

DOT Proposes Consequential Changes to Air Carrier Disability Accessibility Regulations

On February 28, 2024, the U.S. Department of Transportation (DOT) released an advance copy of a Notice of Proposed Rulemaking (NPRM) titled “Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs.” The NPRM represents consequential changes to DOT’s regulations set forth at 14 CFR Part 382 implementing the Air Carrier Access Act (ACAA).

Background

The ACAA, codified at 49 U.S.C. § 41705, generally prohibits discrimination in airline service on the basis of a passenger’s disability. When enacting the ACAA, Congress directed the DOT “to promulgate regulations to ensure non-discriminatory treatment of qualified handicapped individuals consistent with safe carriage of all passengers on air carriers.”¹ The DOT responded by issuing regulations at 14 C.F.R. Part 382, which set forth detailed requirements for the accessibility of airline services, aircraft, and other facilities, and steps that airlines must take to accommodate passengers with a disability.² DOT has continually updated these regulations, including a major overhaul in 2008 that extended Part 382 to foreign air carriers’ flights to and from the United States,³ and major amendments in 2020 that allowed airlines to categorize emotional support animals as pets instead of service animals.⁴

The NPRM, which is summarized below, is the culmination of (1) a 2018 congressional directive to DOT requiring a review of Part 382 to ensure that passengers with a disability receive dignified, timely, and effective assistance at airports and onboard aircraft from trained personnel and that air carrier personnel (including contractors) who provide physical assistance to passengers with a disability receive annual training,⁵ and (2) a March 2022 public meeting held by DOT on air travel by passengers who use wheelchairs, during which DOT heard from such passengers on difficulties they have encountered and from airlines on actions being taken “to improve the air travel environment for wheelchair users.” Following the meeting, DOT received approximately 192 written comments from advocates, airlines, other industry stakeholders, and individuals.

Summary of Key Provisions

The NPRM would take major actions in three key areas:

- i. Penalties and remedies for wheelchair mishandling.
- ii. Safe, dignified, and prompt assistance for passengers using wheelchairs, including enhanced airline employee and contractor training.
- iii. Improved accessibility standards on aircraft.

Penalties and Remedies for Wheelchair Mishandling

The NPRM proposes that **any** “mishandling of a passenger’s checked wheelchair or other assistive device” would be an **automatic per se violation** of the ACAA and Part 382, thus subjecting airlines to the imposition of administrative, civil penalties, “regardless of the circumstances surrounding the event.” In this regard, the NPRM would define a mishandled assistive device as one that is “lost, delayed, damaged, or pilfered.”

The NPRM would require airlines, in the event of any mishandling of a wheelchair or scooter, to “immediately notify impacted passengers of their rights to (1) file a claim with the airline, (2) receive a loaner wheelchair from the airline with certain customizations, (3) choose a preferred vendor, if desired, for device repairs or replacement, and (4) have a Complaints Resolution Official (CRO)



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available and be provided information on how to contact the CRO.”

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If a passenger chooses their own preferred vendor, DOT proposes that the airline would have “the responsibility to transport the device to the preferred vendor and pay the vendor directly for the repairs or replacement.” DOT notes that it “does not anticipate that fraudulent claims for repairs or replacements will be a significant issue under this proposal.”⁶

The NPRM would require airlines to transport a delayed wheelchair or scooter to the passenger’s final destination within 24 hours of the passenger’s arrival “by whatever means possible.”

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DOT “envisions ‘by whatever means possible’ to include the carrier seeking out other commercial passenger flights or cargo flights that could accommodate the device and other ground shipping options that would result in prompt delivery to the passenger.” DOT notes that an airline charged with returning such an assistive device “would be required to cover cost for the transport.”

The NPRM would require airlines to “provide timely notifications to passengers when their wheelchairs or scooters have been loaded to and unloaded from the cargo compartments of their flights” and “immediately notify” passengers upon learning that their wheelchair or scooter does not fit on the aircraft.

