

DEPARTMENT OF TRANSPORTATION
14 CFR Part 382

[Dockets OST–2004–19482; OST–2005–22298; OST–2006–23999]

RINs 2105–AC97; 2105–AC29; 2105–AD41

Nondiscrimination on the Basis of Disability in Air Travel

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule; correction.

SUMMARY: The Department of Transportation published the new Air Carrier Access Act (ACAA) rule in the **Federal Register** on Tuesday, May 13, 2008 (73 FR 27614). This document corrects editorial errors or omissions and clarifies ambiguities in the preamble, rule text and appendix of the final rule.

DATES: *Effective Date:* These corrections are effective May 13, 2009.

FOR FURTHER INFORMATION CONTACT: Kathleen Blank Riether or Blane A. Workie, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202–366–9342 (voice), 202–366–7152 (fax), kathleen.blankriether@dot.gov or blane.workie@dot.gov (e-mail). TTY users may reach both individuals via the Federal Relay Service toll-free at 800–877–8339. Arrangements to receive this notice in an alternative format may also be made by contacting the above named individuals.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Transportation published the final Air Carrier Access Act rule, Nondiscrimination on the Basis of Disability in Air Travel (Part 382), in the **Federal Register** on May 13, 2008, (73 FR 27614), applying it to foreign carriers, adding new provisions concerning accommodations for passengers who use medical oxygen and who are deaf or hard-of-hearing, and reorganizing the entire rule (FR Doc. 08–1228). The final rule, which will become effective on May 13, 2009, contained some editorial errors, inconsistencies, and omissions, which this document corrects. We have set forth these corrections below. The provisions in this correction notice are effective as if they had been included in the final rule. Accordingly, the corrections are effective as of May 13, 2009.

II. Summary of the Corrections to the Final ACAA Rule

The Department received inquiries about whether carriers should file a conflict of law waiver request when the conflict of law in question is anticipated in the text of Part 382 itself because we believed the existence of foreign requirements parallel to those of the U.S. Federal Aviation Administration (FAA) was likely. The question was raised specifically in reference to section 382.87(a), which prohibits seating restrictions for passengers with disabilities, except to comply with an FAA or applicable foreign government safety requirement. We have added language on page 27616 of the **Federal Register** indicating the Department's intent that in such instances carriers nonetheless should strongly consider submitting a conflict of law waiver request as outlined in section 382.9(a). Of course, as a compliance matter if such a conflict exists, the filing of the waiver request would not be required to avoid enforcement action. On pages 27618, 27634, 27640, 27648, 27655, we have corrected typographical errors to the preamble.

Due to an oversight, food service locations were included in the preamble discussion of requirements for providing passengers with disabilities assistance in accessing key functional areas in the terminal. Prior to issuing the final rule, the Department had decided to exclude food service locations from the terminal areas to which carriers are required to provide access. Section 382.91(b) and the corresponding analysis on page 27654 of the preamble reflect this exclusion as the Department intended. We have therefore deleted the remaining overlooked references to food service locations in the preamble discussion on page 27621.

U.S. carriers have submitted inquiries about conflicts of law affecting the services required by Part 382 that the U.S. carrier must ensure on code share flights between two foreign points operated by their foreign-carrier code share partners on behalf of passengers traveling under the U.S. carrier's code. In response to these inquiries, the Department has added a clarification paragraph to the analysis of section 382.9 on page 27647 of the preamble.

Prior to issuing the final rule, the Department decided to exclude from the final rule certain proposed requirements in section 382.43 for accommodating individuals with visual impairments. The Department's intention was to seek further information from the public concerning these requirements through

a Supplemental Notice of Proposed Rulemaking (SNPRM). We have deleted references to these requirements that were inadvertently overlooked in the title of section 382.43 on page 27650 and in the analysis on page 27651 of the preamble. We are also deleting a reference to these requirements that, due to an oversight, remained in the section title on page 27666 of the published rule.

We have also revised the title of section 382.53 as it appears both on page 27652 of the preamble and on page 27666 to be consistent with the section title as it appears in the rule text on page 27673.

On page 27653 of the preamble in the Section-by-Section Analysis of section 382.71 we have aligned the language describing the accessibility standard for replacement or refurbishing of cabin features with its counterpart language in the rule text on page 27675.

