

# AVIATION ADVISOR

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## **CORRECTIONS TO PART 382 OF DOT'S REGULATIONS, RELATING TO PASSENGERS WITH DISABILITIES**

In May 2008, the U.S. Department of Transportation ("DOT") issued a Final Rule, implementing changes to its Air Carrier Access Act ("ACAA") regulations (14 C.F.R. Part 382). These regulations generally prohibit discrimination against passengers with disabilities (hereinafter referred to as "disabled passengers"). Most of the requirements in the Final Rule become effective on May 13, 2009.

On March 18, 2009, DOT released a list of corrections to the Final Rule, published at vol. 74, p. 11469 of the Federal Register (hereinafter referred to as the "DOT Correction"). While many of the corrections simply fix typographical errors, some make substantive changes to the requirements of Part 382. In particular:

- Section 382.9 permits foreign carriers to apply for a conflict-of-law waiver if they believe that a requirement of Part 382 is in direct conflict with a law of their home country. DOT has clarified in the DOT Correction that a U.S. carrier may file a waiver request on behalf of a foreign carrier. For example, under the Final

Rule, a U.S. carrier is responsible for complying with Part 382 for disabled passengers traveling under its code on flights operated by a foreign carrier between two foreign points (section 382.7(c)). If the foreign carrier operating the code-share flight, cannot comply with a section of Part 382 due to a conflict with its home country laws, the U.S. carrier may file a waiver request on the foreign carrier's behalf.

- Section 382.43 requires carriers to provide certain information to passengers with hearing impairments. The DOT Correction clarifies that this section does not apply to passengers with vision impairments, as was suggested in comments accompanying the regulations.
- Section 382.51(a) sets forth requirements for foreign carriers' facilities at U.S. airports. DOT has clarified that most of the requirements do not take effect until May 13, 2010, but that the captioning requirements for televisions and other audio-visual displays (specifically, section 382.51(a)(6) and (8))

will take effect on May 13, 2009.

- Section 382.87(a) provides that disabled passengers may be excluded from specific aircraft seats only "to comply with FAA or applicable foreign government safety requirements." In the DOT Correction, DOT now specifically encourages – but does not require – that foreign carriers request a conflict-of-law waiver (pursuant to section 382.9) if they believe that the foreign government requirements differ from FAA requirements.<sup>1</sup>
- Section 382.91(b) requires carriers to assist disabled passengers in moving within the terminal. DOT has clarified that carriers are not required to provide assistance in obtaining food services, as

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<sup>1</sup> DOT also generally encourages foreign carriers to request a conflict-of-law waiver from other regulations, if they refer to both U.S. and foreign requirements. One example is section 382.19(c), which provides that carriers may refuse to transport a passenger if his/her carriage would violate FAA, TSA, or foreign government requirements.

was suggested in comments accompanying the regulations.

- Section 382.99(c) requires that foreign carriers enter into written agreements with airports to allocate responsibility for providing boarding and deplaning assistance to disabled passengers. DOT has clarified that the deadline for actually providing accessible boarding and deplaning to disabled passengers is May 13, 2011, and not May 13, 2010, as previously was stated in the Final Rule. But the agreement itself still must be reached by May 13, 2010.
- Section 382.117(a) states that carriers may require documentation from a licensed mental health professional before carrying an emotional support or psychiatric service animal. The DOT Correction clarifies that “a medical doctor who specifically treating the passenger’s mental or emotional disability” is one of these professionals.
- Section 382.117(f) states that U.S. carriers may refuse to carry unusual or exotic service animals if there are factors that preclude their traveling in the cabin (i.e., if the animal is too large or heavy, poses a direct health or safety threat, will significantly disrupt cabin service, or will be prohibited from entering a foreign country). DOT has clarified that these factors may be taken into account for all service animals, and not just unusual or exotic animals.

DOT also has clarified that all carriers (and not just U.S. carriers) may consider these factors.

In addition to corrections to the Final Rule, DOT has discussed two other issues. The first issue involves section 382.7(c), while the second issue involves section 382.123.

- Section 382.7(c) sets forth the requirements with which a U.S. carrier must comply for passengers traveling under its code on flights operated by a foreign carrier between two foreign points. Under the Final Rule, these requirements do not include Subpart I of the regulations, which concerns the stowage of wheelchairs and the use of portable oxygen concentrators, among other issues. In the DOT Correction, DOT stated that it will – in a separate proceeding – request public comments as to whether, and how, U.S. carriers should be required to comply with Subpart I for passengers traveling under a U.S. carrier’s code on flights operated by a foreign carrier between two foreign points.
- In the Final Rule, section 382.123(c) states that the seat-strapping method may not be used for wheelchair stowage in aircraft ordered after May 13, 2009 or delivered after May 13, 2011. However, section 382.67(c) states that foreign carriers must have an in-cabin stowage space for wheelchairs in aircraft ordered after May 13, 2009 or delivered after May 13, 2010. The DOT Correction states

that DOT intended for the seat-strapping deadline also to be May 13, 2010. Unfortunately, DOT did not clarify whether it will request public comments about amending section 382.123(c), or whether it will let the 2011 deadline in the regulation stand.

DOT has stated that it will make available a copy of Part 382 which incorporates all of the corrections in two to four weeks.

If you have any questions concerning these changes, please do not hesitate to contact any of the members of our Aviation Group.

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