

US DOT Proposes Most Significant Overhaul of Disability Access Regulations in 16 years (March 2024)

On February 28, 2024, the United States Department of Transportation (DOT) published an advance copy of a Notice of Proposed Rulemaking (NPRM) titled “Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs.”¹ The NPRM, which will likely be published in the Federal Register and opened for public comment in the coming weeks, represents the most significant potential overhaul of 14 C.F.R. Part 382, the regulation implementing the Air Carrier Access Act, since 2008. The proposals, if finalized in their present form, will require U.S. and foreign carriers to update their wheelchair and assistive device handling procedures, mobility assistance procedures, and training programs.

Background

In 2022, DOT held a public meeting for wheelchair users to share their experiences with air travel with the DOT’s Office of Aviation Consumer Protection (OACP). The OACP is the office within DOT that is responsible for issuing regulations to ensure access to air travel for people with disabilities as well as enforcing those regulations. At the public meeting, Secretary Buttigieg announced that the DOT planned a rulemaking that would address various aspects of wheelchair service – including strengthening training and making wheelchair mishandling a *per se* regulatory violation. Since that meeting, advocates for people who use wheelchairs, including the Paralyzed Veterans of America (PVA), have



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filed a petition for rulemaking to address wheelchair handling issues. Additionally, the PVA has filed formal complaints with DOT against airlines for wheelchair mishandling. Wheelchair mishandling (i.e., delaying, damaging, destroying, or losing a wheelchair) is a serious problem for travelers who rely on wheelchairs. DOT has been collecting data on U.S. carrier mishandling of wheelchairs and scooters for several years. From January to September 2023, U.S. carriers (that are required to report) reported that 8,637 wheelchairs or scooters were mishandled.² The stated goal of the NPRM is to reduce that number and to reduce the harm experienced by passengers whose wheelchairs are mishandled. If the NPRM is finalized as proposed, it will be a major shift for carriers in how they handle wheelchairs and other assistive devices and how they provide mobility assistance.

Summary of Proposals

The NPRM contains several proposals. Below we provide a high-level overview of each proposal.

- Most importantly, the proposal would make any mishandling (i.e., loss, damage, delay, or pilferage) of wheelchairs and assistive devices a *per se* regulatory violation regardless of the circumstances surrounding the mishandling.
- The proposal will require annual, hands-on training for carrier and vendor personnel who physically assist with mobility disabilities or handle wheelchairs and other assistive devices. Currently, refresher training for such personnel is only required every three years and is not specifically required to be hands-on.
- The NPRM would adopt a rule that specifically requires that all assistance required by Part 382 (not just wheelchair assistance) be provided in a “safe and dignified manner.” However, the rule does not define those terms.
- The proposal clarifies the requirement to provide “prompt” assistance. The proposal will specifically apply the requirement to all types of mobility assistance required by Part 382. Although the proposal does not provide define the term “prompt,” it codifies DOT’s current enforcement practice to determine promptness based on the totality of the circumstances, except in the case of passengers who need physical assistance for deplaning the aircraft. In that case, the proposal will require (i) personnel and boarding wheelchair to be available to deplane the passenger when the last passenger who did not request deplaning assistance departs the aircraft; and (ii) the passenger’s wheelchair must be available as close as possible to the door of the aircraft to the maximum extent possible.
- The proposal will require certain notifications to passengers about their rights if a mishandling event occurs. Notification would also be required when a wheelchair or scooter has been loaded or unloaded into the cargo compartment or if a wheelchair or scooter does not fit into a cargo compartment.
- If a wheelchair or scooter is delayed and not transported on the passenger’s flight, DOT will require prompt return of the device.

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- If a wheelchair or scooter is damaged, DOT will require prompt repair. The passengers will have the option of either having the carrier handle the replacement and repair of the device or the passenger can handle the repair and replacement with a vendor of their choosing. The proposal requires carriers to provide loaner wheelchairs during the repair/replacement process and ensure that the loaner meets the passenger's needs.
- The proposal will require new standards for on-board wheelchairs in twin-aisle aircraft to mirror the requirements adopted in 2023 for single-aisle aircraft.³
- Finally, the NPRM seeks comment on two proposals but did not specifically identify any proposed regulatory text that would implement the proposal. The first would consider specifying a size standard for accessible lavatories on twin-aisle aircraft. The second would require fare reimbursement if a wheelchair or scooter did not fit on the aircraft the passenger booked.

Conclusion and Next Steps

After the proposal is published in the Federal Register, interested parties, including carriers, will have sixty days to comment on the substance of the proposal, unless an extension is requested and granted (which is not uncommon for complex/significant rulemakings). DOT asks several significant questions in the NPRM, including gathering information about current practices for wheelchair handling and training. Additionally, DOT asks for comment on the costs of the regulation. Currently, DOT has estimated costs for implementing the training program and the procurement of new on-board wheelchairs.

At a White House event announcing the NPRM, the Secretary of Transportation emphasized the importance of enforcement once these rules are finalized. He noted that fines can be above \$100,000 for a single instance of mishandling.⁴ With a mishandled wheelchair becoming a *per se* regulatory violation, the potential carrier liability is severe.

This proposal is important, and, if finalized, would represent the most significant overhaul of Part 382 since 2008, when Part 382 was greatly expanded and applied to foreign air carriers. Carriers are well-advised to consult with counsel to carefully review the proposal, consider the operational and financial impacts of the DOT's proposals, and provide public comment on the various aspects of the proposal and DOT's questions.

¹ See DOT Docket DOT-OST-2022-0144-0005. See also <https://www.transportation.gov/briefing-room/secretary-buttigieg-announces-proposed-rule-ensure-passengers-who-use-wheelchairs-can>.

² See *Air Travel Consumer Report*, November 2023 at p. 46 (available at <https://www.transportation.gov/sites/dot.gov/files/2023-12/November%202023%20ATCR.pdf>).

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³ See 14 C.F.R. § 382.65(e).

⁴ Under 49 U.S.C. § 46301(a)(7)(A), DOT may seek treble civil penalty amounts for damage to wheelchairs or other mobility aids. The current civil penalty amount per violation is \$41,577. (See Final Rule: Revisions to Civil Penalty Amounts, 2024, 88 Fed. Reg. 89551 (Dec. 28, 2023)).