

Related Information

(t) CAA airworthiness directive G-2004-0027, dated November 19, 2004, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on December 15, 2004.

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[FR Doc. 04-28144 Filed 12-28-04; 8:45 am]

BILLING CODE 4910-13-P

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

[OST Docket No. 2003-11473]

RIN 2105-ADO4

Reporting Requirements for Disability-Related Complaints

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

ACTION: Guidance on final rule and notice of information collection approval.

SUMMARY: A July 8, 2003, final rule (68 FR 40488) requires, among other things, that certain certificated U.S. air carriers and foreign air carriers record disability-related complaints and submit a summary report of those complaints annually to the Department.

This document announces the Office of Management and Budget (OMB) approval of this information collection request (ICR) OMB No. 2105-0551, "Reporting Requirements for Disability-Related Complaints," provides information on how covered carriers can submit a report summarizing the disability-related complaints that they receive during the prior calendar year to the Department through the World Wide

Web, and addresses frequently asked questions about the applicability of the rule.

DATES: The final rule published July 8, 2003 (68 FR 40488) was effective August 7, 2003. The expiration date for the ICR is April 30, 2007.

FOR FURTHER INFORMATION CONTACT:

Damon P. Whitehead or Blane A. Workie, Office of the General Counsel, 400 7th Street, SW., Room 4116, Washington, DC 20590, (202) 366-9342 (voice), (202) 366-7152 (Fax) or damon.whitehead@ost.dot.gov or blane.workie@ost.dot.gov (E-mail). Arrangements to obtain the notice in an alternative format may be made by contacting the above-named individuals.

SUPPLEMENTARY INFORMATION:**Background**

On July 8, 2003, the Office of the Secretary published a final rule adding § 382.70 to 14 CFR Part 382, the Department's rule implementing the Air Carrier Access Act. Section 382.70 requires most certificated U.S. air carriers and foreign air carriers operating to and from the U.S. that conduct passenger-carrying service to do the following: (1) Record and categorize complaints that they receive alleging inadequate accessibility for the disabled or discrimination on the basis of disability according to the type of disability and nature of complaint; (2) prepare an annual summary report of the number of such complaints; (3) submit the report to the Department's Aviation Consumer Protection Division through the World Wide Web unless the carrier can demonstrate that it would suffer undue hardship if it were not permitted to submit the data via paper copies, computer disks, or e-mail; and (4) retain copies of the correspondence and records of action taken on the

disability-related complaints for three years. 68 FR 40488. The effective date of this final rule was August 7, 2003. At that time, the Department had not obtained an OMB control number for its information collection request and had not established procedures for covered carriers to follow when submitting annual reports to the Department through the World Wide Web.

Approval of Information Collection Request

OMB regulations implementing provisions of the Paperwork Reduction Act of 1995 require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, OST has received OMB approval of the following ICR:

OMB Control Number: 2105-0551.

Title: Reporting Requirements for Disability-Related Complaints.

This information collection approval, which was granted by OMB on April 23, 2004, expires on April 30, 2007. Because OMB approved the information collection after publication of the July 8, 2003, final rule, we are now announcing the OMB approval and incorporating notice of this approval into the form that carriers will use through the World Wide Web to submit their annual report summarizing the disability-related complaints that they received during the prior calendar year. A copy of the form is included below and this notice will be sent to affected carriers for whom we have accurate contact information.

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Procedures For Submission of Report Through the World Wide Web

DOT has established a Web site at <http://382reporting.ost.dot.gov> to enable covered carriers to submit from any Internet-connected computer anywhere in the world the required annual report summarizing the disability-related complaints that they received during the prior calendar year using the form specified in Appendix A of Part 382. Carriers will need to register on the Web site before they can gain access and complete the disability-related complaint form online. To register, carriers simply fill in and submit the required registration information: Carrier name; carrier class (foreign or U.S.); carrier address; and carrier representative name, title, and contact information. Each carrier representative will be assigned a unique user name and password after DOT has verified the authenticity of the registered carrier and representative, which may take a day or two. This step is necessary to ensure that only authorized users can submit information and view sensitive data. We encourage each covered carrier to register with the Web site as soon as possible so that the carrier representative can receive a user name and password well in advance of January 25, 2005, the date by which carriers must submit to the Department of Transportation the report covering disability-related complaints received during calendar year 2004.

