

BEFORE THE
OFFICE OF THE SECRETARY
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC

In the Matter of)

NONDISCRIMINATION ON THE BASIS OF)
DISABILITY IN AIR TRAVEL)

NOTICE OF PROPOSED RULEMAKING)

) Docket Clerk
) Department of Transportation
) 400 7th Street, SW.,
) Room PL-401
) Washington, DC 20590
)
) 14 CFR Part 382
) OST-2004-19482
)

COMMENTS OF

THE ASSOCIATION OF ASIA PACIFIC AIRLINES

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Dated: 4 March 2005

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The Association of Asia Pacific Airlines (AAPA) files these comments regarding the Notice of Proposed Rulemaking (NPRM) outlining the revision of Department of Transportation (DOT) rules requiring non-discrimination on the basis of disability in air travel.

I. THE ASSOCIATION OF ASIA PACIFIC AIRLINES

The AAPA is the trade association of 17 major international airlines based in the Asia Pacific region. The association was founded in 1966 to provide a forum for examining international air transport issues and for developing action plans on matters of mutual concern. Its Members include Air New Zealand, All Nippon Airways, Asiana Airlines, Cathay Pacific Airways, China Airlines, Dragonair, EVA Air, Garuda Indonesia, Japan Airlines, Korean Air, Malaysia Airlines, Philippine Airlines, Qantas Airways, Royal Brunei Airlines, Singapore Airlines, Thai Airways International and Vietnam Airlines.

II. BACKGROUND

The AAPA appreciates the opportunity to comment on the NPRM.

The AAPA and its Member Airlines are recognised leaders in standards of service and are committed to safe transport of all passengers with dignity and respect in a non-discriminatory manner.

The AAPA wishes to state its position that it understands the needs and supports the empathetic carriage of persons with disability. AAPA Member Airlines have long established procedures, formulated in accordance with ICAO Recommended Practices as stipulated under Annex 9 ("Facilitation of the Transport of Air Passengers Requiring Special Air Assistance") to the Chicago Convention. Annex 9 was developed through extensive consultations amongst the international aviation community, taking into account the distinct nature of international flights, such as extended duration of travel and cross-border operations.

The AAPA urges the DOT to adopt the principle of multilateralism by engaging the cooperation of States through the ICAO framework.

AAPA submits that ICAO is the recognized global body for harmonizing aviation standards and policies. It should be the appropriate forum for governments to develop a harmonized approach on issues pertaining to service and carriage of persons with disabilities. The approach taken by DOT is contrary to that method. In our view, the NPRM is overly prescriptive, too often proposes measures which would be impractical to implement in the context of international air transport, and raises serious questions of extra-territorial overreach in its application.

AAPA suggests that DOT adopt a less prescriptive approach in view of the cultural, religious, legal and regulatory complexities when addressing this issue in the context of international air transport.

III. SUBPART A - GENERAL PROVISIONS

The AAPA submits that the provisions set out under the rule and to be applied to foreign carriers are distinctly United States (US)-centric in nature. The NPRM does not, in a number of instances, take into account internationally accepted requirements, standards and practices. This NPRM focuses almost exclusively on US concerns.

The underlying premise of this rule is intended to extend the provisions of the *Air Carrier Access Act (ACAA)*, a US domestic law designed to afford rights to citizens of the US, to include carriage by foreign carriers to and from the US. The fact that the provisions cover other nationals on such flights is merely a consequence of its intended application.

According to DOT, since the enactment of the ACAA in 1986 it has been involved in "a lengthy rulemaking process that included a regulatory negotiation involving representatives of the airline industry and disability community."¹ While DOT has fulfilled this negotiation to a certain extent with US airlines and the US disability community, it has not carried out any consultation with foreign stakeholders in the process leading to the adoption of the current Part 382. As the NPRM draws its origins from those consultations, DOT's issuance of the NPRM has limited the opportunity for foreign carriers to engage in a meaningful negotiation process. This does not comply

¹ 14 CFR Part 382, Section 382.5

with the mandate given to DOT by Congress to "work with appropriate international organizations and aviation authorities of other nations..." with respect to establishing "standards for accommodating handicapped passengers in air transportation, particularly with respect to foreign air carriers..." (49 U.S.C. 41705 (c)).

Furthermore, DOT's proposal to unilaterally apply the provisions of the rule does not comply with international commitments under the Chicago Convention, as well as commitments under a number of bilateral agreements concluded by the US with other nations.² We would also argue that the proposals to address the limits of liability for damage to wheelchairs would run the risk of contravening the Warsaw and Montreal Conventions.

