboarding opportunity for passengers with disabilities of which all passengers would be notified.

Section 382.95 What Are Carriers' General Obligations With Respect to Boarding, Deplaning, and Connecting Assistance?

Paragraph (a) of this section carries forward the requirement of current § 382.39(a) and (a)(1). It specifies that the requirement for assistance, consistent with proposed § 382.91, includes responsibility for connecting flights. This paragraph speaks of carriers providing this assistance "promptly." The Department seeks comment on whether this requirement should be more specific (e.g., by including a time frame, like 10 or 15 minutes or by requiring that carriers ensure that deplaning assistance is provided to passengers with disabilities who will use an aisle chair for deplaning no later than the time that the aircraft aisle is clear of other passengers, such that the aisle chair can be brought to the passenger's aircraft seat). Our objective is to address situations in which passengers who need assistance in deplaning have been left on board aircraft for an unreasonable length of time.

Paragraph (b) rewords the requirement of current § 382.39(a)(2) to be consistent with the present state of requirements for providing boarding assistance at U.S. airports.

Section 382.97 To Which Aircraft Does the Requirement To Provide Boarding and Deplaning Assistance Through the Use of Lifts Apply?

Section 382.99 What Agreements Must Carriers Have With the Airports They Serve?

These sections combine and condense the requirements of current §§ 382.40 and 382.40a on the use of mechanical lifts or ramps, without making

substantive changes in the requirements. By this time, compliance dates for all requirements to have agreements and lifts in place under current §§ 382.40 and 382.40a have passed for U.S. carriers and U.S. airports. The NPRM proposes time frames for foreign carrier compliance approximately similar to that which U.S. carriers had. The training-related provisions of the current regulations on boarding via lifts or ramps have been moved to proposed § 382.141(a)(1).

One of the most important changes in airline service since the publication of the original ACAA regulation concerns the increasing use of regional jets (RJs) by carriers for relatively short flights. These aircraft typically carry from 40–70 passengers and often are boarded from the tarmac, rather than via loading bridges. At many airport terminals, passengers must descend a level from the gate area to the tarmac in order to board. Under these circumstances, for passengers with mobility impairments to board these aircraft successfully, airlines and airports need to ensure that lifts are in place and made available to passengers and that there is an accessible path from the gate area to the tarmac. The Department's Aviation Consumer Protection Division has received few complaints about tarmac boardings of RJs. Nevertheless, the Department seeks information from airports, airlines, and passengers about whether these conditions are being met. Are there accessible paths from gate areas to the tarmac, and is lift service successful? We also seek comment on whether there are any additional regulatory provisions that would facilitate use of RJs by passengers with disabilities.

Section 382.101 What Other Boarding and Deplaning Assistance Must Carriers Provide?

This provision lists the circumstances in which use of lifts for boarding and deplaning is not required, even in the absence of other means of level-entry boarding. These include foreign airports, a specified category of smaller U.S. airports, situations involving exempt aircraft, situations prior to the compliance deadline for foreign carriers, and other situations beyond the control of the carrier that prevent use of the lifts. In all these situations, the obligation to provide boarding and deplaning assistance continues. Carriers must find other means of accomplishing the objective. No one method is prescribed; only physically hand-carrying a passenger, as described in § 382.101, is prohibited.

Section 382.103 May a Carrier Leave a Passenger Unattended in a Wheelchair or Other Device?

This section carries forward the requirement of current § 382.39(a)(3).

Subpart H—Services on Aircraft

Section 382.111 What Services Must Carriers Provide to Passengers with a Disability on Board the Aircraft?

This section carries forward the provisions of current § 382.39(b), and adds an "effective communication" requirement similar to the on-aircraft portions of present § 382.45(c), with some current exceptions eliminated. The effective communication would have to be with respect to such information as weather at the destination, connecting gates at the arrival airport, and on-board services.

Section 382.113 What Services Are Carriers Not Required To Provide to Passengers With a Disability on Board the Aircraft?

This section carries forward the provisions of current § 382.39 (c).

Section 382.115 What Requirements Apply to On-Board Safety Briefings?

This section carries forward the provisions of current §§ 382.45(b) and 382.47(b). Foreign carriers may comply with the requirement for video safety briefing materials incrementally, as they replace old videos with new ones. As is currently the case, carriers are prohibited from taking any action adverse to a passenger on the basis that the passenger has not "accepted" the briefing. For example, it would be improper for a carrier to take any action against a passenger because carrier personnel felt that the passenger was not paying sufficient attention to the briefing (e.g., because he or she was reading at the time). While close attention to safety briefings is always recommended for passengers, carriers do not take action against members of the general passenger population who similarly ignore the general safety briefing. Passenger inattention to briefings does not prevent crewmembers from performing their duties under FAA safety rules, which is simply to provide the briefings. The Department seeks comment on whether any different requirements should apply to foreign carriers.

Section 382.117 Must Carriers Permit Passengers With a Disability To Travel With Service Animals?

This section carries forward the provisions of current § 382.55(a). While the substance of this provision has not

changed, new guidance concerning service animal issues found in Appendix A. The original source of this guidance was a series of questions and answers the Department published in 1996 (61 FR 56420). A group convened by the NCD and ATA subsequently provided recommendations via the NCD MOU with the Department. The Department made minor modifications and additions to the NCD/ATA suggestions, and we have previously posted this material on the Department's web site. This guidance replaces the questions and answers on service animal issues the Department published in 1996 (61 FR 56420). In Appendix A, the Department has made a few additional minor modifications to the sections on requesting and requiring documentation for service animals. The Department seeks comment on whether any modifications should be made to Appendix A.

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

Section 382.121 What Mobility Aids May Passengers With a Disability Bring Into the Aircraft Cabin?

This section incorporates the substance of current § 382.41(a)–(d). It adds a reference to TSA as well as FAA regulations that may affect the carriage of passengers' items in the cabin. As in other situations in which there could be a conflict with foreign law, foreign carriers could apply for a waiver under § 382.7.

Section 382.123 What Are the Requirements Concerning Priority Cabin Stowage Space for Wheelchairs?

This section carries forward the substance of current § 382.41(e). It emphasizes the applicability of FAA, TSA, and hazardous materials rules to the carriage of items in the cabin. As in other situations in which there could be a conflict with foreign law, foreign carriers could apply for a waiver under § 382.7.

