

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****14 CFR Part 382**

[Docket No. OST-2003-11473]

RIN 2105-ADO4

Reporting Requirements for Disability-Related Complaints**AGENCY:** Office of the Secretary, Department of Transportation (DOT).**ACTION:** Final rule.

SUMMARY: This document requires most certificated U.S. air carriers and foreign air carriers operating to and from the U.S. that conduct passenger-carrying service to record and categorize complaints that they receive alleging inadequate accessibility or discrimination on the basis of disability according to the type of disability and nature of complaint, prepare a summary report of those complaints, submit the report annually to the Department of Transportation's (Department or DOT) Aviation Consumer Protection Division, and retain copies of correspondence and record of action taken on disability-related complaints for three years.

DATES: This rule is effective on August 7, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Background**

The Air Carrier Access Act (ACAA, 49 U.S.C. 41705) prohibits discriminatory treatment of persons with disabilities in air transportation. The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR-21"; Public Law 106-181) signed into law on April 5, 2000, extended the requirements of the Air Carrier Access Act to foreign air carriers and required, among other things, that the Secretary of Transportation "regularly review all complaints received by air carriers alleging discrimination on the basis of disability" and "report annually to Congress on the results of such review."

On February 14, 2002, the Department published a Notice of Proposed Rulemaking (NPRM) to implement the requirement of AIR-21 (67 FR 6892). The notice stated that the only practical way the Department can implement the

statutory requirement to review disability complaints received by air carriers and report annually to Congress on the results of the review is by requiring carriers to record disability-related complaint data and submit it to the Department. It proposed to require an annual report on the disability-related incidents communicated by passengers to U.S. certificated and foreign air carriers involving flights to, from or between U.S. points. Air carriers would be required to categorize complaints that they receive into specific groups, and would be required to retain for three years copies of the complaints and the records of the action taken on the complaints. The proposed reporting regulations would not apply to air taxis, commuter air carriers, small certificated air carriers and foreign air carriers that operate strictly small aircraft (60 seats or less). The proposed reporting requirements would apply to all operations of carriers utilizing a mixed fleet (both large and small aircraft).

The NPRM had six main components on which we specifically solicited comment: (1) The scope/coverage of the rule; (2) the definition of a disability-related complaint; (3) the categories of data collected; (4) the frequency of data reporting; (5) the procedures for submission of data; and (6) the period of record retention. The comment period closed on June 4, 2002. The DOT received eleven comments, three from disability community organizations (Eastern Paralyzed Veterans Association, Epilepsy Foundation, Paralyzed Veterans of America), four from foreign air carriers (British Airways, Iberia Lineas Aereas de Espana, Crossair Ltd. d/b/a Swiss, Virgin Atlantic Airways), one from a U.S. carrier (Atlantic Southeast Airlines) and three from industry associations representing airlines (Air Transport Association of America, International Air Transport Association, Regional Airline Association). Generally, the disability community organizations supported the rule while carriers and industry representatives either opposed the rule or found the rule to be overly broad.

Discussion of Comments**1. Entities Covered Under the Rule**

Proposed Rule: Under the proposed rule, certificated U.S. carriers that conduct passenger-carrying service with at least one aircraft having a designed seating capacity of more than 60 passengers and foreign air carriers operating to and from the United States that conduct passenger-carrying service

with at least one aircraft having a designed seating capacity of more than 60 passengers would be required to record, categorize and submit disability-related complaint data.

Comments: The disability community organizations commented that the requirement to record, categorize and submit disability-related complaint data should also apply to carriers conducting passenger-carrying service on smaller aircraft. More specifically, the Eastern Paralyzed Veterans Association (EPVA) commented that the rule should be expanded to cover all carriers who operate aircraft with 30 or more passenger seats, while the Epilepsy Foundation and Paralyzed Veterans of America (PVA) asserted that the rule should be expanded to include all carriers operating aircraft with 19 or more passenger seats. The disability community organizations believe that expansion of the rule to cover smaller aircraft is appropriate as small aircraft provide the only means of air travel available for certain areas of the United States.

The Regional Airline Association (RAA) contends that the scope of the rule should not be expanded and agrees with the Department's proposal excluding commuter carriers and certificated carriers operating only aircraft with 60 or fewer seats from the reporting requirement. RAA states that these entities carry a small percentage of passenger traffic but that the cost of complying with the rule would be enormous, as numerous regional air carriers do not have the systems or software to record, categorize, and submit disability-related complaint data.

All of the foreign air carriers that commented on the proposal oppose its application to foreign airlines. Several foreign air carriers contend that AIR-21 does not require that the Department's report to Congress include complaints received by "foreign air carriers" since AIR-21 states that "all complaints received by air carriers" be reported to Congress and the term "foreign air carrier" is not normally encompassed within the term "air carrier." The International Air Transport Association (IATA), British Airways, Iberia Lineas Aereas de Espana (Iberia), Crossair Ltd. d/b/a Swiss (Swiss), Virgin Atlantic Airways (Virgin) also argue that the proposed rule would impose an undue burden on foreign airlines. IATA and Virgin further assert that the proposal raises extraterritoriality concerns. IATA believes that it is unclear whether the proposed rule would require complaints relating to events outside the U.S. be reported to the Department. Another