

Aviation Insights: DOT's Disability Regulations and Carrier Compliance (updated Apr. 2019)

Since 1986, the Air Carrier Access Act (49 U.S.C. § 41705) ("ACAA"), has prohibited air carriers from discriminating against individuals with physical or mental impairments. The U.S. Department of Transportation ("DOT") has adopted regulations at 14 C.F.R. part 382 ("Part 382") which implement the ACAA. In 2009, the regulations were substantially revised, both to expand their scope (e.g., to broaden their applicability to foreign air carriers) and to add new requirements (e.g., rules regarding the use of medical oxygen in-flight).

DOT is required by the ACAA to investigate all complaints it receives regarding disability access, and aggressively pursues violations of the ACAA and Part 382 in cases indicating a carrier pattern or practice of noncompliance or particularly egregious violations. In the past three years, DOT has sanctioned ten carriers for violations of these rules – assessing an average civil penalty of \$372,500 in those cases. DOT's enforcement focus has often centered on cases involving failure to provide adequate assistance to passengers with disabilities at the airport, in particular assistance with the enplaning and deplaning process, and failing to adequately maintain records of, and adequately respond to, passenger disability-related complaints. Because these issues have proven to be of particular enforcement priority for DOT, carriers should ensure that they are in compliance with the applicable rules.ⁱ

The general nondiscrimination requirements of Part 382 should be well-known to air carriers. However, Part 382 includes eleven subparts and numerous specific requirements, not all of which are well-known. Although a carrier's front-line personnel may have the best intentions, the carrier nevertheless may be found in breach of DOT requirements (and subject to a fine of up to \$33,333 per violation, per day) if such personnel fail to comply with the specific standards set forth in Part 382.ⁱⁱ This article provides a list of ten potential "traps for the unwary air carrier." The list does not cover all the rules with which carriers must comply under DOT's disability regulations,



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but it does emphasize the breadth and depth of Part 382 as well as the importance of ensuring that a carrier has a comprehensive compliance program for the proper and legal treatment of passengers with disabilities.

(1) For foreign carriers, Part 382 applies to single-flight number services operated beyond foreign points.

In 2009, DOT extended most of Part 382's requirements to foreign carriers. For foreign carriers, the rules apply to "a continuous journey in the same aircraft *or with one flight number* that begins or ends at a U.S. airport" (emphasis added). For example, if a passenger books a journey on a foreign carrier from New York to Prague and changes aircraft in Frankfurt, but the flight number remains the same, the requirements of Part 382 apply to the Frankfurt-Prague leg of the passenger's travel.

(2) Part 382 applies to most charter flights, as well as to most services offered by indirect air carriers.

Part 382 applies not just to scheduled flights but also to most charter flights. However, there is an exception for charter flights that (i) are operated by foreign carriers, (ii) originate from and return to a foreign airport, and (iii) do not pick up any passengers in the U.S. Additionally, Part 382's general prohibition on discrimination against passengers with disabilities applies to indirect air carriers to the extent they provide facilities or services to passengers that otherwise would have been provided by a direct carrier.

(3) Written passenger complaints are not the only matters requiring a written carrier response.

The general rule is that a carrier has 30 days to respond in writing to a written disability-related complaint submitted by a passenger or other user of its services (as discussed further below). But in certain other cases a carrier must provide a written explanation within 10 days, including cases where a passenger has been denied boarding on the basis of his/her disability or the carrier denies transportation to a service animal accompanying a passenger. There are only very limited circumstances under Part 382 when a carrier may permissibly deny boarding based on a disability and if a carrier does so it must provide the passenger with a written statement within this deadline – even if the passenger has not specifically requested such a statement.

(4) Carriers must provide training for all personnel who deal with the traveling public.

All personnel who deal with the traveling public must be trained on the disability access requirements of Part 382 and the carrier's procedures for accommodating persons with disabilities, as appropriate to the employee's duties. The training must be to "proficiency," which DOT defines as training personnel to provide accommodations to passengers in "the right way, the first time." Flight crew members must be trained before they begin flight duties. All other personnel must be trained within 60 days of assuming duties. Personnel must receive recurrent training every three years. Carriers are responsible for ensuring that their third-party contractors/service providers who interact with the carrier's passengers receive adequate training. For Complaint Resolution Officials (CROs), training must be annual, and must cover every aspect of Part 382 as well as all carrier procedures for accommodating passengers with disabilities.

(5) Carriers must keep a copy of Part 382 available at airports and provide it to passengers upon request.

DOT requires carriers to keep a copy of Part 382 at each airport they serve (in the case of U.S. carriers) or at each airport served by a flight to or from the U.S. (in the case of foreign carriers). This copy must be provided for the review of any passenger who requests it. Carriers are not, however, required to

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give away copies of Part 382. Carriers should ensure that they have the most recent copy of Part 382, which includes amendments made in 2013 and 2016, at covered airports.