One problem that has sometimes occurred concerns competing claims to stowage space between passengers' wheelchairs and crew luggage. On some occasions, crew members have argued that their own luggage takes precedence over a passenger's folding wheelchair. A related problem has arisen in some cases where crew members have asserted that a passenger's folding wheelchair need not be stowed in the cabin because an on-board wheelchair is already stowed there. The language of this section is intended to address both problems. Under this provision, if a

closet or other stowage space is made available for passengers' items at any time, then it must be made available for the stowage of passengers' wheelchairs. This use of the space is not trumped by crew luggage. Nor is the presence of an on-board wheelchair a valid reason for denying stowage space to a passenger's wheelchair. The Department's Aviation Enforcement and Proceedings Office has made these positions clear to carriers under the existing regulation, and we maintain these positions under the proposed rule.

Section 382.125 What Procedures Do Carriers Follow When Wheelchairs, Other Mobility Aids, and Other Assistive Devices Must Be Stowed in the Cargo Compartment?

This section carries forward the provisions of current § 382.41(f). It again makes reference to the potential applicability of TSA as well as FAA regulations. As in other situations in which there could be a conflict with foreign law, foreign carriers could apply for a waiver under § 382.7.

Section 382.127 What Procedures Apply to Stowage of Battery-Powered Wheelchairs?

This section carries forward the provisions of current § 382.41(g). It again makes reference to the potential applicability of TSA as well as FAA regulations. As in other situations in which there could be a conflict with foreign law, foreign carriers could apply for a waiver under § 382.7.

Section 382.129 What Other Requirements Apply When Passengers' Wheelchairs, Other Mobility Aids, and Other Assistive Devices Must Be Disassembled for Stowage?

This section carries forward the provisions of current §§ 382.41(h) and 382.43 (a). It includes language incorporating an existing provision (see current § 382.41(h)) that carriers must permit a passenger to provide written directions concerning the disassembly and reassembly of wheelchairs and other devices. The carrier would have to follow these instructions to the greatest extent feasible, consistent with applicable FAA and TSA rules. As in other situations in which there could be a conflict with foreign law, foreign carriers could apply for a waiver under § 382.7.

The purpose of this requirement is to reduce the chance for damage to wheelchairs and other devices resulting from unfamiliarity by carrier personnel with the best way of working with the devices. The passenger is often the best

source of information on how to handle his or her valuable property.

Section 382.131 Do Baggage Liability Limits Apply to Mobility Aids and Other Assistive Devices?

This section carries forward the provisions of current § 382.43(b). Because the rule now would apply to foreign carriers, the Department believes it is useful to spell out that the domestic baggage liability limits of 14 CFR part 254, as well as the exception to these limits that this section in effect creates, do not apply to international transportation to which Warsaw or Montreal Convention liability limits apply. The Department seeks comment on how liability for loss of or damage to wheelchairs and other assistive devices should be handled in the case of international transportation.

Subpart J—Training and Administrative Provisions

Section 382.141 What Training Are Carriers Required To Provide for Their Personnel?

This section is based principally on current § 382.61 (a)(1)–(3), (5)–(7), and (b). The NPRM would add provisions concerning training on equipment operation and consultation with disability community organizations. The Department seeks comment on the application of this proposed requirement to foreign carriers. For example, if a foreign carrier can demonstrate it made good faith efforts to contact disability community organizations in its home country, but was unable to do so, should the requirement be waived? In addition, training would cover contractor employees who deal with the traveling public generally, not only at airports as under the current § 382.61(a)(6). For example, contract reservationists who deal with customers over the phone need to know how to apply certain provisions of this regulation no less than ticket agents located at an airport.

Section 382.143 When Must Carriers Complete Training for Their Personnel?

This section would establish the schedule on which carriers must complete the training of their personnel. Training of contractor personnel would be required to follow the same schedule, as if the contractor personnel worked directly for the air carrier. Current personnel of U.S. carriers are supposed to have received ACAA training already. However, the final rule will probably change some requirements of the rule. Consequently, the Department proposes that existing U.S. carrier personnel

would be given training on the revised Part 382 within a year of the effective date of the final rule. The training could be limited to changes in the regulation. New U.S. carrier personnel would have to receive complete ACAA training before they started work, or within 60 days of doing so, depending on the position they occupy.

For foreign carriers, training requirements would be limited to carrier and contractor personnel who deal with the traveling public in connection with flights that begin or end at a U.S. airport. Because foreign carriers probably would not have experience in developing and implementing disability-related training programs comparable to that of U.S. carriers, foreign carriers would not be required to complete training for any of their personnel until a year from the effective date of the rule. Otherwise, the U.S. and foreign carrier training requirements would be parallel.

Section 382.145 What Must Carriers Incorporate in Their Manuals?

Current § 382.63 requires carriers to establish ACAA compliance programs, which major or national U.S. carriers must submit to DOT for review. The NPRM proposes to delete this requirement, which we believe is no longer necessary. Rather, this section would require all carriers to incorporate their procedures for complying with ACAA requirements in their manuals, training materials, and guidance for their personnel. Carriers would not be required to submit these materials to DOT as a routine matter. However, carriers would have to make them available to DOT for review on DOT's request. DOT could require a carrier to change these materials to comply with Part 382. We also seek comment on whether it would be beneficial for carriers to be required to submit certifications of compliance with this requirement to the Department.

Subpart K—Complaints and Enforcement Procedures

Section 382.151 What Are the Requirements for Providing Complaints Resolution Officials?

This section is based on current § 382.65 (a)(1)–(4). We propose an important addition to the current language. In any situation in which a person raises a disability-related issue, and a carrier's personnel do not resolve the issue immediately to the customer's satisfaction, the carrier's personnel must immediately inform the customer of the right to contact a Complaints Resolution Official (CRO). Frequently, passengers

do not know that CROs exist and that they can be a resource to solve discrimination or accessibility problems. We believe it should be the airline's responsibility to make passengers aware of this resource when a passenger's disability-related concern has not been addressed to the customer's satisfaction by the carrier's staff. A web site, phone reservation system, or contractor must also provide this same information when such a problem arises. To ensure that passengers have the necessary tools at their disposal to resolve issues, the airlines in this situation would also have to provide the Department's toll-free airline accessibility hot line number. This number is available only for calls made from the U.S.

The current and proposed regulations require carriers to make CRO service available at all times when the carrier is operating at the airport. In some cases, a carrier may have only a few flights a week to a given airport. The carrier may staff its station at that airport only around the times that these flights are arriving or departing. In such a case, CRO service would only be required during those periods.

Section 382.153 What Actions Do CROs Take on Complaints?