A. General Prohibitions of Discrimination

§382.7 states that should the rule, or part thereof, come into conflict with a foreign law, a carrier may seek a waiver. The NPRM, however, overlooks the fact that such a carrier will not be granted a stay pending approval from the DOT of the waiver request. In the absence of a stay of proceedings, the carrier applying for a waiver will be subject to sanctions from the foreign State in question.

This provision is completely unacceptable to the AAPA and its Member Airlines. The DOT has failed to adhere to the spirit of the Chicago Convention. As a Contracting Party to the Convention, the US should adopt a collaborative approach consistent with its international treaty obligations. The manner in which the provisions are imposed upon the foreign carriers is at odds with the general principle that has been the mainstay of the Chicago Convention: to maintain the highest standards of uniformity in promulgating aviation standards.

The premise that foreign flag carriers should have to seek permission from the US to continue to comply with the lawful requirements of their home State goes against those basic principles that have been championed by the US itself. The position of the AAPA is that the NPRM may apply to foreign carriers operating to the US, but only to the extent that such rules do not conflict with the laws of the flag carrier's own jurisdiction or that of third party States.³ In the event of a conflict, the laws of the foreign carrier's jurisdiction must prevail. This is simply restating a fundamental principle of international law.

Even allowing for the concept of a waiver, the method proposed is severely flawed. It may be financially burdensome for foreign carriers to incur costs for modifications required to comply with certain provisions of the rule, only to then receive a waiver nullifying the requirement *ex post facto*.

Further, AAPA submits that DOT recognize the fact that some Member Airlines operate limited numbers of flights to the US. To comply with the provisions of the rule would place them at a severe disadvantage, as the costs incurred would far outweigh the

² Article 37 of the Chicago Convention

³ Fifth freedom flights enroute to the US.

value of supposed benefits. Such carriers may well determine that there is no commercial justification for continued operations to the US at the current level, thus depriving the public of air links that would otherwise have been available.

IV. SUBPART B - NONDISCRIMINATION AND ACCESS TO SERVICES AND INFORMATION

A. Burden of Proof

The provisions of this part of the rule would require significant changes by Member Airlines to modify or enhance current policies, practices and facilities to ensure compliance. It fails to recognize that AAPA Member Airlines already have policies, practices and facilities of the highest standards concerning the carriage of persons with disabilities. Many of these policies, practices and facilities arise from provisions in the domestic legislation of the home States of Member Airlines. Once again, DOT appears to ignore the validity of foreign laws and lawmakers. This is contrary to the standards of international law as well as in contravention of the DOT's own obligations under §40105(b) of the *Aviation Code*, which Congress expressly incorporated by reference into the ACAA. To impose the DOT's will on these carriers is to suggest that foreign laws and regulations are subordinate to the US. The AAPA totally rejects such a notion and respectfully calls upon DOT to reconsider its position.

Further, whilst §382.13 states that carriers "are not required to make modifications that would constitute an undue burden or would fundamentally alter your [the carrier's] program", the section remains unclear as to what constitutes an "undue burden". The AAPA considers that an "undue burden" would be constituted by the substantial costs that will be incurred in order to comply with the rule, measured against the frequency of service and size of the aircraft fleet affected. As wide-bodied aircraft (more than one-aisle) make up the major part of the fleets of many Member Airlines, the estimated cost of complying with Subpart E would be substantial, amounting to USD479,509,180 as shown in *Appendix A*.

For the same reasons, the requirements for accessible lavatories (§382.63) will also result in a disproportionate cost burden to the AAPA Member Airlines operating to the US; whereas the cost impact on US carriers is reduced by the exclusion of narrow-bodied aircraft from meeting this requirement.

Similarly, the concept of "fundamental alteration" which involves "a modification that substantially alters the basic nature or purpose of a program, service, product or activity" remains open to interpretation.

This section throws into stark relief a fundamental flaw in this NPRM. As it currently stands, it would appear to the AAPA that compliance would indeed constitute an "undue burden", releasing Member Airlines from compliance, and apparently nullifying the whole NPRM.

B. Third Party Compliance

§382.15 proposes that carriers ensure their contractors meet the requirements of this part. Compliance with this part would place Member Airlines in an invidious position. Contractors are independent entities over whom carriers often have little or no control. Further, many contractors used by Member Airlines operate outside the jurisdictional control of the US, thereby raising the question of how DOT hopes to ensure compliance. Once again, the NPRM ignores issues of sovereignty. Contractors may well be regulated by other jurisdictions and it would be futile to even attempt to force compliance with the NPRM.

On a practical level, in some instances contractors operate in a monopolistic or oligopolistic environment. This places carriers in a highly disadvantageous bargaining situation. Carriers have no commercial negotiating power to ensure compliance with DOT requirements. We are also concerned with the situation where the contractors may agree to abide by the DOT requirements but at a very high price charged to the airlines for their services. This would effectively hold the airlines to ransom, as airlines would have no power to bargain given the requirement for compliance. In these circumstances, airlines, both US and non-US domiciled, will have no choice but to pass on the higher costs to the consumer to the disbenefit of the aviation industry in general.