Once a carrier representative receives a user name and password from DOT, that representative will be able to access and complete the disability-related complaint form online, modify his/her contact information and change his/her user name and/or password. To change a user name or password, the representative would simply login with the given user name and password and then click on the "Change Password" link on the left side of the menu. Similarly, a carrier representative could modify his/her contact information by clicking on "Change Contact Information." Clicking on the "Add Report to Current Year" will take the carrier representative to a screen containing data fields that need to be completed on the DOT disability complaint reporting form. All the fields in the form must be completed, as failure to provide a number in any field would prevent the representative from continuing to the next screen. Carriers are to enter a numeral "0" where there are no complaints in a given category. When the carrier representative finishes inputting numbers in all the fields in the form, he/she should then read and

acknowledge the legal certification statement prior to clicking the "Submit" button. After submission, the annual report will be forwarded to DOT and the carrier representative will not be able to make any changes to the report through the Internet.

Frequently Asked Questions

Since the final rule on reporting requirements for disability-related complaints was published on July 8, 2003, a number of carrier representatives have contacted the Department of Transportation to ask for clarification or interpretation regarding the text of § 382.70. These clarifications and interpretations have been disseminated primarily through informal conversations or e-mails between DOT staff and individual carrier representatives. The Department believes that the guidance provided to these carrier representatives may also be of interest to other members of the public. To ensure this guidance will be more accessible to the public and § 382.70 will be more readily understandable, we are including in this notice frequently asked questions and DOT responses regarding § 382.70.

1. *Question:* Did § 382.70 become effective on August 7, 2003? If so, what action(s) were covered carriers required to take beginning on that date?

Answer: Yes, § 382.70 became effective on August 7, 2003. See 68 FR 40488. Beginning on that date, covered carriers were required to record and categorize disability-related complaints that they receive according to the type of disability and nature of complaint. Covered foreign air carriers were also required to retain for three years copies of the correspondence and records of action taken on the disability-related complaints. Prior to August 7, 2003, 14 CFR 249.20 of the Department's regulations already required certificated U.S. air carriers to retain correspondence and records of action taken for all consumer complaints for three years.

The first report, which must cover complaints received during calendar year 2004, must be submitted to the Department by January 25, 2005. There was no requirement to submit a report in 2004 for complaints received during any portion of calendar year 2003, and carriers are not to include complaints received during 2003 in the report that they file in January 2005.

2. *Question:* Can one piece of correspondence (e.g., a letter, e-mail message) contain more than one disability-related complaint? If so, must each separate complaint be categorized and reported?

Answer: Yes, a single piece of correspondence might express more than one complaint. Each disability-related problem that an individual complains about in writing must be categorized and reported. For example, if a passenger in a wheelchair sends in a letter stating that he/she did not receive connecting assistance, and after his/her final flight he/she discovered that his/her wheelchair was damaged, that is two complaints.

3. *Question:* Is a carrier required to report disability-related complaints that it receives from government agencies (e.g. DOT)?

Answer: Yes, each carrier is required to record, categorize, and report disability-related complaints forwarded by a governmental agency with respect to difficulties encountered in connection with service the carrier provides. However, if a carrier receives a disability-related complaint from an agency and the carrier has already recorded, categorized, and reported that complaint based on prior correspondence received from, or submitted on behalf of, the involved individual with a disability then the carrier is not required to count the same complaint again (i.e. there is to be no double counting).

4. *Question:* Are the types of complaints covered by the final rule limited to complaints deemed by the carrier to be reasonable, complaints that the carrier is not able to resolve satisfactorily or complaints that relate to service required under Part 382?

Answer: The types of complaints required to be reported are not limited to those disability complaints that the carrier deems to be valid or to constitute a potential violation of Part 382. Carriers are required to report on all complaints that they receive alleging discrimination on the basis of disability or failure to accommodate a disability, even if the carrier believes that the complaint is unreasonable or invalid, there was a rational explanation for what happened, the carrier arrived at a subsequent resolution with the passenger that the passenger said was satisfactory, or the incident does not constitute a violation of Part 382.

5. *Question:* Are all complaints filed by passengers with disabilities to be reported, even if a problem had nothing to do with the disability?

Answer: No, only disability-related complaints are to be reported. For example, if a passenger who uses a wheelchair complains that his/her flight operated two hours late, but he/she expresses no dissatisfaction with the disability-related accommodations that he/she received, that complaint is not to

be reported as a disability-related complaint.

6. *Question:* Is the carrier required to report all disability-related complaints regardless of the passenger's nationality and/or citizenship?

Answer: Yes, a carrier is required to report disability-related complaints irrespective of the passenger's nationality and/or citizenship. As indicated in the rule, a disability-related complaint means a specific written expression of dissatisfaction received from, or submitted on behalf of, an individual with a disability concerning a difficulty associated with the person's disability, which the person experienced when using or attempting to use a U.S. or foreign air carrier's services. "Individual with a disability" is defined in § 382.5. These definitions are not limited in any manner by the nationality and/or citizenship of the individual with a disability.

7. *Question:* If a passenger has more than one disability, how should a carrier record and categorize the passenger's disabilities?

