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Subpart A—General Provisions

§ 382.1 What is the purpose of this part?

The purpose of this part is to carry out the Air Carrier Access Act of 1986, as amended. This rule prohibits both U.S. and foreign carriers from discriminating against passengers on the basis of disability; requires carriers to make aircraft, other facilities, and services accessible; and requires carriers to take steps to accommodate passengers with a disability.

§ 382.3 What do the terms in this rule mean?

In this regulation, the terms listed in this section have the following meanings:

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Air Carrier Access Act or ACAA means the Air Carrier Access Act of 1986, as amended, the statute that provides the principal authority for this part.

Air transportation means interstate or foreign air transportation or the transportation of mail by aircraft, as defined in 49 U.S.C. 40102. Generally this refers to transportation by aircraft within, to or from the United States.

Assistive device means any piece of equipment that assists a passenger with a disability to cope with the effects of his or her disability. Such devices are intended to assist a passenger with a disability to hear, see, communicate, maneuver, or perform other functions of daily life, and may include medical devices and medications.

Automated airport kiosk means a self-service transaction machine that a carrier owns, leases, or controls and makes available at a U.S. airport to enable customers to independently obtain flight-related services.

Battery-powered mobility aid means an assistive device that is used by individuals with mobility impairments such as a wheelchair, a scooter, or a Segway when it is used as a mobility device by a person with a mobility-related disability.

Carrier means a U.S. citizen (“U.S. carrier”) or foreign citizen (“foreign carrier”) that undertakes, directly or indirectly, or by a lease or any other arrangement, to engage in air transportation.

Commuter carrier means an air taxi operator as defined in 14 CFR part 298 that carries passengers on at least 5 round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week and places between which those flights are performed.

Conforming alternate version means a Web page that allows a corresponding non-conforming Web page on the primary Web site to be included within the scope of conformance as long as it meets the WCAG 2.0 Level AA success criteria, is up-to-date and contains the same information and functionality in the same language as the non-conforming page. At least one of the following applies to a conforming alternative version:

(1) The conforming version can be reached from the non-conforming page via an accessibility-supported mechanism; or

(2) The non-conforming version can only be reached from the conforming version; or

(3) The non-conforming version can only be reached from a conforming page that also provides a mechanism to reach the conforming version.

CPAP machine means a continuous positive airway pressure machine.

Department or DOT means the United States Department of Transportation.

Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Equivalent alternative means a policy, practice, or other accommodation that provides substantially equivalent accessibility to passengers with disabilities, compared to compliance with a provision of this Part.

Expected maximum flight duration means the carrier’s best estimate of the total duration of the flight from departure gate to arrival gate, including taxi time to and from the terminals, based on the scheduled flight time and factors such as (a) wind and other weather conditions forecast; (b) anticipated traffic delays; (c) one instrument approach and possible missed approach at destination; and (d) any other conditions that may delay arrival of the aircraft at the destination gate.

FAA means the Federal Aviation Administration, an operating administration of the Department of Transportation.

Facility means a carrier’s aircraft and any portion of an airport that a carrier owns, leases, or controls (e.g., structures, roads, walks, parking lots, ticketing areas, baggage drop-off and retrieval sites, gates, other boarding locations, loading bridges) normally used by passengers or other members of the public.

Flight-related services mean functions related to air travel including, but not limited to, ticket purchase, rebooking cancelled flights, seat selection, and obtaining boarding passes or bag tags.

High-contrast captioning means captioning that is at least as easy to read as white letters on a consistent black background.

Indirect carrier means a person not directly involved in the operation of an aircraft who sells air transportation services to the general public other than as an authorized agent of a carrier.

Individual with a disability means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) *Has a record of such impairment* means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit

major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

On-demand air taxi means an air taxi operator that carries passengers or property and is not a commuter carrier as defined in this section.

PHMSA means the Pipeline and Hazardous Materials Safety Administration, an operating administration of the Department of Transportation.

POC means portable oxygen concentrator.

Primary (or Main) Web site means the Web site that is accessed upon entering the uniform resource locator (e.g., *www.carriername.com*, *www.airline designator code.com*) in an Internet browser from a standard desktop or laptop computer where the carrier advertises or sells air transportation to the public.

Qualified individual with a disability means an individual with a disability—

(a) Who, as a passenger (referred to as a “passenger with a disability”),

(1) With respect to obtaining a ticket for air transportation on a carrier, offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain such a ticket;

(2) With respect to obtaining air transportation, or other services or accommodations required by this Part,

(i) Buys or otherwise validly obtains, or makes a good faith effort to obtain, a ticket for air transportation on a carrier and presents himself or herself at the airport for the purpose of traveling on the flight to which the ticket pertains; and

(ii) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers; or

(b) Who, with respect to accompanying or meeting a traveler, using ground transportation, using terminal facilities, or obtaining information about schedules, fares, reservations, or policies, takes those actions necessary

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to use facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier.

