

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

RIN No. 2105-AE12

[Docket No. DOT-OST-2015-0246]

**Nondiscrimination on the Basis of Disability in Air Travel; Consideration of
Negotiated Rulemaking Process**

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Intent.

SUMMARY: The Department of Transportation (“Department” or “DOT”) announces that it is exploring the feasibility of conducting a negotiated rulemaking (Reg Neg) concerning accommodations for air travelers with disabilities. Specifically, the Department is exploring a Reg Neg to:

- ensure that the same in-flight entertainment (IFE) available to all passengers is accessible to passengers with disabilities;
- provide individuals dependent on in-flight medical oxygen greater access to air travel consistent with Federal safety and security requirements;
- determine the appropriate definition of a service animal;
- establish safeguards to reduce the likelihood that passengers wishing to travel with their pets will be able to falsely claim that their pets are service animals;
- address the feasibility of accessible lavatories on new single aisle aircraft;

- address whether premium economy is a different class of service from standard economy as airlines are required to provide seating accommodations to passengers with disabilities within the same class of service; and
- require airlines to report annually to the Department the number of requests for disability assistance they receive and the time period within which wheelchair assistance is provided to passengers with disabilities.

The Department has hired a convener to speak with interested parties about the feasibility of conducting this Reg Neg. The Department anticipates that the interested parties may include disability advocacy organizations, airlines, airports, airline vendors providing wheelchair assistance, aircraft manufacturers, IFE system manufacturers, movie studios, other IFE content providers, service animal training organizations, and other Federal agencies that have a regulatory interest in these issues such as the Department of Justice, the Federal Communications Commission, and the United States Access Board.

DATES: Please submit your comments no later than [insert 30 days from date of publication in the Federal Register].

ADDRESSES: You may submit comments identified by docket number DOT-OST-2015-0246 using any one of the following methods:

- Federal eRulemaking Portal: *<http://www.regulations.gov>*.
- Fax: 202-493-2251.
- Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: If you have questions about the regulatory negotiation, you may contact Kathleen Blank Riether, Senior Attorney, Office of the Aviation

Enforcement and Proceedings, U.S. Department of Transportation, by email at kathleen.blankriether@dot.gov or by telephone at 202-366-9342. To obtain a copy of this notice in an accessible format, you may also contact Kathleen Blank Riether.

SUPPLEMENTARY INFORMATION: Congress enacted the Air Carrier Access Act (ACAA) in 1986. It prohibited discrimination in airline service on the basis of disability by U.S. air carriers. In 1990, following a lengthy rulemaking process that included a regulatory negotiation involving representatives of the airline industry and disability community, the Department issued a final ACAA rule. In 2000, Congress amended the ACAA to specifically include foreign air carriers. The ACAA now prohibits U.S. and foreign air carriers from discriminating against individuals on the basis of disability in air travel. In 2008, the Department revised its disability regulation to, among other things, apply its rule to foreign carriers and add new protections for passengers who use portable oxygen concentrators and passengers who are deaf or hard of hearing. See 73 Fed.Reg., 27614 (May 13, 2008), effective May 13, 2009.

In the preamble to the 2008 final rule, the Department explained that it had deferred final decisions regarding a number of proposed requirements and expressed its intent to issue a Supplemental Notice of Proposed Rulemaking (SNPRM) seeking additional public input on carrier-supplied in-flight medical oxygen, transport of service animals, in-flight entertainment, and accessible kiosks and websites. The Department also announced its intent to carefully monitor ongoing developments with respect to lavatory accessibility on single aisle aircraft during longer flights to determine if a future rulemaking proposal may be warranted. See 73 Fed.Reg., 27614 (May 13, 2008). In September 2011, the Department issued an SNPRM on airline websites and automated airport kiosks. See 76 Fed.Reg., 59307 (September 26, 2011).

The proceeding culminated in a final rule mandating that airline websites and automated airport kiosks be accessible by specific dates. See 78 Fed.Reg., 67882 (November 12, 2013). The Department is now planning to address in-flight medical oxygen, transport of service animals and in-flight entertainment.

