

**V-565 [Amended]**

From Centex, TX; College Station, TX; to Lufkin, TX.

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**V-568 [Amended]**

From Corpus Christi, TX; INT Corpus Christi 296° and Three Rivers, TX, 165° radials; Three Rivers; INT Three Rivers 327° and San Antonio, TX, 183° radials; San

Antonio; to Stonewall, TX. From Millsap, TX; to Wichita Falls, TX.

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*Paragraph 6011 United States Area Navigation Routes.*

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**T-254 SAN ANGELO, TX (SJT) TO KNZLY, LA [AMENDED]**

|                           |        |   |
|---------------------------|--------|---|
| San Angelo, TX (SJT)      | VORTAC | (Lat. 31°22'29.84" N, long. 100°27'17.53" W). |
| DILLO, TX                 | WP     | (Lat. 30°47'46.76" N, long. 098°47'13.91" W). |
| KALLA, TX                 | FIX    | (Lat. 30°43'15.88" N, long. 098°04'38.46" W). |
| DOWWD, TX                 | WP     | (Lat. 30°44'58.33" N, long. 097°06'12.22" W). |
| College Station, TX (CLL) | VORTAC | (Lat. 30°36'18.01" N, long. 096°25'14.45" W). |
| EAKES, TX                 | WP     | (Lat. 30°33'18.00" N, long. 095°18'29.00" W). |
| CREPO, TX                 | WP     | (Lat. 30°16'54.00" N, long. 094°14'43.00" W). |
| KNZLY, LA                 | WP     | (Lat. 30°08'29.48" N, long. 093°06'19.37" W). |

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**T-499 CORPUS CHRISTI, TX (CRP) TO DILLO, TX [NEW]**

|                          |        |   |
|--------------------------|--------|---|
| Corpus Christi, TX (CRP) | VORTAC | (Lat. 27°54'13.56" N, long. 097°26'41.57" W). |
| CARTI, TX                | FIX    | (Lat. 28°09'46.08" N, long. 098°02'51.29" W). |
| LEMIG, TX                | FIX    | (Lat. 28°58'37.91" N, long. 098°30'03.52" W). |
| San Antonio, TX (SAT)    | VORTAC | (Lat. 29°38'38.51" N, long. 098°27'40.74" W). |
| Stonewall, TX (STV)      | VORTAC | (Lat. 30°12'24.33" N, long. 098°42'20.72" W). |
| DILLO, TX                | WP     | (Lat. 30°47'46.76" N, long. 098°47'13.91" W). |

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Issued in Washington, DC, on March 7, 2024.

**Frank Lias,**

*Manager, Rules and Regulations Group.*

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**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****14 CFR Part 382**

[Docket No. DOT-OST-2022-0144]

**RIN 2105-AF14**

**Ensuring Safe Accommodations for Air Travelers With Disabilities Using Wheelchairs**

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT or the Department).

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** The U.S. Department of Transportation (DOT or the Department) is proposing to strengthen its rule implementing the Air Carrier Access Act (ACAA) to address the serious problems that individuals with disabilities using wheelchairs and scooters face when traveling by air that impact their safety and dignity, including mishandled wheelchairs and scooters and improper transfers to and from aircraft seats, aisle chairs, and personal wheelchairs.

**DATES:** Comments should be filed by May 13, 2024. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number DOT-OST-2022-0144 by any of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov> and follow the online instructions for submitting comments.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, Washington, DC between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- **Fax:** (202) 493-2251.

**Instructions:** You must include the agency name and docket number DOT-OST-2022-0144 or the Regulatory Identification Number (RIN 2105-AF14) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

**Privacy Act:** Anyone can search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register**

published on April 11, 2000 (65 FR 19477-78), or you may visit <https://www.transportation.gov/privacy>.

**Docket:** For access to the docket to read background documents and comments received, go to <https://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Miller, Staff Attorney, or Blane Workie, Assistant General Counsel, of the Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), [christopher.miller1@dot.gov](mailto:christopher.miller1@dot.gov) or [blane.workie@dot.gov](mailto:blane.workie@dot.gov) (email).

**SUPPLEMENTARY INFORMATION:****I. Executive Summary****A. Purpose**

The Department is issuing this notice of proposed rulemaking (NPRM) to increase access to safe and dignified air travel for individuals with disabilities. Air travel connects individuals to family and friends, jobs, and vital services, and it opens the door to opportunity. However, air travel can be especially difficult for individuals who use wheelchairs or scooters and rely on disability-related physical assistance and services provided by U.S. or foreign air carriers<sup>1</sup> ("carriers" or "airlines")

<sup>1</sup> "Carrier" is defined as "a U.S. citizen ("U.S. carrier") or foreign citizen ("foreign carrier") that undertakes, directly or indirectly, or by a lease or

and their contractors. Damaged and delayed personal wheelchairs and assistive devices and untimely and unsafe assistance provided by airlines can lead to serious life disruptions such as loss of mobility independence, personal injury, lost opportunities and wages, and other significant harms. Some wheelchair users even avoid flying altogether because of these risks.

#### B. Statutory Authority

The Air Carrier Access Act, 49 U.S.C. 41705, prohibits discrimination in airline service because of disability by U.S. and foreign air carriers. When it enacted the ACAA, Congress directed the Department “to promulgate regulations to ensure non-discriminatory treatment of qualified handicapped individuals consistent with safe carriage of all passengers on

air carriers.” Public Law 99–435, 3, 100 Stat. 1080, 1080 (1986). The Department responded by issuing a final rule that required carriers to provide nondiscriminatory service to individuals with disabilities. 55 FR 8008 (Mar. 6, 1990). The Department has continually updated these regulations pursuant to the ACAA and with its rulemaking authority under 49 U.S.C. 40113, which states that the Department may take action that it considers necessary to carry out its statutory duties, including prescribing regulations.

To the extent that violations of the ACAA and part 382 result in injuries to passengers with disabilities and occur in interstate air transportation, the incidents are also violations of 49 U.S.C. 41702, which require air carriers to

provide safe and adequate interstate air transportation. It is well-established that section 41702 may be used to ensure “safe and adequate” service in a civil rights context.<sup>2</sup>

Furthermore, section 440 of the FAA Reauthorization Act of 2018 (2018 FAA Act) directs the Department to review, and if necessary revise, applicable regulations to ensure that passengers with disabilities receive dignified, timely, and effective assistance at airports and onboard aircraft from trained personnel and to ensure that airline personnel who provide physical assistance to passengers with disabilities receive annual training that includes, as appropriate, hands-on instructions and the appropriate use of relevant equipment.

#### C. Summary of Regulatory Provisions

TABLE 1—SUMMARY OF NPRM PROPOSALS

| Subject   | Proposal  |
|---|---|
| Safe and Dignified Assistance .....   | Clarifies that safe and dignified assistance to individuals with disabilities is required when providing required accommodations.   |
| Prompt Enplaning, Deplaning, and Connecting Assistance.                           | Clarifies that prompt enplaning, deplaning, and connecting assistance is required, including moving within the airport terminal.<br>Prompt is determined based on the totality of circumstances, except when physical assistance is needed to disembark the aircraft, in which case prompt means that: (1) personnel and boarding wheelchair must be available to deplane the passenger when the last passenger who did not request deplaning assistance departs the aircraft; and (2) the passenger’s personal wheelchair must be available as close as possible to the door of the aircraft to the maximum extent possible, except: (a) where this practice would be inconsistent with Federal regulations governing transportation security or the transportation of hazardous materials, (b) or when the passenger requests the wheelchair be returned at a location other than the door of the aircraft. If the passenger requests the wheelchair be returned at a location other than the door of the aircraft, an airport wheelchair must be available for the passenger’s use.                          |
| Mishandling of Wheelchairs and Assistive Devices as Per Se Violation.             | Defines <i>mishandled</i> to mean lost, delayed, damaged, or pilfered ( <i>i.e.</i> , stolen). Specifies that any mishandling of wheelchairs and assistive devices by airlines is a per se regulatory violation subject to administrative penalties. In the event of any mishandling of a wheelchair or scooter, requires airlines to immediately notify impacted passengers of their rights: (1) to file a claim with the airline, (2) to receive a loaner wheelchair from the airline with certain customizations, (3) to choose a preferred vendor, if desired, for device repairs or replacement, and (4) to have a Complaints Resolution Official (CRO) available and be provided information on how to contact the CRO.   |
| Passenger Notifications After Wheelchair Is Loaded on and Unloaded from Aircraft. | Requires airlines to timely notify passengers when their wheelchairs or scooters have been loaded to and unloaded from the cargo compartment of their flights. Requires airlines to notify passengers immediately upon learning that the passenger’s wheelchair or scooter does not fit on the plane.   |
| Prompt Return of Delayed Wheelchairs or Scooters.                                 | Requires 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. Requires airlines to provide the passenger a choice between picking up the wheelchair or scooter at his or her destination airport or having the wheelchair delivered to another location based on a reasonable request by the passenger, such as the passenger’s home or hotel. Depending on the passenger’s choice, the Department would consider the wheelchair or scooter to be provided to the passenger (1) when the wheelchair or scooter is transported to a location requested by the passenger if the passenger chooses to have it delivered, regardless of whether the passenger is present to take possession of the wheelchair or scooter; or (2) when the wheelchair or scooter has arrived at the destination airport, is available for pickup, and the carrier has provided notice to the passenger of the location and availability of the wheelchair or scooter for pickup if the passenger chooses to pick it up. |
| Prompt Repair or Replacement of Damaged Wheelchairs or Scooters.                  | Following a mishandling, requires airlines to provide passengers the option of: (1) the carrier handling the repair or replacement of the device, with a device of equivalent or greater function and safety, within a reasonable timeframe and paying the associated costs; or (2) the passenger arranging for the repair or replacement of the device, with a device of equivalent or greater function and safety, through his or her preferred vendor with the carrier having the responsibility to transport the device to the preferred vendor and pay the vendor directly for the repairs or replacement.   |

any other arrangement, to engage in air transportation.” 14 CFR 382.3.

<sup>2</sup> See Frontier Airlines, Inc., Order 2017–7–8 (July 21, 2017); United Airlines, Inc., Order 2016–1–3 (January 15, 2016); U.S. Airways, Inc., Order 2003–

3–19 (March 26, 2003); American Airlines, Inc., Order 2003–3–1 (March 4, 2003).

TABLE 1—SUMMARY OF NPRM PROPOSALS—Continued

| Subject  | Proposal   |
|--|--|
| Loaner Wheelchair Accommodations ..                              | Requires airlines to provide loaner wheelchairs while individuals with disabilities are waiting on repairs or replacement of a mishandled device. Requires airlines to consult with the individual receiving the loaner wheelchair to ensure that the loaner wheelchair fits the passenger's functional needs, as much as possible, and safety-related needs.  |
| Enhanced Training for Certain Airline Personnel and Contractors. | Requires annual training, including hands-on training, of airline employees and contractors who physically assist passengers with mobility disabilities or handle passengers' wheelchairs or scooters.   |
| New Improved Standards for On-Board Wheelchairs (OBW).           | Requires new improved performance standards for OBWs on twin-aisle aircraft and aircraft with 60 or more seats, consistent with standards for OBWs on single-aisle aircraft with 125 or more seats.  |
| Size Standard for Lavatories on Twin-Aisle Aircraft.             | Seeks comments regarding 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. |
| Reimbursement of Fare Difference .....                           | Seeks comments regarding whether U.S. and foreign air carriers should be required to reimburse the difference between the fare on a flight a wheelchair user took and the fare on a flight that 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.  |

#### D. Summary of Preliminary Regulatory Analysis

TABLE 2—SUMMARY OF ANNUALIZED MONETIZED COSTS AND MONETIZED BENEFITS, DISCOUNTED AT 7 PERCENT

| Subject   | Costs                | Benefits      |
|---|----------------------|---------------|
| Safe, Dignified, and Prompt Assistance .....  | \$0 .....            | \$0           |
| Mishandling of Wheelchairs and Assistive Devices as Per Se Violation .....  | \$0 .....            | \$0           |
| Passenger Notifications; Return, Repair, and Replacement of Wheelchairs and Scooters; and Loaner Wheelchair Accommodations. | \$0 .....            | \$0           |
| Enhanced Training for Certain Airline Personnel and Contractors .....   | \$5.44 million ..... | \$6.0 million |
| New Improved Standards for On-Board Wheelchairs (OBWs) .....  | \$700,000 .....      | \$0           |
| Total .....   | \$6.1 million .....  | \$6.0 million |

The quantifiable benefits of this rulemaking included in the current analysis are anticipated to be slightly less than the quantifiable costs. However, we note that the quantified benefits are underestimated because certain benefits are not included. The Department believes the benefits of the proposed rule would exceed and justify the costs if the unquantified benefits were included.

The proposed rule and training requirements are expected to have unquantified benefits of reduced injuries, including fatalities, sustained by individuals with disabilities while receiving physical assistance from airline staff and contractors and after wheelchair and scooter mishandlings. Other types of injuries, including injuries to airline personnel and contractors, were also not quantified due to data limitations. The wheelchair handling training provision is expected to reduce repair costs due to avoided wheelchair mishandlings. This benefit has been quantified in the analysis. Additional unquantified benefits of this rulemaking include improved dignity, improved mobility by reduced mishandlings and improved loaner wheelchair accommodations, reduced

wait times for mishandled wheelchairs to be returned to passengers, and improved lavatory accessibility. Also, the Department believes that this rulemaking could help restore confidence in flying for many individuals with disabilities, which in turn would yield great benefits for individuals with disabilities and industry stakeholders. Additional information and questions for comment can be found in the docket in the full-length regulatory impact analysis (RIA).

## II. Need for a Rulemaking

### A. Concerns Raised to DOT

Disability rights advocates have raised concerns to the Department regarding unsafe, inadequate, and undignified assistance that individuals with mobility impairments receive from airlines when flying. These concerns have primarily focused on delayed and damaged personal wheelchairs or scooters, unsafe transfers to and from wheelchairs and aircraft seats, and lack of prompt wheelchair assistance at the airport.

These advocates have emphasized that many passengers with disabilities have received bumps and bruises and,

in other cases, far more significant injuries like broken bones, dislocated joints, and open wounds during the boarding and deplaning process. As evidence, one disability organization specifically recounted several recent incidents where its members had experienced significant difficulties during the boarding and deplaning process. These included a failed transfer resulting in a fractured tailbone and subsequent infection; being hand-carried off an airplane; and improper use of an aisle chair. An aisle chair is a wheelchair that is used in the enplaning and deplaning process to transport an individual with a mobility disability between their own wheelchair, or an airport wheelchair, and an aircraft seat. Improper use of aisle chairs can result in passengers bumping into armrests while being transported to their seats and improper transfers can result in passengers being dropped when moving from aisle chairs to their seats.<sup>3</sup> Because transfers to and

<sup>3</sup> Additional related information can be found in Paralyzed Veterans of America's (PVA) Rulemaking Petition, viewable in the rulemaking's docket, Docket DOT-OST-2022-0144, and available online at <https://www.regulations.gov/docket/DOT-OST-2022-0144>. PVA has separately submitted a formal

from aircraft seats and wheelchairs are the most physically intensive type of assistance provided by airline personnel and contractors and can cause serious bodily harm to passengers and workers if not done properly, the advocates—representing both passengers with disabilities and workers—have urged the Department to require enhanced training in this area.