In this respect, the AAPA raises parallel arguments against controlling online travel agent activities. Airline distribution is no longer supported solely by traditional "brick and mortar" agencies. The business environment has changed, with online agencies operating in a virtual, borderless environment. Therefore, it would be an impossible task for Member Airlines to ensure compliance by all agents. Such requirements should be removed.

C. Limitations to Carriage of Persons with Disability

§382.17 states that carriers "must not limit the number of passengers with a disability who travel on a flight." The proposed rule ignores the safety implications of this statement, particularly in the context of the long-haul transpacific carriage undertaken by Member Airlines. The International Air Transport Association (IATA), which represents the interests of approximately 270 carriers globally, has developed and promulgated standards to ensure the proper facilitation of passengers with disabilities while acknowledging the important aspect of safety.⁴

Further, foreign civil aviation authorities also promulgate regulations on the number of persons with disabilities a carrier can carry on a particular flight. Once again, however, DOT chooses to ignore the existence of other jurisdictions. AAPA Member Airlines operate pursuant to an Air Operators Certificate (AOC), which is issued by their national

⁴ IATA Recommended Practice (RP) 1700, "Acceptance and Carriage of Incapacitated Passengers". The RP was formulated to ensure standardization of operating processes/procedures to facilitate passengers with disabilities on interline flights.

civil aviation authority.⁵ AAPA Member Airlines should not have to then seek a waiver from US authorities to enable them to comply with the legislation of their own home State. The AAPA urges the DOT to engage in discussions with foreign regulators before attempting to legislate in the present manner.

Without some limits on the number of passengers with disability and the type of disability (ambulatory or non-ambulatory), the safety of other able-bodied passengers may also be jeopardized and be the subject of legal challenge.

Additionally, some foreign regulations limit the number of certain assistive devices and aids, which consequently restrict the number of passengers who can be carried with disabilities requiring such equipment. In Australia, for example, legislation permits a maximum of four (4) oxygen cylinders onboard an aircraft, thus limiting the number of passengers who require such equipment.

All AAPA Member Airlines operate long-haul or ultra long-haul flights to the US of up to eighteen hours in duration. The Member Airlines must also take into account crewing considerations for such flights. The ability of the crew to service other passengers and react to emergency situations on such flights could be compromised if there were no restrictions on the number and types of passengers with disability.

§382.19 reflects a view that the circumstances of air travel are similar to any other form of domestic transportation. The AAPA strongly disagrees and argues that the dynamics of such flights makes it all the more important that carriers should be allowed to exercise discretion in the carriage of persons with a disability. A carrier's determination should not be subject to regulatory prescriptions based upon purely libertarian concerns. Carriers are best placed to understand the operational and safety constraints in play, and to determine if a passenger should be refused transportation on the basis of disability. Because of the flight durations of Member Airlines' services to the US, it is much less likely that a passenger with a disability would be able to conceive the actual and the potential problems that could occur in-flight than would the carriers themselves.

Furthermore, it is internationally accepted that the pilot-in-command of a flight has the absolute authority to deny boarding on the basis that a passenger is deemed to have an impact on the safety of a flight. This concept of authority is embedded under Annex 2 ("Rules of the Air") to the Chicago Convention.⁶ This concept is also recognised and manifests in §121.586, "Authority to Refuse Transportation".⁷

The issue of a "direct threat" presents a conundrum of "what" is regarded as such and "who" regards it to be such. In order to make an accurate assessment, carriers should

⁵ For example, in Singapore, the Civil Aviation Authority of Singapore (CAAS) has set a limit on the number of passengers with disability its airlines may carry on a flight. Chapter 7, Para 2.2.2. of Singapore Airline's (SQ) AOC states that the number of disabled passengers to be carried should not normally exceed the total number of floor level exits.

⁶ Chapter 2.4, "Authority of pilot-in-command of an aircraft"

⁷ 14 CFR Part 121, §121.586 (a)(1) and (2)(i)

be allowed to apply discretionary judgment, and also be allowed to seek medical certification under any circumstances.

D. Communicable Diseases

§382.21 concerning limiting access to transportation on the basis that a passenger has a communicable disease or other medical conditions, presupposes that carriers are always in a position to make assessments as to whether a passenger's condition poses a direct threat. New and emerging diseases remain a constant threat to society as a whole. The recent Severe Acute Respiratory Syndrome (SARS) provided a stark reminder of the difficulties that the airlines and the medical fraternity faced. Various unknowns and uncertainties when dealing with such emerging diseases cannot properly be addressed by the actions prescribed in this provision. Airlines should not be culpable in cases where they are forced to act in accordance with other directives from governments or other public health authorities, such as the World Health Organization (WHO).

