



# Accessible Sky

**Updated U.S. regulation prohibits discrimination against passengers with disabilities except in cases such as a direct threat to airline safety.**

BY WAYNE ROSENKRANS

Updates to flight attendant training by major U.S. airlines — which had to be in place by a May 2009 deadline to safely accommodate passengers with disabilities — have tended to be more evolutionary than revolutionary. For the first time, however, all U.S. regional airlines, U.S. on-demand aircraft operators and some non-U.S. airlines must comply with Part 382, a regulation of the U.S. Department of Transportation (DOT) under the Air Carrier Access Act.<sup>1</sup> Regional and on-demand operators that previously complied voluntarily also made straightforward updates.

By comparison, some of the affected non-U.S. airlines have made significant changes because of differences between DOT requirements and their own country's approach to carrying

passengers with disabilities, says Heidi Giles MacFarlane, vice president of strategic development at MedAire. She discussed a few of the safety challenges covered in Part 382 training of non-U.S. airlines during the 2009 International Aircraft Cabin Safety Symposium in Torrance, California, U.S., and discussed others in an ASW interview. Generally, all airline personnel who interact with customers must be trained.

“Under Part 382, we can expect to have more passengers with unique needs,” MacFarlane said. “Its purpose is to open air travel to people who haven't been able to travel in the past. The disability communities throughout the world are very well connected, and they communicate frequently about their rights. The airline community also knows that a number of passengers with disabilities are not aware of the

details of the rule, and it will be important for airline personnel to be able to articulate those details.”

## Safety Above All Else

All operations of U.S. air carriers are subject to Part 382, which prohibits carriers from discriminating against an otherwise qualified person with a disability on the basis of that disability—including the person's appearance or involuntary behavior that may offend, annoy or inconvenience crewmembers or other passengers — except as specifically permitted by the regulation.

A critical point, however, is that air carriers “may refuse to provide transportation to any passenger on the basis of safety<sup>2</sup> ... or to any passenger whose carriage would violate U.S. Federal Aviation Administration [FAA] or Transportation Security Administration

requirements or applicable requirements of a foreign government.”

One acceptable disability-related safety basis for refusing to carry a passenger with a disability is determining that the passenger poses a *direct threat*. This means “a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.” Moreover, the direct threat determination must be justified by “an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain the nature, duration and severity of the risk; the probability that the potential harm to the health and safety of others will actually occur; and whether reasonable

modifications of policies, practices, or procedures will mitigate the risk.”

The regulation also specifies types of mobility aids and other assistive devices that passengers with a disability must be allowed to bring into the aircraft cabin.

“Part 382 dictates that safety always is the primary factor, and sometimes it’s a mitigating factor in regulatory enforcement,” MacFarlane said. “It’s a matter of finding that middle ground where safety is appropriately considered, and the rights of the individual don’t cancel out safety considerations. It’s a tough tightrope. Many people from non-U.S. airlines come into our Part 382 training with the preconception that a passenger’s rights as a person with a disability come before everything.”

Upper left, MacFarlane; lower left, on-board wheelchairs in 17-in (43.2-cm) and 15-in (38.1-cm) widths; right, accommodation for a passenger with a battery-powered mobility aid.



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A few safety-related highlights show the comprehensive scope of Part 382. “With respect to passengers who have mobility impairments, we have clarified the criterion relating to safety assistants to say that the passenger must be capable of physically assisting in his or her own evacuation,” the DOT said. The rule also contains provisions for identifying cases in which people with mental impairments, such as Alzheimer’s disease, and severe hearing and vision impairment or deaf-blind individuals may be required to have a safety assistant accompany them.

Among notable requirements being phased in are movable armrests on at least half the aisle seats in rows that passengers with disabilities may occupy in affected new aircraft; the movable armrests also must be installed when newly manufactured seats replace old seats. The affected air carriers also must provide an on-board wheelchair, also called an aisle chair, aboard any aircraft with more than 60 seats. The DOT explained that “without a means of making a horizontal transfer into aircraft seats, passengers

who board using boarding wheelchairs will have to use the less comfortable, safe and dignified method of being lifted over the armrest.”

Also noteworthy is that all U.S. airlines and affected non-U.S. airlines that conduct passenger-carrying operations — other than on-demand operations — now must allow during all flight phases the use of passenger-owned, battery-powered electronic devices that assist a passenger with respiration, specifically ventilators, respirators, continuous positive airway pressure machines and FAA-approved portable oxygen concentrators, if labeled by the manufacturer as compliant with FAA technical standards.

There is no exemption for aircraft based on size or having no requirement for a flight attendant aboard, and the passenger must carry properly packaged batteries sufficient for 150 percent of the expected maximum flight duration, except when the passenger has contracted for carrier-supplied medical oxygen for in-flight use.

Part 382 significantly helps airline employees to distinguish service animals from pets, identify several types of service animals banned from the cabin and distinguish between service animals allowed to accompany users in the cabin without health care documentation and those that require this documentation in advance of a flight. Non-U.S. air carriers are not required to transport service animals other than dogs.