The NPRM **seeks comments** on whether U.S. and foreign air carriers “should be required to **reimburse the difference** between the fare on a flight a wheelchair [or scooter] user took and the fare on a flight the wheelchair or scooter user would have taken if his or her wheelchair or scooter had been able to fit in the cabin or cargo compartment of the aircraft.”

Safe, Dignified, and Prompt Assistance

Part 382 currently requires airlines to “promptly provide or ensure the provision of assistance requested by or on behalf of passengers with a disability, or offered by carrier or airport operator personnel and accepted by passengers with a disability, in *enplaning and deplaning*.”⁷ The NPRM would expand this requirement by specifying that, in addition to enplaning and deplaning, airlines would be required to *promptly* provide “connecting assistance....including within the airport terminal.”

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DOT notes that this approach is “consistent” with its “longstanding interpretation and practice.”

Taking into account comments from Airlines for America (A4A) and the International Air Transport Association (IATA) submitted in response to the DOT’s March 2022 meeting, the NPRM proposes to codify DOT’s “longstanding practice of considering the totality of the circumstances when evaluating whether assistance was provided in a prompt manner when deplaning assistance by *aisle chair is not needed*.” (emphasis added).

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In contrast, when assistance by aisle chair is required, DOT proposes not to use the “totality of the circumstances” standard and instead proposes to define “prompt” as “mean[ing] that personnel and boarding chairs must be available to deplane the passenger no later than as soon as other passengers have left the aircraft.”

The NPRM would require airlines to ensure that, with respect to arriving flights, a passenger’s wheelchair is “ready and available as close as possible to the door of the aircraft, to the maximum extent possible.”⁸

The NPRM would require “annual training, including hands-on training, of airline employees and contractors who physically assist passengers with mobility disabilities or handle passengers’

wheelchairs or scooters.”

Improved Standards on Aircraft

The NPRM would require that “any aircraft with 60 or more passenger seats and an accessible lavatory (e.g., twin aisle aircraft) delivered after October 2, 2026, be equipped with an [onboard wheelchair] meeting the [DOT’s] improved standards.”

The NPRM **seeks comments** on whether to specify that one lavatory needs to be of sufficient size:

1. “to permit both a passenger with a disability and an attendant to enter and maneuver within the lavatory;” and
2. “to set a 95th percentile male standard for the individual with a disability and the attendant in place of the non-specific standard currently set forth for twin-aisle aircraft lavatories.”

Next Steps

In recognition of the potential for legal challenges to some of the proposals set forth above, the NPRM states, “In the event that a court were to invalidate one or more of this [NPRM]’s unique provisions as finalized, the [DOT]’s intent is that the remaining provisions should remain in effect to the greatest extent possible.”

Following publication in the Federal Register (expected in the coming days), the public will have 60 days to file comments. Based on those comments, DOT will decide whether the requirements detailed in the NPRM should be modified or adopted as proposed and proceed to the issuance of a final rule.

¹ Pub. L. 99-435, § 3, 100 Stat. 1080, 1080 (1986).

² See 55 Fed. Reg. 8008 (Mar. 6, 1990).

³ See 73 Fed. Reg. 27614 (May 13, 2008).

⁴ See 85 Fed. Reg. 79742 (Dec. 10, 2020).

⁵ See Pub. L. 115-254, § 440, 132 Stat. 3186, 3347 (2018).

⁶ DOT states, “If a dispute were to arise between the [passenger and the airline] over the cost of repairs or replacement, the passenger should submit quotes, receipts, or other similar documentation to the airline to prove or substantiate costs.”

⁷ 14 CFR 382.95(a) (emphasis added).

⁸ DOT states this would not apply if its application would be “inconsistent with Federal regulations governing transportation security or the transportation of hazardous materials; or when the passenger requests the wheelchair be returned at a location other than the door of the aircraft.”