The advocates have also maintained that damage to passengers' personal wheelchairs and scooters can result from insufficient training.<sup>4</sup> Wheelchair users today cannot travel in their own wheelchairs and must surrender their wheelchairs to an airline for stowage prior to travel. This means passengers must rely on airline staff and contractors to properly handle a wheelchair or scooter and return it in the condition it was received. The advocates have stressed to the Department that, when an individual's wheelchair or scooter is delayed or damaged by an airline, the individual's mobility, health, and freedom are impacted until the device can be returned, repaired, or replaced. According to advocates, wheelchairs are custom-fitted to meet the needs and shape of each user. Spending time in an ill-fitting chair can cause serious injury, such as pressure sores, and even death as a result of a subsequent infection. Further, loaner devices may lack the customized assistive technology that helps the individual speak or breathe, and have inadequate functions that limit mobility. A disability organization also asserted that, according to its survey, the top reason individuals with mobility impairments avoid travel is because of concerns about wheelchair damage.<sup>5</sup>

The concerns of the disability community were further echoed by the hundreds of people who participated in the Department's Public Meeting on Air Travel by Persons Who Use Wheelchairs, which was held virtually on March 24, 2022, and the many others who submitted written comments to the meeting's docket.<sup>6</sup> The purpose of the meeting was to listen and learn from individuals who use wheelchairs on the difficulties that they encounter during

air travel and from airlines on both the challenges that they face in providing accessible air transportation and the actions that they are taking, or plan to take, to improve the air travel environment for wheelchair users. The Department heard from many individuals with disabilities about how a mishandled wheelchair is a significant and serious problem that endangers their health and limits their mobility and independence. For example, one commenter stated, "These are not one-size-fits-all products and damaging them can have enormous negative consequences for the person having to use them. Recreating damaged or lost chairs takes time and money."<sup>7</sup> Another individual wrote, "My [wheelchair] has come back to me with missing pieces and scratches and scrapes. Think of a wheelchair as essentially being my legs and when my 'legs' are damaged or broken then I cannot go about my daily activities."<sup>8</sup>

Individuals with disabilities also shared their perspectives on the negative effects of significant delays in receiving wheelchair assistance, actions that they believe airlines should take when a wheelchair has been mishandled, and the harm that they suffer because of unsafe transfers to and from aircraft seats, aisle chairs, or their personal wheelchairs. A disability organization stated that "[w]ait times [for assistance] can be astronomical," resulting in significant consequences including wasted time, missed connections, and additional time spent without access to the restroom, which can have significant health impacts for individuals.<sup>9</sup> Regarding transfers, another individual wrote that "[t]he process of transferring out of our wheelchairs can be inconvenient at best and traumatizing at worst," and recommended that "[t]he Department of Transportation must hold airlines accountable for the injuries that they cause people with disabilities."<sup>10</sup>

In association with the March 2022 meeting, the Department received approximately 192 written comments

from advocates, airlines, other industry stakeholders, and individuals in response to the public meeting. Generally, comments discussed mishandled wheelchairs (including damages and delays, related airline procedures for handling, assistance after a mishandling, and related training for airline personnel), safety of physical assistance (including transfers, use of equipment such as aisle chairs, and related training for airline personnel), or other miscellaneous topics.

Individuals and advocates also described several potential actions to address these issues. Some ideas they raised included:

- Holding airlines accountable and enforcing higher penalties against airlines for wheelchair damages;
- Enhancing the designs of aisle chairs, wheelchairs, and aircraft cargo compartments;
- Requiring airlines to use certain equipment and establish processes for handling wheelchairs and physically assisting passengers with mobility impairments;
- Requiring airlines to provide additional training, including hands-on training, to employees and contractors; and
- Allowing passengers to use their personal wheelchairs on-board aircraft.<sup>11</sup>

Representatives of airlines noted that the industry is currently making best efforts to accommodate passengers with disabilities and to mitigate any negative consequences, including by providing appropriate training to personnel, starting repair and replacement procedures immediately after mishandlings, and working directly with passengers to secure loaner wheelchairs that best meet passengers' needs. Some airlines also advocated for other key stakeholders (e.g., airports, mobility aid service providers, mobility aid manufacturers, airport vendors, and travel agents) to assist in addressing problems outside of their control. Further, airline representatives believe that any new training requirements must be adaptable and that recurrent hands-on training should be limited to employees who are involved in a mishandling incident or have failed to follow procedures, due to training cost considerations.

<sup>11</sup> In FY2023, the Federal Aviation Administration (FAA) initiated a three-year research roadmap to investigate the feasibility of enabling passengers to stay in their personal wheelchairs while travelling on commercial aircraft. This research program builds on the U.S. Access Board and Transportation Research Board Report on the *Feasibility of Wheelchair Securement Systems on Passenger Aircraft* and may support potential future rulemaking.

complaint to the Department detailing many other similar travel experiences of its members from 2022. The formal complaint's docket number is DOT-OST-2022-0075.

<sup>4</sup> See, PVA's Rulemaking Petition, Docket DOT-OST-2022-0144, and available online at <https://www.regulations.gov/docket/DOT-OST-2022-0144>.

<sup>5</sup> PVA's informal online survey, titled *The ACAA Survey*, and its results were published in September 2022 and can be accessed online at <https://pva.org/wp-content/uploads/2022/09/2022-ACAA-Survey-Results-FINAL.pdf>.

<sup>6</sup> See Docket DOT-OST-2022-0014, available online at <https://www.regulations.gov/docket/DOT-OST-2022-0014>.

<sup>7</sup> See Comment from Robert Westal, posted to the meeting's docket on April 18, 2022, available online at <https://www.regulations.gov/comment/DOT-OST-2022-0014-0172>.

<sup>8</sup> See Comment from Kelly Pelong, posted to the meeting's docket on April 22, 2022, available online at <https://www.regulations.gov/comment/DOT-OST-2022-0014-0178>.

<sup>9</sup> See Comment from National Council on Independent Living, posted to the meeting's docket on April 8, 2022, available online at <https://www.regulations.gov/comment/DOT-OST-2022-0014-0141>.

<sup>10</sup> See Comment from Stephanie Woodward, posted to the meeting's docket on April 25, 2022, available online at <https://www.regulations.gov/comment/DOT-OST-2022-0014-0186>.

B. Disability-Related Complaint Data and Mishandled Wheelchair Data

Disability complaints filed with the Department and the airlines demonstrate dissatisfaction with the assistance provided to wheelchair users during air travel. Further, the mishandled wheelchair and scooter data that the Department requires airlines to report monthly shows that the number of mishandled wheelchairs and scooters is just as high today as it was in calendar year 2019, when airlines first reported this data for the full year. It also reveals that the wheelchairs and scooters are mishandled at a much higher rate than checked bags.<sup>12</sup>

Inadequate wheelchair assistance, which includes untimely assistance and unsafe physical assistance, is the top disability complaint category for the Department and airlines. These complaints account for more than 40%

of all disability-related complaints that consumers filed with the Department from 2013 to 2022.<sup>13</sup> Also, more than 46% of the disability-related complaints that U.S. and foreign air carriers received directly from consumers from 2013 to 2021 were related to inadequate wheelchair assistance.<sup>14</sup> In addition, from 2013 to 2022, the number of complaints regarding inadequate wheelchair assistance that the Department received from consumers and that the airlines received directly from consumers increased significantly.<sup>15</sup>

Mishandled assistive devices, including delayed and damaged wheelchairs and scooters, are another significant disability-related complaint area. From 2013 to 2022, such complaints accounted for more than 13% of all disability-related complaints that consumers filed with the

Department.<sup>16</sup> It is either the second or third largest disability-related complaint category that the Department receives from consumers depending on the year.<sup>17</sup> U.S. and foreign air carriers also receive a significant number of complaints related to mishandled assistive devices directly from consumers.<sup>18</sup>

The Department also reviewed the data that reporting carriers<sup>19</sup> submit monthly to the Department on the total number of wheelchairs and scooters that they transport and the total number of those that are mishandled.<sup>20</sup> This reporting reveals that more than one in every 100 wheelchairs and scooters transported in the cargo compartments of domestic flights are mishandled (*i.e.*, damaged, delayed, lost, or pilfered). Below is a table that summarizes the data on mishandled wheelchairs and scooters from 2019 through June 2023.

TABLE 3—REPORTED WHEELCHAIR AND SCOOTER DATA BY YEAR

| Year                              | Total number of wheelchairs and scooters enplaned | Total number of wheelchairs and scooters mishandled | Percent of wheelchairs and scooters mishandled per 100 enplaned |
|-----------------------------------|---|---|---|
| 2019 .....                        | 685,792   | 10,548  | 1.54  |
| 2020 .....                        | 268,676   | 3,464   | 1.29  |
| 2021 .....                        | 553,969   | 7,239   | 1.31  |
| 2022 .....                        | 741,582   | 11,389  | 1.54  |
| 2023 (January through June) ..... | 390,200   | 5,361   | 1.37  |

As shown, the rate of mishandling is generally not improving, and mishandled wheelchairs and scooters

remain a significant source of concern for individuals with mobility impairments. In addition, as stated

above, wheelchairs and scooters are mishandled at over twice the rate of checked bags, and the consequences

<sup>12</sup> In 2019, carriers reported approximately 10,548 wheelchair and scooter mishandlings, equating to a mishandling rate of 1.54%. In 2022, carriers reported approximately 11,389 wheelchair and scooter mishandlings, equating to a mishandling rate of 1.54%. In 2019 and 2022, carriers reported total *baggage* mishandlings at a rate of .655%, and .63%, respectively.

<sup>13</sup> From 2013 to 2022, the Department received a total of 9,878 disability-related complaints from consumers. Of those, 4,144 were related to inadequate wheelchair assistance. Data regarding complaints that aviation consumers file with the Department against airlines can be found in the Department's Air Travel Consumer Report (ATCR). The ATCRs are available on the Department's aviation consumer protection website at <https://www.transportation.gov/individuals/aviation-consumer-protection/air-travel-consumer-reports>.

<sup>14</sup> From 2013 to 2021, U.S. and foreign carriers reported to the Department that they received a total of 278,437 disability-related complaints directly from consumers. Of those, 130,036 were related to inadequate wheelchair assistance. Data regarding disability-related complaints that aviation consumers file directly with U.S. and foreign carriers can be found in the Department's Annual Report on Disability-Related Air Travel Consumer Complaints. The Department notes that data for calendar year 2022 is not available yet. The Reports are available on the Department's aviation consumer protection website at <https://www.transportation.gov/individuals/aviation-consumer-protection/air-travel-consumer-reports>.

[www.transportation.gov/airconsumer/annual-report-disability-related-air-travel-complaints](https://www.transportation.gov/airconsumer/annual-report-disability-related-air-travel-complaints).

<sup>15</sup> In 2013, the Department received 362 inadequate wheelchair assistance complaints out of 679 total disability complaints, and airlines received 11,768 inadequate wheelchair assistance complaints out of 25,246 total disability complaints. In 2022, the Department received 838 inadequate wheelchair assistance complaints out of 2,095 total disability complaints and in 2021, airlines received 17,241 of such complaints out of 33,631 total disability complaints.

<sup>16</sup> From 2013 to 2022, the Department received a total of 9,878 disability-related complaints from consumer. Of those, 1,358 were related to mishandled assistive devices.

<sup>17</sup> From 2013 to 2017, the top disability-related complaint category was inadequate wheelchair assistance (49%), the second highest category was mishandled assistive devices (14%), and third highest category was seating accommodations (11%). From 2018 to 2022, inadequate wheelchair assistance remained the top disability-related complaint category (37%), service animals was the second highest category (23%), and mishandled assistive devices was the third highest category (14%).

<sup>18</sup> For example, carriers reported to the Department that in 2019, they received almost 4,000 complaints related to damage, delay, and storage of assistive devices out of 42,418 total disability complaints, and in 2022, they received over 4,140

such complaints out of 42,144 total disability complaints.

<sup>19</sup> "Reporting carrier" is defined in 14 CFR 234.2 as a U.S. carrier that accounts for at least 0.5 percent of the domestic scheduled-passenger revenues. For calendar year 2002, the reporting carriers were: Alaska Airlines, Allegiant Air, American Airlines, Delta Air Lines, Envoy Air, Frontier Airlines, Hawaiian Airlines, Horizon Air, JetBlue Airways, Mesa Airlines, PSA Airlines, Republic Airways, SkyWest Airlines, Southwest Airlines, Spirit Airlines, and United Airlines.

<sup>20</sup> Pursuant to 14 CFR part 234, U.S. airlines classified as "reporting carriers" are required to report to the Department monthly data on the number of wheelchairs and scooters they transport in the aircraft cargo compartment and the number of wheelchairs and scooters that are mishandled (*i.e.*, damaged, delayed, lost, or pilfered). This reporting requirement has applied to reporting carriers for their operations on and after December 4, 2018. In addition, reporting carriers have been required to report for the operations of their branded codeshare partners on and after January 1, 2019. Mishandled wheelchair and scooter data are published monthly in the Department's ATCR along with information on the number of disability-related complaints that aviation consumers file with the Department against airlines. The ATCRs are available on the Department's aviation consumer protection website at <https://www.transportation.gov/individuals/aviation-consumer-protection/air-travel-consumer-reports>.

that passengers with disabilities face when their wheelchairs and scooters are mishandled can be far more serious than when checked bags are mishandled.

### C. ACAA Advisory Committee

In 2019, as mandated by the 2018 FAA Act, the Department established the Air Carrier Access Act (ACAA) Advisory Committee to identify and assess barriers to accessible air travel, determine the extent to which the Department is addressing those barriers, and recommend improvements. When determining the specific duties of the Committee, the Department prioritized work needed to carry out other provisions of the 2018 FAA Act. For example, as stated above, section 440 of the 2018 FAA Act directs the Department to review, and if necessary revise, applicable regulations to ensure that passengers with disabilities receive dignified, timely, and effective assistance at airports and onboard aircraft from trained personnel and to ensure that airline personnel who provide physical assistance to passengers with disabilities receive annual training that includes, as appropriate, hands-on instructions and the appropriate use of relevant equipment. Given the interest expressed by stakeholders in consulting with the Department before the Department determines if revisions to the regulations are necessary, the Department tasked the ACAA Advisory Committee with gathering information on the barriers encountered by individuals with disabilities in obtaining guide and wheelchair assistance at airports and on aircraft. The Committee was also tasked with examining airlines' disability training programs for employees and contractors who interact with the traveling public. The ACAA Advisory Committee held public meetings in March 2020 and September 2021 and submitted its final report to the Department in February 2022.<sup>21</sup>

In its final report, the ACAA Advisory Committee made various regulatory and non-regulatory recommendations to the Department related to assistance provided to passengers with disabilities at airports and on aircraft. Specifically, the ACAA Advisory Committee recommended that the Department "continue to use the totality of the circumstances standard to determine if enplaning, deplaning and connecting assistance is prompt" and "swiftly issue

its rulemaking clarifying that the [Department's] requirement to provide prompt assistance includes assistance moving within the airport when requested by or on behalf of a passenger with a disability with a departing, arriving or connecting flight."<sup>22</sup> The Committee also recommended that "DOT codify the timeliness standard described in the Preamble of the 2008 final rule with respect to providing deplaning assistance by aisle chair (*i.e.*, aisle chair and personnel be at the arrival gate no later than as soon as other passengers have deplaned)."<sup>23</sup>

The non-regulatory recommendations of the ACAA Advisory Committee include new and improved industry standards for wheelchair labelling that will facilitate safe and proper air transport, the establishment of working groups comprising disability advocates and aviation industry stakeholders to study and develop new guidance and best practices for wheelchair handling and securement, and the continuation of consumer education efforts, among other things. Furthermore, the ACAA Advisory Committee recommended that, as best practice, airlines provide hands-on training as appropriate to airline or contractor personnel who provide physical assistance to passengers with disabilities and airline or contractor personnel who handle battery-powered wheelchairs or scooters hands-on training.<sup>24</sup>

### D. Paralyzed Veterans of America's Petition for Rulemaking

In a petition filed with the Department on December 20, 2022, Paralyzed Veterans of America (PVA)<sup>25</sup> stated that it believes the current ACAA regulation could be improved by: (1) mandating that only highly trained airline personnel or contractors provide boarding and deplaning assistance to individuals with mobility disabilities; (2) prohibiting carriers from transferring a passenger into an aisle chair until ready to seat the passenger on an aircraft seat or personal wheelchair; (3) requiring carriers to document and track problems that occur during the boarding and deplaning process; (4) clarifying

carriers' obligation to return *all* wheelchairs and other assistive devices in the condition in which they were received; and (5) strengthening carriers' obligations in the event that they damage, lose, or otherwise mishandle a wheelchair or other assistive device. PVA elaborated that, in the event airlines mishandle an assistive device, the Department should establish a timeline to which carriers must adhere when repairing or replacing the wheelchair or other assistive device, to prevent passengers having to wait months to have their damaged wheelchair repaired or to receive a new chair. PVA also suggested that the Department require carriers to provide "adequate interim accommodations" after a mishandling.<sup>26</sup>

Separate from the Petition, DOT staff also met with PVA, at their request, on December 19, 2022, to listen to PVA's suggestions on other actions that the Department could take to improve accessibility for wheelchair users.<sup>27</sup> Specifically, PVA mentioned issues with loaner wheelchair vendors and options available to passengers after a mishandling. PVA proposed that airlines should offer temporary wheelchair repairs so that passengers can continue with their journeys in their own wheelchairs to the maximum extent possible until a full repair can be secured. PVA also raised issues regarding the repair claim process and noted that passengers need to be given sufficient time to review repairs carried out by airlines to determine whether the repairs are sufficient. PVA stated that often passengers would prefer to handle wheelchair repairs and replacements themselves through their own preferred vendors. PVA lastly raised other concerns related to requiring accommodations for impacted passengers should their wheelchair not fit on a flight.

