

communication. The Department maintains that carriers must treat each disability-related problem as a separate incident as there is no reason to require a complainant to write separate letters to document multiple problems/incidents occurring in connection with one or more flights. When DOT receives a written letter alleging more than violation, DOT records each separate incident as a complaint. The purpose of the report to Congress is not to track the number of letters but rather to track the number of complaints alleging inadequate accessibility or discrimination in an effort to improve accessibility.

4. Frequency of Data Reporting

Proposed Rule: Under the NPRM, carriers would submit to the Department an annual report summarizing the disability-related complaint data. The first report, which would be for complaints received by carriers during calendar year 2003, would be submitted on January 26, 2004 and all subsequent submissions would be due on the last Monday in January and would cover data from the prior year.

Comments: None of the commenters object to the annual reporting system although British Airways objects to the proposed initial filing deadline of January 26, 2004 while EPVA and PVA state that the January 2004 filing deadline is appropriate and advises DOT to incorporate penalties for airlines that do not submit timely reports. British Airways and IATA argue that the initial filing deadline should be deferred to provide carriers an opportunity to develop the necessary database system and train its personnel. British Airways would also like for the Department to publish a notice 30 days in advance of each year's deadline. There were also recommendations from ASA and ATA that the Department report the complaint data on a per-enplanement basis rather than simply reporting the raw complaint numbers as the raw data will be of little use to the public given size and other differences among airlines.

DOT Response: The final rule provides that the initial filing deadline is in January 2005 rather than in January 2004 as proposed in the NPRM because this final rule is issued on July 8, 2003 and the information required to be submitted in January 2005 would cover complaints received by carriers during calendar year 2004. The Department can assess a civil penalty of up to \$10,000, under the ACAA and Part 382, against a carrier for each instance the carrier failed to submit the required complaint data in a timely fashion. For continuing

violations, each day each violation continues constitutes a separate offense. As a result, it is not necessary to create a specific penalty provision allowing the Department to assess fines for a carrier's failure to file a timely report as suggested by disability community organizations.

The Department is willing to publish a notice 30 days in advance of each year's deadline as a reminder to carriers of their reporting requirements. However, the lack of such notice by the Department, would not qualify as a justifiable excuse by carriers of not providing the required information. The Department also agrees to report the disability-related complaint data on a per-enplanement basis when possible.

5. Procedures for Submission of Data

Proposed Rule: The NPRM proposes to require carriers to report a summary of the disability-related complaint data by using a form designed by the Department which is included in the appendix to part 382. It also proposes to mandate that carriers submit this form through the World Wide Web rather than submitting paper copies, disks or emails of the form. The NPRM proposed to allow limited exceptions to those carriers that can demonstrate that they would suffer undue hardship if required to submit the data through the web.

Comments: The disability community raises no specific issues. EPVA simply notes that the form used by carriers to submit data must be uniform in order to be of use. Swiss indicates that submission of the reports via a private website would be an efficient methodology for carriers. However, IATA and British Airways believe that carriers should be given options as to the means they wish to use to file their reports.

DOT Response: The Department is not making any changes to the rule with regard to submission of data. If submission of the form through a website creates undue hardship, then carriers have options as to the means to file the report. The rule provides that carriers may submit the form, which summarizes the disability-related complaint data, by paper copies, disks, or emails.

6. Retention of Records

Proposed Rule: The NPRM proposed that covered carriers retain copies of the disability-related complaints for three years. It also proposed that covered carriers make these records available for review by DOT officials at their request.

Comments: The disability community raises no specific issues here. ATA is opposed to a three-year retention period for complaint data and recommends that

the record retention term be reduced to one year. Swiss suggests that the Department take into consideration the record-retention requirements of the foreign air carriers' home governments. The other carriers and industry associations either had no comment or indicated that they were not opposed to the three year proposed record retention. Several carriers were concerned about the requirement that records be made available to DOT for review. Virgin appears to be concerned that DOT officials may make unreasonable and burdensome requests for review of such records. British Airways wants assurances that the Department would work with them to develop procedures to ensure that any sharing of complaint data would comply with the requirements imposed by the United Kingdom's Data Protection Act.

DOT Response: The Department does not require carriers to retain the complaint data for three years but rather to retain the actual complaints for three years. The requirement to retain consumer complaints for three years already exists for U.S. carriers and is not a new cost to them. The Department's regulations in 14 CFR 249.20 requires certificated U.S. air carriers to retain correspondence and record of action taken on all consumer complaints for three years. DOT believes the three-year record retention requirement for U.S. and foreign air carriers is a reasonable period of time as trends in the data over multiple years may indicate the need for the airlines and/or the Department to take a closer look at the actual complaints.

7. Economic Analysis

Proposed Rule: The Department estimated that the first year cost to industry of the proposed rule would range from \$242,957 to \$254,738 and the annual cost to industry in subsequent years would range from \$239,113 to \$249,425.

Comments: The disability community raises no specific issues here. Several carriers and carrier associations assert that the Department has not accurately assessed the practical and financial impact the proposed reporting requirements will have on the airlines. They believe that the regulatory evaluation greatly underestimates the cost to the industry and are concerned that airlines will be required to undertake substantial investments in information technology, related equipment and staff training. ATA explains that it believes the cost to industry to be high, particularly if new training for a large number of employees is needed as well as extensive system