New communication provisions require high-contrast captioning of safety videos and informational videos, except those not created under the airline’s control, before the end of 2009. Cabin crews also must help to make more types of in-flight announcements accessible, but the DOT said, “The rule expressly relieves the crew from complying [with new in-flight communication requirements for passengers who are deaf, hard of hearing or deaf-blind] when this would interfere with their safety duties under FAA and foreign regulations.”

Complaint resolution officials (CROs) and other categories of airline employees must receive and record specific training. CROs have expertise in interpreting the regulation and accept responsibility for decisions. A CRO does not necessarily have a background in aviation safety

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or flight operations, however. “Crew resource management comes into play here,” MacFarlane said. “The CRO talks to all the parties involved but the CRO cannot overrule the captain — that is the fail-safe point.”

### New Contingency Training

Training on the basics of the respiratory assistive devices prepares the cabin crew to safely handle some novel situations. Apart from depletion of all available battery power or failure of a portable oxygen concentrator, the primary safety issue would be checking that the passenger has donned a drop-down oxygen mask during a cabin depressurization because the device may not generate its normal rate of oxygen pulses for its life-enhancement purpose, and the duration of in-flight medical oxygen on the aircraft may not be sufficient as a substitute.

Portable respirators and ventilators that fit under an aircraft seat — enabling people to travel with disabilities such as those caused by paralysis — likewise require the cabin crew to have new contingency plans. “If this device does fail for some reason, the individual would have to receive mechanical ventilation with a bag valve mask, possibly directly into the trachea — something that only can be done by someone specifically trained,” MacFarlane said.

MedAire’s Part 382 training aims to prepare CROs, flight attendants and other personnel to pinpoint a safety issue, and then work with the passenger toward the least restrictive solution that mitigates that issue. Safety focus and priorities do not change after flight attendants receive Part 382 training, she added. But a crew’s lack of knowledge about disabilities can lead to DOT regulatory violations. “Making assumptions is where we get lost,” she said. “I saw one passenger board a plane in an aisle chair.

He didn’t have any legs, and so we said, ‘To travel by yourself, you need to be able to physically assist in your own evacuation. Can you do that?’ He jumped right out of his seat and said, ‘Absolutely, look at this. I walk on my hands most of the time; I just didn’t get on the airplane that way. This is how I would evacuate myself.’ He went right up on his hands and walked down the aisle. Because we talked to him, we became confident.”

During the training, students often assume at first that emergency operations, such as evacuations, and even some normal operations inevitably would be problematic if passengers with disabilities are aboard. Yet, evacuation issues can be broken down into simple elements: investigating potential problems before pre-boarding passengers, understanding the capabilities of the individual and being prepared with backup actions, MacFarlane noted. “We address evacuation in terms of the best interest of the individual,” she said. “The flight attendant can say, ‘This is what we do. What do you plan on doing? How can we do this together? What would you need?’”

One possible evacuation scenario that has disturbed flight attendants is expecting the passenger with a disability to physically assist as planned, then realizing that the passenger did not get out. “In training, we say, ‘OK, so you check the cabin and you find someone who, for whatever reason, could not assist in their own evacuation,’ she said. “You would handle that the same way that you would handle any incapacitated passenger who was not incapacitated at the beginning of the flight. It’s really no different. As long as the techniques are safe, the same ones would apply.”

Beneath the surface of some concerns voiced during training was fear of getting involved with the passenger without knowing how to deal with

unfamiliar equipment or situations. “In Part 382 courses, we see the same trepidation that crewmembers have when they come to our medical training,” MacFarlane said. “Everyone has the opportunity in multiple scenarios to play the role of the person with a disability, to play the role of the crewmember, to say the words out loud and to practice in a protected, safe environment.”

Passengers with disabilities often have visualized, and can explain, what to do if a service animal becomes separated from the owner and how to evacuate a service animal down the slide. A guide dog or hearing dog can be expected to join the flow to exit but sense danger at the aircraft door, and typically the dog will have been trained to stop the owner if the owner tries to sit down and move forward onto the slide.

“It’s important for the cabin crew to be aware that they may have to separate animals and owners just to get them down,” MacFarlane said. The training also covers hands-on practice handling, operating, disassembling and reassembling about 20 items of equipment that passengers with disabilities may bring into the aircraft cabin.

Everybody has a responsibility, not just the airlines — and the key is communicating, MacFarlane said. “A lot of work remains to be done in educating the vast disability community,” she added. ➤

### Notes

1. Part 382 is shorthand for 14 Code of Federal Regulations Part 382, *Nondiscrimination on the Basis of Disability in Air Travel*. The re-issued regulation, effective May 13, 2009, replaces a final rule issued in 1990 and amended in 1990, 1996, 1997, 1998, 1999, 2000, 2001 and 2003.
2. Details of the basis of safety are provided in 49 U.S. Code 44902 and U.S. Federal Aviation Regulations Part 121.533.