(6) Audio-visual displays in carrier-controlled airport facilities and on aircraft must comply with high-contrast captioning requirements.

Captioning must be enabled on television and other audio-visual displays capable of displaying captions in terminal facilities a carrier owns, leases, or controls at a U.S. airport. Captioning on existing equipment must be high-contrast if the equipment can display it. Additionally, as equipment at U.S. airports that provides passengers with safety briefings, information, or entertainment is replaced or updated, the replacement equipment must have the ability to display high-contrast captioning. All audio-visual displays played on aircraft for safety purposes or, if created under the carrier's control, played for informational purposes, must be high-contrast captioned, in the predominant language or languages used to communicate with passengers on the flight.

(7) Carriers must make their U.S. websites and airport automated kiosks accessible to persons with disabilities.

Part 382 was amended in 2013 to require carriers to make their primary websites on which air transportation is marketed to the U.S. general public accessible to persons with disabilities, under guidelines set by the World Wide Web Consortium (W3C), called the Web Content Accessibility Guidelines 2.0, at Level AA success criteria. Part 382 also was amended to require carriers, at each U.S. airport with 10,000 or more annual enplanements, to make automated kiosks accessible, and sets related technical standards for such accessibility. At such airports, all carrier proprietary and shared-use kiosks installed on or after December 12, 2016 must be accessible, until 25% of the carrier's kiosks – at each kiosk location in the airport – are accessible. Additionally, by December 12, 2023, at least 25% of the carrier's kiosks at each such location in the airport must be accessible. For airport automated kiosks that are not accessible to passengers with disabilities, the carrier must provide equivalent service to such passengers (e.g., by having carrier personnel assist at the kiosk or alternatively allowing the passenger to come to the front of the line at the check-in counter).

(8) If a carrier determines that an individual with a disability must travel with a safety assistant as a condition of being provided air transportation, the carrier must not charge for the transportation of the safety assistant.

In cases where a passenger with a disability voluntarily chooses to travel with a personal care attendant or safety assistant, the carrier may charge for the transportation of that person. If a passenger with a disability wants to travel alone but the carrier determines, contrary to the self-assessment of that passenger, that a safety assistant is essential for safety, the carrier must not charge for the transportation of the safety assistant. Carriers are not required to find or provide a safety assistant, although they may offer to do so as a customer service matter.

(9) A carrier must make a CRO available, even if a passenger has not specifically asked for one.

CROs must be available (in person or by telephone) at each airport served by a U.S. carrier or, in the case of a foreign air carrier, at each foreign airport served by a flight to or from the U.S. Carrier personnel must inform a passenger of his or her right to speak with a CRO any time a passenger makes a complaint or raises a concern with respect to discrimination, accommodations, or services for passengers with disabilities that is not immediately resolved. This information, and assistance in contacting the CRO, must be provided even if the passenger does not specifically request a "CRO" or "Complaint Resolution Official."

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(10) Carriers must not only respond to disability complaints, but also include specific information.

DOT requires that carriers submit dispositive responses to any written complaint (e.g., letters, emails, faxes) within 30 days of its receipt. Carriers must ensure that their responses to such complaints: (1) are timely; (2) are complete (e.g., admit or deny a violation occurred); (3) include the facts and the steps taken (if any) in cases where a violation is admitted or include the facts and reasons why the carrier believes no violation occurred; and (4) inform the individual of his or her right to pursue enforcement action from DOT.

Part 382 imposes extensive requirements on carrier services and accommodations provided to persons with disabilities in relation to flights to, from and within the U.S., and, in the case of U.S. carriers, extends to their flights worldwide. Carriers are well-advised to consult with counsel to stay current on these requirements, including complex and technical accommodation and nondiscrimination standards, and ensure carrier policies, procedures, personnel manuals, training programs and passenger conditions of carriage comply with such requirements. Given the large civil penalties DOT has imposed under the ACAA and Part 382 as well as adverse publicity incident to DOT enforcement actions, noncompliance may entail significant consequences.

ⁱ See, e.g., 14 C.F.R. § 382.95 (“What are carriers’ general obligations with respect to boarding and deplaning assistance?”), 14 C.F.R. § 382.155 (“How must carriers respond to written complaints?”) and 14 C.F.R. § 382.157 (“What are carriers’ obligations for recordkeeping and reporting on disability-related complaints?”).

ⁱⁱ For violations of the ACAA involving damage to assistive devices or injury to the passenger, DOT has the authority to assess triple the amount of penalties that would be otherwise applicable. 49 U.S.C. § 46301(a)(7).