This section is based on current § 382.65(a)(5). It concerns situations when a complaint is made directly to a CRO, typically by such "real time" means as a personal conversation, phone or TTY call, or electronic instant message. (Communications to the carrier's organization are discussed below in connection with § 382.155.)

Section 382.155 How Must Carriers Respond to Written Complaints?

This section is unchanged from the current § 382.65(b), except that it eliminates the 45-day complaint filing deadline with respect to complaints forwarded to carriers by DOT.

Section 382.157 What Are Carriers' Obligations for Recordkeeping and Reporting on Disability-Related Complaints?

The Department has issued a final rule creating a new § 382.70, concerning recordkeeping and reporting requirements to comply with AIR–21 mandates. We are not reprinting this material here, because we are not seeking additional comment on it. When the final rule based on this NPRM is issued, we will insert the contents of the current § 382.70 at this point in the revised rule. The Department will also incorporate the Appendix created by the recordkeeping and reporting

requirements rulemaking into the Part 382 final rule as Appendix B.

Section 382.159 How Are Complaints Filed With DOT?

This section carries forward the provisions of current § 382.65(c).

Appendix A—Guidance Concerning Service Animals

This appendix incorporates into the ACAA rule the guidance on service animal issues that the Department recently issued and placed on its web site. The guidance is intended to give both air carriers and passengers the benefit of the thinking of the Department, the airline industry, and the disability community on how to carry out the rule's requirements for accommodating passengers' service animals. This proposed appendix would add three elements to the previously published version of the guidance: training for emotional support animals, a prohibition on requiring documentation for most service animals, and certain conditions on the use of service animals. As noted above, the Department is seeking comments on whether this guidance should be modified in any way.

One issue of which the Department has become aware concerns transportation of service animals on long-duration flights (e.g., nonstop trans-Pacific flights that may take 14–18 hours). Eating, drinking, and elimination functions for service animals could prove problematic under these circumstances. The Department seeks comment on how best to address these issues. In addition, in the context of connecting flights for passengers using service animals, the Department has heard suggestions that airports provide animal relief areas in terminals. (If such a provision were included in the rule, it would presumably be in Subpart D.) We seek comment on whether providing animal relief areas in airport terminals is feasible and, if so, how it would best be accomplished.

Reference Table—Placement of Current Provisions

The purpose of this table is to aid readers in finding the location, in the new proposed rule text, of material corresponding to or derived from provisions in the current rule text. The current and proposed language often is not identical, though the subject matters covered are similar. The citations from the current regulatory text are in the left-hand column; the corresponding portions of the new proposed regulatory text are in the right-hand column.

Current rule text	New proposed rule text
382.1	382.1
382.3(a)–(d)	382.5
382.3(e)–(g)	382.9
382.5	382.3
382.7	382.11–382.13
382.9	382.15
382.21	382.61–382.71
382.31	382.19
382.33	382.25–382.27
382.35	382.29
382.37	382.87
382.38	382.81–382.85
382.39(a)	382.91(a)
382.39(a)(1)	382.95(a)
382.39(a)(2)	382.101
382.39(a)(3)	382.103
382.39(b)	382.111
382.39(c)	382.113
382.40(a), 382.40a(a)	382.95(b)
382.40(c)(4),	382.97
382.40a(c)(4).	
382.40(c)(1)–(3), (5)–	382.99
(6); 382.40a(c)(1)–	
(3), (5)–(6).	
382.40(d), 382.40a(d)	382.141(a)(1)(ii)–(iii)
382.41(a)–(d)	382.121
382.41(e)	382.123
382.41(f)	382.125
382.41(g)	382.127
382.41(h)	382.129(a)
382.43(a)	382.129(b)
382.43(b)	382.131
382.43(c)	382.35
382.45(a)	382.41
382.45(b)	382.115(a)–(d)
382.45(c)	382.53
382.45(d)	382.45
382.47(a)	382.43(a)
382.43(b)	382.115(e)
382.49	382.55
382.51	382.21
382.53	382.23
382.55(a)	382.117
382.55(b)–(c)	382.33
382.61	382.141–382.143
382.63	382.145
382.65(a)(1)–(4)	382.151
382.65(a)(5)	382.153
382.65(b)	382.155
382.55(c)–(d)	382.159
382.70	382.157 (reserved in NPRM)

Regulatory Analyses and Notices

This proposed rule is a significant rule under Executive Order 12886 and the Department’s Regulatory Policies and Procedures. It is of considerable interest to the disability community and the aviation industry. It does not, however, meet the criteria under the Executive Order for an economically significant rule.

The extension of current provisions to foreign air carriers will be of significant interest to them and the public. The Department has attempted to propose this extension in as even-handed a manner as possible, applying not only the same regulatory provisions but the same compliance time frames that

applied to U.S. carriers. As noted above, the provisions of the proposed rule apply only to foreign aircraft and operations involved with flights beginning or ending at U.S. airports.

Other than extending coverage of ACAA provisions to foreign carriers, the most important new element is the requirement for web site accessibility, which is an extension of existing communications accessibility requirements to a medium that did not play an important role in the industry when the original ACAA rule was issued. This new requirement would apply to U.S. and foreign carriers alike (though, with respect to foreign carriers, only with respect to flights to and from U.S. airports).

This rule results from a statutory change applying the requirements of the ACAA to foreign as well as U.S. air carriers. We believe that amending Part 382 to cover foreign air carriers is the most direct and transparent way of carrying out this statutory mandate. There are alternative approaches the Department could consider, though the Department does not at this time believe they are as feasible. Nevertheless, the Department seeks comment on these and any other alternatives that commenters may want to suggest.

Since the statute now applies to foreign air carriers, the Department could simply rely on the efforts of our Aviation Enforcement and Proceedings office to respond to complaints of discrimination by passengers against foreign air carriers. While enforcement is an important task of the Department under the ACAA, using enforcement alone to implement the statute has disadvantages. The statute does not provide to foreign air carriers detailed advance notice of what the Department’s expectations for compliance are, leading to considerable uncertainty. This approach would also result in case-by-case adjudications being the only way of determining what detailed requirements were, which would serve passengers less well than an articulated set of generally applicable standards. This approach would also create a disparity between the way U.S. carriers and foreign carriers would be expected to comply with the same underlying statutory requirement, contrary to the apparent intent of Congress that all carriers serving U.S. airports be treated similarly.