E. Medical Certificates

The provision limiting a carrier's ability to request medical certification is of concern to our carriers. Even in the few circumstances when certificates are permissible (as currently proposed), the AAPA submits that the regulations provide for the airline's medical physician to conduct an assessment. The field of aviation medicine is a specialised area practised by a limited number of physicians. A passenger's physician is unlikely to have the specialist knowledge of this field of medicine to be able to ascertain the conditions and precautionary measures to be taken when flying on long-haul/ultra long-haul flights.

F. Advance Notices

DOT's proposal to restrict the circumstances under which a carrier may request advance notice for specific services is impractical. The purpose of advance notice is to ensure that carriers can allocate the appropriate personnel and resources needed for the specific service requested. Furthermore, the concept of a "direct threat" can only be accurately assessed if a carrier is granted sufficient time to properly examine the factors.

The 48-hour advance notice and one-hour advance check-in stipulated by DOT to receive certain services and accommodations is insufficient under current operating parameters. This provision, once again, suggests a lack of understanding, on the part of DOT as to the nature of long-haul and ultra-long haul operations.

One example is the need for sufficient lead-time to accommodate passengers requesting medical oxygen for uses onboard the aircraft. Medical oxygen is not an item that is prepositioned at the airport by airlines. Due to the strict approval process, the certification required and the infrequent demand for such items, it is not feasible for airlines to have medical oxygen available at all times at all airports.

It must also be noted that current airline operating procedures require that medical oxygen should only be provided by the airline, upon request by the passenger, and not from any other source. The provision of oxygen is only then arranged from the carrier's home base to the required destination. This is why the required lead-time is necessary.

The reduced advance check-in time proposed by DOT is unacceptable in the context of long-haul and ultra-long haul international air transportation. Current operational constraints at airports also influence how early a passenger should check-in. Airport congestion, coupled with heightened security screening measures, require that passengers should check-in at least two-hours in advance to prevent any delays. In the US, Transportation Security Administration (TSA)-mandated security screenings require strict adherence to procedures for both baggage and passengers. It is for these very reasons that passengers departing to and from the US on Member Airlines are currently advised to check-in three hours prior to departure.

Further, advance notice to carriers also ensures that passengers are afforded the appropriate level of service. Failure to provide information in advance would curtail a carrier's ability to deliver the necessary service.

G. Safety Assistants

The issue of safety assistants is a source of unending inquiries and deliberations. The AAPA submits that the matter should fall within the sphere of the airline's discretion: not only on the basis of ensuring the safety and health of passengers with disability, but also that of other passengers. AAPA reiterates that the carriers are in a better position to determine if a passenger with a disability requires a safety assistant for reasons of onboard safety. This is especially true in the ultra-long haul environment. Self-assessment cannot be an equivalent, as passengers are rarely as familiar with the operational and safety characteristics of ultra-long haul flights; or with the effects that their condition, coupled with the operating environment, may induce.

We have concerns over the potential for abuse of §382.29(c). It may be that a passenger would indeed be objectively required to have an assistant, but chooses not to on the basis of self-assessment. By accepting the carrier's assessment, the passenger would be afforded an assistant without charge, which the passenger would normally have to pay the fare for otherwise.

AAPA notes that the rule suggests that a carrier's concern is not a justification for determining that a passenger with a disability be required to have a safety assistant present. With the exceptions under §382.29(b), carriers could find themselves exposed to possible legal actions if the individual is injured during the flight, as a result of a self-assessment contrary to the carrier's view that a safety assistant was required.

The need for assistants is further exacerbated when transpacific and transpolar flights are taken into account. While carriers are not required to provide to qualified individuals with a disability, extensive special assistance with functions such as eating, elimination functions, or provision of medical equipment or services, circumstances may

well be entirely different in the case of the long-haul and ultra-long haul flights operated by AAPA Member Airlines.⁸ Lack of assistance for such extended periods of time could result in extremely difficult situations for passengers with a disability, other passengers and the crew.

V. SUBPART C – INFORMATION FOR PASSENGERS

With reference to §382.43, the provision of text telephone service (TTY) in many places outside the US is not feasible due to a lack of infrastructure to support TTY.

The amount of information that is accessible to individuals with disabilities is limited to certain types of information that can be displayed. AAPA submits that passengers should have to make certain requests, such as for medical oxygen, special assistance, *etc.*, via personal contact with an agent of the airline.

VI. SUBPART D – ACCESSIBILITY OF AIRPORT FACILITIES

The prescriptions under §382.51 are not practically feasible for AAPA Member Airlines. Airports in general are separate entities and in many cases are virtual monopolies. The AAPA Member Airlines are not in a position to exercise proper control over what facilities are available and how an airport should conduct its operations. Furthermore, the control of airports in many instances falls under the purview of government or quasi-government entities.

