

# AVIATION ADVISOR

Special Edition  
November 5, 2008

## NEW DOT DISABILITIES RULES TAKE EFFECT ON MAY 13, 2009 – IS YOUR AIR CARRIER READY?

On May 13, 2008, the U.S. Department of Transportation (DOT) released an update to its regulations which prohibit discrimination against passengers with disabilities (14 C.F.R. Part 382), and which implement the Air Carrier Access Act (ACAA). Most of the revisions will enter into effect on May 13, 2009.

The changes are significant, and airlines should begin preparations to comply with the revised Part 382 well in advance of the deadline – which is now just over six months away. DOT has statutory authority to impose fines of up to \$25,000 for violations, computed on a daily basis, and it is expected to aggressively enforce the revised rules.

This memorandum provides an overview of some of the most important

requirements of the regulations as revised. DOT has issued additional requirements and guidance for specific circumstances that are not addressed herein. Please contact Zuckert, Scott & Rasenberger, L.L.P. if you have questions or require additional information about the requirements imposed by Part 382.

- **Foreign Air Carriers:** Although ACAA was amended in 2000 to include foreign air carriers, until now Part 382 has largely applied only to U.S. air carriers. The rules now also specifically apply to foreign air carriers, with some exceptions. Notably, foreign air carriers can apply for a waiver if a Part 382 requirement conflicts with a foreign legal requirement.

- **Airport Terminals and Facilities:** Carriers

must ensure that terminal facilities that they own, lease, or control are accessible. This obligation includes, but is not limited to, providing captioned television/audio-visual displays and providing relief areas for service animals.

- **Enplaning, Deplaning, and Connecting Assistance:**

Carriers must provide assistance to disabled passengers in enplaning and deplaning aircraft, including an opportunity to pre-board. In addition, carriers must provide assistance throughout terminals, including reasonable assistance to access ticket and baggage locations, rest rooms, food service concessions, and service animal relief areas.

- **Services on Aircraft:** Carriers must, upon request, provide assistance

to disabled passengers in preparation for eating (e.g., opening packages and identifying food), moving to and from the lavatory, and stowing and retrieving personal items.

- **Number Limits:**

Carriers may not limit the number of disabled passengers on a flight, although they may require advance notice if 10 or more disabled passengers travel together.

- **Safety Assistants:**

Carriers may require that disabled passenger travel with an assistant only if a passenger cannot physically assist in their own evacuation. If an air carrier overrules a disabled passenger's determination that he/she can travel independently and requires that he/she travel with a safety assistant, the carrier cannot charge for the transport of the safety assistant.

- **Medical Certificates and Communicable**

**Diseases:** Carriers may refuse to carry a passenger with a communicable disease or require a medical certificate only if he/she a communicable disease that is both readily transmitted in the course of a flight and which has serious health consequences. A medical

certificate also may be required if there is reasonable doubt that a passenger can complete a flight safely without extraordinary medical assistance.

- **Aircraft Accessibility**

**Features:** New aircraft are required to have movable aisle armrests on at least half of the seats in all classes. New two-aisle aircraft are required to have an accessible lavatory. New aircraft with 100 or more seats are required to have a priority space to stow a folding passenger wheelchair. Aircraft with more than 60 seats must be equipped with an on-board wheelchair if it has an accessible lavatory, and upon advance request if it does not.

- **Wheelchairs, Mobility Aids, and Assistive**

**Devices:** If checked, carriers are required to return wheelchairs, mobility aids, and other assistive devices as closely as possible to the door of the aircraft. Advance notice and/or advance check-in may be required for electric wheelchairs. For domestic flights, passengers must be fully compensated for loss or damage to wheelchairs. If carried in the cabin, wheelchairs, mobility aids,

and other assistive devices (e.g., canes and medical devices) cannot be counted against carry-on limits.

- **Seating Accommodations:**

Carriers must make certain seats available to individuals with certain types of disabilities (e.g., bulkhead seats for passengers traveling with a service animal or who have a fused or immobilized leg). A carrier may not limit the seating options for passengers with disabilities, except to comply with safety rules (e.g., exit rows).

- **Oxygen Devices:**

Carriers must allow the use of electronic respiration assistance devices that meet the applicable FAA and/or foreign requirements for such devices. Advance notice and/or advance check-in may be required. Carriers are not required to directly provide in-flight oxygen to passenger, and may charge for in-flight oxygen if they choose to provide it.

- **Service Animals:**

Carriers must allow passengers to be accompanied by service animals. Carriers may require documentation and/or advance notice for "emotional support" and "psychiatric service"

animals. Carriers are not required to accept rodents and reptiles, and unusual animals such as miniature horses, pigs, and monkeys may be evaluated on a case-by-case basis.

Foreign air carriers are only required to accept dogs as service animals.

- **Information for Passengers:** Carriers must, upon request, provide passengers with information about the accommodations available on a particular aircraft. Carriers must not charge fees, and must make online discounts available, to disabled passengers who cannot use inaccessible websites and must make bookings by phone or in person.

- **TTY Services:** Carriers must offer and publicize TTY (teletypewriter for the deaf) telephone service. Carriers may meet this requirement through use of voice relay services. Carriers must respond to TTY calls in substantially the same amount of time as voice calls.

- **In-Flight Audio and Video Services:** Carriers must “high-contrast” caption new safety videos (effective November 10, 2009), and new informational videos

created under its control (effective January 8, 2010) in the language or languages in which they communicate with passengers.

- **Other Information for Individuals with Hearing or Vision Impairments:** Carriers must, upon request, provide passengers with hearing or vision impairments the same information that is provided to other passengers at gates, ticketing areas, customer service desks, and on-board aircraft (e.g., about flight safety, ticketing, flight check-in, flight delays and cancellations, schedule changes, boarding, the checking and claiming of baggage, the solicitation of volunteers on oversold flights, individuals being paged, aircraft changes, and emergencies).

- **Training:** Carriers that operate aircraft with 19 or more seats must train their personnel in the requirements of Part 382. Carriers must train employees who come into contact with passengers with hearing or vision impairments to communicate with them in ways that are common and readily available.

- **Complaints:** Carriers must make Complaint Resolution Officials (CROs) available to disabled passengers. CROs generally must have the authority to direct other carrier personnel to take actions to comply with Part 382. Carriers must respond to complaints filed with CROs, and also file annual reports with DOT about disability-related complaints that they have received.

The **AVIATION ADVISOR** is published by **Zuckert, Scoutt & Rasenberger, L.L.P.**, a Washington, D.C. law firm.

For further information regarding any of the developments discussed in this issue, please contact a member of the firm’s Aviation Group:

Frank J. Costello  
Ralph L. Kissick  
William H. Callaway, Jr.  
Rachel B. Trinder  
Charles J. Simpson, Jr.  
Richard D. Mathias  
Malcolm L. Bengel  
Lonnie A. Pera  
Robert T. Francis  
Nathaniel Breed  
John E. Gillick

Our address is:  
888 17<sup>th</sup> Street, N.W.,  
Washington, D.C. 20006.  
Telephone: (202) 298-8660  
Fax: (202) 342-0683  
Web site: [www.zsrlaw.com](http://www.zsrlaw.com)

© 2008