On page 27655 of the preamble we have corrected an erroneous reference to the location of the service animal guidance in the final rule and have added an omitted reference to licensed mental health professionals and medical doctors specifically treating a passenger's recognized mental or emotional disability.

To clarify the Department's intent concerning documentation that may be required as a condition for allowing an emotional support or psychiatric service animal to travel in the cabin, we have added language on page 27659 of the Guidance Concerning Service Animals stating carriers should also accept documentation provided by a medical doctor for passengers traveling with an emotional support or psychiatric service animal. On page 27679 in section 382.117 of the rule text, we have added language indicating that documentation for an emotional support or psychiatric service animal from a medical doctor who is specifically treating the passenger's mental or emotional disability is acceptable. On the same page, in the same section, we have also added language further explaining when the factors that preclude the transport of a service animal in the aircraft cabin may apply.

For consistency of terminology and to avoid any misunderstanding concerning which operations of foreign carriers are and are not covered by this rule, the word "operation" is replaced with the word "flight" in section 382.7 of the rule text on page 27668, for consistent use throughout the section of the defined term "flight".

On page 27673 in section 382.51(c), we have clarified the applicability of the section's effective dates with respect to

foreign carriers. On pages 27669 and 27674, we have corrected minor typographical errors in the rule text.

On page 27675, in section 382.71(b), we have clarified the level of accessibility that applies when refurbishing aircraft cabins or any elements thereof.

On page 27677 in section 382.99(c) of the rule text, we have corrected a typographical error in the effective date applicable to foreign carriers so that it is consistent with the effective date of this provision as stated in the Section-by-Section Analysis on page 27654.

On page 27682 in section 382.143(a)(2) of the rule text, we revised awkward language addressing the time frame for the completion of training on the changes to Part 382 for existing employees without changing the substance of the provision, corrected an erroneous reference, and deleted superfluous text. On page 27683 in section 382.151(a) of the rule text, we corrected a typographical error.

On page 27687, we have added a section and a subject that had been omitted from the Cross-Reference Table.

We note that there are two additional corrections we have determined to be substantive in nature, which we intend to address through a notice of proposed rulemaking (NPRM). The first involves an omission of Subpart I from the subparts listed in section 382.7(c). Section 382.7(c) contains the service-related requirements with which a U.S. carrier must comply with respect to passengers traveling under its code on flights operated by a foreign carrier between two foreign points. Subpart I (14 CFR 382.121 to 14 CFR 382.133) is titled "Stowage of Wheelchairs, Other Mobility Aids, and Other Assistive Devices." Among other things, Subpart I contains requirements related to the in-cabin use of portable oxygen concentrators and other respiratory assistive devices that will apply for the first time to both U.S. and foreign carriers. We will provide an opportunity for public comment on the inclusion of Subpart I, which contains these new requirements, in the list of subparts with which a U.S. carrier must comply with respect to passengers traveling under its code on flights operated by a foreign carrier between two foreign points.

The second matter that we intend to address through an NPRM involves inconsistencies in the amended rule with respect to requirements concerning in-cabin stowage of passenger wheelchairs. Because the Department's enforcement policy has in the past permitted the use of seat-strapping (i.e., strapping a wheelchair across a row of

seats on aircraft that do not have a closet or similar compartment for stowing the device), the Department in the amended ACAA rule in effect "grandfathered" situations in which carriers, in reliance on the DOT Enforcement Office's statements, continued to utilize seat-strapping rather than having a closet or compartment space for a wheelchair. The rule does prohibit the use of seat-strapping beyond a certain date. More specifically, section 382.123(c) states that carriers must not use the seat-strapping method for wheelchair stowage in any aircraft ordered after May 13, 2009 or which are delivered after May 13, 2011. However, section 382.67(c) states that a foreign carrier must have a priority space in the cabin to stow a standard size wheelchair on aircraft ordered after May 13, 2009 or delivered after May 13, 2010. The Department intended to provide one year after the effective date of the rule (i.e., May 13, 2010) for obtaining new aircraft that would have priority space in the cabin to stow a standard size wheelchair and to allow carriers to use the seat-strapping method only on aircraft on which this method was previously allowed and on aircraft ordered on or before May 13, 2009 and delivered on or before May 13, 2010. The Department erroneously stated that carriers may not use the seat-strapping method in any aircraft delivered after May 13, 2011 instead of stating carriers may not use the seat-strapping method in any aircraft delivered after May 13, 2010. Nevertheless, we are not fixing this mistake through this correction notice since we believe correcting the error in the compliance date is substantive and would require notice and opportunity to comment. We also recognize that it often takes up to two years after the order date of an aircraft for that aircraft to be delivered to a carrier. Therefore, U.S. carriers relying on the language in 382.123(c) are likely not to have requested that the ordered aircraft, to be delivered between May 13, 2010 and May 13, 2011, contain priority space in the cabin to stow a standard size wheelchair.