The Department could also wait for international action (e.g., through the International Air Transport Association (IATA) or via bilateral or multilateral international agreements) to establish standards for air travel throughout the world. However, IATA frequently takes

a long time to devise standards, and its standards are often advisory rather than mandatory. In any case, it would probably be much more difficult for the Department to enforce IATA materials than to enforce a DOT regulation. The issue of different compliance responsibilities for U.S. and foreign air carriers arises in this context as well. International agreements also typically take a much longer time to establish than a generally applicable rulemaking, and may not deal with accessibility issues in a uniform way that is transparent to passengers.

Because the rule will impose compliance requirements on U.S. and foreign carriers, the Department has produced a regulatory evaluation for this proposal, which we have placed into the docket. The evaluation estimates that incremental compliance costs will be approximately \$16–21 million per year, plus an additional one-time cost of about \$300,000 for web site accessibility. Twenty-year present value costs for compliance are estimated to range between \$166 and \$205 million.

As foreign air carrier service becomes more accessible, there will be obvious, though nonquantifiable, benefits to passengers with disabilities and persons traveling with them. The analysis also estimates that there will be tangible economic benefits to foreign air carriers themselves, in terms of increased revenue from the additional passengers that will be able to travel as barriers to travel are reduced. The range of these benefits is estimated to be approximately \$326 to \$615 million in 20-year present value terms, with the most probable benefit being \$443 million.

Given the scale of the projected economic benefits of the rule, and the likelihood that foreign carriers do not face legal or regulatory barriers preventing them from providing accommodations that would produce these benefits, the question of why carriers have not voluntarily adopted such accommodations may arise. That is, since airlines presumably are no less interested than the next economic actor in maximizing profits, why have they not recognized these potential benefits and voluntarily taken the opportunity of increasing their income and profits by providing accommodations to passengers with disabilities, even in the absence of regulation?

The Department does not have information in its record concerning the thought processes of airline managements on this question. One possibility is that the notion that providing improved accommodations to passengers with disabilities can be a

source of additional revenue—and not merely a source of additional costs—has not occurred to airline managements. Alternatively, it might also be possible that, because the population of people with disabilities is perceived in some sectors to be much smaller than it actually is, the business case for accessibility improvements is not seriously examined. In either case, data would not have been collected on which to base carrier decisions. Economically rational, profit-maximizing behavior, flows—at least in theory—from accurate and complete information about market factors. If an economic actor has not looked for or seen the possibility of information about a given factor, then ideal-typical behavior may not occur. In this event, a failure to obtain data leads to a kind of market failure, which may be rectified as airlines implement the accommodations called for in the proposed rule.

The Department seeks information and comments on this matter, as well as on the regulatory assessment's approach to, and the accuracy of, its estimates of costs and benefits.

There are a number of other points of interest in the regulatory assessment to which the Department would call attention. One is the fact that much of the benefits analysis is based on Canadian data. The analysis then extrapolates from these data to the situation of foreign air carriers. As the regulatory assessment points out, this extrapolation involves a good deal of uncertainty, since the situations of other nations' air carriers and passenger populations may not replicate Canadian data and trends. This uncertainty is the primary reason for conducting the sensitivity analysis in Chapter 5 of the assessment. Nevertheless, the Canadian data is the most complete the Department has been able to find at this time. We seek comment and additional data from carriers, international organizations, and other sources that will augment the information available to the Department for purposes of the final rule.

There are also some classes of potential beneficiaries besides passengers with disabilities that the assessment mentions. These include friends and relatives of passengers with disabilities and some airline employees. The former would benefit by being able to travel more readily with a passenger with a disability (indeed, a family member of a disabled passenger might well forego the opportunity to travel if his or her spouse or child could not readily travel because of barriers that this proposed regulation tries to address). The latter would benefit

because lift boarding requirements of the rule would reduce the chances of injury and time lost from work as the result of having to hand-carry passengers with disabilities onto and off of aircraft. The Department seeks comments on these and other potential classes of beneficiaries as well as any additional data that would help us more precisely analyze the effects of the proposed regulation on beneficiaries.

The Department certifies that, if adopted, this proposed rule would not have a significant economic effect on a substantial number of small entities. The vast majority of passenger air traffic on international routes to and from U.S. airports is carried on airlines that are not small entities; the economic effects of the proposal on small carriers that fly international routes into and out of the U.S. (e.g., commuter carriers on routes from Mexico, Canada, or the Caribbean) are not expected to be substantial. The proposed rule does not regulate state and local governments, and therefore would not have any Federalism impacts warranting a Federalism assessment. The proposed rule would not create any new information collection requirements for which a Paperwork Reduction Act submission to the Office of Management and Budget would be needed.

There are a number of other statutes and Executive Orders that apply to the rulemaking process that the Department considers in all rulemakings. However, none of them are relevant to this NPRM. These include the Unfunded Mandates Reform Act (which does not apply to nondiscrimination/civil rights requirements), the National Environmental Policy Act, E.O. 12630 (concerning property rights), E.O. 12988 (concerning civil justice reform), and E.O. 13045 (protection of children from environmental risks).

Issued this 22nd day of October, 2004, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

List of Subjects in 14 CFR Part 382

Air carriers, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR Part 382 as follows:

1. Revise Part 382 to read as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

Subpart A—General Provisions

Sec.

- 382.1 What is the purpose of this part?
- 382.3 What do the terms in this part mean?
- 382.5 To whom do the provisions of this part apply?
- 382.7 What may foreign carriers do if they believe a provision of a foreign nation's law prohibits compliance with a provision of this part?
- 382.9 When are foreign carriers required to begin complying with the provisions of this part?

Subpart B—Nondiscrimination and Access to Services and Information

- 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?
- 382.15 Do carriers have to make sure that contractors comply with the requirements of this part?
- 382.17 May carriers limit the number of passengers with a disability on a flight?
- 382.19 May carriers refuse to provide transportation on the basis of disability?
- 382.21 May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition?
- 382.23 May carriers require a passenger with a disability to provide a medical certificate?
- 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 certain specific services in connection with a flight?
- 382.29 May a carrier require a passenger with a disability to travel with a safety assistant?
- 382.31 May carriers impose special charges on passengers with a disability for providing services and accommodations required by this rule?
- 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?

Subpart C—Information for Passengers

- 382.41 What flight-related information must carriers provide to qualified individuals with a disability?
- 382.43 Must information and reservation services of carriers be accessible to individuals with hearing and vision impairments?
- 382.45 Must carriers make copies of this part available to passengers?

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- 382.51 What requirements must carriers meet concerning the accessibility of airport facilities?
- 382.53 What accommodations are required in airports for individuals with a vision

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382.55 May carriers impose security screening procedures for passengers with disabilities that go beyond TSA requirements?

