U.S. Law Concerning Airline Treatment of Air Travelers with Disabilities

(This is only a summary. Consult 14 CFR Part 382 for complete regulation, @ http://airconsumer.dot.gov)
Introduction

What is the role of DOT’s Office of the Assistant General Counsel for Aviation Enforcement and Proceedings?

Our office handles service-related airline issues and enforces compliance with the ACAA and Part 382.
Topics of Discussion

- History of Air Carrier Access Act (ACAA)
- Main Provisions of Recent ACAA Rulemaking
- Other ACAA Rulemaking Activities at DOT
History of Air Carrier Access Act

- 1986: ACAA passed by U.S. Congress
- March 1990: Rule implementing ACAA (Part 382) issued by DOT
- April 2000: Extension of ACAA to Foreign Carriers by Congress
- May 2000: Guidance Notice issued to Foreign Carriers Regarding ACAA and 14 CFR Part 382
- November 2004: Draft rule (NPRM) proposing extension of Part 382 to foreign carriers issued by DOT
- May 2008: Final rule amending ACAA rule to apply to foreign carriers issued by DOT
- May 2009: Final rule goes into effect
Intent of the ACAA

The ACAA essentially is intended to remove non-safety related travel barriers and ensure that passengers with disabilities enjoy equal access to the air transportation system.
Main Provisions of New Rule

- Applicability of Rule & Effective Date
- Definition of ‘Individual with a Disability’
- Conflict of Law Waivers and Equivalent Alternative Determinations
- Service and Assistance Requirements
- Aircraft Accessibility Requirements
- Airline Training Requirements
- Complaints and Enforcement Procedures
To whom does Part 382 apply?

- Part 382 (the rule) applies to all U.S. carriers, as it has since 1990: all operations and aircraft, wherever operations take place.

- The rule applies to foreign carriers only for flights that begin or end at a U.S. airport and for aircraft used on those flights.
  -- ‘Flight’ is defined as a continuous journey, in the same aircraft or with one flight number, that begins or ends at a U.S. airport.
What is the Effective Date of the Rule?

The rule becomes effective on May 13, 2009, with some additional phase-ins for individual requirements.
Who is an Individual With a Disability?

- An individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits a major life activity.

- Examples of major life activities include things such as walking, seeing, hearing, speaking, breathing, learning, and even working.
Conflict of Law Waivers

- If a foreign carrier thinks that an applicable provision of foreign law precludes compliance with a provision of the rule, it can write DOT and ask for a waiver. (New. See section 382.9)

- Only real conflicts count. There must be a legal mandate, binding on the carrier (e.g., a statute, the equivalent of an FAA safety regulation) that requires something Part 382 prohibits or prohibits something Part 382 requires.

- Guidance, best practices, manuals, recommendations, discretion under foreign laws, carrier policies etc. do not form the basis for a conflict of law waiver, because they do not have legally mandatory effect on carriers.

- Waiver requests are posted in dockets – 41 received to date (see Docket No. DOT-OST-2008-0272).
Equivalent Alternative Determinations

- If a carrier has a policy or practice that differs from a Part 382 requirement, but it believes it provides substantially equivalent accessibility to passengers with disabilities, the carrier can write DOT and ask for an equivalent alternative determination. (New. See 382.10)

- We won’t entertain requests to determine that an entire regulatory scheme (e.g., the EU PRM rules) is equivalent to Part 382. Requests must be on an individual provision of Part 382.

- Applications are posted in dockets – 17 received to date (see Docket No. DOT-OST-2008-0273).
Timing of Requests for Conflict of Law Waivers & Equivalent Alternative Determinations

- A carrier that has submitted a conflict of law waiver request on or before September 10, 2008 has a commitment from DOT not to take enforcement action related to the allegedly conflicting foreign law pending DOT's response to the waiver request.

- A carrier that has submitted an application for an equivalent alternative determination on or before September 10, 2008 can implement its proposed equivalent alternative unless and until the Department disapproves it.

However, a carrier that submits such an application after September 10, 2008, cannot use its proposed equivalent alternative unless and until the Department approves it.
Key Service and Assistance Requirements of Part 382

- Enplaning, deplaning and connecting assistance
- Service Animals
- Accommodations for individuals who are deaf or hard of hearing
- Accommodations for individuals who use respiratory assistive devices
- Seating accommodations
Enplaning, Deplaning and Connecting Assistance

- Airlines must *provide* or *ensure* assistance, upon request, with enplaning, deplaning, (see 382.95) and making connections (see 382.91) at an airport.