To ensure that the changes to the preamble and final rule outlined in this correction notice are readily accessible and easily understandable to the public, it is the Department's intention to place in the docket and post on the Aviation Consumer Protection Web site a version of the complete final rule incorporating all the changes described herein within 2 to 4 weeks. This consolidated version will be available at <http://airconsumer.dot.gov/rules/rules.htm>.

III. Waiver of Proposed Rulemaking

Pursuant to section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), the Department can waive prior notice and opportunity for public comment on this action if it finds that the notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice. The revisions contained in this document correct typographical errors, omissions, and unclear language in the final rule. Minor editorial corrections and clarifications consistent with the rule text have also been added to the preamble. These corrections are necessary to ensure the accuracy of the final rule. Since all are minor and non-substantive, public comments on these revisions are unnecessary. Therefore, we find good cause to waive the notice and comment procedure.

IV. Correction of Errors and Clarifications

In FR Doc. 08–1228, appearing on page 27614 in the **Federal Register** on Tuesday, May 13, 2008, the following corrections are made:

A. Corrections to the Preamble

1. On page 27614, in the first column, correct the footnote so it reads "The dates and citations for these amendments are the following: April 3, 1990, 55 FR 12336; June 11, 1990, 55 FR 23539; November 1, 1996, 61 FR 56409; January 2, 1997, 62 FR 16; March 4, 1998, 63 FR 10528; March 11, 1998, 63 FR 11954; August 2, 1999, 64 FR 41781; January 5, 2000, 65 FR 352; May 3, 2001, 66 FR 22107; July 8, 2003, 68 FR 40488."

2. On page 27616, in the third column, add the sentence, "We strongly encourage carriers, even where a provision of Part 382 itself explicitly allows an exception in order to comply with a foreign law (i.e., section 382.87(a)), to consider filing a conflict of law waiver request as outlined in section 382.9(a) whenever a carrier believes itself bound by a legal mandate that requires something Part 382 prohibits or prohibits something Part 382 requires." before the sentence starting with the word "If" in the eighteenth line.

3. On page 27618, in the first column, in the 13th line, revise the phrase, "regulatory provision that was shown" to read, "regulatory provision was shown".

4. On the same page, in the same column, in the 15th line, revise the phrase, "addition, The Department" to read, "addition, the Department".

5. On page 27621, in the second column, in the first full paragraph, in the 10th and 11th lines, delete the phrase, “or food service location”.

6. On the same page, in the same column, in the same paragraph, from the 22nd through the 30th lines, delete the last two sentences.

7. On page 27634, in the third column, in the 24th and 25th lines, revise the phrase, “fear that Department” to read, “fear that the Department”.

8. On page 27640, in the first column, in the 34th line, add a comma and delete the period following the acronym “NPRM”.

9. On page 27647, in the second column, after the second full paragraph, insert the following new paragraph: “Finally, the Department recognizes that a U.S. carrier may wish to file a waiver request on behalf of a foreign carrier. This may occur, for example, in the case of U.S. carriers who must ensure compliance with the service-related provisions of this Part on code share flights between two foreign points operated by their foreign code share partners on behalf of passengers traveling under the U.S. carriers’ codes. Where a U.S. carrier believes a foreign law conflicts with a service-related provision of this Part and bars compliance on a code-share flight operated by its foreign code share partner, the U.S. carrier may file a waiver request on behalf of its foreign code-share partner(s) subject to that law. The waiver request should include a proposal for an alternative means of compliance with the Part 382 provision or a justification of why it would be impossible to achieve the objective. If granted, the responsibility of the U.S. carrier with respect to code-share flights operated by its foreign partner(s) will be limited in accordance with the terms of the waiver.”