## III. Discussion of Proposals

### A. Providing Assistance to Individuals With Disabilities

#### 1. Safe and Dignified Assistance

The ACAA, which prohibits airlines from discriminating against an individual with a disability because of his or her disability, is celebrated as a

<sup>22</sup> *Id.* at 13–14.

<sup>23</sup> *Id.* at 13.

<sup>24</sup> *Id.* at 22.

<sup>25</sup> Paralyzed Veterans of America is a congressionally chartered veterans service organization founded in 1946, whose members are primarily veterans of the armed forces who have experienced spinal cord injury or dysfunction. PVA is an active advocate for various issues involving the special needs of its members, including health care, research and education, benefits, and civil rights. Additional information about the organization can be found on PVA's website at <https://pva.org/about-us/>.

<sup>26</sup> The full Petition can be viewed in the rulemaking's docket, Docket DOT-OST-2022-0144, available online at <https://www.regulations.gov/docket/DOT-OST-2022-0144>.

<sup>27</sup> In accordance with the Department's rules and guidance regarding *ex parte* communications in informal rulemakings, a record of this meeting has been placed in this rulemaking's docket: <https://www.regulations.gov/document/DOT-OST-2022-0144-0003> [hereinafter PVA Meeting, December 2022].

<sup>21</sup> "Final Report: Air Carrier Access Act Committee Recommendation" (February 4, 2022), available at <https://www.regulations.gov/document/DOT-OST-2018-0204-0040>.

law that recognizes the inherent dignity of people with disabilities and their right to safe and accessible air travel. The Department's regulation implementing the ACAA requires airline personnel who deal with the traveling public to be trained to provide boarding and deplaning assistance, when applicable to their duties, in a manner that safeguards the safety and dignity of passengers.<sup>28</sup> Airline personnel must also train their personnel with respect to awareness and appropriate responses to passengers with a disability.<sup>29</sup> Despite this training requirement, disability rights advocates have reported to the Department that airlines frequently provide unsafe and undignified assistance that results in physical injuries and emotional distress to passengers with disabilities. The Department has also received consumer complaints alleging undignified assistance such as being lifted improperly causing passengers' pants to slide off in front of others resulting in embarrassment.<sup>30</sup> In addition, the Department has received consumer complaints alleging unsafe assistance, such as being dropped or bumped into armrests, walls, or other objects, resulting in bruises, scrapes, and other serious injuries.<sup>31</sup>

In this proposed rulemaking, the Department is emphasizing the importance of passengers with disabilities receiving assistance in a safe and dignified manner by proposing to explicitly include in the rule text that any assistance or accommodation required by the Department's disability regulation must be provided to individuals with disabilities in a safe and dignified manner. The Department seeks data, analysis, and recommendations from interested persons on this proposal:

- Are the terms "safe" and "dignified" easily understood by carriers and by the public?
- Should the Department include definitions for "safe" and "dignified" in

part 382? If so, what should the Department consider when drafting definitions for those terms?

- Are there any other specific practices or procedures that the Department should require or prohibit to safeguard dignity and safety for passengers with disabilities?

## 2. Prompt Enplaning, Deplaning, and Connecting Assistance

Airlines are currently required to provide prompt enplaning and deplaning assistance, including, as needed, the use of ground wheelchairs, accessible motorized carts, boarding wheelchairs (*i.e.*, aisle chairs), and onboard wheelchairs.<sup>32</sup> The Department's Office of Aviation Consumer Protection has consistently interpreted the existing regulatory requirement to provide prompt enplaning and deplaning assistance to also include assistance to move within the airport because the use of an accessible motorized cart is provided as one example of how to provide prompt enplaning and deplaning assistance.<sup>33</sup> Moving within the airport means moving from the terminal entrance through the airport to the gate for a departing flight, moving from the gate for an arriving flight to the terminal entrance, or moving between gates to make a connection to another flight.

With respect to what constitutes "prompt" assistance, the Department has not previously adopted a specific maximum timeframe within which the requested assistance must be provided. Rather, except when a passenger is deplaning with the use of an aisle chair, the Department has adopted a reasonable performance-based standard and considers "the totality of circumstances" of each case to determine whether the requested assistance was provided promptly. The Department emphasizes that a reasonable performance standard includes carriers taking steps to ensure they have the proper staffing levels needed to handle anticipated service requests. With respect to deplaning assistance by aisle chair, the Department explained that to be prompt "personnel and boarding chairs should be available to deplane the passenger no later than as soon as other passengers have left the aircraft." <sup>34</sup>

As stated above, untimely wheelchair assistance is one of the top categories of complaints that the Department receives

from air travelers with disabilities. Further, in response to the Department's March 2022 public meeting, several comments from advocates and individuals with disabilities specifically cited experiences with excessive wait times for requested assistance, including long wheelchair service queues when arriving at airports and delayed assistance while enplaning and deplaning. These comments also mentioned that such delays can result in passengers missing flights or other important events. In addition, commenters noted that when airlines do not provide prompt assistance, passengers may feel forgotten, frustrated, and anxious. According to these commenters and complaints against airlines received by DOT, this may at times result in passengers attempting to move through the airport on their own without any assistance, which could be uncomfortable, painful, and harmful to passengers with disabilities. Some commenters added that they believe a major contributing factor for such delays was that airlines and their contractors do not have the proper staffing levels needed to handle service request volumes.

Airlines For America (A4A) and International Air Transport Association (IATA) submitted a joint comment in response to the Department's March 2022 public meeting. A4A and IATA stated that airlines provide prompt assistance as required by the Department's rules and that the appropriate determination of promptness is through a totality of the circumstances standard. A4A and IATA further explained that assistance wait times can be impacted by a variety of factors, including: whether the passenger has provided advance notice to the airline; the size of the aircraft and the number of passengers deplaning; the number of assistance requests for a given flight; unforeseen staffing and operational issues; and airport layouts.<sup>35</sup> The Avianca Carriers also submitted a comment in response to the Department's March 2022 public meeting.<sup>36</sup> Avianca Carriers stated that the services they offer to passengers with disabilities are being taken advantage of by passengers who are not qualified individuals with disabilities. They explained that such passengers put a strain on available resources to provide timely assistance and affect the wait times passengers with disabilities experience in enplaning, deplaning, and

<sup>28</sup> 14 CFR 382.141(a)(1)(iii).

<sup>29</sup> 14 CFR 382.141(a)(2).

<sup>30</sup> Other examples of complaints related to undignified assistance include, but are not limited to: airline personnel doubting the complainants' need for wheelchair assistance and questioning them in front of other passengers; and airline personnel making passengers with disabilities get out of wheelchairs and enplane or deplane the aircraft on their own.

<sup>31</sup> Other examples of complaints related to unsafe assistance include, but are not limited to: one airline personnel pushing two passengers with disabilities in wheelchairs at the same time; airline personnel not knowing how to use aisle chairs and/or how to properly strap and secure passengers to aisle chairs; and airline personnel dropping passengers with disabilities while transferring them between wheelchairs and aircraft seats.

<sup>32</sup> 14 CFR 382.95(a).

<sup>33</sup> See cases cited *supra* note 2.

<sup>34</sup> See Final Rule, Nondiscrimination on the Basis of Disability in Air Travel, 73 FR 27614, at 27620, May 13, 2008.

<sup>35</sup> See <https://www.regulations.gov/comment/DOT-OST-2022-0014-0188>.

<sup>36</sup> See <https://www.regulations.gov/comment/DOT-OST-2022-0014-0098>.

moving through the terminal.<sup>37</sup> As another reason for long wait times, Avianca Carriers noted that at certain airports, there is only one service provider approved by the airport authority. They state that this lack of competition can result in lower quality service and higher prices for airlines that contract out these services.

The Department's ACAA Advisory Committee also examined the issue of prompt enplaning, deplaning, and connecting assistance. As discussed earlier, the ACAA Advisory Committee recommended that the Department continue to use the totality of the circumstances standard to determine if enplaning, deplaning, and connecting assistance is prompt.<sup>38</sup> The ACAA Advisory Committee also recommended that the Department codify the timeliness standard described in the Preamble of the 2008 final rule with respect to providing deplaning assistance by aisle chair (*i.e.*, aisle chair and personnel be at the arrival gate no later than as soon as other passengers have deplaned).<sup>39</sup> Furthermore, the ACAA Advisory Committee recommended that the Department swiftly issue a rulemaking clarifying that the Department's requirement to provide prompt assistance includes assistance moving within the airport when requested by or on behalf of a passenger with a disability with a departing, arriving, or connecting flight.<sup>40</sup>

This NPRM proposes to clarify that all boarding, deplaning, and connecting assistance provided, including moving within the airport terminal, must be carried out by airlines in a "prompt" manner. This proposal is consistent with the Department's longstanding interpretation and practice. This proposal is also consistent with the recommendations of the ACAA Advisory Committee to issue a rulemaking clarifying that the

requirement to provide prompt assistance includes assistance moving within airport when requested by or on behalf of a passenger with a disability with a departing, arriving, or connecting flight.

The Department also proposes to codify its longstanding practice of considering the totality of circumstances when evaluating whether assistance was provided in a prompt manner when deplaning assistance by aisle chair is not needed. The Department believes that this standard is appropriate given the number of factors and circumstances that may impact the timeliness of assistance, including many of those mentioned in the comments from A4A and IATA in response to the Department's March 2022 public meeting. In addition, this proposal follows the ACAA Advisory Committee's recommendation for the Department to "continue to use the totality of the circumstances standard to determine if enplaning, deplaning and connecting assistance is prompt."

This NPRM also proposes to codify the Department's longstanding interpretation that for deplaning assistance by aisle chair, "prompt" means that personnel and boarding chairs must be available to deplane the passenger no later than as soon as other passengers have left the aircraft. This proposal is in line with ACAA Advisory Committee's recommendation that the Department codify the timeliness standard described in the Preamble of the 2008 final rule with respect to providing deplaning assistance by aisle chair. The Department is also proposing that the passenger's personal wheelchair must be ready and available as close as possible to the door of the aircraft, to the maximum extent possible, except: where this practice 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. The maximum extent possible does not mean that airlines can simply decide that it is too much work to provide passengers their own wheelchairs at the gate. It is intended to address the limited situations where it may not be possible to bring passengers' wheelchairs to the door of the aircraft. For example, if a passenger has a short connection time, then it may be necessary to transfer the wheelchair directly to the next flight. Also, the Department notes that if a passenger requests the wheelchair be returned at a location other than the door of the aircraft, an airport wheelchair must be

available for the passenger's use. The Department believes that these additional proposals will reduce the amount of time that passengers with disabilities may have to sit and wait in aisle chairs, which passengers with disabilities state are uncomfortable and can completely restrict their ability to move independently.

The Department seeks data, analysis, and recommendations from interested persons on this proposal:

- Should the Department continue to consider the totality of circumstances to determine whether assistance with enplaning, deplaning, and moving within the airport (*e.g.*, moving from the terminal entrance through the airport to the gate for a departing flight, or from the gate to the terminal entrance, or moving between gates to make a connection) is provided promptly?

- With respect to deplaning assistance that requires the use of aisle chairs, should "promptly" continue to mean that personnel and boarding chairs must be available to deplane the passenger no later than as soon as other passengers have left the aircraft?

- For prearranged deplaning assistance that does not require the use of aisle chairs (*i.e.*, a passenger with a disability is able to walk short distances), should "prompt" be based on the totality of circumstances or mean that personnel and an airport wheelchair must be available to assist the passenger with moving from the gate to the terminal entrance (or moving between gates to make a connection) by the time that all other passengers have left the aircraft? Alternatively, should "prompt" mean that personnel and an airport wheelchair are ready and waiting for the passenger at the gate by the time the aircraft doors open and passengers *begin* to deplane? Should the fact that the individual is able to deplane the aircraft on his or her own factor into when the assistance is available?

- Is there another standard that the Department should use to define "prompt?"

#### *B. Handling Requirements for Wheelchairs, Mobility Aids, and Other Assistive Devices*

##### *1. Mishandling Wheelchairs, Mobility Aids, and Other Assistive Devices as a Per Se Violation*

Damaged and delayed personal wheelchairs and scooters are a major concern because these devices are essential to the user's independence and mobility. Although airlines today are required to compensate passengers on domestic flights for mishandled

<sup>37</sup> This issue was also raised during discussions of the ACAA Advisory Committee. In its final report, the Committee states, "In a growing number of cases, requests for wheelchair assistance are being made by non-disabled passengers. This impacts the timeliness of assistance provided to passengers with disabilities." See "Final Report: Air Carrier Access Act Committee Recommendation" at 17. To help address this issue, the Committee recommended that DOT post language on its website clarifying who is and is not entitled to wheelchair assistance under DOT's ACAA regulation and supported additional guidance on this point. DOT has implemented the Committee's recommendation and placed clarifying language on its website at <https://www.transportation.gov/individuals/aviation-consumer-protection/wheelchair-and-guided-assistance>.

<sup>38</sup> See "Final Report: Air Carrier Access Act Committee Recommendation" at 13.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 14.



wheelchairs up to the original price of the wheelchair,<sup>41</sup> this does not make passengers whole. In response to the March 2022 public meeting, the Department received many comments emphasizing that wheelchair mishandlings can lead to a multitude of problems for individuals, including fear of flying; lost wages; loss of independence; physical injury; and expensive and lengthy device repairs and/or replacements. Thus, it is of utmost importance that these assistive devices are transported safely to the passenger's destination.

The Department's disability regulation specifies that airlines must return a wheelchair or other assistive device to the passenger in the same condition in which the airline received it.<sup>42</sup> However, this requirement is under a heading stating, "What other requirements apply when passengers' wheelchairs, other mobility aids, and other assistive devices must be disassembled for stowage?" This has resulted in assertions that the requirement to return a wheelchair or other assistive device in the condition it was received only applies if an airline disassembles the wheelchair or other assistive device. In this NPRM, the Department is proposing to clarify that *any* mishandling of a passenger's checked wheelchair or other assistive device is a violation of the ACAA and is proposing to make the mishandling of a wheelchair or other assistive device a *per se* violation.<sup>43</sup> Thus, under the proposal, any checked wheelchair or other assistive device that is lost, delayed, damaged, or pilfered (*i.e.*, stolen) while under the custody and control of an airline would be considered a violation of the ACAA and part 382 regardless of the circumstances surrounding the event.

Airlines have asserted that wheelchair design and aircraft design limitations, which are factors outside of their control, can create significant issues when airline personnel or contractors handle passengers' wheelchairs and may lead to damaged devices or the inability to transport them altogether. The Department's ACAA Advisory Committee acknowledged this point and recommended the establishment of a working group "to study how battery-powered wheelchairs and scooters could best fit and be secured within the

bulk cargo compartment of both narrow-bodied aircraft and wide-bodied aircraft."<sup>44</sup> The ACAA Advisory Committee also recommended other actions to improve wheelchair handling, including an examination on improving airline checklists and forms for handling wheelchairs to make the checklists and forms more consistent across airlines and written in plain language.<sup>45</sup>

IATA, who has taken the lead on these initiatives, expressed concern that this rulemaking would not consider the committee's recommendations or IATA's on-going work to implement the recommendations related to wheelchair handling.<sup>46</sup> In December 2022, the Department met with IATA regarding this matter and informed the organization that it would consider its work to the extent that it was completed prior to the publication of this rulemaking. IATA shared its finalized wheelchair handling guidance with the Department in early 2023.<sup>47</sup> The Rehabilitation Engineering and Assistive Technology Society of North America (RESNA) is also doing work in this area. Specifically, RESNA, a wheelchair standard-setting organization, recently published new wheelchair labeling and design requirements for stowage and transport in commercial aircraft.<sup>48</sup> The new standard includes all the information needed by airlines to create templates to request needed information from passengers regarding their wheelchairs.

This rulemaking is not in conflict with the ACAA Advisory Committee's recommendations, IATA's subsequent work, or RESNA's work. The Department encourages IATA and RESNA to continue with its valuable research and developments in this area. The Department believes that this rulemaking emphasizes the importance of their work, especially as it relates to steps that can be taken by airlines, aircraft manufacturers, and others to reduce instances of wheelchair and scooter mishandlings.