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382.123 What are the requirements concerning priority cabin stowage space for wheelchairs?

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382.157 What are carriers' obligations for recordkeeping and reporting on disability-related complaints? [Reserved]

382.159 How are complaints filed with DOT?

Appendix A to Part 382—Guidance Concerning Service Animals

Appendix B to Part 382—Disability Complaint Reporting Form [Reserved]

Authority: 49 U.S.C. 41702, 41310, 47105, and 41712.

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 air 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 part mean?

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

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

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.

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.

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

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.

Indirect air 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 an air 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.

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 an air 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 air 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 To whom do the provisions of this part apply?

(a) If you are a U.S. air carrier, this part applies to you with respect to all your operations and aircraft, regardless of where your operations take place.

(b) Except as provided in paragraph (c) of this section, if you are a foreign air carrier, this part applies to you only with respect to flights 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: A passenger books a nonstop flight from Paris to Chicago. This is a "flight" for purposes of this part.

Example 2: A passenger books a journey on a foreign carrier from Washington, DC, to Berlin. The foreign carrier flies nonstop to Frankfurt. The passenger gets off the plane in Frankfurt and boards a connecting flight, on the same or a different foreign carrier, that goes to Berlin. The Washington-Frankfurt leg of the journey is a "flight" for purposes of this part; the Frankfurt-Berlin leg is not (unless it is a code-shared flight with a U.S. carrier; see paragraph (c) of this section).

Example 3: A passenger books a journey on a foreign carrier from New York to Cairo. The plane stops for refueling and a crew change in London. The passengers reboard the aircraft (or a different aircraft, assuming the flight number remains the same) and continue to Cairo. Both legs are parts of a covered "flight" for purposes of this part, with respect to passengers who board the flight in New York.

Example 4: In Example 3, the carrier is not required to provide services under this part to a passenger who boards the aircraft in London and goes to Cairo. Likewise, on the return trip, the foreign carrier is not required to provide services under this part to a passenger who boards the aircraft in Cairo and whose journey ends in London.

Example 5: If you are a foreign carrier that actually operates a flight that is also listed as a flight of a U.S. carrier through a code-sharing arrangement, the provisions of this part covering U.S. carriers apply to the flight.

(c) Notwithstanding any other provision of this section, if you are a foreign carrier that uses a particular aircraft in flights only between foreign airports, and you do not use the aircraft for any flights that begin or end at a U.S. airport, you are not required to comply with the aircraft accessibility requirements of Subpart E of this part

with respect to that aircraft. However, you must comply with the service-related requirements of this part for any flight that is covered by this part (e.g., a code-shared flight).

(d) 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.

(e) If you are an indirect air carrier, §§ 382.17 through 382.157 of this part do not apply to you.

(f) Notwithstanding any provisions of this part, you must comply with all FAA safety regulations and TSA security regulations that apply to you.

§ 382.7 What may foreign carriers do if they believe a provision of a foreign nation's law prohibits 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, U.S. Department of Transportation, 400 7th Street, SW., Room 4116, Washington, DC 20590.

(c) Your waiver request must 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 Assistant General Counsel for Aviation Enforcement and Proceedings may grant the waiver request if he or she 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 provision of this part subject to the waiver or clear and convincing evidence that it would be impossible to achieve this objective in any way.

(e) Until and unless the Assistant General Counsel for Aviation Enforcement and Proceedings grants a waiver request, the carrier requesting the waiver remains subject to the provision of this part for which the waiver is sought.

§ 382.9 When are foreign air carriers required to begin complying with the provisions of this rule?

As a foreign air carrier, you are required to comply with the requirements of this part beginning [effective date of this part], except as otherwise provided in individual sections of this part.

Subpart B—Nondiscrimination and Access to Services and Information

§ 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(b), 382.85(b), and 382.123(b).

(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. 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 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 air carrier, you provide facilities or services for passengers that are covered for other carriers by sections §§ 382.17–382.157, 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 and practices as needed to ensure nondiscrimination, consistent with the standards of section 504 of the Rehabilitation Act, as amended.

(b) As a carrier, you must modify your nondiscrimination, consistent with the standards of the Americans with Disabilities Act Accessibility Guidelines

(ADAAGs), as adopted by the Department of Transportation in 49 CFR part 37, appendix A.

(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 who 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 who provide to the public services 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 Complaints Resolution Officials (CROs) under §§ 382.151 through 382.153.

(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 with the assurances in your contracts with them.

(e) It is not a defense to 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(b)(7).)

§ 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.

(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 and determining the least restrictive means of dealing with such a threat, you must apply the provisions of § 382.19(c)(1) through (2). For example, suppose a passenger with a communicable disease gives you a medical certificate of the kind described in § 382.23(c)(2) that describes 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.

(c) 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.

(d) 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.

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

(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. It must be dated within ten days of the date of the flight for which it is presented.

§ 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 paragraph (b) of this section, 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 48 hours' advance notice and one-hour advance check-in to receive the following services and accommodations. The services listed in paragraphs (b)(1) through (4) of this paragraph are optional; you are not required to provide them, but you may choose to do so.

(1) Medical oxygen for use on board the aircraft;

(2) Carriage of an incubator;

(3) Hook-up for a respirator to the aircraft electrical power supply;

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

(5) Transportation for an electric wheelchair on a flight scheduled to be

made with an aircraft with fewer than 60 seats;

(6) Provision by the carrier of hazardous materials packaging for a battery for a wheelchair or other assistive device;

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

(8) Provision of an on-board wheelchair on an aircraft with more than 50 seats that does not have an accessible lavatory.

(c) 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 (b)(5) through (8) of this section) or choose to provide (see paragraphs (b)(1) through (4) of this section), you must provide the requested service or accommodation.

(d) 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.

(e) 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.

(f) 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 ICAO Standards and Recommended Practices, as applicable;

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

(4) A passenger who has both severe hearing and severe vision impairments, if the person cannot establish some means of communication with carrier personnel, adequate to permit transmission of the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4), 14 CFR 135.117(b), or ICAO Standards and Recommended Practices, as applicable.

(c) 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. However, if a passenger voluntarily chooses to travel with a personal care attendant or a 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, the passenger is eligible for denied boarding compensation under 14 CFR Part 250, if Part 250 applies to the flight.

(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.

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

(a) As a carrier, you must not 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 (e.g., oxygen).

(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.

