

concern raised by British Airways is that the proposed rule would lead to unanticipated negative consequences such as other countries imposing comparable reporting requirements on all carriers serving those countries.

*DOT Response:* After fully considering the disability community organizations' comments that the rule should be extended to cover carriers that operate aircraft with 60 or fewer seats, the Department maintains that it is reasonable to apply the rule only to carriers operating larger than 60-seat aircraft. In choosing to exclude from the reporting requirement commuter carriers and certificated carriers operating only "small aircraft" (aircraft with 60 or fewer seats), the Department has tried to balance the need to receive good data regarding accessibility in air travel and the cost of compliance to carriers operating only aircraft with less than 60 seats. Carriers operating only aircraft with 60 or fewer seats are classified as small under the OST aviation "small business" standard in 14 CFR 399.73 and the Regulatory Flexibility Act encourages agencies to consider flexible approaches to the regulation of small businesses and other small entities that take into account their special needs and problems. As explained by RAA in its comments, the cost of complying with the reporting requirements would be prohibitive for most of its 58 member airlines. Further, the vast majority of passengers are carried on aircraft with more than 60 seats so the Department would still be able to receive high-quality data without extending coverage of the proposal to carriers operating only small aircraft.

The Department is also not persuaded by comments that there is no statutory basis for the Department to impose the new reporting requirements on non-U.S. carriers. AIR-21, which extended the Air Carrier Access Act (ACAA) to foreign air carriers, provides in the general applicability part of the section on discrimination against individuals with disabilities that " \* \* \* an air carrier, including (subject to section 40105(b)) any foreign air carrier \* \* \*" may not discriminate against a person in air transportation on the basis of disability. By defining an air carrier in the section on discrimination against disabled individuals to include any foreign air carrier, Congress demonstrated its intention for the ACAA requirements that apply to U.S. carriers to also apply to foreign air carriers. As a result, the Department believes that the requirement that it "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" is a requirement for the Department to review not only complaints received by U.S. carriers but also complaints received by foreign carriers. In addition, the Department's general statutory authority for imposing reporting requirements under 49 U.S.C. 41708(b) applies to foreign air carriers.

With regard to issues of extraterritoriality, IATA and several foreign carriers raise this issue but do not fully explain their concerns. Although the rule would require complaints relating to events outside the U.S. be reported to the Department, most of the provisions of 14 CFR part 382 (the Department's rule implementing the ACAA) have applied extraterritorially to U.S. carriers for years and the only new feature about this proposal is its extraterritorial application to foreign carriers. As for cost issues raised by IATA and foreign air carriers, the Department realizes that this is the first time that reporting of disability-related complaints has been required and that there will be a cost to creating new databases but we expect that these costs would be minimal. Neither IATA nor the foreign air carriers provide data disputing the cost estimates provided by the Department and simply state that the reporting burden on foreign air carriers would be unnecessarily burdensome. Having considered all of these comments, the Department is not persuaded that the rule should not apply to foreign air carriers.

## 2. Definition of a Disability-Related Complaint

*Proposed Rule:* The proposed rule defined a disability-related complaint as a specific expression of dissatisfaction received from, or submitted on behalf of, an individual with a disability against a covered air carrier or foreign air carrier concerning a difficulty associated with the person's disability, which the person experienced when using or attempting to use the carrier's services. It proposed that disability-related complaints be recorded and reported without regard to the carrier's perception of the validity of the complaint and that in circumstances where a flight that is the subject of a disability-related complaint was a code-share flight, the carrier that receives the complaint from the passenger report the complaint.

*Comments:* The vast majority of carriers and industry associations representing airlines strongly argued that the definition of a disability-related complaint was overly broad because it

requires any expression of dissatisfaction concerning a disability-related issue be recorded and reported as a complaint. They contend that DOT should only require complaints received in writing through a specifically designated department in the airline be reported. There were also arguments made, particularly by ATA and British Airways, that complaints that only incidentally address a disability-related issue not be reported. Other commenters such as IATA and Virgin insist that complaints that are unreasonable or were satisfactorily resolved not be reported while ATA recommends that only complaints that relate to a service or process required under part 382 be reported as DOT's authority is grounded in, and limited to, the Air Carrier Access Act as implemented by part 382. Virgin also urges that the complaints that a carrier receives as a result of the carrier directly soliciting comments and feedback from its passengers be exempted from the reporting requirements.

Further, several carriers and industry associations object to the proposal that a complaint received by a carrier from a passenger on a code-share partner's service be reported by the carrier that receives the complaint. These commenters argue that this requirement will result in double reporting as industry experience is that passengers complain to both ticketing and operating airlines about a problem on a particular flight. Representatives of airlines recommend that only the airline that operated the flight and carried the passenger who is making a complaint report the complaint. Two disability advocacy organizations, EPVA and PVA, while agreeing with the Department's proposal that in the case of code-share flights the carrier that receives the complaint record it, seem primarily interested in the Department creating some means to identify both code share partners.

*DOT Response:* The Department does not believe that it is advisable to narrow the definition of a disability-related complaint to only complaints provided to a designated department in the airline. An airline employee can forward a complaint that he or she receives to the appropriate office in the airline. However, the Department is persuaded by comments from carriers and industry associations that the definition of a disability-related complaint is overly broad in other ways and needs to be amended. As noted in comments from industry, it would be impractical to expect every utterance of dissatisfaction concerning an accessibility matter by a passenger to an