The NPRM also proposes to add a definition for "mishandled" as it relates

to wheelchairs or other assistive devices to mean lost, delayed, damaged, or pilfered (*i.e.*, stolen), which is consistent with how the Department defines a "mishandled checked bag" in another aviation regulation.<sup>49</sup> In addition, the Department is proposing that when carriers mishandle wheelchairs and scooters, they have an obligation to inform passengers of their rights and options for moving forward. More specifically, this NPRM proposes to require airlines to immediately notify the passenger of his or her rights to: (1) file a claim with the airline; (2) receive a loaner wheelchair from the airline with certain customizations (as explained below); (3) choose a preferred vendor, if desired, for repairs or replacement of a damaged device; and (4) to have a Complaints Resolution Official (CRO) available and be provided information on how to contact the CRO. This requirement would enable impacted passengers to make informed decisions regarding remedies available to them after mishandlings and ensure that they receive prompt and proper assistance.

The Department asks for comments and data from interested parties and persons on all parts of this proposal.

- Is it reasonable to consider any mishandling of a wheelchair or other assistive device a *per se* violation of the ACAA? Why or why not?

- Is the proposed definition for "mishandled" appropriate? Why or why not?

- What, if anything, do airlines currently tell passengers when checked wheelchairs and scooters are mishandled?

- Is the Department's proposal that carriers must notify passengers of their rights and options when checked wheelchairs and scooters are mishandled sufficient? Why or why not?

- Should the proposal to notify passengers of their rights and options be limited to wheelchairs and scooters or extended to include other checked assistive devices?

## 2. Timely Passenger Notifications and Return of Delayed Wheelchairs or Scooters

The Department requires carriers to "provide for the checking and timely return of passengers' wheelchairs, other mobility aids, and other assistive devices as close as possible to the door of the aircraft, so that passengers may use their own equipment to the extent possible" as long as the practice is consistent with relevant safety and

<sup>44</sup> See "Final Report: Air Carrier Access Act Committee Recommendation" at 12.

<sup>45</sup> See *id.* at 9.

<sup>46</sup> International Air Transport Association (IATA), Guidance on The Transport of Mobility Aids (1st ed. 2023), available online at <https://www.iata.org/>.

<sup>47</sup> In accordance with the Department's rules and guidance regarding *ex parte* communications in informal rulemakings, a record of this meeting has been placed in this rulemaking's docket: <https://www.regulations.gov/document/DOT-OST-2022-0144-0002>.

<sup>48</sup> The RESNA AT-1 Section 4 standard is available on RESNA's website at [https://www.resna.org/Portals/0/AT\\_AT-1\\_Section%204\\_SellSheet\\_9\\_30\\_21.pdf](https://www.resna.org/Portals/0/AT_AT-1_Section%204_SellSheet_9_30_21.pdf).

<sup>49</sup> See 14 CFR 234.

<sup>41</sup> See 14 CFR 382.131. For international flights, the baggage provisions of the Montreal Convention, a multilateral treaty adopted by member states of the International Civil Aviation Organization (ICAO), apply.

<sup>42</sup> 14 CFR 382.129.

<sup>43</sup> "Per se" is a Latin phrase that means "by itself" or "inherently."

security regulations.<sup>50</sup> However, sometimes a passenger's wheelchair or scooter is not transported on his or her flight, which means it cannot be returned to the passenger in a timely manner upon arrival. For example, an airline may lose track of a wheelchair before it makes it onto the flight, an airline may not have necessary equipment or staffing to timely load a wheelchair in the cargo, or a wheelchair may not be able to safely fit into the cargo compartment of a given aircraft. When such situations arise, it can lead to serious consequences upon arrival for passengers that rely on their personal wheelchairs and scooters. Passengers can be left stranded at airports, may be immobile until their wheelchair is returned, and may also be forced to cancel their upcoming plans and events.

As a preliminary matter, the Department believes that these situations and resulting harms could potentially be avoided if airlines provided passengers timely and accurate notifications about their checked wheelchairs and scooters during the loading and unloading process, including notification when a device cannot fit on a flight. The Department believes that this information is crucial because it not only gives passengers "peace of mind," but also allows them to make informed decisions when stowage issues arise. For instance, if a passenger knows that his or her wheelchair has not been loaded on the aircraft, then he or she can make an informed decision on whether to continue the original flight without the wheelchair or to wait for another flight. A passenger also may not want to wait in an aisle chair upon arrival for reasons such as safety concerns. As such, by notifying the passenger when his or her device has been unloaded from the aircraft, the passenger can better determine when to begin the deplaning process.

Accordingly, this NPRM proposes that airlines provide timely notifications to passengers when their wheelchairs or scooters have been loaded on and unloaded from the cargo compartment of their flights. Under the proposal, airlines would also need to immediately notify the passenger upon learning that his or her wheelchair or scooter does not fit on the aircraft. The Department is not proposing a specific method that carriers should use to provide the notifications to passengers. Airlines may choose to have employees notify passengers orally, to utilize technology to provide automated notifications, or to use any other means to provide timely

notifications. We note that some airlines currently use technology that tracks the location of passengers' checked baggage and provides notifications to passengers through airlines' mobile applications when checked baggage has been loaded or unloaded from aircraft. It is possible that this same technology could be used to meet the proposed requirement.

This NPRM also proposes additional safeguards should an airline fail to transport the passenger's wheelchair or scooter on his or her same flight. Specifically, this NPRM proposes the following: if a checked wheelchair or scooter is not transported on the passenger's flight, the carrier would be required to transport the device to the passenger's final destination within twenty-four (24) hours of the passenger's arrival at that destination by whatever means possible. The 24-hour requirement is meant to allow enough time for airlines to handle the logistics of the transport while also ensuring that individuals are not subjected to lengthy periods of time without their wheelchairs or scooters. The Department is also proposing to require carriers to notify passengers that they have a choice of either picking up their wheelchair or scooter at the final destination airport or having it delivered to another location based on a reasonable request made by the passenger (e.g., passenger's home or hotel). The Department would consider the wheelchair or scooter to be provided to the passenger (1) when the wheelchair or scooter is transported to a location requested by the passenger if the passenger chooses to have it delivered, regardless of whether the passenger is present to take possession of the wheelchair or scooter; or (2) when the wheelchair or scooter has arrived at the destination airport, is available for pickup, and the carrier has provided notice to the passenger of the location and availability of the wheelchair or scooter for pickup if the passenger chooses to pick it up. The Department envisions "by whatever means possible" to include the carrier seeking out other commercial passenger flights or freight flights that could accommodate the device and other ground shipping options that would result in prompt delivery to the passenger. The carrier would be required to cover costs for the transport.

The Department seeks comments and data in response to the following questions related to this NPRM proposal:

- What are airlines' current practices regarding tracking wheelchairs and scooters and providing updates and

notifications to passengers on the status of their wheelchairs and scooters?

- Should the Department consider requiring airlines to provide other status updates to passengers about their checked wheelchairs and scooters (e.g., stowage location of the passenger's wheelchair or scooter on the flight)? Should the requirement to provide status updates extend to other assistive devices that are checked in cargo or be limited to wheelchairs and scooters?

- What are airlines' current policies and practices when a passenger's wheelchair or scooter does not fit in the cargo compartment?

- Are there any other concerns or factors that the Department should consider when a passenger's wheelchair or scooter does not fit in the cargo compartment? Because learning at the airport that a wheelchair or scooter does not fit in the cargo compartment can disrupt travel plans of passengers, should carriers be required to provide the dimensions of their cargo compartments prior to travel to any passenger who shares that he or she will be traveling with a personal wheelchair or scooter? The Department notes that airlines are already required to notify passengers, on request, of any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other assistive devices commonly used by passengers with a disability.<sup>51</sup>

- What are airlines' current policies and practices regarding delayed wheelchairs and scooters?

- How do airlines deliver delayed wheelchairs and scooters to passengers and what are the average associated costs? How long does it typically take to get a delayed wheelchair or scooter to the passenger?

- Do airlines cooperate with each other when seeking out alternative flights to transport a delayed wheelchair or scooter to an impacted passenger? Is the cooperation based on whether airlines have an interline agreement with one another?

- How do airlines communicate and provide updates to passengers regarding the status of their delayed wheelchairs and scooters? Is there a preferred or best method for contact, such as by email, text message, or phone call?

- In situations where the wheelchair of a passenger with disabilities is delayed or damaged and the passenger is waiting for his/her wheelchair or a loaner wheelchair at the airport, should airlines be required to provide safe and adequate seating options that will accommodate the passenger? What

<sup>50</sup> 14 CFR 382.125(b).

<sup>51</sup> See 14 CFR 382.41(d).

types of seat options would accommodate passengers with disabilities while they wait in the airport for their wheelchairs and what are the costs and logistics associated with having these options available at the airports?

- Should the Department consider any other factors or standards when determining what is meant by device delivery to the “passenger’s final destination”? And if so, why?
- If an individual with a disability incurs additional, associated costs because a wheelchair or scooter is delayed, should the airline be responsible for reimbursing the individual for those costs? What are these potential costs? What documentation should individuals provide to airlines to substantiate these costs? Should there be a limit to the airlines’ liability?

### 3. Prompt Repair or Replacement of Lost, Damaged, or Destroyed Wheelchairs or Scooters

Under existing regulations, in the event that a passenger’s wheelchair is damaged, lost, or destroyed by an airline on a domestic flight, the normal baggage liability limits under 14 CFR part 254 do not apply and instead carriers must use the original purchase price of the device as the basis for calculating compensation.<sup>52</sup> For international flights, the provisions of the Montreal Convention, a multilateral treaty adopted by member states of the International Civil Aviation Organization (ICAO), apply. Under the Montreal Convention, airlines must pay up to a limit of 1,131 Special Drawing Rights (SDR)<sup>53</sup> for an assistive device that is lost, damaged, or destroyed. Beyond the compensation requirement, the Department’s disability regulation is silent regarding options and other necessary accommodations for passengers with disabilities after their wheelchairs and scooters have been mishandled, including how repairs and replacements should be best handled based on the passenger’s specific circumstances and needs. The Department believes revisions to its regulation are needed to ensure that passengers impacted by mishandlings

are not further plagued by unnecessary delays, undesirable repair and replacement processes, and additional resulting costs.

When a passenger’s personal wheelchair or scooter is mishandled by an airline, carriers have different methods and policies for coordinating wheelchair repairs and replacements. For example, after a passenger files a claim, some carriers may require a passenger to use a wheelchair repair vendor chosen or contracted by the carrier, while others may allow the passenger to find a vendor on their own for the handling of the repair or the replacement. When the carrier chooses the vendor, the vendor may then reach out directly to the passenger to provide their assessment and price quote. In some cases, if the damage is very severe or if the vendor no longer repairs the passenger’s specific wheelchair model, then a full replacement may be necessary.

However, individuals with disabilities state that the wheelchair repair and replacement process is not so simple and can often be messy, lengthy, and frustrating when carried out by the airline. Individuals with disabilities and disability organizations assert that individuals with disabilities would strongly prefer to take their damaged wheelchair to a vendor that they trust, already have a relationship with, and/or know will be able to timely repair their exact wheelchair model, rather than having to rely on the airline to coordinate. They also assert that there may be unnecessary delays in the process and a lack of transparency when the airline acts as the middleman. We note that in these situations, the passenger will have better information about their personal wheelchair and their personal circumstances, including whether they may have a backup wheelchair readily available to use while the repairs are carried out. Accordingly, we agree that individuals with disabilities need to have a greater say in this process and require more flexibility when determining how their damaged wheelchairs and scooters will be repaired or replaced in order to ensure their non-discriminatory treatment.

As such, in this NPRM, the Department is proposing to require airlines to provide two separate options to a passenger who files a claim with the airline after his or her personal wheelchair or scooter has been lost, damaged, or destroyed: (1) the passenger can elect for the carrier to handle the repair or replacement of the device; or (2) the passenger can elect to use the passenger’s preferred vendor to repair or

replace the device. If the passenger selects the first option, the carrier must repair or replace the device, depending on the severity of the damage; return the device within a reasonable timeframe; and pay the cost of the repairs or replacement. The Department has not proposed to define a specific “reasonable” timeframe, as we acknowledge that there are many different factors that could impact the timing for this process, including the complexity of the necessary repairs, the availability of parts needed for the repairs, and fluctuating turnaround times for vendors. In any case, airlines should work directly with the passenger and immediately initiate the repair/replacement process once a passenger has filed a claim.

If the passenger selects the second option, the carrier would be required to promptly transport the wheelchair or scooter to the passenger’s preferred vendor, unless the passenger has indicated that he or she will arrange for the transport themselves. The carrier would be required to cover the cost of this transport. The carrier would also be required to pay the wheelchair vendor directly for the cost of repairs or replacement within a reasonable timeframe. To ease the burden on the passenger and expedite the process, the Department is proposing that the billing for the repairs or replacement go directly to the airline so the passenger is not forced to front the costs. The Department seeks comments on this point and whether direct billing to the airline may cause any unforeseen issues. Similar to the proposed requirements of the first option, and to account for varying circumstances outside the control of airlines, the Department proposes to use a “reasonable” standard for timeliness of payment rather than defining specific deadlines. If a dispute were to arise between the parties over the cost of the repairs or replacement, the passenger should submit quotes, receipts, or other similar documentation to the airline to prove or substantiate costs. The Department does not anticipate that fraudulent claims for repairs or replacements will be a significant issue under this proposal.

Under both proposed options, if a replacement is necessary due to the severity of the damages or because the device was lost, the provided replacement device must have equivalent or greater function and safety as the individual’s original device.

The Department also seeks feedback, comments, and data on the following questions related to this NPRM proposal:

<sup>52</sup> See 14 CFR 382.131.

<sup>53</sup> The SDR was created by the International Monetary Fund (IMF) and is defined as “equivalent to the value of a basket of world currencies. The SDR itself is not a currency but an asset that holders can exchange for currency when needed. The SDR serves as the unit of account of the IMF and other international organizations.” See <https://www.imf.org/en/About/Factsheets/Sheets/2023/special-drawing-rights-sdr>. As of November 15, 2023, one SDR was roughly equivalent to \$1.32 USD in value.

- Are there sufficient vendors available to repair or replace passengers' personal wheelchairs or scooters? What is the average turnaround time once the vendor has the passenger's wheelchair in its possession?

- What are airlines' current policies and procedures related to replacing, repairing, and/or reimbursing passengers for damaged wheelchair and scooters, including how costs are determined? Do disputes arise between passengers and airlines over the costs to repair or replace damaged wheelchairs and scooters? If they do, how are these disputes resolved?

- Should the Department consider stricter and detailed timelines rather than using a reasonableness standard to which airlines must adhere when handling wheelchair and scooter repairs and replacement?

- Are certain types of wheelchairs and scooters no longer repairable or replaceable?

- Are all repairs handled only by Durable Medical Equipment (DME) suppliers and should the Department address this issue in rulemaking? Would proprietary agreements or right-to-repair laws impact this or any of the current proposals set forth in this NPRM?

- Do disputes arise between passengers and airlines over whether a repair or a full wheelchair or scooter replacement is necessary based on the level of damage to the wheelchair or scooter? If they do, who should be responsible for ultimately determining whether a wheelchair or scooter is "fixable"? If the carrier (or the carrier's chosen vendor) makes the determination, should the passenger then be given an opportunity to independently review their determination and carry out their own assessment?

- Does travel insurance cover wheelchairs or scooters if lost or damaged during a trip? If so, how much of the cost to replace wheelchairs or scooters can be recouped? Should the airline's cost be limited to whatever is not paid by the travel insurance, or is baggage/wheelchair travel insurance often secondary (*i.e.*, consumer must first file a claim with airline before filing a travel insurance claim)?

- PVA previously stated that once an airline has completed a wheelchair repair and returned the device to the passenger, the passenger needs to be given an opportunity to test the wheelchair and confirm whether the repairs are indeed adequate.<sup>54</sup> Do airlines currently provide passengers

the opportunity to test a repaired wheelchair or scooter to confirm whether the repairs are adequate? Should the NPRM's first option include a "testing period"? If so, how long should the passenger have to carry out this review and determine whether additional repairs by the airline are necessary?

- PVA also advocated for an additional option where, at the passenger's request, an airline would be required to provide a minor "temporary wheelchair repair" that is essentially sufficient to get the passenger out the door of the airport with their personal wheelchair so that they can continue on with their journey as planned to the maximum extent possible and seek out a "full repair" at a later time and date.<sup>55</sup> Does this option seem reasonable to airlines and to passengers with disabilities? Would airlines logistically be able to do this? What exactly would a "temporary wheelchair repair" entail, and is this something that wheelchair repair vendors already offer/provide? If required, would airlines then need to have a vendor on-site at the airport to handle this? And if so, what types of costs would be associated with this option?