§ 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);

(5) Requiring ambulatory passengers, including but not limited to blind or visually impaired passengers, to use a wheelchair in order to receive assistance required by this part (e.g., by § 382.91) or otherwise offered to the passenger; or

(6) 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.

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. The information you provide must be specific to the type of aircraft and, where feasible, the specific aircraft you expect to use for a flight:

(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 limitations on the ability of the aircraft to accommodate passengers with a disability, including limitations on the availability of boarding assistance 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; and

(e) Whether the aircraft has an accessible lavatory.

§ 382.43 Must information and reservation services of carriers be accessible to individuals with hearing and vision impairments?

(a) If, as a carrier, you provide telephone reservation or information service to the public, you must make this service available to individuals who are deaf or hard-of-hearing through use of a text telephone (TTY).

(1) You must make TTY service available during the same hours as telephone service for the general public.

(2) Your response time to TTY calls must be equivalent to your response time for your telephone service to the general public.

(3) If you are a foreign carrier, you must meet this requirement by [date one year from the effective date of this part].

(b) If you provide information or reservation services to the public through an internet web site (including a web site maintained by a contractor or agent for you or for you and other air

carriers), you must ensure that the web site is accessible to and usable by individuals with vision impairments and other disabilities.

(1) In making web sites accessible, you must use as your standards the provisions of 36 CFR Part 1194.

(2) New Web sites placed on line after [effective date of this part] must meet these accessibility standards from the time they are placed on line.

(3) Web sites that were placed on line before [effective date of this part] must meet these accessibility standards by [date two years from the effective date of this part].

(c) If, as a carrier, you provide written (*i.e.*, hard copy) information to the public, you must ensure that this information is able to be communicated effectively, on request, to persons with vision impairments. You must provide this information in the same language(s) in which it is available to the general public.

(d) If you are a U.S. carrier, the requirements of this section apply with respect to all your information and reservation services. If you are a foreign air carrier, the requirements of this section apply only with respect to your information and reservations services concerning flights covered by § 382.5.

§ 382.45 Must carriers make copies of this part available to passengers?

As a carrier, you must keep a current copy of this part at each airport you serve. As a foreign carrier, this means that you must keep the copy at any airport serving a flight that begins or ends at a U.S. airport. You must make the copy available for review by any member of the public on request.

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 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.

(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 that begin or end in the U.S.

(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 boarding 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 air carrier, you must meet the requirements of this section by [date one year from the effective date of this part]. As a U.S. carrier, you must meet the requirements of paragraph (b) of this section by [date one year from the effective date of this part].

§ 382.53 What accommodations are required at airports for individuals with a vision impairment or individuals who are deaf or hard-of-hearing?

(a) As a carrier, you must ensure that individuals with impaired vision and deaf and hard-of-hearing individuals have access to the information you provide to the general public at airports.

To the extent that this information is not available to these individuals through signage and verbal public address announcements, your personnel must promptly provide the information to such individuals on their request, in languages in which the information is provided to the general public.

(1)(i) As a U.S. carrier, you must make this information available at each gate, baggage claim area, ticketing area, or other terminal facility that you own, lease, or control at any U.S. or foreign airport.

(ii) As a foreign carrier, you must make this information available at each gate, baggage claim area, ticketing area, or other terminal facility that you own, lease, or control at any U.S. airport. At foreign airports, you must make this information available only at terminal facilities that serve flights that begin or end in the U.S.

(2) The types of information you must make available include, but are not limited to, information concerning ticketing, flight delays, schedule changes, changes to the aircraft being used for a flight, connections, flight check-in, gate assignments and changes, and the checking and claiming of luggage.

(b) As a foreign air carrier at a U.S. airport, or a U.S. or foreign air carrier at a foreign airport, you must meet the requirements of this section by [date one year from effective date of this rule].

§ 382.55 May carriers impose security screening procedures for passengers with disabilities that go beyond TSA requirements?

(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 an air carrier, you impose security screening procedures for passengers with disabilities that go beyond those mandated by TSA (or, at a foreign airport, by legal requirements of the country in which the airport is located), you must ensure that they meet the following requirements:

(1) You must apply security screening procedures to passengers with disabilities in the same manner 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 (c) 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.

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 which passengers with mobility impairments are permitted to sit under FAA safety rules.

(b) You are not required to provide movable armrests on aisle seats 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 individuals 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 an aircraft's seats with newly manufactured seats, you must provide movable aisle armrests as required by this section.

(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 [effective date of this part] or which are delivered to you after [date two years from the effective date of this part]. As a U.S. carrier, this requirement applies to you with respect to new aircraft you operate that are initially ordered after April 5, 1990, or which are delivered to you after April 5, 1992.

(g) As a U.S. carrier, you must comply with paragraph (c) of this section with respect to new aircraft that are ordered after [effective date of this part] or that are delivered after [date two years from the effective date of this part].

(h) As a foreign carrier, you must comply with the requirements of paragraph (e) of this section with respect to seats ordered on or after [effective date of this part].

§ 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. If you replace a component of an inaccessible lavatory (e.g., the sink) on an aircraft with more than one aisle, you must replace it with an accessible component.

(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 [effective date of this part] or which are delivered to you after [date two years from the effective date of this part]. 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 are delivered to you on or after April 5, 1992.

(e) As a foreign carrier, you must comply with the requirements of paragraph (c) of this section beginning [effective date of this part].

§ 382.65 What are the requirements concerning on-board wheelchairs?

(a) As a carrier, you must equip aircraft that have 50 or more passenger seats, and that have an accessible lavatory (whether or not having such a lavatory is required by § 382.63) with an on-board wheelchair.

(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 50 or more 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 [date two years from the effective date of this part]. As a U.S. carrier, you must meet this requirement by [date two years from the effective date of this part] with respect to aircraft with 50–60 passenger seats.

§ 382.67 What is the requirement for priority space in the cabin to store passengers' wheelchairs?

(a) As a carrier, you must designate, in each aircraft with 100 or more passenger seats, a priority space in the cabin of sufficient size to stow at least one folding, collapsible, or break-down 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. If a wheelchair exceeds this space 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, stow the removed components in areas provided for stowage of carry-on luggage.

(b) As a foreign carrier, you must meet the requirement of paragraph (a) of this section by [date two years from the effective date of this part]. 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 are delivered to you on or after April 5, 1992.

§ 382.69 [Reserved]

§ 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 accessibility to a level below that specified 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:

(a) You must provide a seat in a row with a movable aisle armrest, if the aircraft is required to be equipped with such armrests. You must ensure that your personnel are trained in the location and proper use of movable aisle armrests, including appropriate transfer techniques.