Once again, DOT does not take into account the nature of international airline operations. It also fails to acknowledge that other sovereign States have the right to regulate affairs in their own best interest. AAPA Member Airlines are not prepared to accept a situation where they are caught between two competing claims for jurisdiction. This is a problem that the US DOT has bought upon itself through its lack of consultation and cooperation with other governments and international bodies responsible for international aviation.

VII. SUBPART E - ACCESSIBILITY OF AIRCRAFT

A. Movable Armrests

§382.61 envisages that movable aisle armrests be installed, irrespective of the cabin class seating configurations. The rule fails to recognize that first and business class seats of many AAPA Member Airlines provide sufficient space, even for passengers with mobility impairments, to ingress or egress without the need for movable armrests.

Furthermore, many of these seat designs come with fixed armrests to house various in-flight service modules unique to the class distinctions. For example, these armrests

⁸ Singapore Airlines, for example, operates a non-stop 18-hour flight between JFK-SIN.

accommodate the multi-function handset for the in-flight entertainment unit; the foldaway meal table; or a fixed shell to offer privacy from the adjacent passenger.

AAPA Member Airlines are concerned that the reference made in §382.61(c) to "all classes" would be an undue burden on them, as a result of prohibitive costs associated with designing, developing and installing such seats when deemed unnecessary given the fact that access by disabled passengers is, in any case, likely to be significantly better in such seat configurations.

Once again, had DOT consulted with AAPA Member Airlines prior to rulemaking, this information would have been made available.

B. Accessible Lavatories

§382.63(c) prescribes that if a carrier should replace a lavatory, it should do so with an accessible lavatory. The installation of accessible lavatories is subject to a cabin layout change, and is not merely a simple replacement in existing aircraft in the fleet. In practical terms, AAPA submits that the language should refer to the context of a carrier performing a cabin layout change, instead of merely replacing a lavatory.

Furthermore, it must be recognized that any changes to the cabin layout would have to be done in the context of an aircraft Service Bulletin. Therefore, any arbitrary date set by DOT for the carriers to comply is not practical. Any date set for compliance must be in relation to the applicable Service Bulletin.

C. Priority Stowage of Passengers' Wheelchairs

The proposal to provide priority stowage for passengers' wheelchairs (§382.67) in the cabin does not accrue any tangible benefit to the passengers or the carriers. In fact, to keep with the intent that the disabled passenger is not inconvenienced, it would be more practical to have the wheelchair stowed in the cargo hold. Retrieval of the wheelchair from the cargo hold to the aircraft door where the passengers disembark takes no longer than the time required to retrieve the wheelchair from the rear of the cabin (in practice, the priority stowage space is generally located towards the rear of the cabin).

Onboard wheelchairs and priority disembarkation procedures already in place by the AAPA member airlines defeat the need to make such a provision.

VIII. SUBPART F – SEATING ACCOMODATIONS

A. Seating Accommodations for Passengers

Reference should be made that the provisions of §382.81 be subject to the safe operation of the flight.

B. Methodology for Making Seating Accommodations

The method of allocating seating accommodations as outlined in §382.83 is tantamount to regulating how a carrier should conduct its commercial operations. Ensuring the proper seating accommodation is inextricably tied to the premise of advance notice. Insufficient advance notice or failure to do so would inevitably put the carrier in a situation where it may have to discriminate against other passengers.

C. Other Seating Requirements

§382.87(c), pertaining to accommodation of a passenger whose disability results in involuntary active behaviour, would create a direct threat and should not be subject to any condition to provide carriage. The DOT proposal to allow carriage under circumstances where the passenger could be safely accommodated in "another location" ("somewhere away from other passengers on a flight") creates a divergence in the interpretation between the passenger and the airline on how and when one should be accommodated.

AAPA and its Member Airlines submit that the carriers' right to refuse carriage should be preserved when determined that such a passenger is deemed to be a direct threat. Under no circumstances should the safety and comfort of the other passengers be compromised.

IX. SUBPART G – BOARDING, DEPLANING, AND CONNECTING ASSISTANCE

The carriers' ability to provide the necessary prompt assistance is subject to mitigating factors. Circumstances such as differing facilities at airports, unforeseen operational constraints, lack of advance notice, *etc.*, dictate how "promptly" a passenger is assisted. Arbitrary time limits do not reflect those circumstances. AAPA submits that the prompt assistance to passengers take into account each specific circumstance.

AAPA points out that its Member Airlines take service delivery seriously. It is unnecessary for DOT to regulate such minutiae, given that the home States of the AAPA Member Airlines all subscribe to the relevant provisions of Annex 9. This is again a matter where the US DOT is attempting to force its own parochial view of what constitutes best practice onto foreign flag carriers, which are responsible to their own domestic regulators.