#### 4. Loaner Wheelchair Accommodations

The Department currently does not specify what accommodations, beyond compensation for a wheelchair, airlines must provide to passengers with disabilities in the event that an airline mishandles a passenger's personal wheelchair or scooter. Nevertheless, many carriers already secure loaner wheelchairs for impacted passengers and cover the associated costs of the loaner since it can take up to weeks or even months for repairs on a damaged wheelchair to be completed or for a replacement wheelchair to be ready after a passenger's wheelchair is destroyed. In their joint public comment to the March 2022 public meeting, IATA and A4A state that a loaner manual wheelchair may cost roughly \$250 per month while a high-end powered wheelchair may cost \$4,500 for a three-month rental.

Advocates and individuals with disabilities state that the loaners received from airlines are not always safe and adequate for the individual user. They assert that loaner wheelchairs may not be suitable for certain users if they are not customized to meet the individual's functional needs and personal specifications. It appears that this problem arises most often when more complex, battery-

powered devices are mishandled. If the loaner wheelchair is not suitable for the user's needs (*e.g.*, proper cushioning, back support, leg and arm rests), it can lead to discomfort, pain, pressure sores, and other injuries and medical complications. This point is especially important because passengers may be spending extended periods of time with these loaner wheelchairs while they await repairs or a replacement wheelchair or scooter.

The Department recognizes that loaner wheelchairs are vital for passengers whose wheelchairs and scooters are delayed, damaged, or lost. Loaner wheelchairs give those passengers the ability to continue their normal daily lives, to the maximum extent possible, until they can get their personal wheelchair back or secure an adequate replacement. Accordingly, this NPRM proposes to require carriers to consult with passengers on a loaner wheelchair that best meets the passenger's physical and functional needs, and to pay for that wheelchair, so passengers are able to safely use the loaner wheelchair while waiting for their mishandled personal devices to be returned, repaired, or replaced. The Department believes this is a necessary accommodation when carriers mishandle passengers' personal wheelchairs.

The Department also recognizes that it may not be possible to secure a loaner wheelchair that is identical to the passenger's personal wheelchair. Under this NPRM, the airlines would be required to provide, upon request, functional and safety-related customizations (*e.g.*, changing cushions; adding lumbar support seat attachment; adjusting the headrest, armrest, or footrest) on loaner wheelchairs, to the extent possible, to ensure passengers can safely use them.

The Department also seeks feedback, comments, and data on the following questions related to this NPRM proposal:

- What types of customizations should be required under this proposal, how much such customizations generally cost, and how quickly such customizations can be completed?

- Can the loaner wheelchair requirements be easily implemented by airlines and do they meet the needs of individuals with disabilities who experience wheelchair mishandlings?

- If an individual with a disability incurs additional, associated costs because the loaner wheelchair provided by the airline restricts his or her mobility or independence, should the airline be responsible for reimbursing the individual for those costs? What are

<sup>54</sup> See PVA Meeting, December 2022, *supra* note 27.

<sup>55</sup> *Id.*

these potential costs? What documentation should individuals provide to airlines to substantiate these costs? Should there be a limit to the airlines' liability?

*C. Enhanced Training for Certain Airline Personnel and Contractors*

The Department is proposing to enhance its existing training requirements for airline employees and contractors who physically assist passengers with mobility disabilities or handle passengers' wheelchairs or scooters. Currently, the Department requires airline personnel and their contractors who deal with the traveling public to receive general training on awareness and communication as well as training tailored to their job duties within 60 days of assuming their duties.<sup>56</sup> Airline personnel and contractors who deal with the traveling public include but are not limited to customer service agents, flight attendants, reservation agents, and wheelchair attendants. The required training consists of training to proficiency on the requirements of the Department's disability regulation in part 382 and other relevant Federal regulations, as well as on the airline's procedures to implement these requirements, including how to properly and safely operate equipment used to accommodate passengers with a disability, as appropriate to the employee's or contractor's duties.<sup>57</sup> In addition, airline personnel and contractors who deal with the traveling public must be trained "with respect to awareness and appropriate responses to passengers with a disability, including persons with physical sensory, mental, and emotional disabilities, including how to distinguish among the different abilities of individuals with a disability."<sup>58</sup> They must also be trained to recognize requests for communication accommodation from individuals whose hearing or vision is impaired.<sup>59</sup> Further, airline and contractor personnel who provide boarding and deplaning assistance must be trained to proficiency on the use of boarding and deplaning equipment and the "boarding and deplaning assistance procedures that safeguard the safety and dignity of passengers."<sup>60</sup> Refresher training to public contact personnel and contractors is required every three years, at a minimum.<sup>61</sup>

In their joint comment to the Department's March 2022 Meeting, A4A and IATA state that their member airlines agree that there is value in and benefits to hands-on training. They state that resulting improvements can include familiarity with mobility aids lifting procedures, especially with heavy items and for employee safety, battery safety and regulatory limitations, communication with passengers, and the application of airline procedures. They assert that their member airlines provide hands-on training "in various forms as needed by and tailored to the circumstances, including instructor-led courses, on-the-job training, initial training courses, and special training events at stations." Further, airlines commented that any new training requirements should not be prescriptive so that training can be adapted based on input from the disability community, while also best meeting the airline's operational needs. They state that "adaptability is even more critical given the incredible diversity of our passengers, their assistance needs, aircraft, airport configurations, and employees, as well as the growing complexities and peculiarities of mobility aids." They also raise concerns with the associated costs, including pay and travel costs to attend; costs of training equipment; instructor costs; and lost revenues because front-line employees are taken away from their operational duties. They commented that in consideration of few violations in relation to a high number of successfully assisted passengers, recurrent hands-on training should only be required for employees who are involved in a mishandling incident or who fail to follow airline procedures.

However, individuals with disabilities and advocacy organizations strongly believe that current airline training programs related to disability assistance at airports and on aircraft are insufficient. In response to the Department's March 2022 Meeting, the Department received numerous comments asserting that airline personnel and contractors are not adequately trained in providing physical assistance and with handling assistive devices. Further, in a letter to the Secretary, dated December 2, 2022, PVA states, "Too often the process of boarding and deplaning an aircraft causes a wheelchair user to experience physical injury and emotional stress. The wheelchair attendants who assist passengers with mobility impairments frequently demonstrate that they are not able to safely assist a passenger who must board and deplane using an aisle

chair. In addition, passengers who use wheelchairs often experience great fear, often well founded, that their assistive device will be delayed, damaged, or lost when they arrive at their destination."<sup>62</sup>

In a supplemental comment to the Department, PVA points to multiple publications and studies that concluded either that training in this area could be improved or that part 382 could be enhanced with greater training specificity.<sup>63</sup> PVA states that "it is imperative that wheelchair attendants be fully trained and able to subsequently demonstrate to a superior on the job their ability to properly assist a passenger throughout the airport, as needed, and on and off the aircraft." PVA also states that "attendants should be required to complete refresher training every six months and be recertified yearly on the job by a superior in order to remain qualified for providing aisle chair assistance."<sup>64</sup>

Individuals with disabilities and other advocacy organizations also assert that airline personnel and contractors lack general knowledge regarding the proper handling of personal wheelchairs and other assistive devices and fail to follow instructions from passengers. They note that wheelchairs can be damaged when proper lifting and securement points on the wheelchair are not located and used, when a wheelchair is tilted or loaded while lying on its side, and when the airline does not have loading equipment robust enough to support a given a wheelchair. Additionally, as noted in the ACAA Advisory Committee's work, improper handling and loading techniques can also injure airline personnel and contractors.<sup>65</sup>

The Department's proposals for enhanced training focus on the training given to airline personnel and contractors who provide physical assistance to passengers with mobility-related disabilities and who handle passengers' wheelchairs and other assistive devices. Given the nature of their job duties and responsibilities, it is essential that these airline employees and contractors receive more extensive training. Inadequate training of these employees and contractors could result in harm to passengers with disabilities

<sup>62</sup> PVA's full Letter can be viewed in the rulemaking's docket, Docket DOT-OST-2022-0144, available online at <https://www.regulations.gov/docket/DOT-OST-2022-0144>.

<sup>63</sup> The full Comment can be viewed in the rulemaking's docket, Docket DOT-OST-2022-0144, available online at <https://www.regulations.gov/docket/DOT-OST-2022-0144>.

<sup>64</sup> *Id.*

<sup>65</sup> See Report of the Subcommittee on Stowage of Assistive Devices, available at <https://www.regulations.gov/document/DOT-OST-2018-0204-0021>.

<sup>56</sup> 14 CFR 382.141 and 14 CFR 382.143(a)(4).

<sup>57</sup> 14 CFR 382.141(a)(1).

<sup>58</sup> 14 CFR 382.141(a)(2).

<sup>59</sup> 14 CFR 382.141(a)(3).

<sup>60</sup> 14 CFR 382.141(a)(1)(iii).

<sup>61</sup> 14 CFR 382.141(a)(5).

and costly damages to passengers' wheelchairs. The Department is proposing more thorough, frequent, and hands-on training of these employees and contractors. The Department believes that these training enhancements would improve the safety and dignity of passengers with disabilities; prevent wheelchairs from being damaged, delayed, or lost; and improve the overall services of airlines.

When determining that enhanced training in these two areas is needed, the Department was persuaded by comments from passengers with disabilities and advocates, the disability complaints that the Department receives against airlines and that airlines receive directly from passengers, and the data on mishandled wheelchairs. Disability rights advocates have long argued that airline personnel and contractors are not careful, rush assistance, use improper equipment and techniques, and do not follow the passenger's instructions because of lack of adequate training. The Department has also reviewed numerous complaints where, during the boarding and deplaning process, passengers who require transfer assistance are dropped to the ground; bumped into arm rests, overhead compartments, and other objects; and held or lifted inappropriately. This unsafe assistance has resulted in passengers with disabilities sustaining pain and injuries and experiencing stress and embarrassment. The Department has also reviewed numerous complaints and comments where passengers' wheelchairs are damaged during airline handling, including broken joysticks, cracked frames, and bent axles. As mentioned, airline reports to the Department indicate that airlines are mishandling thousands of wheelchairs and scooters each year.

The Department also found persuasive IATA's recommendations regarding airline employee training and has incorporated key topics and suggestions into the NPRM's training proposal.<sup>66</sup> IATA's guidance contains a list of topics that should be covered during training, at a minimum, including: disability awareness and communications; transfer techniques for passengers; safe lifting techniques for mobility aids; safe and common methods for reducing size and weight of mobility aids; securement techniques in the bulk cargo compartment; and mobility aid reassembly and

reconfiguration steps. IATA also notes: "In addition to general training, airlines and airport operators should ensure that they train and maintain a continuous competence of their employees and contractors who are required to handle mobility aids. This will include procedures for preparing, securing, carrying and stowing of mobility aids for air transport."

In addition to stakeholder comments and recommendations, the Department carefully considered the following sources when examining regulatory enhancements for training: research carried out by Volpe on problems associated with passenger transfers and wheelchair mishandlings;<sup>67</sup> training requirements set forth in the Canadian Transportation Agency's disability regulations and related guidance and recommendations;<sup>68</sup> and PVA's comments submitted to the Department in support of additional and more robust training requirements for wheelchair assistants and ramp personnel.<sup>69</sup> The Department also considered the recommendation of the ACAA Advisory Committee that "as best practices, airlines provide hands-on training as appropriate for airline or contractor personnel who handle battery-powered wheelchairs or scooters; hands-on training be provided as appropriate to airline personnel or contractors who provide physical assistance to passengers with disabilities; and airlines involve individuals with disabilities, whether it is through their advisory board or external organizations, in their training programs."<sup>70</sup>

The Department proposes to require employees and contractors who provide physical assistance to passengers with mobility-related disabilities receive hands-on training covering safe and dignified physical assistance, including transfers to and from personal or airport wheelchairs, aisle chairs, and aircraft seats; proper lifting techniques to safeguard passengers; how to troubleshoot common challenges when providing physical assistance; and

proper use of equipment used to physically assist passengers with disabilities. These personnel would also be required to receive other training covering collecting and sharing of passenger information needed to ensure safe, dignified, and prompt physical assistance, such as Special Service Request (SSR) codes.

Like the proposals for airline employees and contractors who provide physical assistance to passengers with mobility-related disabilities, the Department is proposing more thorough and hands-on training for employees and contractors who handle passengers' wheelchairs and other mobility aid devices. Specifically, the Department is proposing hands-on training covering common types of wheelchairs and other mobility aids and their features; airport and airline equipment used to load and unload wheelchairs and other mobility aids; and methods for safely moving and stowing wheelchairs, including lifting techniques, wheelchair disassembly, reconfiguration, and reassembly, and securement in the cargo compartment of the aircraft. Personnel who handle passengers' wheelchairs and other mobility aid devices would also be required to receive other training covering the collecting and sharing of information regarding a passenger's wheelchair or other mobility aid, including using any airline wheelchair handling form(s) that may exist, to ensure the safe and proper handling of such assistive devices.

This NPRM proposes to define "hands-on training" to mean training that is received by an employee or contractor where the employee or contractor performs a task, function, or procedure that would be part of his or her normal duties in a controlled/ simulated environment and with the use of a suitable life-sized model or equipment, as appropriate. A suitable life-sized model could be a full-body mannequin or a person, such as an instructor or volunteer. Hands-on training could also be supplemented with related on-the-job training as appropriate for wheelchair handlers.

Further, the Department proposes to amend when initial and refresher training is provided to personnel who provide physical assistance to passengers with mobility-related disabilities and personnel who handle passengers' wheelchairs and other mobility aid devices. Instead of initial training being required within 60 days of assuming their duties, as is currently the case, we are proposing that this newly required training, including hands-on training, be provided prior to the covered airline employees and

<sup>66</sup> International Air Transport Association (IATA), *Guidance on The Transport of Mobility Aids* (1st ed. 2023), available online at <https://www.iata.org/>.

<sup>67</sup> See "Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs: Regulatory Impact Analysis," available in the rulemaking's docket, Docket DOT-OST-2022-0144.

<sup>68</sup> See Canadian Transportation Agency (CTA), *Personnel Training for the Assistance of Travelers with Disabilities: A Guide*, available online at <https://otc-cta.gc.ca/>. See also CTA, *Best Practices for Interacting with Persons with Disabilities: A Guide*, available online at <https://otc-cta.gc.ca/>.

<sup>69</sup> The full Comment can be viewed in the rulemaking's docket, Docket DOT-OST-2022-0144, available online at <https://www.regulations.gov/docket/DOT-OST-2022-0144>.

<sup>70</sup> See "Final Report: Air Carrier Access Act Committee Recommendation" at 22.

contractors assuming their duties. Also, instead of refresher training being required at least once every three years as is the case today, the Department is proposing to mandate that these airline employees and contractors receive such training at least once every twelve months. The Department believes that annual refresher training is necessary for such personnel to maintain a high level of skill and to stay up-to-date on related procedures and technologies. The Department notes that airlines would also continue to be required to train these personnel with respect to awareness of different types of disabilities and appropriate communications and interactions with passengers with disabilities.

The Department notes further that proposed changes in the disability-related training requirements for all other personnel (e.g., ticket counter agents and telephone reservation agents) are minor. The proposed revisions are primarily formatting and language changes to promote consistency throughout the regulation, without expanding the airlines' obligations. The Department is also proposing changes to clarify the training requirements that would apply based on the duties of the airline employee or contractor. The more substantive change is the proposed requirement for airlines to consult with disabilities rights organizations not only regarding their initial training programs, as required today, but also to consult with such organizations when making changes to disability training programs and related policies and procedures that are expected to have a significant impact on assistance provided to individuals with disabilities. The ACAA Advisory Committee had recommended that airlines consult with disability rights organizations if changing or enhancing their disability training program.<sup>71</sup> The Department believes that many carriers are already taking such actions and that this proposed additional requirement would not impose a significant burden on carriers.

Although not included in the proposed rule text, the Department is also considering whether airlines should be required to designate wheelchair experts and transfer experts who could be consulted in the event that a complex issue or problem arises while handling a passenger's personal wheelchair or while physically assisting a passenger with a disability. These experts would have a similar role to Complaint Resolution Officials (CROs) and would require training above and

beyond the proposed requirements set forth in this NPRM for related personnel. The Department seeks public comments on this idea and whether such a requirement would be reasonable and beneficial for consumers and on challenges that carriers may have.

In drafting the NPRM, the Department focused on key issues that must be addressed when training personnel and contractors who provide physical assistance to passengers with mobility-related disabilities and who handle passengers' wheelchairs and other assistive device rather than creating overly prescriptive standards. The Department intentionally provides flexibility for airlines, within the parameters set forth in the proposal, to develop training programs that best suit their needs, the needs of their employees and contractors, and the needs of their customers. The NPRM also recognizes the importance of hands-on training and more frequent training for these personnel. The Department believes this approach would prevent or significantly reduce wheelchair mishandlings and injuries to individuals with disabilities.