(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 a 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., offers seat assignments to passengers before the day of the flight), you must comply with the requirements of § 382.81 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) 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 who requests the accommodation at the time the passenger makes the request. You may require such a passenger to check in at least one hour before the scheduled departure of 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 scheduled departure of the flight, 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 assign seats 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.

§ 382.85 What seating accommodations must carriers make to passengers in circumstances not covered by § 382.81 (a) through (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) through (d) 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) c, you must implement the requirements of this section as follows:

(i) When a passenger with a disability not described in § 382.81(a) through (d) 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), 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 departure time of 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).

(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.

§ 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 safety requirements.

(b) In responding to requests from individuals for accommodations under

this subpart, you must comply with FAA 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.

§ 382.89 When do the requirements of this subpart begin applying to foreign carriers?

As a foreign carrier, the obligations of this subpart apply to you on [date 6 months from the effective date of 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 an air carrier, you must provide assistance requested by or on behalf of 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 is responsible for providing this assistance, even if the passenger holds a separate ticket and/or reservation for the departing flight.

(b) You must also provide assistance requested by or on behalf of 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. This requirement

includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage claim. It also includes a brief stop upon request at an accessible rest room or nearby takeout food vendor.

(c) As part of your obligation to provide assistance to passengers with disabilities in moving around the terminal (e.g., between the terminal entrance and the gate, between gate and aircraft, from gate to gate for a connecting flight), you must assist passengers with disabilities, on request, with transporting their carry-on luggage. This obligation applies only to carry-on luggage which can be transported in the cabin, consistent with your carry-on luggage policy, this part, and FAA and TSA rules, or gate-checked.

§ 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 as needing additional time or assistance to board, stow accessibility equipment, or be seated. You must make the availability of this service known (i.e., through an announcement) to all passengers in the gate area before each flight.

§ 382.95 What are carriers' general obligations with respect to boarding, deplaning, and connecting assistance?

(a) As a carrier, you must promptly provide assistance requested by or on behalf of passengers with a disability, or offered by air carrier personnel and accepted by passengers with a disability, in enplaning, deplaning, and connecting to other flights. 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 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 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 provide access to 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 airport described in § 382.95(b) to ensure the provision of lifts for boarding and deplaning.

(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 [date one year from the effective date of this part].

(c) For foreign carriers, the agreement 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 [date 24 months from the effective date of this part], with respect to all covered aircraft serving an airport described in § 382.95(b).

(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 scheduled departure 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, and that inoperable lifts and equipment must be repaired or replaced expeditiously.

(f) All air carriers and airport operators involved are jointly and

severally responsible for the timely and complete implementation of the agreement.

(g) You must make 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 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 personnel to effect a level change the passenger needs to enter or leave the aircraft), even if the passenger consents. 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 lift boarding and deplaning assistance requirements under § 382.97 (a) through (c);

(d) The deadlines established in § 382.99(c)(2) through (3) have not yet passed; or

(e) Circumstances beyond your control (*e.g.*, unusually severe weather; unexpected short-duration 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 unattended by your personnel 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 restriction.

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 air

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 semiambulatory 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.

(f) Effective communication with passengers who have vision impairments 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 equipment or services, except as required by this part or FAA rules.

§ 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) As a carrier, if you present on-board safety briefings to passengers on video screens, you must ensure that the safety-video presentation is accessible to passengers with impaired hearing (e.g., through use of open captioning or placement of a sign language interpreter in the video).

(1) You may use an equivalent non-video alternative to this requirement only if neither open captioning nor a sign language interpreter inset can be placed in the video presentation without so interfering with it as to render it ineffective or it would not be large enough to be readable.

(2) If you are a foreign carrier, you may implement the requirements of this section by substituting captioned or interpreted video materials for uncaptioned/uninterpreted video materials as the uncaptioned/uninterpreted materials are replaced in the normal course of the carrier's operations.

§ 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.

(b) You must permit the service animal to accompany the passenger with a disability in 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 a seat location, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel in the cargo hold.

(d) You must accept as evidence that an animal is a service animal 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) 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 ten calendar days of the incident.

(f) Guidance concerning the carriage of service animals is found in appendix A to this part.

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 and TSA requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(1) Wheelchairs, including manual wheelchairs and break-down or collapsible battery-powered 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., vision-enhancing devices, personal ventilators and respirators that use non-spillable batteries).

(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 space for wheelchairs?

(a) In an aircraft in which a closet or other approved stowage area is provided in the cabin for passengers' carry-on items, of a size that will accommodate a passenger's typical adult-sized, folding, collapsible, or break-down wheelchair (including such battery-powered wheelchairs), you must, as a carrier, designate priority stowage space, as described below, for at least one such folding, collapsible, or break-down passenger wheelchair. This space must be other than the overhead compartments and under-seat spaces routinely used for passengers' carry-on items.

(b) If you are a passenger with a disability who uses a wheelchair and takes advantage of a carrier's offer of the opportunity to preboard the aircraft, you may stow your wheelchair in this area,

with priority over other items brought onto the aircraft by other passengers enplaning at the same airport, consistent with FAA and TSA requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(c) If you are a passenger with a disability who does not take advantage of a carrier offer of the opportunity to preboard, you may use the area to stow your wheelchair on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the area.

§ 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 and TSA 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. 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 within four hours of the scheduled arrival time of the flight.

(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 wheelchairs?

(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, including the battery, as checked baggage, consistent with the requirements of 49 CFR 175.10(a)(19) and (20) and the provisions of paragraph (f) of this section.

(b) You may require that passengers with a disability wishing to have battery-powered wheelchairs transported on a flight (including in the cabin) check in one hour before the scheduled departure time of the flight. If the passenger checks in after this time, you must nonetheless carry the wheelchair if you can do so by making a reasonable effort, without delaying the flight.

(c) If the battery on the passenger's wheelchair 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 may remove and package separately any battery that appears to be damaged or leaking (or even deny transportation to the battery if the potential safety hazard is serious enough).

(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)(19) and (20) 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 drain batteries.

(f) At the request of a passenger, you must stow a folding, break-down or collapsible battery-powered wheelchair in the passenger cabin stowage area as provided in § 382.123, consistent with FAA and TSA requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items. If the wheelchair can be stowed in the cabin without removing the battery, you must not remove the battery. If the wheelchair cannot be stowed in the cabin without removing the battery, you must remove the battery and stow it in the baggage compartment as provided in paragraphs (c) and (d) of this section. In this case, you must permit the wheelchair, with battery removed, to be stowed in the cabin.

