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Conflict of Law Waivers and Equivalent Alternative Determinations Offer Flexibility in DOT Disability Rules (Jan. 2011)

By David M. Endersbee

The U.S. Department of Transportation (“DOT”) has adopted extensive regulations covering U.S. and foreign airline accommodation of passengers with disabilities, 14 C.F.R. Part 382, “Nondiscrimination on the Basis of Disability in Air Travel.” These regulations address a wide range of airline customer service and accommodation issues ranging from accessibility of airport facilities (Subpart D) to specific employee training requirements (Subpart J). Airline operations are also impacted by the requirements of (among others) Subpart E (accessibility of aircraft) and Subpart I (stowage of wheelchairs and mobility devices).

When DOT finalized significant revisions to Part 382 in 2008¹ it also provided two new regulatory mechanisms through which carriers may find some flexibility in complying with Part 382’s requirements. The first such mechanism is a conflict of law waiver under 14 C.F.R. § 382.9. Under this mechanism, a foreign carrier required to observe a “legally binding mandate” of a foreign government may petition DOT for a waiver from the conflicting DOT regulation(s). It is important to note that such foreign requirements must be binding and have the force of law in order for DOT to entertain a conflict of law waiver application. While a number of conflict of law waiver applications have been filed with DOT, the vast majority of them have been rejected on the grounds that DOT’s regulations can be interpreted in ways that do not conflict with foreign requirements.

DOT also created an equivalent alternative mechanism for Part 382’s requirements. The equivalent alternative mechanism permits U.S. and foreign airlines to propose alternative means of compliance with Part 382’s requirements. Specifically, airlines may submit a proposed alternative policy, practice, or other accommodation to DOT.



The firm’s practice encompasses virtually every aspect of aviation law, including advising domestic and foreign airlines on compliance with the DOT’s rules on nondiscrimination on the basis of disability in air travel.

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¹ “Nondiscrimination on the Basis of Disability in Air Travel; Final Rule,” 73 Fed. Reg. 27614 (May 13, 2008).

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The application must very carefully describe the proposed equivalent alternative, provide detailed supporting evidence, and explain how the proposal would provide “substantially equivalent accessibility to passengers with disabilities” as would literal compliance with the DOT regulation(s).

DOT did not limit the scope of such applications under Part 382 but did note that carriers may only submit applications for specific requirements of Part 382 and not “an entire regulatory scheme” (e.g., DOT would not entertain an application from a carrier that wished to observe only its homeland disability-related rules as being “equivalent” to Part 382).

DOT may impose conditions on approved equivalent alternatives. A common condition is a requirement that carriers submit quarterly reports to DOT of any complaints received concerning the carrier’s equivalent alternative policy, procedure, or accommodation. This condition enables DOT to monitor the effectiveness of equivalent alternative policies, procedures, and accommodations that it grants.

A common example of successful equivalent alternative applications is from 14 C.F.R. § 382.61, which requires that certain aircraft have moveable aisle armrests distributed proportionately throughout the aircraft in at least half of the aisle seats in which a person with a disability are permitted to sit. Many carriers with first- and business-class seats that are not so equipped have successfully applied for equivalent alternative determinations based on the equivalent accessibility of their first- and business-class seats. Zuckert, Scoutt & Rasenberger attorneys have also successfully obtained an equivalent alternative determination for alternative means of compliance with 14 C.F.R. §§ 382.67 and 123 (priority space in the cabin for folding wheelchairs and related requirements).

Carriers wishing to submit conflict of law waiver or equivalent alternative determination applications to DOT are well-advised to consult with legal counsel to ensure that their applications are well-crafted, thoroughly supported, and justified. Applications may be delayed or denied as a result of insufficient supporting evidence.

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