The Department seeks data, analysis, and recommendations from interested persons on this proposal:

- Are the proposed amendments to the training requirements in part 382 sufficient to address concerns and inadequacies with current training practices?
- Should the Department impose more specific training requirements rather than identifying the topics that airlines must cover as part of the training? For example, the Department is aware of existing standards for caregivers to provide safe patient assistance involving lifting and transferring. Would it be more beneficial to require training standards such as these? And if so, which ones should be considered and what are the associated costs of the training?
- Are the proposed topics to be covered when training personnel and contractors who handle passengers' wheelchairs sufficient (i.e., common types of wheelchairs and other mobility aids and their features; airport and airline equipment used to load and unload wheelchairs and other mobility aids; and methods for safely moving and stowing wheelchairs, including lifting techniques, wheelchair disassembly, reconfiguration, and reassembly, and securement in the cargo compartment of the aircraft)? If not, what additional topics should the Department consider requiring?
- Are the proposed topics to be covered when training personnel and

contractors who provide physical assistance to passengers with disabilities sufficient (i.e., safe and dignified physical assistance, including transfers to and from personal or airport wheelchairs, aisle chairs, and aircraft seats; proper lifting techniques to safeguard passengers; how to troubleshoot common challenges when providing physical assistance; and proper use of equipment used to physically assist passengers with disabilities)? If not, what additional topics should the Department consider requiring?

- Is the Department's proposed definition of hand-on training reasonable? What other factors, if any, should the Department consider when defining hand-on training?
- Is the proposed frequency of recurrent training (at least once every 12 months) reasonable? Should the Department require more frequent training (e.g., once every six months) or less frequent training (e.g., once every 18 months or once every 24 months)? What are the costs and logistical considerations associated with such training for airline employees and contractors?
- Should other types of airline employees and contractors be subject to the enhanced training requirements set forth in this proposal? For example, reservation agents gather information about consumers' travel needs and ticket counter agents handle consumer inquiries, including disability related accommodation requests. Also, while managers may not directly assist individuals with disabilities or handle wheelchairs, they are often responsible for overseeing the airlines' processes and personnel. Is the existing requirement that individuals who deal with the traveling public be trained as appropriate to their duties sufficient?

#### *D. Improved Standards for Onboard Wheelchairs (OBWs)*

The Department requires airlines to equip certain aircraft<sup>72</sup> with onboard wheelchairs (OBWs), i.e., wheelchairs that are used to transport an individual with a mobility disability between an aircraft seat and an aircraft lavatory. In 2008, the Department set minimum safety and accessibility standards for OBWs.<sup>73</sup> Then, in 2023, the Department

<sup>72</sup> If an aircraft has more than 60 seats and an accessible lavatory, then the Department requires that airline to equip the aircraft with an OBW. 14 CFR 382.65(a). The Department also mandates that if aircraft being used for a flight has more than 60 passenger seats and a passenger requests an OBW, then the airline must provide an OBW even if the aircraft does not have an accessible lavatory. 14 CFR 382.65(b).

<sup>73</sup> 14 CFR 382.65(c).

<sup>71</sup> "Final Report: Air Carrier Access Act Committee Recommendation" at 18.



required enhanced performance standards for the OBWs to be used on single-aisle aircraft that have 125 or more passenger seats that are delivered on or after October 2, 2026.<sup>74</sup> At that time, the Department also required airlines that replace an OBW on such aircraft to replace it with an improved OBW that provides the significant safety and accessibility improvements to individuals with disabilities, because of the Department's view that if improved OBWs are available on the market then they should be the ones purchased. The Department is now proposing to require these improved performance standards for all OBWs.

More specifically, in this NPRM, the Department is proposing to expand the usage of improved OBWs in several different ways. First, the Department proposes that if carriers purchase an OBW after October 2, 2026, then they must purchase an OBW meeting the Department's improved standards. Again, if improved OBWs are available on the market, then the Department believes that they should be the ones purchased, whether as a replacement or as an addition. Second, the Department proposes 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 OBW meeting the Department's improved standards. This approach would ensure that the benefits afforded by these new OBWs reach more individuals with disabilities without imposing costs all at once on airlines. Finally, the Department is proposing that, by October 2, 2031, all OBWs meet the Department's new safety and accessibility standards. The Department presumes that by this date that there would be only a few OBWs that do not meet the improved standard but believes that it is important to have a date certain for all OBWs to meet this standard.

This rulemaking proposes that the OBW standards be improved to include the following:

- (1) the ability to maneuver both forward and backward through the aircraft aisle by an attendant;
- (2) seat height that aligns with the height of the aircraft seat to facilitate a safe transfer;
- (3) wheels that lock in the direction of travel, and that lock in place so as to permit safe transfers, with any other moving parts capable of being secured such that they do not move while it is occupied and maneuvered;
- (4) design such that it does not tip or fall in any direction under normal

operating conditions when occupied for use;

(5) a padded seat and backrest and must be free of sharp or abrasive components;

(6) arm supports that are sufficiently structurally sound to permit transfers and repositionable so as to allow for unobstructed transfers; adequate back support; torso and leg restraints that are adequate to prevent injury during transport; and a unitary foot support that provides sufficient clearance to traverse the threshold of the lavatory and is repositionable so as to allow for unobstructed transfer, with all restraints operable by the passenger;

(7) ability to maneuver in a forward orientation partially into at least one aircraft lavatory to permit transfer from the on-board wheelchair to the toilet;

(8) ability to maneuver into the aircraft lavatory without protruding into the clear space needed to completely close the lavatory door; and

(9) prominent display of instructions for proper use.

This is consistent with the standards set for the OBWs to be used on single-aisle aircraft that have 125 or more passenger seats that are delivered on or after October 2, 2026.<sup>75</sup>

The Department expects that, by October 2, 2026, OBW manufacturers will have available OBWs that meet the Department's new standards. If that should not be the case, the Department proposes to require airlines to acquire an OBW that complies with as many of the proposed requirements as are available. Under this proposal, airlines would not be held responsible for the failure of third parties to develop and deliver OBWs that meet these requirements. The Department is proposing to require airlines to inform the Department if OBW meeting all the requirements are not available. This is consistent with the requirements for airlines who will be acquiring OBWs for large single aisle aircraft delivered after October 2, 2026.

The Department seeks data, analysis, and recommendations from interested persons on the proposed OBW requirements, including the costs and benefits. We specifically solicit comment on the following topics:

- *OBW Wheelchair Stowage Space:* What should happen if the improved OBWs do not fit within the pre-existing stowage space?<sup>76</sup> Should airlines be

required to expand the existing on-board wheelchair stowage space of the aircraft, or modify the interior arrangement of the lavatory or the aircraft to enable the OBW to fit? Would it be sufficient if the Department requires airlines to stow the OBW in another space that exists (e.g., an overhead compartment) where it could fit consistent with FAA safety standards as the Department did for OBWs stowed on large single-aisle aircraft? What obstacles, if any, would apply to stowing OBWs onboard aircraft that are subject to this new rulemaking?

- *Dates for Improved OBWs:* The Department has proposed that any aircraft with 60 or more passenger seats and an accessible lavatory delivered after October 2, 2026, be equipped with the improved OBW. The Department already requires that large single aisle aircraft delivered after this same date have improved OBWs. Is the date selected reasonable? Why or why not? The Department also proposes a date certain, five years after October 2, 2026, when all OBWs must meet the improved performance standard. Is this date reasonable? If not, what would be a more reasonable time frame, and what would be the costs and benefits of that approach?

- *Availability of Improved OBWs in Marketplace:* In this NPRM, the Department is proposing to require airlines to acquire OBWs that comply with as many of the proposed safety and accessibility requirements as are available. The Department is also proposing that airlines inform the Department that an OBW meeting that a safety or accessibility requirement is unavailable if that is the case. Is this the right approach? Should the Department require airlines to retain records of the unavailability of OBWs that meet all the proposed safety and accessibility requirements instead of informing DOT? What would be the costs and benefits of any such modifications?

#### *E. Size Standard for Lavatories on Twin-Aisle Aircraft*

The Department is seeking comment on whether it should update the accessibility requirements for twin-aisle aircraft given the new requirements that apply to large single-aisle aircraft ordered after October 3, 2033, or delivered after October 2, 2035. Currently, twin-aisle aircraft must

<sup>75</sup> 14 CFR 382.65(e)(1)–(9).

<sup>76</sup> For new single-aisle aircraft over 125 seats that are delivered after October 2, 2026, carriers are not required to expand the existing FAA-certificated on-board wheelchair stowage space of the aircraft, or modify the interior arrangement of the lavatory or the aircraft, in order to stow the improved OBW.

However, if the OBW does not fit within the original stowage space, and another space exists (e.g., an overhead compartment) where it could fit consistent with FAA safety standards, then the carrier must stow it in that space and must request any necessary FAA approval to do so. 14 CFR 382.65(f).

<sup>74</sup> 14 CFR 382.65(e).



include at least one lavatory of sufficient size to permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair, while affording privacy equivalent to that afforded ambulatory users.<sup>77</sup> This requirement has been in place for U.S. carriers since 1992, and for foreign carriers since 2010.<sup>78</sup>

More recently, the Department set new size standards for lavatories on new single-aisle aircraft. Specifically, new single-aisle aircraft with an FAA-certificated maximum seating capacity of 125 seats or more in which lavatories are provided, shall include at least one lavatory of sufficient size to permit a qualified individual with a disability equivalent in size to a 95th percentile male to approach, enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair, in a closed space that affords privacy equivalent to that afforded to ambulatory users. The lavatory must *also* be large enough to permit an assistant equivalent in size to a 95th-percentile male to assist the individual with a disability.<sup>79</sup> This "95/95 Standard" applies to new single-aisle aircraft that were originally ordered after October 3, 2033, or delivered after October 2, 2035, or are part of a new type-certificated design filed with the FAA or a foreign carrier's safety authority after October 2, 2024.<sup>80</sup>

The 95/95 standard is larger than the size standard for twin-aisle aircraft. Specifically, an accessible single-aisle aircraft lavatory must be large enough to accommodate a large male passenger *and* a large male attendant; in contrast, the twin-aisle standards do not specify the size of the passenger, and do not mention attendants at all. As a result, it is possible that accessible lavatories for twin-aisle aircraft may in the near future be smaller than the accessible lavatories found on single-aisle aircraft. This result is counterintuitive, particularly because twin-aisle aircraft are generally used for the longest international flights.<sup>81</sup> Accordingly, the Department is considering whether to explicitly mandate the 95/95 standard, or a similar standard, for accessible twin-aisle aircraft lavatories.

It is possible that, in practice, accessible twin-aisle aircraft lavatories

today already meet the 95/95 standard, even if they are not required to do so. More generally, it is possible that twin-aisle lavatories today are adequate to accommodate passengers with disabilities, OBWs, and their attendants, even without a 95/95 standard. The Department solicited data on some of these questions during the rulemaking process for accessible lavatories on single aisle aircraft.<sup>82</sup> The Department received some comments, but not significant data, in response to these questions. Airbus indicated generally that its twin-aisle solutions comply with current part 382.<sup>83</sup> Boeing indicated that its accessible twin-aisle lavatories do not necessarily meet the 95/95 standard, but "are considered large enough to accommodate a disabled passenger in a wheelchair with an attendant behind the closed lavatory door."<sup>84</sup> However, disability advocates commented that the experience of their members is mixed, with not all twin-aisle lavatories being large enough to accommodate an attendant.<sup>85</sup> A4A and IATA commented that they are not aware of a material number of complaints regarding the size of accessible twin-aisle lavatories. This is the Department's experience as well.

The Department solicits data and comment on all aspects of this question, including but not limited to the following:

- Is the 95/95 standard, which has been adopted for future new single-aisle aircraft lavatories, appropriate for twin-aisle aircraft lavatories? Why or why not?
- To what extent do twin-aisle aircraft lavatories currently meet the 95/95 standard? If current twin-aisle lavatories do not meet the 95/95 standard, what standards do they meet in terms of accommodating large passengers, OBWs, and large attendants?
- What would be the incremental benefits for passengers with disabilities,

<sup>82</sup> See 87 FR 17,222 ("The Department currently requires airlines to ensure that at least one lavatory on twin-aisle aircraft is accessible. To what extent do accessible lavatories on twin-aisle aircraft meet the needs of passengers with disabilities, particularly passengers with mobility impairments? Are accessible lavatories on twin-aisle aircraft large enough to accommodate an assistant to assist the passenger with transfers between the OBW and the toilet?").

<sup>83</sup> Comment of Airbus at p.3, available at <https://www.regulations.gov/comment/DOT-OST-2021-0137-0302>.

<sup>84</sup> Comment of Boeing at p.5, available at <https://www.regulations.gov/comment/DOT-OST-2021-0137-0350>; NDRN at 2, available at <https://www.regulations.gov/comment/DOT-OST-2021-0137-0353>; Cure SMA at 2, available at <https://www.regulations.gov/comment/DOT-OST-2021-0137-0186>.

<sup>85</sup> Comments of PVA at 10, available at <https://www.regulations.gov/comment/DOT-OST-2021-0137-0350>; NDRN at 2, available at <https://www.regulations.gov/comment/DOT-OST-2021-0137-0353>; Cure SMA at 2, available at <https://www.regulations.gov/comment/DOT-OST-2021-0137-0186>.

and other passengers, in adopting a 95/95 standard? Would lavatories meeting the 95/95 standard require a larger footprint than those found on current twin-aisle aircraft? If so, what are the costs associated with installing a lavatory meeting this larger footprint?

- If the Department adopted a 95/95 standard for twin-aisle aircraft, what would be an appropriate time frame for implementation? What factors should the Department consider when setting an implementation time frame?<sup>86</sup>

#### *F. Refund of Fare Difference When Passengers' Wheelchairs Cannot Fit on Preferred Flight*

The Department is soliciting comment on whether it should require U.S. and foreign air carriers to refund the difference between the fare on a flight a passenger who uses a wheelchair took and the fare on a flight that the passenger would have taken if his or her wheelchair had been able to fit in the cabin or cargo compartment of the aircraft.<sup>87</sup> Currently, airlines are required to stow assistive devices in the baggage compartment of an aircraft if an approved stowage area is not available in the cabin or the device cannot fit in the cabin.<sup>88</sup> Such devices, including wheelchairs, scooters, and other mobility aids, must be given priority over other cargo and baggage. However, if a device still cannot be transported in this manner due to its size or for other safety concerns, then the airline is not required to transport it.

The Department notes that in 2020, the Canadian Transportation Agency issued a regulation that states that if a carrier is unable to transport a passenger's mobility aid device on a flight, then the carrier is required to advise the passenger of alternative trips provided by the same carrier to the same destination and offer booking for no additional cost (if desired).<sup>89</sup>

The ACAA Advisory Committee explored options to address instances

<sup>86</sup> For context, we note that the Department's original rule for accessible twin-aisle aircraft was issued after a negotiated rulemaking in 1988. The rule, effective in January 1990, applied to twin-aisle aircraft ordered after April 5, 1990, or delivered after April 5, 1992. The Department expanded this rule to foreign air carriers on May 13, 2008; it applied to new aircraft that were ordered after May 13, 2009, or delivered after May 13, 2010. See 14 CFR 382.63(d); 87 FR 17216–17217.

<sup>87</sup> United Airlines has committed to refund, upon request, the fare difference when a passenger's preferred flight cannot accommodate his or her wheelchair and the flight that he or she travels on with the wheelchair is more expensive, among other things. See <https://www.transportation.gov/briefing-room/us-department-transportation-announces-united-airlines-will-implement-industry>.

<sup>88</sup> See 14 CFR 382.125.

<sup>89</sup> See Accessible Transportation for Persons with Disabilities Regulations, SOR/2019–244 (Can.).

<sup>77</sup> 14 CFR 382.63(a)(1–2).

<sup>78</sup> 14 CFR 382.63(d).

<sup>79</sup> 14 CFR 382.64(a)(1–2).

<sup>80</sup> 14 CFR 382.64(c).

<sup>81</sup> Analysis of Bureau of Transportation Statistics T–100 All Segment data. Data retrieved in Aug. 2023.

when a passenger's assistive device does not fit or cannot be safely carried on his or her flight. Airlines stated to the ACAA Advisory Committee that they make efforts to ensure that larger assistive devices, such as wheelchairs or scooters, can travel on the same flight as the passengers when feasible.<sup>90</sup> Airlines explained that they may disassemble certain components of the wheelchairs and deploy specialized equipment and ramps to assist in the handling and loading of very heavy devices to, among other things, ensure that larger wheelchairs and scooters can be travel on the same flight as the passenger. The ACAA Advisory Committee found that even with such efforts, the accommodation of large assistive devices may be impractical or impossible if they cannot fit on the types of aircraft operated by the carrier.