- If such services provided by an airport operator at a *foreign airport* do not meet the requirements of Part 382, carriers must *supplement* those services. If a carrier is precluded by law from doing so, it may file a conflict of law waiver request. (See 382.105)

- If a passenger with a disability is unable to carry his/her carry-on luggage, upon request the carrier must assist in carrying such luggage between the curb at the entrance to the terminal and the aircraft (both directions). (New in rule text: see 382.91(d).)

- Airlines are prohibited from leaving a non-ambulatory passenger in a wheelchair or other device for *more than 30 minutes* if the passenger is not independently mobile in the device, unless the passenger agrees. (See 382.103)
Service Animals

- Both U.S. and foreign carriers must permit properly trained service animals to travel in the passenger cabin, subject to safety and space considerations. (See 382.117)

- Foreign carriers are only required to carry service dogs. (New)

- Service animals must be trained to behave properly in a public setting.

- Carriers cannot ask for documentation for service animals (other than emotional support or psychiatric service animals) as a condition of permitting an individual to travel with his/her service animal unless a passenger’s verbal assurances are not credible.
Service animals (2)

- Carriers may require written documentation for emotional support and psychiatric service animals. (New in rule text.)

- Carriers may require passengers desiring to travel with an emotional support animal or a psychiatric service animal to give 48 hours’ advance notice (in order to assess documentation from mental health professional). (New)
Service Animals (3)

- Certain unusual service animals (i.e., snakes, other reptiles, ferrets, rodents, and spiders) need never be accommodated as service animals in the cabin.

- At U.S. airports, both U.S. carriers (by May 13, 2009) and foreign carriers (by May 13, 2010) must provide, in cooperation with the airport operator, animal relief areas for service animals. Must also provide assistance in reaching such areas, on request. (New)
Service animals (4)

- On long flights -- 8 hrs or longer -- airline can require passenger to provide documentation that animal will 1) not need to relieve itself on the plane or 2) can do so in a way that does not create a health or sanitation issue. (New)
Service animals (5)

- On code-share flights operated by a foreign airline between two foreign points, the U.S. carrier must ensure that the foreign carrier accepts all legitimate service animals in the cabin, including service animals other than dogs (e.g., service monkeys), for paxs traveling under the U.S. carrier’s code. (See 382.7(c) )
Accommodations for Individuals Who are Deaf or Hard of Hearing

At Airports

- Carriers must make their telephone reservation and information services available to individuals who use a TTY by using TTYs or by means of voice relay or any other technology for TTY access. (New) (See 382.43.)

- With respect to terminal facilities carriers own, lease or control at U.S. airports, carriers must enable captioning at all times on all televisions and any other audio-visual displays that are located in areas to which passengers have access and that are capable of displaying captions. (New) (See 382.51(a)(6)).

- At any U.S. or foreign airport, carriers must give individuals who identify themselves as needing visual or hearing assistance prompt access to the same information given to other passengers at each gate, ticketing area, and customer service desk that the carrier owns, leases, or controls. (See 382.53)
Accommodations for Individuals Who are Deaf or Hard of Hearing (2)

- **On Aircraft**
  - On the aircraft, individuals who identify themselves as needing visual or hearing assistance must be given prompt access to the information provided to other passengers. (See 382.119)
  - New audio-visual displays played on aircraft for safety purposes (by Nov. 10, 2009) and those played for informational purposes (by Jan. 8, 2010) that were created under the carrier’s control must be high-contrast captioned in the predominant language or languages in which the carrier communicates with passengers on the flight. (New) (See 382.69)
Accommodations for Individuals Who Use Respiratory Assistive Devices (See 382.133)

- Four types of passenger-supplied electronic respiratory assistive devices are covered by this rule:
  - respirators,
  - ventilators,
  - Continuous Positive Airway Pressure machines (CPAPs),
  - Portable Oxygen Concentrators (POCs).