X. SUBPART H - SERVICES ON AIRCRAFT

A. Service Animals

The issue of service animals in the cabin of an aircraft poses operational, health-related and cultural issues for AAPA Member Airlines. It is important to note that most, if not all Member Airlines operating to the US operate long-haul and ultra-long haul flights, in

excess of 10 hours and up to 18 hours. Based on the carriers' own experience, most service animals on such flights do not easily adapt to the conditions and can be disruptive. This is an area in which the US DOT, as compared to the airlines themselves, simply has insufficient knowledge to be imposing rules on foreign flag carriers.

The carriage of certain animals in the cabin also presents problems relating to cultural and religious attitudes in the Asian context. The Asian cultural perception and value of the role an animal plays must be taken into account. Cultural distinctions as to what constitutes a service animal can be exemplified by a current law in Japan, which restricts the definition of a service animal to dogs (specifically trained for intended purposes) only. Certain animals will be unacceptable in the cabin, and in certain circumstances attempts to legislate to enforce their presence may well result in cessation of services, a result of benefit to no one. In some countries, religious values and regulations forbid the carriage of animals in the cabin.

With respect to assurances from the passengers with a disability as to the nature of the service animal in question, AAPA submits that it should be mandatory that only written certified assurances be acceptable. The position of AAPA Member Airlines is that verbal assurances are subjective and leave room for potential abuse.

The presence of animals in the cabin also creates a procedural conflict for the carriers. While Appendix A to Part 382, "Guidance Concerning Service Animals" is acceptable to the DOT, it presents a different scenario when applied to the context of an international flight. There is no reference to international procedures concerning quarantine and health relating to carriage of animals on long-haul flights. Countries such as Australia and New Zealand, for example, have very strict quarantine rules that restrict the types of permissible animals and the required permits for travel.

Interline connections present further problems, giving rise to situations of conflicting airline policy regarding service animals, since each of the respective carriers is bound by their own operating restrictions (reflected in the domestic legislation of the home State). Advance notice will likely be required for the operating carrier to determine whether an animal meets the quarantine standards at designated stopover stations, and to allow for the necessary preparations to accommodate the animal. The US DOT fails to fully comprehend the nature of international air travel and the fact that different jurisdictions may well have separate legislation in place. Foreign air carriers are subject to the rules of their own home State, and ought not be placed in the position of having to balance rules from the US DOT with conflicting local legislation.

The AAPA submits that, since carriers already ensure that full assistance is provided to passengers and that certain on board services are already prescribed, §382.117 and Appendix A are unnecessarily prescriptive. Furthermore, AAPA submits that the Appendix, in itself, may be a source of confusion to passengers with a disability, in relation to what is allowed in the cabin of an aircraft.

XI. SUBPART I - STOWAGE OF WHEELCHAIRS, OTHER MOBILITY AIDS PROVISIONS, AND OTHER ASSISTIVE DEVICES

A. Battery Powered Wheelchairs and Other Mobility Devices

AAPA submits that with respect to the carriage of battery powered wheelchairs and other mobility devices, reference is made to the Dangerous Goods Regulations established by IATA. The IATA Dangerous Goods Regulations are the globally accepted reference for companies shipping hazardous materials by air.⁹

The section of the Dangerous Goods Regulations, "Provisions for Dangerous Goods Carried by Passengers or Crew", states that devices in that category are generally not permitted to be carried on board the aircraft in the cabin, and should be confined to the aircraft cargo hold.

Services already provided by carriers (e.g., cabin crew assistance, onboard wheelchairs, wheelchair service upon arrival, stowage and delivery priority in the cargo hold) and deplaning services as prescribed under §382.95 ensure that the needs of a passenger with a disability are attended to in a timely and effective manner. AAPA therefore submits that it is not necessary to carry a battery powered wheelchair or other mobility device in the cabin. This should not take precedence over the safety and health concerns of all passengers.

B. Stowage Limitations

By purporting to exercise extra-territorial jurisdiction, DOT ignores the fact that there are foreign laws that limit the ability of carriers to stow certain devices in the cabin. Such regulations governing health and safety in these jurisdictions prohibit the carriage of individual baggage in excess of a prescribed weight limit.¹⁰

C. Limits on Liability

The liability limits applicable for international carriage by air are established under the Warsaw and Montreal Conventions. These Conventions are not amenable to amendment or alteration by DOT. AAPA is surprised that DOT would even contemplate that it could exercise jurisdiction over sovereign States.

⁹ The regulation is designed to provide operators a framework of ICAO mandates; packing instructions; shipping documentation guidelines; operator variations. It also reflects recent United Nations changes; new training requirements and responsibilities regarding dangerous goods security, among others.