10. On page 27648, in the third column, in the 37th line, revise the phrase “users and, people traveling” to read, “users and people traveling”.

11. On page 27650, in the third column, in the 16th line, correct the title of section 382.43 to read, “*Must information and reservation services of carriers be accessible to individuals with hearing impairments?*”

12. On the same page, in the third column, starting in the 63rd line, delete the entire paragraph beginning at the bottom of the column and continuing on page 27651, in the first column, from the 1st through the 7th line.

13. On page 27652, in the first column, in the 1st to 3rd lines, correct the title of section 382.53 to read, “*What information must carriers give*

individuals with a vision or hearing impairment at airports?”

14. On page 27653, in the third column, in the 14th line, insert the phrase, “to a level below that specified for new aircraft in this Part” immediately before the period.

15. On page 27655, in the first column, in the 32nd to 34th lines, delete the sentence, “Appendix A provides further guidance to carriers and passengers concerning service animals.”, and replace with “Further guidance to carriers and passengers concerning service animals follows the Section-by-Section Analysis.”

16. On the same page, in the second column, in the 13th line, revise the phrase, “mental health professional” to read, “licensed mental health professional (e.g., a medical doctor that is treating the passenger’s mental or emotional disability or a licensed clinical social worker)”.

B. Corrections to the Service Animal Guidance

On page 27659, in the second column, in the 32nd line, revise the phrase “licensed mental health professional” to read “licensed mental health professional, including a medical doctor that is treating the passenger’s mental or emotional disability”.

C. Corrections to the Regulatory Text

PART 382—[CORRECTED]

■ 1. On page 27666, in the first column, in the Table of Contents to Part 382, , revise the title of § 382.43 to read, “Must information and reservation services of carriers be accessible to individuals with hearing impairments?”

■ 2. On the same page, in the same column, revise the title of § 382.53 to read, “What information must carriers give individuals with a vision or hearing impairment at airports?”

§ 382.7 [Corrected]

■ 3. On page 27668, in the first column, in § 382.7, in paragraph (c), the phrase “with respect to operations” is corrected to read, “with respect to flights” wherever it may appear.

■ 4. On the same page, in the same section, in the same paragraph, in the 9th line, the phrase “with respect to operations” is corrected to read, “with respect to flights”.

■ 5. On the same page, in the second column, in the same section, in paragraph (d), in the 5th and 6th lines, the phrase “the charter operation is not” is corrected to read: “the charter flight is not”.

§ 382.17 [Corrected]

■ 6. On page 27669, in the third column, in § 382.17, in the 4th line, change “§ 382.27(b)(6)” to “§ 382.27(c)(6)”.

§ 382.27 [Corrected]

■ 7. On page 27671, in the first column, § 382.27, in paragraph (a), in the 1st and 2nd lines, remove the phrase “paragraph (b)” and add in its place the phrase “paragraphs (b) and (c)”.

§ 382.43 [Corrected]

■ 8. On page 27672, in the third column, in the 36th line, correct the title of § 382.43 to read “Must information and reservation services of carriers be accessible to individuals with hearing impairments?”

§ 382.51 [Corrected]

■ 9. On page 27673, in the third column, § 382.51, in paragraph (c), in the 3rd line, insert the phrase, “, except as otherwise indicated in paragraph (a)” after the word “2010”.

§ 382.55 [Corrected]

■ 10. On page 27674, in the first column, in § 382.55, in paragraph (c), in the 2nd line, change “(c)” to “(d)”.

§ 382.71 [Corrected]

■ 11. On page 27675, in the third column, in § 382.71, in paragraph (b), in the fifth line, insert the phrase “for new aircraft” immediately following the word “specified”.

§ 382.99 [Corrected]

■ 12. On page 27677, in the third column, in § 382.99, in paragraph (c), in the 6th and 7th lines, remove the phrase “May 13, 2010” and add in its place the phrase “May 13, 2011”.

§ 382.117 [Corrected]

■ 13. On page 27679, in the first column, in § 382.117, in paragraph (e), in the 13th line, insert the phrase, “including a medical doctor specifically treating the passenger’s mental or emotional disability” immediately before the parenthesis.