Additionally, since the issuance of the 2008 final rule, the Department has become aware of other difficulties individuals with disabilities are having in accessing the air travel system. For example, airlines and disability organizations¹ have raised concerns with the Department of passengers falsely claiming that their pets are service animals. These groups have also pointed out the inconsistency between the Department of Justice definition of a service animal and the Department of Transportation's definition of a service animal. Separately, the Department has noted the industry trend toward greater use of single aisle aircraft that are not equipped with accessible lavatories on medium and long haul flights. The disability community has also expressed distress that single aisle aircraft are increasingly used by airlines for longer flights but lack accessible lavatories. Issues have also been raised about whether premium economy is a different class of service from standard economy as airlines are required to provide seating accommodations to passengers with disabilities within the same class of service. Extra legroom is a standard feature of premium economy, with some carriers providing premium economy passengers amenities in addition to the standard economy class services. Various disability organizations have reported to the Department that their members are unable to obtain bulkhead seating while traveling with a service animal as the bulkhead seats are now primarily located in what has been designated by airlines as the premium economy section. The Department has also

¹ See DOT-OST-2009-0093-0001, Psychiatric Service Dog Society Petition for Rulemaking (April 13, 2009).

received a petition for rulemaking to modify the existing seating accommodations requirement for passengers who need extra legroom.²

The Department is exploring the feasibility of conducting a negotiated rulemaking on the remaining issues that it deferred final action on in its 2008 final rule as well as the issues described above that have arisen since its 2008 final rule. In a Reg Neg, an agency invites representatives of interested parties likely to be significantly affected by a regulation to work with each other and the agency on an advisory committee to seek to reach consensus recommendations on the appropriate resolution of the issues before the committee. If a consensus is reached, the Department will issue a proposed rule consistent with that consensus for public comment under established rulemaking procedures. The Department believes this cooperative problem-solving approach should be given serious consideration. To do so, the Department must determine, among other statutorily-mandated considerations, whether an appropriate advisory committee can be assembled that will fairly represent all affected interests, negotiate in good faith, and offer a reasonable likelihood of reaching a consensus on the issues.

The Department has retained a neutral convener, Mr. Richard Parker from the University of Connecticut School of Law, to undertake the initial stage in the Reg Neg process and assist the agency in making this threshold determination. Mr. Parker's credentials have been placed in docket DOT-OST-2015-0246. The neutral convener will interview representatives of affected interests, including but not limited to, disability advocacy groups, airlines, and manufacturers of aircraft cabin facilities and equipment and determine whether other interest groups should be included. The convener will examine the potential for adequate and balanced representation of the varied interests on an advisory committee convened to negotiate the regulation and/or to

² See DOT-OST-2012-0030, In Re Petition for Rule Change of Title 14 CFR Part 382.81(d) Pertaining to Disabled Seating Accommodations (February 7, 2012).

reach consensus on specific issues. Based on these interviews, the convener will submit a written report of findings and recommendations to the Department, and the final report will be available to the public. The convener's report will provide a basis for the Department to decide whether to proceed with a Reg Neg, and, if so, to determine the scope of the issues the committee will address. In the alternative, the Department may also decide to forgo a Reg Neg and proceed with a traditional notice-and-comment rulemaking.

The convener's activities are subject to the confidentiality provisions of the Administrative Dispute Resolution Act, 5 U.S.C. 574. The Federal Government will make no claim to the convener's notes, memoranda, or recollections or to documents provided to the convener in confidence in the course of the convening process. The convener will not interpret Department policy, make decisions on items of policy, regulation, or statute, or take a stand on the merits of substantive matters under discussion.

The Department will provide any comments it receives in response to this notice to the convener and will file the comments in docket DOT-OST-2015-0246. Should the Department decide to proceed with a Reg Neg process, the Agency will follow the procedures set forth in the Negotiated Rulemaking Act of 1996, 5 U.S.C. 561 *et seq.* This would include the publication of a notice of intent to solicit comment on membership and to invite interested persons to apply for nomination to the committee. It also includes the establishment of an advisory committee under the Federal Advisory Committee Act (5 U.S.C. Appendix 2).

Issued under the authority of delegation in 49 CFR 1.27.

Dated: November 30, 2015

/s/

Kathryn B. Thomson, General Counsel