¹⁰ Health and safety regulations in Australia and New Zealand prohibit the carriage of individual baggage exceeding 32kg per piece.

XII. SUBPART J - TRAINING AND ADMINSTRATIVE PROVISIONS

A. Training Guidelines

On the basis of comity and reciprocity, DOT ought not to concern itself with how foreign flag carriers conduct their training functions, just as foreign governments do not dictate how US-flag carriers train their staff. We fear that if the US takes the lead in doing so, foreign governments may, in response, develop rules which are equally, if not more, prescriptive towards US and other foreign domiciled carriers. This, in turn, may result in a myriad of unnecessary and disharmonized rules on treatment of disabled passengers being created. As AAPA has pointed out earlier, its Member Airlines maintain the highest standards in customer service, which is the result of comprehensive training programmes. It is inappropriate for these programmes to be overseen by a foreign regulatory body.

AAPA believes that the objectives are better served if DOT were to conduct a public forum for the carriers before the Final Rule is published. The objective of the forum would be to provide an opportunity for DOT and the carriers to discuss and seek further clarification and guidance on the practicalities and especially incorporating the concepts into day-to-day operations in order for carriers to progress their individualized training programs in a manner consistent with the objectives of DOT. DOT could coordinate with industry stakeholders including the AAPA to facilitate such a forum for the airlines in the Asia Pacific region.

However, we maintain the fundamental position that the most appropriate means to develop a harmonized legal structure governing disabled passenger treatment is through ICAO.

B. Training Schedules

§382.143 prescribes deadlines for the training of foreign carrier personnel. The training of personnel should be done within the context of the regular training regime of the carriers. We would propose that the prescription be limited to refer to the context of coordinating within the existing training schedules and not subject to an arbitrary deadline.

XIII. CONCLUSIONS

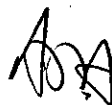
The AAPA submits that DOT should carefully reconsider the merits of this overly prescriptive and too often inappropriately framed rulemaking. The proposed regulation overreaches its jurisdictional limits. There needs to be significantly more consideration of foreign laws and regulations. Foreign flag carriers ought not be placed in the position of having to seek DOT approval for waivers in order to comply with the regulations of their own governments. To adopt the regulation in its current form would be transgressing the boundaries of reciprocity and comity. We urge the DOT to work

within the framework of multilateralism, through an existing international forum for the discussion of these issues, namely ICAO.

Furthermore, the provisions as they stand seem to take little account of the dynamics of the long haul and ultra long haul flights operated by the AAPA Member Airlines. Circumstances and conditions change within the context of such flights, which DOT has not recognized or taken into account in drafting the proposed rules. For all these reasons, DOT should reconsider the effectiveness of having an overly detailed and prescriptive approach to dealing with situations arising from the carriage of persons with a disability. We believe that an appropriate degree of authority, discretion and flexibility on the part of the carrier are still necessary to ensure that the health and safety of all concerned are properly safeguarded.

Notwithstanding the issues raised in this submission, the AAPA and its Member Airlines are committed to treating all passengers with dignity and respect in a non-discriminatory manner. We will continue to work towards this shared goal through international cooperation with the aim of developing a more harmonized approach to customer service standards in this and other areas.

Respectfully submitted
by



Andrew Herdman
Director General
Association of Asia Pacific Airlines

Appendix A

Estimation of implicated cost for Installation of Seats with Movable Armrests & Accessible Lavatories (Requirement to Comply with Subpart E of NPRM)

AAPA Aircraft Fleet*

Aircraft Type	Number of Aircraft
Boeing B747-400	237
Boeing B767 (-300 and -200)	145
Boeing B777 (-200 and -300)	164
Airbus A340 (-200, -300, -500 and -600)	32
Total AAPA fleet (wide-bodied) affected	578**

Estimated present value cost of complying (with Subpart E only) based on the following cost elements:

- Estimated cost of a set of seats with movable armrests.
- Man-hours required to change a set of seats.
- Recurring engineering certification costs to change a set of seats.
- Estimated cost of replacing one set of accessible lavatory.
- Man-hours required to install the accessible lavatory.
- Recurring engineering certification costs to change a set of lavatory.
- Man-hours to repitch /remove a row of seats to accommodate an accessible lavatory.

* AAPA Aircraft Fleet 2004 (AAPA Annual Report 2004).

** Figure is based on the wide-bodied fleet of AAPA member airlines operating to the US. Currently, thirteen (13) AAPA member airlines operate to the US.

