

AVIATION ADVISOR

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DOT RELEASES ADDITIONAL GUIDANCE CONCERNING ITS REGULATIONS FOR 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). The ACAA and the Part 382 regulations generally prohibit discrimination against passengers with disabilities (hereinafter referred to as “disabled passengers”). Most of the requirements in the Final Rule became effective on May 13, 2009.

That same day, DOT released additional “Frequently Asked Questions” which provide additional guidance concerning the new requirements. The FAQ does not modify the substance of the regulations, but explains how air carriers, contractors, and other interested parties should apply the rules.

- Section 382.7 sets forth the flights that are subject to the requirements of Part 382. DOT has clarified that foreign-originating charters are not subject to Part 382. DOT also has provided ad-

ditional guidance for flights operated by a foreign carrier which display the code of a U.S. carrier.

- Section 382.10 allows carriers to apply for an “equivalent alternative determination,” which would allow them to use procedures different than those required by Part 382. DOT has provided additional guidance regarding the information that should be included in such applications.
- Section 382.11 establishes that discrimination against disabled passengers is generally prohibited. DOT has clarified that this prohibition extends to ancillary services such as pick-up services for premium passengers.
- Section 382.23 sets forth the circumstances under which a carrier can require that a passenger provide a medical certificate. DOT has clarified the circumstances in which a carrier can conclude that a passenger cannot complete a flight

without extraordinary medical assistance. DOT also has stated that carriers are not obligated to provide in-flight emergency care, and that for privacy reasons, carriers should safeguard any personal medical information that they acquire.

- Section 382.27 sets forth the circumstances under which a carrier can require that a passenger provide advance notice of travel. DOT has clarified that even if a passenger does not provide the required notice (such as for the carriage of emotional support animals), a carrier must still make reasonable efforts to accommodate the passenger.
- Section 382.29 sets forth the circumstances under which a carrier can require that a passenger travel with a safety assistant. DOT has clarified that a carrier can require a different safety assistant if it reasonably believes that the proposed assistant would not be able to fulfill the necessary responsibilities. DOT also has

clarified that, in order to travel without a safety assistant, a passenger should be able to explain how he or she can physically assist in his evacuation of the aircraft.

- Section 382.31 provides that web fare discount must be made available to passengers who, due to a disability, cannot use a carrier's website. DOT has clarified that if such a passenger calls a carrier and self-identifies the nature of the disability which prevents use of the carrier's web site, the carrier must affirmatively disclose the existence of such web fares.
- Section 382.51 establishes accessibility requirements for airport terminals. DOT has clarified various requirements, including general guidance about airports' obligation to cooperate to implement these requirements, and specific standards for the creation and operation of service animal relief areas at airports.
- Sections 382.61 - 382.71 set forth aircraft accessibility requirements. DOT has clarified the definition of a "movable aisle armrest" as well as the factors that it will consider in reviewing applications for equivalent alternative determinations regarding aisle armrests. DOT also has stated that carriers may not avoid complying with requirements triggered by the number of seats on an aircraft (i.e., moveable aisle armrests for aircraft with 30 or more seats) by removing seats from an aircraft.
- Section 382.81 establishes requirements for seating accommodations aboard aircraft. DOT has clarified that passengers with service animals may not be required to sit in the bulkhead row, or otherwise be excluded from sitting in any particular seat except to comply with FAA or foreign government safety requirements.
- Section 382.87 also addresses requirements for seating accommodations aboard aircraft. DOT has clarified that passengers who need more than one seat to accommodate his disability may be required to pay for the additional seats.
- Section 382.91 sets forth requirements for assisting disabled passengers in moving within the terminal. DOT has clarified what a carrier should do to deliver a passenger to another carrier, and the boundaries of the airport in which a passenger is entitled to assistance.
- Sections 382.95 - 382.105 set forth requirements for the boarding and deplaning of aircraft. DOT has clarified various requirements, including the circumstances under which carriers must assist passengers ticketed on other carriers and how carriers may inquire about the nature of a passenger's disability. DOT also has re-emphasized that if a foreign airport provides boarding and deplaning assistance, but does not meet the requirements of Part 382, carriers must supplement those services.
- Section 382.117 establishes requirements for service animals. DOT has clarified various requirements, including the documentation that may be required and what a carrier should do if a service animal cannot be carried in the cabin due to space limitations or behavioral issues. DOT also has advised that passengers should confirm what animal health regulations are applicable for international travel.
- Section 382.121 sets forth standards for the stowage of mobility aids and other assistive devices in the cabin aboard aircraft. DOT has clarified the circumstances under which an assistive device can and cannot be counted towards a passenger's free baggage

allowance. DOT also has clarified that if a disabled passenger does not pre-board, a carrier generally is not obligated to relocate other passengers' carry-on baggage to make room for an assistive device.

- Section 382.125 sets forth standards for the stowage of mobility aids and other assistive devices as cargo aboard aircraft. DOT has clarified that equipment used by a service animal is an assistive device, but food for the service animal is not.
- Section 382.131 establishes liability limits for the loss or damage of mobility aids, such as wheelchairs. DOT has clarified that for international flights, the limit is set by the applicable treaty; i.e., if the Montreal Convention is applicable, the liability limit is 1,000 Special Drawing Rights (SDRs).
- Section 382.133 establishes standards for the use of respiratory assistive devices on aircraft. DOT has clarified various requirements, including the documentation that may be required and the extent to which carriers may require passengers to carry extra batteries. DOT also has clarified that carriers may allow passengers to carry a respiratory assistive device that is not

labeled as FAA approved on board aircraft so long as the device is not used and its batteries are removed. But in the case of Portable Oxygen Concentrators (POCs), only FAA-approved devices may be carried, even if unused, out of a concern that unapproved POCs may contain hazardous materials that are not allowed aboard aircraft.

- Section 382.141 sets forth training requirements for carrier personnel. DOT has clarified some of the training requirements, including the meaning of its requirement that carrier personnel must be "trained to proficiency."

DOT has made the Part 382 FAQ available on its website: http://airconsumer.dot.gov/rules/FAQ_5_13_09.pdf.

If you have any questions concerning Part 382, please do not hesitate to contact any of the members of our Aviation Group.

The **AVIATION ADVISOR** is published by [Zuckert, Scoutt & Rasenberger, L.L.P.](#), a law firm in Washington, D.C.

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