Scheduled service means any flight scheduled in the current edition of the Official Airline Guide, the carrier's published schedule, or the computer reservation system used by the carrier.

Shared-use automated airport kiosk means a self-service transaction machine that is jointly owned, controlled or leased by an airport operator and carriers and/or an independent service provider and that provides carrier software applications which enable customers to independently access flight-related services.

TSA means the Transportation Security Administration, an agency of the Department of Homeland Security.

United States or U.S. means the United States of America, including its territories and possessions.

[Doc. No. DOT-OST-2004-19482, 73 FR 27665, May 13, 2008, as amended at 78 FR 67914, Nov. 12, 2013]

§ 382.5 When are U.S. and foreign carriers required to begin complying with the provisions of this part?

As a U.S. or foreign carrier, you are required to comply with the requirements of this part on May 13, 2009, except as otherwise provided in individual sections of this part.

§ 382.7 To whom do the provisions of this part apply?

(a) If you are a U.S. carrier, this Part applies to you with respect to all your operations and aircraft, regardless of where your operations take place, except as otherwise provided in this part.

(b) If you are a foreign carrier, this part applies to you only with respect to flights you operate that begin or end at a U.S. airport and to aircraft used for these flights. For purposes of this part, a "flight" means a continuous journey in the same aircraft or with one flight number that begins or ends at a U.S. airport. The following are some examples of the application of this term:

Example 1 to paragraph (b): A passenger books a nonstop flight on a foreign carrier from New York to Frankfurt, or Frankfurt to New York. Each of these is a "flight" for purposes of this Part.

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Example 2 to paragraph (b): A passenger books a journey on a foreign carrier from New York to Prague. The foreign carrier flies nonstop to Frankfurt. The passenger gets off the plane in Frankfurt and boards a connecting flight (with a different flight number), on the same foreign carrier or a different carrier, which goes to Prague. The New York-Frankfurt leg of the journey is a "flight" for purposes of this Part; the Frankfurt-Prague leg is not. On the reverse routing, the Prague-Frankfurt leg is not a covered flight for purposes of this Part, while the Frankfurt-New York leg is.

Example 3 to paragraph (b): A passenger books a journey on a foreign carrier from New York to Prague. The plane stops for refueling and a crew change in Frankfurt. If, after deplaning in Frankfurt, the passengers originating in New York reboard the aircraft (or a different aircraft, assuming the flight number remains the same) and continue to Prague, they remain on a covered flight for purposes of this Part. This is because their transportation takes place on a direct flight between New York and Prague, even though it had an interim stop in Frankfurt. This example would also apply in the opposite direction (Prague to New York via Frankfurt).

Example 4 to paragraph (b): In Example 3, the foreign carrier is not subject to coverage under this Part with respect to a Frankfurt-originating passenger who boards the aircraft and goes to Prague, or a Prague-originating passenger who gets off the plane in Frankfurt and does not continue to New York.

(c) As a foreign carrier, you are not subject to the requirements of this part with respect to flights between two foreign points, even with respect to flights involving code-sharing arrangements with U.S. carriers. As a U.S. carrier that participates in a code-sharing arrangement with a foreign carrier with respect to flights between two foreign points, you (as distinct from the foreign carrier) are responsible for ensuring compliance with the service provisions of subparts A through C, F through H, and K with respect to passengers traveling under your code on such a flight.

Example 1 to paragraph (c): A passenger buys a ticket from a U.S. carrier for a journey from New York to Prague. The ticket carries the U.S. carrier's code and flight number throughout the entire journey. There is a change of carrier and aircraft in Frankfurt, and a foreign carrier operates the Frankfurt-Prague segment. The foreign carrier is not subject to the provisions of Part

382 for the Frankfurt-Prague segment. However, the U.S. carrier must ensure compliance with the applicable provisions of Part 382 on the Frankfurt-Prague segment with respect to passengers flying under its code, and the Department could take enforcement action against the U.S. carrier for acts or omissions by the foreign carrier.

(d) As a foreign carrier, if you operate a charter flight from a foreign airport to a U.S. airport, and return to a foreign airport, and you do not pick up any passengers in the U.S., the charter flight is not a flight subject to the requirements of this part.

(e) Unless a provision of this Part specifies application to a U.S. carrier or a foreign carrier, the provision applies to both U.S. and foreign carriers.

(f) If you are an indirect carrier, §§ 382.1 through 382.15 of this part apply to you. §§ 382.17 through 382.157 of this part do not apply to you except insofar as provided by § 382.11(b).

(g) Notwithstanding any provisions of this part, you must comply with all FAA safety regulations, TSA security regulations, and foreign safety and security regulations having legally mandatory effect that apply to you.

[Doc. No. DOT-OST-2004-19482, 73 FR 27665, May 13, 2008, as amended at 74 FR 11471, Mar. 18, 2009; 75 FR 44887, July 30, 2010]

§ 382.9 What may foreign carriers do if they believe a provision of a foreign nation's law conflicts with compliance with a provision of this part?