Answer: Carriers should settle on the primary disability that needed to be accommodated for each incident. For instance, consider the example provided in the notice of proposed rulemaking that led to § 382.70 of Jane, who is deaf and a wheelchair user. Jane sends a letter to ABC Airlines alleging that there was a failure to provide her with ground personnel to assist in pushing the wheelchair at three of the airports through which she traveled and she missed her flight at the fourth airport because the gate agent did not let her know when she should board the aircraft. In this hypothetical, the carrier should determine that the primary disability that needed to be accommodated for three of the incidents (failure to provide personnel to assist in pushing the wheelchair at three airports) is Jane's mobility impairment, and that the primary disability that needed to be accommodated for the other incident (failure to inform Jane about boarding for her flight) is Jane's deafness. It is also worth noting that the carrier should count these disability-related problems as four separate incidents (i.e. four complaints).

8. *Question:* In a flight involving a public charter where there are two entities involved (the charter operator and the airline) and in a wet lease situation where two airlines are involved, who is responsible for recording disability-related complaint data and submitting it to the Department in an annual report?

Answer: Section 382.70 applies to certificated U.S. carriers and foreign air

carriers operating to, from, and in the United States, conducting passenger operations with at least one aircraft having a designed seating capacity of more than 60 passengers. In a flight involving a public charter, it is the airline that operates the flight and not the charter operator (the entity that sells individual seats on charter flights and assumes financial risk) that is responsible for recording and submitting disability-related complaint data. In a wet lease situation, the lessee (the carrier receiving the aircraft and crew and under whose name the flight is offered) and not the lessor (the carrier providing the aircraft and crew) must report disability-related complaints.

9. *Question:* If code-share partners receive copies of the same complaint, which carrier is required to report it?

Answer: The operating airline is required to report disability-related complaints involving the flight itself and services provided on that flight. The ticketing airline is required to report all other complaints, particularly complaints about the reservation system. In situations where there is disagreement between code-share partners as to which carrier is responsible for reporting a particular complaint and only one code-share partner receives the complaint, the carrier that receives the complaint must report it. If both the ticketing and operating carrier receive copies of the same complaint and there is no agreement between the two as to which one is ultimately responsible for reporting the complaint, then both carriers must report the complaint.

10. *Question:* Does § 382.70 apply to U.S. and foreign carrier code-share segments operated between two non-U.S. points?

Answer: Section 382.70 does not apply to foreign carriers operating aircraft between two foreign points even if the operation in question is a code-share flight with a U.S. air carrier. Foreign air carriers are covered by this section only with respect to disability-related complaints associated with any nonstop flight segment originating or terminating in the United States. However, U.S. carriers must report all written disability-related complaints if they operate the flight, even if the flight is between two foreign points.

11. *Question:* What does DOT mean by a flight segment originating or terminating in the United States?

Answer: By flight segment originating or terminating in the United States, the Department is referring to a nonstop flight operating to or from the United States where the last point of departure or the first point of arrival is in the

United States. For example, suppose a foreign air carrier operates nonstop service between New York and London. That flight segment would be covered by § 382.70 because the last point of departure or first point of arrival (i.e. New York) is in the United States. On the other hand, suppose a foreign carrier operates service from Addis Ababa to London to New York. In such a circumstance, the flight segment from Addis Ababa to London would not be covered by § 382.70, as neither the last point of departure (i.e. Addis Ababa) nor the first point of arrival (i.e. London) is in the United States; but the flight segment from London to New York would be covered by § 382.70 as the first point of arrival of that flight segment (i.e. New York) is in the United States.

12. *Question:* Is the scope of the reporting requirements for disability-related complaints (§ 382.70) the same as the scope of the notice of proposed rulemaking (NPRM) issued on November 4, 2004 (69 FR 64364) addressing broad coverage of foreign air carriers under the Air Carrier Access Act?

Answer: No, the scope of the reporting requirements for disability-related complaints in § 382.70 is narrower than that proposed in the November 4 NPRM for other sections of 14 CFR Part 382. Foreign air carriers are covered by § 382.70 only with respect to disability-related complaints associated with any nonstop flight segment originating or terminating in the United States. The November 4 NPRM proposes to cover foreign air carriers with respect to flights that begin or end at a U.S. airport. In other words, the November 4 NPRM does not limit coverage to nonstop flight segments originating or terminating in the United States but proposes to cover all flights that involve a continuous journey beginning or ending at a U.S. airport using the same aircraft and/or flight number.

13. *Question:* Are carriers required to make their records available to DOT on request?

Answer: Yes, carriers must retain and make available to Department of Transportation officials at their request correspondence and records of action taken on all disability-related complaints for three years after receipt of the complaint or creation of the record of action taken.

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

Jeffrey A. Rosen,

General Counsel, U.S. Department of Transportation.