The ACAA Advisory Committee considered recommending to the Department that it require airlines to accommodate a passenger with a disability and his or her mobility aid device on another flight offered by that same airline at no additional cost. Airlines voiced several logistical concerns with these options. They said that some carriers may operate limited fleets of aircraft, or only one type of aircraft, with similar cargo doors and cargo compartments. The ACAA Advisory Committee also considered recommending that the Department require airlines accommodate a passenger on another airline that can transport the passenger and his or her wheelchair or scooter at no additional cost. Airlines asserted that this option would be costly and complex because it would necessitate airlines coordinating and reimbursing other airlines for transporting a passenger and their mobility aid devices. Ultimately, the ACAA Advisory Committee did not make a recommendation with respect to this issue.

PVA has separately urged the Department to require airlines to offer alternative transportation that meets the accessibility needs of the passenger with a disability when the original flight does not.<sup>91</sup> PVA explains that this may be a new flight on the booked airline or another airline, or other mode of transportation, *i.e.*, a train, bus, or rental car. PVA adds that the Department

should mandate that the airlines cover any additional or increased cost of the alternative transportation, such as the cost to fly on another airline or travel on other mode of transportation and overnight accommodations necessary for transportation of the passenger with a disability and their travel companions.

The Department recognizes that passengers who use larger wheelchairs and scooters may not be able to select certain flight options because their wheelchairs may not be able to fit or cannot be safely carried on certain aircraft. The Department further acknowledges that in some instances, passengers who use larger wheelchairs and scooters may be able to select only a more expensive flight because a cheaper flight option uses an aircraft that cannot accommodate their wheelchair or scooter. Individuals with disabilities should not have to pay higher prices for air fares only because their assistive devices cannot be transported on certain flights.

The Department solicits data and comments on all aspects of this question, including but not limited to the following:

- How often does this issue arise for individuals with disabilities who travel by air with their personal wheelchairs and scooters?
- Do any airlines currently offer individuals with disabilities rebooking on another flight on the same airline at no additional cost when their wheelchairs or scooters cannot be carried on their originally booked flights and if the subsequent flights have higher fares?
- Do any airlines currently offer individuals with disabilities alternate transportation on other airlines or other modes of transportation (*i.e.*, a train, bus, or rental car) at no additional cost when their personal wheelchairs and scooters cannot be carried on their originally booked flights? If so, how does this process work? Do airlines book the alternate transportation on other airlines or other modes of transportation or do individuals with disabilities have to first purchase the alternate transportation and then ask the airline to reimburse the costs? If not, what are the reasons or challenges to providing this accommodation?
- Do airlines currently offer individuals with disabilities the lower fare if the individual points out that he or she was unable to take the flight with a lower fare because his or her wheelchair could not fit in the cargo compartment?
- Should the Department require airlines to rebook individuals with disabilities on another flight on the

same airline at no additional cost when their wheelchairs or scooters cannot be carried on their originally booked flights? Should this be limited to flights on the same airline or should it be expanded to flights on other airlines or other modes of transportation (*i.e.*, a train, bus, or rental car)? Should this only apply to instances when wheelchairs or scooters cannot fit on the passenger's flight or should it apply to other types of disability accommodations (*e.g.*, the passenger's originally booked flight cannot accommodate the passenger's seating needs; or the passenger's originally booked flight does not have an accessible lavatory)?

- Should the Department require airlines to refund the fare difference when passengers must book more expensive flights because their personal wheelchairs and scooters cannot be carried on cheaper flights? If so, in what situations should airlines be required provide refunds of the fare difference? Should airlines only provide a refund of the fare difference when the passenger's preferred flight itinerary that cannot accommodate the wheelchair and the more expensive flight itinerary that can accommodate the wheelchair have the same origin and destination, are on the same day, and have the same number of legs, stops, and connection points (if applicable)? Should airlines be required to provide a refund of the fare difference even if the preferred flight itinerary and the more expensive flight itinerary are not on the same day or do not have the same number of legs, stops, or connection points are different? Should a refund of a fare difference be required only if the preferred flight and the more expensive flight are offered by the same airline?

- Should airlines be permitted to require passengers to take certain steps to obtain a refund of the fare difference? If so, what are those steps? What types of proof or documentation, if any, should passengers with disabilities be required to submit to airlines when requesting a lower fare or seeking a reimbursement of the fare difference?

- Once a passenger completes the necessary steps and submits all the necessary documentation, should airlines be required to provide passengers a refund of the fare difference within seven days of receiving necessary documentation when ticket was purchased by credit card? Why or why not?

- What are the potential benefits of these proposals to passengers who use wheelchairs and scooters?

- What challenges would airlines experience if this were a requirement?

<sup>90</sup> See Report of the Subcommittee on Stowage of Assistive Devices, available at <https://www.regulations.gov/document/DOT-OST-2018-0204-0021>.

<sup>91</sup> See PVA's comments filed on the Department's NPRM on Airline Ticket Refunds and Consumer Protections, Docket DOT-OST-2022-0089, available online at <https://www.regulations.gov/comment/DOT-OST-2022-0089-5262>.

Could this process be automated, or would an airline agent need to review each case and process the reimbursement? What would the associated costs be for implementing this proposal?

#### IV. Severability

The overall purpose of this proposed rule is to increase access to safe and dignified air travel for individuals with disabilities. The first series of proposals clarifies the Department's current regulation by specifying when safe, adequate, and prompt assistance is required to be provided by airlines. The second series of proposals improves accommodations for individuals with disabilities in the event of a wheelchair mishandling by an airline. Such proposals include notifying passengers when their wheelchairs have been loaded onto and off of the aircraft, strict timeframes for the return of a delayed wheelchair, improved options for passengers when coordinating wheelchair repairs and replacements, and new requirements for loaner wheelchairs. The third series of proposals requires airline personnel that

provide physical assistance to individuals with disabilities and that handle passengers' personal wheelchairs to receive annual hands-on training. The final series of proposals requires new improved performance standards for OBWs on twin-aisle aircraft and aircraft with 60 or more seats.

This entire suite of measures is designed to ensure accessibility and equality in air travel for individuals with disabilities and to address the on-going and serious difficulties that wheelchair users experience today when traveling, including wheelchair damage and personal injuries. However, the Department finds that these proposals can operate independently from each other, if necessary, and are intended to operate as such. For example, updated training standards can operate separately from remedies for passengers following wheelchair mishandlings even though they could impact one another.

In the event that a court were to invalidate one or more of this proposed rule's unique provisions as finalized, the Department's intent is that the

remaining provisions should remain in effect to the greatest extent possible.

#### V. Regulatory Analyses and Notices

*A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures*

Executive Order 12866 ("Regulatory Planning and Review"), supplemented by Executive Order 13563 ("Improving Regulation and Regulatory Review"), directs Federal agencies to propose or adopt a regulation only after making a reasoned determination that the benefits of the intended regulation justifies its costs. The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action under Executive Order 12866 and requires an assessment of potential benefits and costs. Accordingly, the Department has prepared a regulatory impact analysis (RIA) for the proposed rule, summarized in this section and available in the docket. Table 4 below provides a summary of the costs and benefits of this proposed rulemaking.

TABLE 4—SUMMARY OF ECONOMIC IMPACTS DUE TO PROPOSED RULE  
[2023 Dollars (millions)]

| Proposed provision  | Costs/benefits                | Total 20-year value discounted at 7 percent | Total 20-year value discounted at 3 percent | Annualized value, discounted at 7 percent | Annualized value, discounted at 3 percent | Unquantified   |
|---|-------------------------------|---|---|---|---|--|
| § 382.141 Enhanced Training Requirements for Certain Airline Personnel and Contractors.   | Costs .....<br>Benefits ..... | (\$108.6)<br>119.0                          | (\$165.5)<br>170.9                          | (\$5.4)<br>6.0                            | (\$8.2)<br>8.6                            | N/A.<br>Avoided Injuries and Fatalities.   |
| § 382.141 Enhanced Wheelchair Handling Training Component.  | Costs .....<br>Benefits ..... | (39.7)<br>119.0                             | (60.6)<br>170.9                             | (2.0)<br>6.0                              | (3.0)<br>8.6                              | N/A.<br>Avoided Injuries, Avoided Loss of Mobility.  |
| § 382.141 Enhanced Transfer Assistance Training Component.  | Costs .....<br>Benefits ..... | (68.9)<br>0                                 | (104.9)<br>0                                | (3.4)<br>0                                | (5.2)<br>0                                | N/A.<br>Improved Dignity; Avoided Injuries.  |
| § 382.65 Onboard Wheelchair Performance Requirements.   | Costs .....<br>Benefits ..... | (13.0)<br>0                                 | (17.8)<br>0                                 | (0.7)<br>0                                | (0.7)<br>0                                | N/A.<br>Avoided Injuries and improved lavatory accessibility.  |
| § 382.11 Safe and Dignified Assistance for Passengers with Disabilities; § 382.89 Prompt Boarding, Deplaning, and Connecting Assistance for Passengers with Disabilities.   | Costs .....<br>Benefits ..... | 0<br>0                                      | 0<br>0                                      | 0<br>0                                    | 0<br>0                                    | N/A.<br>Clarifies existing requirements.   |
| § 382.3 Definition of a Mishandled Wheelchair, Scooter, or Other Assistive Device; § 382.125(e) Timely Passenger Notifications; § 382.130(a–b) Wheelchair Mishandling As a Per Se Violation; § 382.130(c) Ensuring That a Delayed Wheelchair Is Returned as Quickly as Possible; 382.130(d) Options for Passengers When a Wheelchair Has Been Lost, Damaged, or Pilfered; 382.130(e) Loaner Chair Accommodations. | Costs .....<br>Benefits ..... | 0<br>0                                      | 0<br>0                                      | 0<br>0                                    | 0<br>0                                    | N/A.<br>Clarifies existing requirements and/or captures existing practice; Passenger is notified of rights in event of mishandling; Passenger is provided opportunity to change plans if wheelchair does not fit on plane. |
| Total Costs .....   |                               | 121.6                                       | 183.3                                       | 6.1                                       | 8.9                                       | N/A.   |
| Total Benefits .....  |                               | 119.0                                       | 170.9                                       | 6.0                                       | 8.6                                       | N/A.   |
| Net Benefits .....  |                               | –2.6  | –12.4                                       | –0.1                                      | –0.34                                     | N/A.   |

This NPRM proposes to clarify airlines' requirements under part 382 by codifying the Department's longstanding view that all assistance, including physical assistance, provided to individuals with disabilities by airlines in accordance with part 382 must be conducted in a safe and dignified manner. It also proposes to codify the Department's interpretation of the word "prompt." We do not expect these proposed provisions to have a cost impact because airlines are already making efforts to comply with the Department's longstanding view and interpretation.

This NPRM proposes to clarify that any mishandling of a checked wheelchair or other assistive device by an airline, regardless of whether the device was disassembled or not, is a violation of the ACAA and subject to potential enforcement, which may include the imposition of civil penalties. This NPRM also proposes to require airlines to inform passengers of their rights following wheelchair and scooter mishandlings. We do not expect these proposals to have a cost impact because it primarily clarifies the Department's longstanding interpretation of the requirement that airlines must return wheelchairs and other assistive devices to passengers in the condition they received them.

This NPRM also includes new proposed requirements for airlines to provide timely stowage notifications to wheelchair and scooter users, to ensure that mishandled wheelchairs and scooters are swiftly returned, repaired, or replaced by airlines, and to provide individuals impacted by mishandlings with greater flexibility in choosing vendors for wheelchair repairs and replacements without having to foot the bill themselves. This NPRM also addresses the critical need for loaner wheelchair accommodations while individuals wait for their mishandled wheelchairs. We do not expect these proposed provisions to have a cost impact because airlines assert that they are already providing these services to passengers, including when wheelchairs and other mobility aids are mishandled. Even so, there is significant benefit to consumers from establishing standards that all carriers must meet and that the Department is able to enforce if any carrier fails to do so. As for passenger notifications, airlines may be able to leverage existing systems to meet the proposed requirements.

In addition, this NPRM proposes enhancements to the part 382 airline training requirements by expanding training for airline personnel that provide physical assistance to

passengers with disabilities and personnel that handle passengers' personal wheelchairs and other mobility aids. The proposal would generally require more frequent, hands-on training for such personnel on several different job-related subjects, among other things. The RIA estimates the annualized cost of the proposed training requirements to be \$5.4 million at a 7 percent discount rate or \$8.2 million at a 3 percent discount rate.

The annualized benefit of the proposed training requirements is estimated to be \$6.0 million at a 7 percent discount rate or \$8.6 million at a 3 percent discount rate. The proposal is expected to reduce injuries, including fatalities, sustained by passengers with disabilities, the frequency and degree of damages to wheelchairs due to mishandling, and the associated hardships and expenses that passengers encounter when wheelchairs are mishandled.

Furthermore, this NPRM proposes to expand the circumstances under which airlines would be required to use OBWs meeting new safety and accessibility standards. The annualized cost for this proposal is expected to be \$700,000 at a 7 percent discount rate or \$700,000 at a 3 percent discount rate. The quantified benefits of this proposal, which are avoided injuries, are estimated on a breakeven basis. The RIA estimates that the proposal would need to result in 24 avoided injuries annually in 2023 growing to 48 avoided injuries annually in 2043 to cover costs. Additional unquantified benefits include improved lavatory accessibility.

The Department further notes that the greater convenience, safety, and accessibility provided by all the proposed provisions could lead passengers with disabilities to increase their use of air travel, either by switching from slower modes of travel or by making more long-distance trips. The potential increase in travel and the associated increase in consumer surplus have not been quantified in this analysis.

Executive Orders 12866 and 13563 also require agencies to provide a meaningful opportunity for public participation. Accordingly, the Department has asked commenters to answer a variety of questions to elicit practical information about relevant data and analytic approaches, as described in the section titled, "Discussion of proposed rule text and requests for data and comments." The Department also specifically requests comments and data on the unquantified benefits mentioned in the table above. Additional questions on this can be

found in the full-length RIA. These comments will help the Department further evaluate the economic effects of the proposed rule.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.*, aircraft with up to 60 seats/18,000-pound payload capacity).<sup>92</sup> In 2023, 29 air carriers meeting these criteria reported passengers traffic data to the Bureau of Transportation Statistics.<sup>93</sup> As described in the Initial Regulatory Flexibility Analysis (IRFA), the primary regulatory initiatives discussed in this NPRM would apply to carriers that operate aircraft with FAA-certificated maximum capacity of more 19 or more seats. This group of impacted air carriers includes small businesses. There would be an impact on those carriers due to proposed increased training requirements for personnel who provide physical assistance and perform wheelchair handling. The RIA estimates that the proposed rule would require two additional hours of training per year for personnel performing physical assistance or performing wheelchair handling (\$ 382.141). However, the cost of two additional hours of wages per year per employee is expected to be nonsignificant. Assuming relevant personnel work 2,000 hours per year on average (40 hours per week times 50 weeks per year), a two-hour increase is just 0.1% increase in labor costs for the impacted roles which would be a much smaller percentage of all labor costs and an even smaller percentage of all operating costs. The other provisions of the rule either apply only to carriers that operate aircraft with more than 60 seats and are therefore not small businesses, or do not impose costs. Accordingly, the Department does not believe that the NPRM would have a significant impact on a substantial number of small entities. However, we invite comment on the potential impact of this rulemaking on small entities as

<sup>92</sup> 14 CFR 298.2.

<sup>93</sup> Bureau of Transportation Statistics. No date. "Aviation Support Tables: Carrier Decode" [https://www.transtats.bts.gov/DL\\_SelectFields.aspx?gnoyr\\_VQ=GDH&QO\\_fu146&nzr=N8vn6v10%20f722146%20gnoyr5](https://www.transtats.bts.gov/DL_SelectFields.aspx?gnoyr_VQ=GDH&QO_fu146&nzr=N8vn6v10%20f722146%20gnoyr5). To access the data, download all field names, filter to only show "Carrier\_Group\_New" code 5, sort by End\_Date, and count entries with no End\_Date value.

described in the IRFA posted to the rulemaking docket.

#### C. Executive Order 13132 (Federalism)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This notice does not propose any provision that: (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

#### D. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because none of the topics on which the Department is seeking comment would significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

#### E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), no person is required to respond to a collection of information unless it displays a valid OMB control number. This NPRM does not propose any new information collection burdens.