(a) If you are a foreign carrier, and you believe that an applicable provision of the law of a foreign nation precludes you from complying with a provision of this part, you may request a waiver of the provision of this Part.

(b) You must send such a waiver request to the following address: Assistant General Counsel for Aviation Enforcement and Proceedings, C-70 U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W96-322, Washington, DC 20590.

(c) Your waiver request must be in English and include the following elements:

(1) A copy, in the English language, of the foreign law involved;

(2) A description of how the foreign law applies and how it precludes compliance with a provision of this part;

(3) A description of the alternative means the carrier will use, if the waiver is granted, to effectively achieve the objective of the provision of this part subject to the waiver or, if applicable, a justification of why it would be impossible to achieve this objective in any way.

(d) The Department may grant the waiver request, or grant the waiver request subject to conditions, if it determines that the foreign law applies, that it does preclude compliance with a provision of this part, and that the carrier has provided an effective alternative means of achieving the objective of the provisions of this part subject to the waiver or have demonstrated by clear and convincing evidence that it would be impossible to achieve this objective in any way.

(e)(1) If you submit a waiver request on or before September 10, 2008, the Department will, to the maximum extent feasible, respond to the request before May 13, 2009. If the Department does not respond to the waiver request by May 13, 2009, you may continue to implement the policy or practice that is the subject of your request until the Department does respond. The Department will not take enforcement action with respect to your implementation of the policy or practice during the time prior to the Department's response.

(2) If you submit a waiver request after September 10, 2008, the Department will, to the maximum extent feasible, respond to the request by May 13, 2009 or within 180 days of receiving it, whichever is later. If the Department does not respond to the waiver request by this date, you may continue to implement the policy or practice that is the subject of your request until the Department does respond. However, the Department may take enforcement action with respect to your implementation of the policy or practice during the time between May 13, 2009 and the date of the Department's response.

(3) If you submit a waiver request after September 10, 2008, and the request pertains to an applicable provision of the law of a foreign nation that did not exist on September 10, 2008, you may continue to implement the policy or practice that is the subject of your request until the Department responds

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to the request. The Department will, to the maximum extent feasible, respond to such requests within 180 days of receiving them. The Department will not take enforcement action with respect to your implementation of the policy or practice during the time prior to the Department's response.

(f) Notwithstanding any other provision of this section, the Department may commence enforcement action at any time after May 13, 2009 with respect to the policy or practice that is the subject of the request if it finds the request to be frivolous or dilatory.

(g) If you have not submitted a request for a waiver under this section with respect to a provision of this part, or such a request has been denied, you cannot raise the alleged existence of such a conflict as a defense to an enforcement action.

§ 382.10 How does a U.S. or foreign carrier obtain a determination that it is providing an equivalent alternative to passengers with disabilities?

(a) As a U.S. or foreign carrier, you may apply to the Department for a determination that you are providing an equivalent alternative to passengers with disabilities.

(b) You must send your application for an equivalent alternative determination to the following address: Assistant General Counsel for Aviation Enforcement and Proceedings (C-70), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W96-322, Washington, DC 20590.

(c) Your application must be in English and include the following elements:

(1) A citation to the specific provision of this part concerning which you are proposing an equivalent alternative.

(2) A detailed description of the alternative policy, practice, or other accommodation you are proposing to use in place of compliance with the provision of this part that you cite, and an explanation of how it provides substantially equivalent accessibility to passengers with disabilities.

(d) The Department may grant the application, or grant the application subject to conditions, if it determines that the proposed facilitation does pro-

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vide substantially equivalent accessibility to passengers with disabilities, compared to compliance with the provision of this part in question.

(e) If your application is granted, you will be deemed to be in compliance with this Part through implementing the equivalent alternative. If your application is denied, you must implement this part as written.

(f)(1) If you submit your application on or before September 10, 2008, the Department will respond to the request before May 13, 2009 to the maximum extent feasible. If the Department does not respond to the application by May 13, 2009, you may implement your policy or practice that is the subject of your application until the Department does respond.

(2) With respect to an application you make after September 10, 2008, you must comply with the provisions of this part without change from May 13, 2009 until the Department responds to your application.

Subpart B—Nondiscrimination and Access to Services and Information

§ 382.11 What is the general nondiscrimination requirement of this part?

(a) As a carrier, you must not do any of the following things, either directly or through a contractual, licensing, or other arrangement:

(1) You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation;

(2) You must not require a qualified individual with a disability to accept special services (including, but not limited to, preboarding) that the individual does not request. However, you may require preboarding as a condition of receiving certain seating or in-cabin stowage accommodations, as specified in §§ 382.83(c), 382.85(b), and 382.123(a) of this part.

(3) You must not exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, except where specifically permitted by this