- U.S. carriers and foreign carriers are required to permit individuals to use electronic respiratory assistive devices in the passenger cabin, unless the device (New)
  - does not display a manufacturer’s label that indicates the device meets FAA (or applicable foreign) requirements for medical portable electronic devices or
  - cannot be stowed consistent with cabin safety requirements.
Seating Accommodations

(See 382.81 thru 382.87)

- Four specific categories of disabilities and type of seat required for each:
  - For a passenger who uses an aisle wheelchair to enplane and who cannot transfer over a fixed armrest, provide a seat in a row with a movable aisle armrest.
  - For a passenger a) traveling with a personal care attendant who will be performing services not required of airline personnel, or b) who is required by the airline to travel with a safety assistant, provide an adjoining seat next to the passenger with the disability.
  - For a passenger traveling with a service animal, provide either a bulkhead seat or seat other than in the bulkhead, at the passenger’s option.
  - For a passenger with a fused or immobilized leg, provide either a bulkhead seat or seat that provides greater legroom than other seats.

- “Catch-all” category:
  Paxs who self-identify as having a disability other than the four listed above, and who need a particular seat in order to “readily access and use” the carrier’s services.
Seating Accommodations (continued)

- Three acceptable methods of providing seating accommodations:
  - For carriers that do provide advance seat assignments:
    - The block seating method: “Blocking” an adequate number of seats for the exclusive use of passengers who self-disclose as meeting one of the specific categories above and who request the seat at least 24 hours in advance.
    - The priority seating method: Designating an adequate number of seats for passengers who self-disclose as meeting one of the specific categories above and who check in at least one hour before the flight. (This may require carriers to move non-disabled paxs.)
  - For carriers that do not provide advance seat assignments:
    - The pre-boarding method: Such carriers must allow passengers who self-disclose as having a condition described in one of the categories above to board the aircraft before all other passengers.
    - Other possible alternative methods: A carrier may comply with DOT’s seating requirements through an alternative method not described above, provided that it receives the written concurrence of DOT before doing so.
Aircraft Accessibility Requirements

(see 382.61 thru 382.71)

- In very general terms, any new provisions applicable to U.S. carriers, and all of the provisions applicable to foreign carriers, apply to aircraft that are:
  - initially ordered after May 13, 2009; or
  - initially delivered after May 13, 2010.

- Aircraft accessibility features addressed by the rule are:
  - Moveable aisle armrests (50% on aircraft with 30 or more seats)
  - Stowage space for wheelchairs (on aircraft with 100 or more seats)
  - Accessible lavatories (on aircraft with more than one aisle)
  - On-board aisle chair (on aircraft with an accessible lav or if pax gives 48 hours’ notice)
Airline Training Requirements

(see 382.141 thru 382.145)

- Airlines must train to proficiency all personnel who deal with the traveling public, as appropriate to the duties of each employee. Airlines must also train their contractors’ employees or ensure that the contractors do so.

- An airline must consult with organizations representing persons with disabilities when developing its training program and its policies and procedures.

- All personnel required to receive training must receive refresher training at least once every three years.
Complaints and Enforcement Procedures
(see 382.151 thru 382.159)

- Airlines providing scheduled or non-scheduled service using aircraft with 19 or more seats, must designate one or more Complaint Resolution Officials (CRO), and make the CRO available to consumers either by phone or in person, on request.

- CROs must be thoroughly familiar with Part 382 and have the authority to resolve complaints promptly, although CROs need not be given the authority to countermand the decision made by a pilot-in-command for safety reasons.

- Airlines must send a dispositive written response to any disability complaint within 30 days of its receipt, specifically admitting or denying a violation of Part 382.
Future ACAA Rulemaking Activities

- An SNPRM seeking further comment on the following:
  - Ticket kiosks (but see interim requirement in 382.57)
  - Website accessibility (but see interim requirement in 382.31(c))
  - Carrier-supplied in-flight medical oxygen
  - Safety related objections to carriage of service animals other than dogs
  - In-flight entertainment systems

- Expected issuance date of SNPRM is sometime in 2010.
Other Recent/ Future DOT Disability-Related Initiatives

- Issued a corrections notice on the new Part 382 (e.g., correcting typos, adding some clarifications, etc.) on 3/18/09.

- Issued an FAQ (e.g., on medical certificates, service animal issues, etc.) on 5/13/09.

- Published a Request for Comments on a Petition for Rulemaking from Psychiatric Svc Dog Society (on 9/18/2009)

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