[FR Doc. 04-28543 Filed 12-27-04; 11:54 am]

BILLING CODE 4910-62-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 742, 745 and 774

[Docket No. 041221359-4359-01]

RIN 0694-AD25

Implementation of the Understandings Reached at the June 2004 Australia Group (AG) Plenary Meeting and Through a Subsequent AG Intersessional Decision; Clarifications to the Scope of ECCNs 1A004, 1A995, and 2B351; Corrections to Country Group D and ECCNs 1C355, 1C395, and 1C995; Additions to the List of States Parties to the Chemical Weapons Convention

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Export Administration Regulations (EAR) to implement the understandings reached at the June 2004 plenary meeting of the Australia Group (AG) and through a subsequent AG intersessional decision. Specifically, this final rule amends the EAR by adding three new bacteria and two new viruses to the list of AG-controlled plant pathogens described on the Commerce Control List (CCL). In addition, this rule amends the EAR to indicate that certain medical products identified on the CCL, which contain AG-controlled conotoxins, no longer require a license for chemical/biological (CB) reasons. The AG-related licensing policies in the EAR are amended by adding a new criterion to the list of factors that BIS will consider when determining what action should be taken on license applications for AG-listed items. This rule also amends the EAR to reflect the addition of five new member countries to the Australia Group. This rule corrects an inadvertent omission from a previous AG plenary rule (published on May 31, 2002) by removing Bulgaria from the EAR list of countries of concern for chemical and biological reasons. This rule also

amends the EAR to implement an AG intersessional decision, which was adopted after the June 2004 AG plenary meeting, by adding nine precursor chemicals to the list of AG-controlled precursor chemicals described on the CCL.

In addition to the amendments to the EAR resulting from the AG understandings described above, this rule amends the EAR by revising a CCL entry containing protective and detection equipment identified on the Wassenaar Arrangement dual-use list to indicate that chemical/biological (CB) controls in the EAR apply to certain chemical detection systems and dedicated detectors therefor, described in that entry, because such systems and detectors also are included on the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology." A related AG entry on the CCL is revised to indicate that it does not control any of the chemical detection systems described in the Wassenaar list entry, thereby eliminating any appearance of an overlap between the two CCL entries.

This rule also amends three CCL entries, which control certain precursor chemicals and/or mixtures and test kits containing such chemicals, to restore the text of the license requirements notes that were inadvertently omitted from these ECCNs in a rule that BIS published on July 30, 2004.

Finally, this rule updates the list of countries that currently are States Parties to the Chemical Weapons Convention (CWC) by adding seven countries that recently became States Parties.

DATES: This rule is effective December 29, 2004.

ADDRESSES: Written comments should be addressed to Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, e-mailed to wfisher@bis.doc.gov, or faxed to (202) 482-3355.

FOR FURTHER INFORMATION CONTACT: Douglas Brown, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, telephone: (202) 482-7900.

SUPPLEMENTARY INFORMATION:

Background

A. Revisions to the EAR Based on Understandings Reached at the June 2004 Plenary Meeting of the Australia Group and Through a Subsequent AG Intersessional Decision

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the understandings reached at, and subsequent to, the annual plenary meeting of the Australia Group (AG) that was held in Paris on June 7-10, 2004. The Australia Group is a multilateral forum, consisting of 38 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

The understandings reached at the June 2004 plenary meeting included a decision to add five pathogens to the AG "List of Plant Pathogens for Export Controls." This final rule implements these changes by amending the EAR to add three bacteria and two viruses to the AG list of plant pathogens described in Export Control Classification Number (ECCN) 1C354 on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR).

Specifically, this rule adds the following three bacteria to the AG-listed plant pathogens described in ECCN 1C354.a on the CCL: *Xanthomonas oryzae* pv. *oryzae* (syn. *Pseudomonas campestris* pv. *oryzae*), *Clavibacter michiganensis* subspecies *sepedonicus* (syn. *Corynebacterium michiganensis* subspecies *sepedonicum* or *Corynebacterium sepedonicum*), and *Ralstonia solanacearum* Races 2 and 3 (syn. *Pseudomonas solanacearum* Races 2 and 3 or *Burkholderia solanacearum* Races 2 and 3). In addition, this rule amends ECCN 1C354 by adding a new 1C354.c that controls the following two viruses: Potato Andean latent tymovirus and Potato spindle tuber viroid. These AG-listed bacteria and viruses, along with all other items controlled by ECCN 1C354, require a license for export or reexport to all destinations, worldwide.

Another understanding reached at the June 2004 AG plenary meeting was the removal of certain medical products containing conotoxins from the AG list of biological agents (*i.e.*, human and zoonotic pathogens and toxins). This rule amends the EAR to implement this understanding by revising ECCN