Appendix A

Estimation of implicated cost for Installation of Seats with Movable Armrests & Accessible Lavatories
(Requirement to Comply with Subpart E of NPRM)

Typical B747-400 Configuration

No. of Aisle Seats/Class	12 / F*	35 / C**	100 / Y***	COST (USD)
No. of Aisle Seats to be modified	6	18	50	
Cost Per Unit	\$10,000	\$8,500	\$7,500	
Cost	\$60,000	\$153,000	\$375,000	\$588,000
Man-hours	12	36	100	
Man-hours Cost (USD80 per Man-hour)	\$960	\$2,880	\$8,000	\$11,840
No. of Lavatories		13		
No. of lavatories to be replaced		1		
Cost Per Unit		\$100,000		
Cost		\$100,000		\$100,000
Man-hours		20		
Man-hours Cost (USD80 per Man-hour)		\$1,600		\$1600
Other cost i.e. certification cost		\$130,000		\$130,000
Total cost (USD) per Aircraft				\$831,440
Total AAPA fleet (B747-400) cost				\$197,051,280

* First Class
** Business Class
*** Economy Class

Appendix A

Estimation of implicated cost for Installation of Seats with Movable Armrests & Accessible Lavatories (Requirement to Comply with Subpart E of NPRM)

Typical B767-300 Configuration

No. of Aisle Seats/Class	16 / C*	121 / Y**	COST (USD)
No. of Aisle Seats to be modified	8	61	
Cost Per Unit	\$8,500	\$7,500	
Cost	\$68,000	\$457,500	\$525,500
Man-hours	16	122	
Man-hours Cost (USD80 per Man-hour)	\$1,280	\$9,760	\$11,040
No. of Lavatories		8	
No. of lavatories to be replaced		1	
Cost Per Unit	\$100,000		
Cost	\$100,000		\$100,000
Man-hours		20	
Man-hours Cost (USD80 per Man-hour)		\$1,600	\$1,600
Other cost i.e, certification cost		\$130,000	\$130,000
Total cost (USD) per Aircraft			\$768,140
Total AAPA fleet (B767-300) cost			\$111,380,300

* Business Class
** Economy Class

Appendix A

Estimation of implicated cost for Installation of Seats with Movable Armrests & Accessible Lavatories
(Requirement to Comply with Subpart E of NPRM)

Typical B777-300 Configuration

No. of Aisle Seats/Class	12 / F*	28 / C**	120 / Y***	COST (USD)
No. of Aisle Seats to be modified	6	14	60	
Cost Per Unit	\$10,000	\$8,500	\$7,500	
Cost	\$60,000	\$119,000	\$450,000	\$629,000
Man-hours	8	28	120	
Man-hours Cost (USD80 per Man-hour)	\$640	\$2,240	\$9,600	\$12,480
No. of Lavatories		12		
No. of lavatories to be replaced		1		
Cost Per Unit		\$100,000		
Cost		\$100,000		\$100,000
Man-hours		20		
Man-hours Cost (USD80 per Man-hour)		\$1,600		\$1,600
Other cost i.e, certification cost		\$130,000		\$130,000
Total cost (USD) per Aircraft				\$873,080
Total AAPA fleet (B777-300) cost				\$143,185,120

* First Class
 ** Business Class
 *** Economy Class

Appendix A

Estimation of implicated cost for Installation of Seats with Movable Armrests & Accessible Lavatories (Requirement to Comply with Subpart E of NPRM)

Typical A340-300 Configuration

No. of Aisle Seats/Class	8 / F*	27 / C**	102 / Y***	COST (USD)
No. of Aisle Seats to be modified	4	14	51	
Cost Per Unit	\$10,000	\$8,500	\$7,500	
Cost	\$40,000	\$119,000	\$382,500	\$629,000
Man-hours	8	28	102	
Man-hours Cost (USD80 per Man-hour)	\$640	\$2,240	\$8,160	\$11,040
No. of Lavatories		12		
No. of lavatories to be replaced		1		
Cost Per Unit		\$100,000		
Cost		\$100,000		\$100,000
Man-hours		20		
Man-hours Cost (USD80 per Man-hour)		\$1,600		\$1,600
Other cost i.e, certification cost		\$130,000		\$130,000
Total cost (USD) per Aircraft				\$871,640
Total AAPA fleet (A340-300) cost				\$27,892,480

* First Class
 ** Business Class
 *** Economy Class

Appendix A

**Estimation of implicated cost for Installation of Seats with Movable Armrests & Accessible Lavatories
(Requirement to Comply with Subpart E of NPRM)**

Total Cost Impact to Comply with Subpart E

Aircraft Type	Total Cost (USD)
Boeing B747-400	\$197,051,280
Boeing B767 (-300 and -200)	\$111,380,300
Boeing B777 (-200 and -300)	\$143,185,120
Airbus A340 (-200, -300, -500 and -600)	\$27,892,480
Total AAPA fleet (wide-bodied) cost	\$479,509,180