#### F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. As described elsewhere in the preamble, this proposed rule would have no such effect on State, local, and Tribal governments or on the private sector. Therefore, the Department has determined that no assessment is required pursuant to UMRA.

#### G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR. 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency’s NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).<sup>94</sup> In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.<sup>95</sup> Paragraph 4.c.6.i of DOT Order 5610.1C categorically excludes “[a]ctions relating to consumer protection, including regulations.” This rulemaking concerns consumer and civil rights protection for individuals with disabilities. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking. The Department welcomes public comment on potential environmental impacts, including climate change impacts, that may result from this rulemaking.

#### H. Rulemaking Summary, 5 U.S.C. 553(b)(4)

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found in the Abstract section of the Department’s Unified Agenda entry for this rulemaking at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=2105-AF14> and in the docket for this rulemaking at <https://www.regulations.gov/docket/DOT-OST-2022-0144/unified-agenda>.

#### List of Subjects in 14 CFR Part 382

Air carriers, Civil rights, Consumer protection, Individuals with Disabilities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 14 CFR part 382 as follows:

<sup>94</sup> See 40 CFR 1508.4.

<sup>95</sup> *Id.*

### PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

■ 1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 41705.

#### Subpart A—General Provisions

■ 2. Amend § 382.3 by adding in alphabetical order the definitions of “Hands-on training” and “Mishandled” to read as follows:

##### § 382.3 What do the terms in this rule mean?

\* \* \* \* \*

*Hands-on training* means training that is received by an employee or contractor where the employee or contractor performs a task, function, or procedure that would be part of his or her normal duties in a controlled/simulated environment and with the use of a suitable life-sized model or equipment, as appropriate.

\* \* \* \* \*

*Mishandled* means lost, delayed, damaged, or pilfered.

\* \* \* \* \*

#### Subpart B—Nondiscrimination and Access to Services and Information

■ 3. In § 382.11, redesignate paragraph (b) as paragraph (c) and add new paragraph (b) to read as follows:

##### § 382.11 What is the general nondiscrimination requirement of this part?

\* \* \* \* \*

(b) As a carrier or an indirect carrier, the assistance you provide with respect to this part must be performed in a safe and dignified manner.

\* \* \* \* \*

#### Subpart E—Accessibility of Aircraft and Service Animals on Aircraft

■ 4. Amend § 382.65 by revising paragraph (h) to read as follows:

##### § 382.65 What are the requirements concerning on-board wheelchairs?

\* \* \* \* \*

(h)(1) If you replace an on-board wheelchair supplied on aircraft with an FAA-certificated maximum seating capacity of 125 or more after October 2, 2026, then you must replace it with an on-board wheelchair that meets the standards set forth in paragraph (e) of this section.

(2) After October 2, 2026, if you purchase or otherwise obtain a new on-board wheelchair for use on aircraft with more than 60 passenger seats, it must meet the standards set forth in paragraph (e) of this section.

(3) Any on-board wheelchair supplied on aircraft with an FAA-certificated maximum seating capacity of more than 60 passenger seats and that has an accessible lavatory and that was delivered after October 2, 2026, must meet the standards set forth in paragraph (e) of this section.

(4) After October 2, 2031, any on-board wheelchair that you provide for passengers' use on aircraft with more than 60 passenger seats must meet the standards set forth in paragraph (e) of this section.

(5) For purposes of paragraphs (h)(2) through (4), you must acquire OBWs that comply with as many of the proposed safety and accessibility requirements in paragraph (e) of this section as are available. You must inform the Department at the address cited in 14 CFR 382.159 that an on-board wheelchair meeting that requirement is unavailable, if that is the case.

#### **Subpart G—Boarding, Deplaning, and Connecting Assistance**

■ 5. In Subpart G, add § 382.89 to read as follows:

##### **§ 382.89 How timely must the service required under this Subpart be provided by carriers to passengers with disabilities?**

(a) As a carrier, the assistance you provide with respect to this subpart must be performed in a prompt manner.

(b) Whether the assistance is prompt is dependent on the totality of the circumstances, except, for as set forth in paragraph (c) of this section.

(c) Prompt assistance for a person who uses a boarding chair (*i.e.*, aisle chair) in deplaning means:

(1) personnel and boarding chair must be available to deplane the passenger when the last passenger who did not request deplaning assistance departs the aircraft; and

(2) the passenger's personal wheelchair must be available as close as possible to the door of the aircraft to the maximum extent possible, except where this practice 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. If the passenger requests the wheelchair be returned at a location other than the door of the aircraft, an airport wheelchair must be available as close as possible to the door of the aircraft for the passenger's use.

■ 6. In § 382.95, revise paragraph (a) to read as follows:

##### **§ 382.95 What are carriers' general obligations with respect to boarding and deplaning assistance?**

(a) As a carrier, you must 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. This assistance must include, as needed, the services of personnel and the use of ground wheelchairs, accessible motorized carts, boarding wheelchairs, and/or on-board wheelchairs where provided in accordance with this part, and ramps or mechanical lifts.

\* \* \* \* \*

#### **Subpart I—Stowage of Wheelchairs, Other Mobility Aids, and Other Assistive Devices**

■ 7. In § 382.125, add new paragraph (e) to read as follows:

##### **§ 382.125 What procedures do carriers follow when wheelchairs, other mobility aids, and other assistive devices must be stowed in the cargo compartment?**

\* \* \* \* \*

(e) You must provide timely notifications to passengers when their wheelchairs and scooters have been loaded and stowed in the cargo compartment and unloaded and retrieved from the cargo compartment. In the event that a passenger's wheelchair or scooter does not fit into the cargo compartment, you must immediately notify the impacted passenger.

■ 8. In Subpart I, add § 382.130 to read as follows:

##### **§ 382.130 What are the handling requirements for wheelchairs and other assistive devices and what obligations apply when wheelchairs or other assistive devices are mishandled?**

(a) The mishandling of a passenger's checked wheelchair or other assistive device is a violation of the Air Carrier Access Act within the meaning of 49 U.S.C. 41705.

(b) In the event of a mishandling of a wheelchair or scooter, you must immediately notify the impacted passenger of his or her rights to file a claim with the carrier, to receive a loaner wheelchair or scooter from the carrier with certain customizations described in paragraph (e) of this section, to choose a preferred vendor for repairs or replacement of the device, and to have a Complaints Resolution Official (CRO) available and be provided information on how to contact the CRO.

(c)(1) When a checked wheelchair or scooter has been delayed, you must

ensure that the device is transported to the passenger's final destination within 24 hours of the passenger's arrival by whatever means possible.

(2) You must provide passengers a choice between picking up the wheelchair or scooter at the passenger's final destination airport or having the wheelchair or scooter delivered to another location based on a reasonable request by the passenger, such as the passenger's home or hotel. The wheelchair or scooter is considered to be provided to the passenger when the wheelchair or scooter is transported to a location requested by the passenger if the passenger chooses to have it delivered, regardless of whether the passenger is present to take possession of the wheelchair or scooter; or when the wheelchair or scooter has arrived at the destination airport, is available for pickup, and the carrier has provided notice to the passenger of the location and availability of the wheelchair or scooter for pickup if the passenger chooses to pick it up.

(d) When a checked wheelchair or scooter has been lost, damaged, or pilfered, you must give the passenger the following options:

(1) The passenger may file a claim with the carrier and elect for the carrier to handle the repair or replacement of the wheelchair or scooter. If the passenger selects this option, you must repair or replace the wheelchair or scooter, with a device of equivalent or greater function and safety, within a reasonable timeframe and pay the cost of repairs or replacement; or

(2) The passenger may file a claim with the carrier and elect to use the passenger's preferred vendor to repair or replace the wheelchair or scooter. If the passenger selects this option, you are responsible for promptly transporting the damaged wheelchair or scooter to the passenger's preferred vendor, unless the passenger has indicated that he or she will arrange for the transport themselves, and for paying the cost of transport and repairs or replacement, with a device of equivalent or greater function and safety, within a reasonable period.

(e) While the passenger is waiting for his or her mishandled personal wheelchair or scooter to be returned, repaired, or replaced, you must use your best efforts to work with the passenger and to provide an adequate loaner wheelchair or scooter that meets the passenger's functional and safety-related needs, to the maximum extent possible. You must pay for the cost of the loaner wheelchair or scooter.

## Subpart J—Training and Administrative Provisions

### ■ 9. Revise § 382.141 to read as follows:

#### **§ 382.141 What training are carriers required to provide for their personnel (i.e., employees and contractors)?**

(a) As a carrier that operates aircraft with 19 or more passenger seats, you must ensure training, meeting the requirements of this paragraph, for all personnel who interact with the traveling public or who handle passengers' assistive devices, as appropriate to the duties of each employee or contractor.

(1) *General.* You must ensure training to proficiency concerning:

(i) The requirements of this part and other applicable Federal regulations affecting the provision of air travel to passengers with a disability;

(ii) Your procedures, consistent with this part, concerning the provision of air travel to passengers with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability; and

(iii) Your procedures that safeguard the safety and dignity of passengers with disabilities when providing service required under this part.

(2) *Communication.* You must ensure employees and contractors who interact with the traveling public are trained with respect to awareness of different types of disabilities, including how to distinguish among the differing abilities of individuals with a disability.

(i) You must ensure such employees and contractors are trained on appropriate ways to communicate and interact with passengers with a disability, including persons with physical, sensory, mental, and emotional disabilities (e.g., speaking to the individual with a disability instead of to the travel companion).

(ii) You must also ensure such employees and contractors are trained to recognize requests for communication accommodation from individuals whose hearing or vision is impaired and to use the most common methods for communicating with these individuals that are readily available, such as writing notes or taking care to enunciate clearly, for example. Training in sign language is not required. You must also train these employees to recognize requests for communication accommodation from deaf-blind passengers and to use established means of communicating with these passengers when they are available, such as passing out Braille cards if you have them, reading an information sheet that a passenger provides, or communicating

with a passenger through an interpreter, for example.

(3) *Physical Assistance.* You must ensure that employees and contractors who provide physical assistance to passengers with disabilities who use wheelchairs and other assistive devices are trained in the matters listed in paragraphs (a)(1) and (2) of this section, and the following:

(i) Hands-on training concerning safe and dignified physical assistance, including: transfers to and from personal or airport wheelchairs, aisle chairs, and aircraft seats; proper lifting techniques to safeguard passengers; how to troubleshoot common challenges in providing physical assistance; and proper use of equipment used to physically assist passengers with disabilities; and

(ii) Other training concerning the collecting and sharing of passenger information, such as Special Service Request (SSR) codes, needed to ensure safe, dignified, and prompt physical assistance.

(4) *Handling of Wheelchairs and Other Mobility Aids.* You must ensure that employees and contractors who handle passengers' wheelchairs and other mobility aid devices are trained in the matters listed in paragraphs (a)(1) and (2) of this section, as appropriate to the duties of each person, and the following:

(i) Hands-on training concerning common types of wheelchairs and other mobility aids and their features, airport and airline equipment used to load and unload wheelchairs and other mobility aids, and methods for safely moving and stowing wheelchairs, including lifting techniques, wheelchair disassembly, reconfiguration, and reassembly, and securement in the cargo compartment of the aircraft; and

(ii) Other training concerning the collecting and sharing of information regarding a passenger's wheelchair or other mobility aid, including using any airline wheelchair handling form(s) that may exist, to ensure the safe and proper handling of such assistive devices.

(5) *Consulting With Disability Rights Organizations.* You must consult with organizations representing individuals with disabilities in your home country when developing your training program and your policies and procedures. When making changes to such training programs and related policies and procedures that will have a significant impact on assistance provided to individuals with disabilities, you must consult with organizations representing individuals with disabilities who would be affected by those changes. If such organizations are not available in your

home country, you must consult with individuals with disabilities and/or international organizations representing individuals with disabilities.

(6) *Training Frequency.* You must ensure that all personnel who are required to receive training receive refresher training on the matters covered by this section, as appropriate to the duties of each employee and contractor, as needed to maintain proficiency. The training program must describe how proficiency will be maintained.

(i) All personnel who provide physical assistance to passengers with disabilities must receive the training described in paragraph (a)(3) of this section, prior to assuming their duties and at least once every twelve months thereafter.

(ii) All personnel who handle passengers' wheelchairs and other mobility aid devices must receive the training described in paragraph (a)(4) of this section, prior to assuming their duties and at least once every twelve months thereafter.

(iii) All other personnel must receive training prior to assuming their duties and at least once every three years thereafter.

(7) *Contractors.* You must provide, or ensure that your contractors receive, training concerning travel by passengers with a disability. This training is required only for those contractors who interact directly with the traveling public or who handle passengers' assistive devices, and it must be tailored to the employees' functions. Training for contractors must meet the requirements of paragraphs (a)(1) through (6) of this section.

(8) *Complaint Resolution Officials (CROs).* The employees you designate as CROs, for purposes of § 382.151 of this part, must receive training concerning the requirements of this part and the duties of a CRO prior to assuming their duties and at least once every twelve months thereafter.

(b) If you are a carrier that operates only aircraft with fewer than 19 passenger seats, you must ensure that your employees and contractors who directly interact with the traveling public are trained, as appropriate to their duties, to ensure that they are familiar with the matters listed in paragraph (a)(1) of this section, as well as to ensure they are knowledgeable on how to communicate with individuals with differing disabilities, how to physically assist individuals with mobility impairments, and how to properly handle passengers' wheelchairs and other assistive devices.



Issued this 27th day of February, 2024, in Washington, DC.

**Peter Paul Montgomery Buttigieg,**  
*Secretary.*

[FR Doc. 2024-04729 Filed 3-11-24; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 73

[Docket No. FDA-2024-C-1085]

#### Filing of Color Additive Petition From Phytolon Ltd.

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification of petition.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Phytolon Ltd., proposing that the color additive regulations be amended to provide for the safe use of beetroot red for the coloring of foods generally in amounts consistent with current good manufacturing practice.

**DATES:** The color additive petition was filed on November 22, 2023.

**ADDRESSES:** For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the docket number found in brackets in the heading of this document into the "Search" box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Christopher Kampmeyer, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-1255.

**SUPPLEMENTARY INFORMATION:** Under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act ((21 U.S.C. 379e(d)(1))), we are giving notice that we have filed a color additive petition (CAP 4C0326), submitted by Phytolon Ltd., Ha-Tsmikha St, Yokne'am Illit, Israel. The petition proposes to amend the color additive regulations in part 73 (21 CFR part 73), "Listing of Color Additives Exempt From Certification," to provide for the safe use of beetroot red for the coloring of foods generally in amounts consistent with current good manufacturing practice.

The petitioner has claimed that this action is categorically excluded under

21 CFR 25.32(r), which applies to an action for substances which occur naturally in the environment, and for which the action does not alter significantly the concentration or distribution of the substance, its metabolites, or degradation products in the environment. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: March 7, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024-05216 Filed 3-11-24; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 635

[Docket No. FHWA-2023-0037]

**RIN 2125-AG13**

#### Buy America Requirements for Manufactured Products

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The FHWA is proposing to discontinue its general waiver of Buy America requirements for manufactured products and in doing so require FHWA recipients to start applying Buy America requirements to manufactured products. The FHWA is also proposing standards for applying Buy America to manufactured products should the waiver be discontinued. The proposed standards for applying Buy America to manufactured products are consistent with the Office of Management and Budget's (OMB) guidance implementing the Build America, Buy America Act (BABA) provisions of the Infrastructure Investment and Jobs Act (also known as the Bipartisan Infrastructure Law (BIL)).

**DATES:** Comments must be received on or before May 13, 2024.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit comments by only one of the following means:

- **Federal eRulemaking Portal:** Go to [www.regulations.gov](http://www.regulations.gov) and follow the online instructions for submitting comments.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

All submissions should include the agency name and the docket number that appears in the heading of this document or the Regulation Identifier Number (RIN) for the rulemaking. All comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For questions about this document, please contact Mr. Brian Hogge, Office of Infrastructure, (202) 366-1562, or via email at [brian.hogge@dot.gov](mailto:brian.hogge@dot.gov). For legal questions, please contact Mr. David Serody, Office of the Chief Counsel, (202) 366-4241, or via email at [david.serody@dot.gov](mailto:david.serody@dot.gov). Office hours are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at [www.regulations.gov](http://www.regulations.gov) using the docket number listed above. Electronic retrieval help and guidelines are also available at [www.regulations.gov](http://www.regulations.gov). An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at [www.FederalRegister.gov](http://www.FederalRegister.gov) and the U.S. Government Publishing Office's website at [www.GovInfo.gov](http://www.GovInfo.gov).

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date and interested persons should continue to examine the docket for new material. A final rule may be published at any time