■ 14. On the same page, in the same column, in the same section, in paragraph (f), in the 5th and 6th lines, replace the phrase “With respect to other unusual or exotic animals” with the phrase “With respect to all other animals, including unusual or exotic animals” and in the 9th line, delete the abbreviation “U.S.” before the word “carrier”.

■ 15. On the same page, in the second column, in § 382.117, in paragraph (f), in the 12th line, remove the word “As” and add in its place “However, as”.

§ 382.143 [Corrected]

■ 16. On page 27682, in the third column, in § 382.143, in paragraph (a)(2), in the 3rd line, insert the phrase “for each such employee no later than” after the phrase “must take place”.

■ 17. On the same page, in the same column, in the same section, in the same paragraph, in the 3rd and 4th lines, remove the phrase “as part of”.

■ 18. On the same page, in the same column, in the same section, in the same paragraph, in the 5th line, insert the phrase “taking place” before the word “after”.

■ 19. On the same page, in the same column, in the same section, in the same paragraph, in the 5th and 6th lines, delete the phrase “for each such employee”.

■ 20. On the same page, in the same column, in the same section, in paragraph (b), in the 4th and 5th lines, remove the phrase, “paragraph (a) of this section” and replace it with “§ 382.141(a)”.

■ 21. On the same page, in the same column, in the same section, in paragraph (b)(4), in the 3rd line remove the phrase “a date”.

§ 382.151 [Corrected]

■ 22. On page 27683, in the first column, in § 382.151, in paragraph (a), in the 2nd line, remove the comma after “service”.

D. Corrections to Appendix B: Cross-Reference Table

■ 23. On page 27687, in the second column, in the Section Numbers: Old and New Rules Table, in the 21st line, insert “95, “ immediately before “99”.

■ 24. On the same page, in the third column, in the same table, in the 22nd line, insert “, POCs and other respiratory assistive devices” immediately before the period.

Dated March 9, 2009, at Washington, DC, under authority delegated in 49 CFR 1.57(j).

Rosalind A. Knapp,

Acting General Counsel.

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DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Part 744**

[Docket No. 090223225-9275-01]

RIN 0694-AE57

Removal and Modification of Certain Entries From the Entity List: Persons Removed or Modified Based on ERC Annual Review

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by removing two persons from the Entity List (Supplement No. 4 to Part 744). These persons are being removed from the Entity List because of determinations made by the United States Government during the annual review of the Entity List conducted by the End-User Review Committee (ERC).

This rule also makes a clarification for two persons that were listed on the Entity List prior to this rule being published to revise the addresses provided for these listed persons or add an address. These two listed persons were listed under addresses in more than one country. This rule removes one of the addresses for each of these entities.

The Entity List provides notice to the public that certain exports and reexports to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of License Exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective March 18, 2009. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694-AE57, by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include “RIN 0694-AE57” in the subject line of the message.

Fax: (202) 482-3355. Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694-AE57.

Send comments regarding the collection of information associated

with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jseehra@omb.eop.gov, or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694-AE57)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT:

Karen Nies-Vogel, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-3811, Fax: (202) 482-3911, e-mail: kniesv@bis.doc.gov.

SUPPLEMENTARY INFORMATION:**Background**

In Supplement No. 4 to part 744 (The Entity List) of the EAR, this rule removes two listed persons and modifies the entries for two listed persons on the basis of an annual review of the Entity List that was conducted by the End-User Review Committee (ERC). The modifications of the entries of two of the listed entries include the removal of their addresses under the United Arab Emirates (U.A.E.) and deletion of cross-references to the U.A.E. entries for these listed persons' entries under Germany and Hong Kong. The ERC approved these modifications pursuant to an annual review of the Entity List, which was conducted in accordance with the procedures outlined in Supplement No. 5 to part 744 (Procedures for End-User Review Committee Entity List Decisions).

ERC Entity List Decisions

The ERC, composed of representatives of the Departments of Commerce, State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from or changes to the Entity List. The ERC is chaired by the Department of Commerce and makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote. As noted in the preamble of the August 2008 final rule and in Supplement No. 5 to part 744, the activities of the ERC include conducting an annual review of the Entity List to make a determination