§ 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 and TSA 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 domestic transportation (i.e., transportation to which Warsaw or Montreal Convention liability limits do not apply), the baggage liability limits of 14 CFR part 254 do not apply to liability for loss, damage, or delay concerning wheelchairs or other assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device shall be the original purchase price of the device.

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 consult with organizations representing persons with disabilities in developing your training program and your policies and procedures.

(4) 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.

(5) You must provide, or require your contractors to 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.

(6) The employees you designate as Complaints Resolution Officials (CROs), for purposes of § 382.151, must receive training concerning the requirements of this part and the duties of a CRO by [date 60 days from the effective date of this part]. For employees who have already received CRO training, this training may be limited to changes from the previous version of Part 382.

Employees subsequently designated as Complaints Resolution Officials shall receive this training before assuming their duties under § 382.151. You must ensure that all employees performing the Complaints Resolution Official function receive annual refresher training concerning their duties and the provisions 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) For crewmembers and other personnel subject to training required under 14 CFR part 121 or 135, who are employed on [effective date of this rule], within one year of that date or as part of their next scheduled recurrent training, whichever comes first.

(2) For crewmembers subject to training requirements under 14 CFR part 121 or 135 whose employment in any given position commences after [effective date of this rule], before they assume their duties; and

(3) For other personnel whose employment in any given position commences after [effective date of this rule], 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 paragraph (a) of this section 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) For crewmembers or other personnel who are employed on [effective date of this rule], within one year of that date;

(2) For crewmembers whose employment commences after [date one year from the effective date of this rule], before they assume their duties;

(3) For other personnel whose employment in any given position commences after [date one year from the effective date of this rule], within 60 days after the date on which they assume their duties; and

(4) For crewmembers and other personnel who become employed after [effective date of this rule] but before [date one year from the effective date of this rule], by [date one year from the effective date of this rule] or a date 60 days from the date of their employment, whichever is later.

§ 382.145 What must carriers incorporate in their manuals?

(a) As a carrier that operates aircraft with 19 or more seats, you must incorporate procedures implementing the requirements of this part in the manuals or other guidance or instructional materials provided for the 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.

(b) You must make your manuals and other materials implementing this part available 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.

Subpart K—Complaints and Enforcement Procedures

§ 382.151 What are the requirements for providing Complaints Resolution Officials?

(a) As a carrier, you must designate one or more complaints resolution officials (CROs).

(b) You must make a CRO available at each airport you serve, during all times you are operating at that airport. You must make CRO service available in the language(s) in which you make your other services available to the general public.

(c) 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 must be available so that persons with hearing impairments may readily communicate with the CRO.

(d) 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 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 (d)(1) of this section to passengers with a disability using those services.

(3) In the situations covered by paragraphs (1) and (2) of this paragraph, the passenger must also be given the Department of Transportation's airline accessibility toll-free hot line phone number (800-778-4838 (voice); 800-455-9880 (TTY)).

(e) 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.

(f) 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 (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 10 calendar days of the complaint.

§ 382.155 How must carriers respond to written complaints?

(a) As a carrier, 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? [Reserved]

§ 382.159 How are complaints filed with DOT?

(a) Any person believing that a carrier has violated any provision of this part may contact the following office for assistance: U.S. Department of Transportation, Aviation Consumer Protection Division, 400 7th Street, SW., Washington, DC, 20590. The Web site for this office is <http://airconsumer.ost.dot.gov>.

(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) Requests for assistance and complaints must be filed no later than 18 months after the incident to ensure that they can be investigated.

Appendix A to 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 1996¹, 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 by air 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 animal² 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, 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.

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 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).

Service Animals

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

Remember: In most situations *the key is TRAINING*. 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

¹ 61 FR 56409, 56420 (Nov. 1, 1996).

² See Glossary for definition of this and other terms.

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. *Obtain credible verbal assurances:* 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. *Look for physical indicators on the animal:* 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.

3. *Request documentation for service animals other than emotional support animals:* The law allows airline personnel to ask for documentation as a means of verifying that the animal is a service animal. Carriers are 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 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 mental health professional 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; and (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. An airline is allowed, but not required, to insist that the documentation include the date, type, and state of the mental health professional's license. 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.

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 handlers³ 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 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.

Qualified Individuals With Disabilities⁴

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 animal.

• Using the questions and other factors above, you must decide whether it is

³ Service animal users typically refer to the person who accompanies the animal as the "handler."

⁴ See Glossary.

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).

Inconvenience of other passengers is not sufficient grounds to deny a service animal carriage in the cabin; as indicated later in this document, however, airlines are not required to ask other passengers to relinquish space that they would normally use in order to accommodate a service animal (e.g., space under the seat in front of the non-disabled 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 ten 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 (i.e. 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, 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.

- 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, i.e. 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. 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 (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.

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.

What if the service animal is too large to fit under the seat in front of the customer?

- 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 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 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).

What if an airline employee or another passenger on board is allergic or has an adverse reaction to a passenger's service animal?

Passengers who state they have allergies or other animal aversions should be located as far away from the service animal as practicable. Whether or not an individual's allergies or animal aversions are disabilities (an issue this Guidance does not address), 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.

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 pre-boarding 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 382.38 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 pre-boarding for passengers with special needs, although it may be available. If you wish to request pre-boarding, tell the agent at the gate.

- Unless pre-boarding is not part of your carrier's business operation, a timely request for pre-boarding by a passenger with a disability should be honored (382.38(d)).

- Part 382 does not require carriers to make modifications that would constitute an undue burden or would fundamentally alter their programs (382.7(c)). Therefore, the following are *not* required in providing accommodations for users of service animals and are examples of what might realistically be viewed as creating an undue burden:

- ▶ Asking another passenger to give up the space in front of his or her seat to accommodate a service animal;

- ▶ 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.

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

Part 382 prohibits air carriers from imposing special charges for accommodations required by the regulation, such as carriage of a service animal. However, an air 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 pre-boarding 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 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 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 pre-boarding—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 pre-board 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 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).

- If you are having difficulty receiving an appropriate accommodation, ask the airline employee to contact the airline's *complaint resolution official (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 aviation consumer 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 382.3).

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 air 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 air carrier"; or

(3) "purchases or possesses a valid ticket for air transportation on an air 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 382.3).

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).

Appendix B to Part 382—Disability Complain Reporting Form**Disability Complaint Reporting Form [Reserved]**

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