

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**14 CFR Part 382**

[Docket No. DOT-OST-2011-0098]

RIN 2105-AD87

**Nondiscrimination on the Basis of Disability in Air Travel; Accessibility of Aircraft and Stowage of Wheelchairs**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Department of Transportation is seeking comment on whether or not the prohibition against using the seat-strapping method (placing a wheelchair across a row of seats using a strap kit with safety-approval from the Federal Aviation Administration or applicable foreign government) to transport a passenger's wheelchair in the cabin of newer aircraft as set forth in DOT regulations should be deleted, modified, or remain as written.

**DATES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before August 2, 2011.

**ADDRESSES:** You may file comments identified by the docket number DOT-OST-2011-0098 by any of the following methods:

- *Federal Rulemaking Portal:* go to <http://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., 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-2011-0098 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Privacy Act:* Anyone is able to 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 <http://DocketsInfo.dot.gov>.

*Docket:* For access to the docket to read background documents or

comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Amna Arshad, Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue, SE., Room W96-405, Washington, DC 20590, (202) 366-9179. You may also contact Blane A. Workie, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue, SE., Room W96-464, Washington, DC 20590, (202) 366-9342. Arrangements to receive this notice in an alternative format may be made by contacting the above named individuals.

**SUPPLEMENTARY INFORMATION:**

**Summary of Preliminary Regulatory Analysis**

The preliminary regulatory analysis suggests that the benefits of the proposed requirement to allow carriers to use the seat-strapping method to stow a passenger's manual folding wheelchair in the cabin of "new" aircraft exceed its costs. This analysis, outlined in the table below, finds that the expected net present value of the rule over 20 years at a 7% discount rate would amount to \$243 million to \$273 million.

		Present value (millions)
Total Quantified Benefits .....	20 years, 7% discounting .....	\$243 to \$273.
Total Quantified Costs * .....	20 years, 7% discounting .....	\$0.
Net Quantified Benefits .....	20 years, 7% discounting .....	\$243 to \$273.

\* No basis for concluding that rule would impose quantified costs on any party.

Information on additional benefits and costs for which quantitative estimates could not be developed is provided in the Regulatory Analysis and Notices section.

*Background*

The Air Carrier Access Act (ACAA) prohibits discrimination by U.S. and foreign carriers against passengers with disabilities. (See 49 U.S.C. 41705) Its implementing regulation, 14 CFR Part 382, contains detailed standards and requirements to ensure carriers provide nondiscriminatory service to passengers with disabilities. This rule was updated on May 13, 2008, to, among other things, cover foreign air carriers. (73 FR 27614) This NPRM seeks comment on whether the Department should amend

the provisions in the May 13, 2008, rule pertaining to the stowage of one passenger's manual folding wheelchair in the cabin of aircraft with 100 or more passenger seats (§ 382.67) in order to allow the continued use of the seat-strapping method (placing a wheelchair across a row of seats using a strap kit approved by the Federal Aviation Administration or applicable foreign government).

When the requirement for in-cabin space for a folding passenger wheelchair was originally adopted in 1990, the Department's intention was that new aircraft would have a designated space (e.g., a closet or similar compartment) in which a passenger's wheelchair could be stowed. (55 FR 8007) The practice of seat-strapping was not authorized, or

even mentioned, in the regulatory text or the original rulemaking. The practice of seat-strapping was subsequently permitted under Department enforcement policy as an alternative to compliance with the regulation's requirement with respect to accommodating a passenger's manual folding wheelchair in the cabin. The Department determined in the final rule issued in 2008 that it was best not to carry over this policy to the new rule with respect to new aircraft (i.e., aircraft ordered after May 13, 2009, or delivered after May 13, 2011), and required, consistent with the intent of the original 1990 rule, that new aircraft be capable of accommodating a passenger's wheelchair in a priority stowage space in the cabin. The Department made this

decision because of concerns that seat-  
strapping (1) Is an awkward way of  
transporting a wheelchair in the cabin;  
(2) can result in less timely stowage and  
return of the passenger's wheelchair; (3)  
can be more conspicuous and bring  
unwanted attention to passengers with  
disabilities; (4) can be more likely to  
result in damage to the passenger's  
wheelchair; and (5) can result in last-  
minute surprise denials of service to  
other passengers holding confirmed  
tickets on full flights. Existing aircraft  
were not required to be retrofitted,  
however, and airlines could continue to  
use seat-  
strapping on those aircraft.

Within six months of issuance of the  
May 13, 2008, final rule, the Department  
received two requests to continue the  
use of seat-  
strapping. The Department  
also received a request to stow a  
passenger's manual folding wheelchair  
in a designated cargo stowage space as  
an alternative to stowing the passenger's  
wheelchair in the cabin of aircraft.  
These requests were submitted pursuant  
to the "equivalent alternative" provision  
of the May 13, 2008, final rule, which  
allows carriers to request a  
determination that a carrier's policy,  
practice, or other accommodation  
provides substantially equivalent  
accessibility to passengers with  
disabilities compared to a specified  
provision of Part 382. (See 14 CFR  
382.9)

The Department denied the two  
requests to continue the use of seat-  
strapping because it was contrary to the  
explicit language of the rule, and a  
change in the substance of the rule must  
be addressed through rulemaking. (See  
Response to Application of JetBlue  
Airways Corp., for an Equivalent  
Alternative Determination from 14 CFR  
382.123(c), Docket DOT-OST-2008-  
0273-0063 (filed July 22, 2009);  
Response to Application of US Airways,  
Inc., for an Equivalent Alternative  
Determination from 14 CFR 382.123(c),  
Docket DOT-OST-2008-0273-0064  
(filed July 22, 2009).) The Department,  
however, granted a request to stow a  
passenger's manual folding wheelchair  
in a designated cargo stowage space as  
an alternative to stowing the wheelchair  
in the cabin on a one-year trial basis  
subject to numerous conditions to  
ensure the same or greater accessibility  
to persons with a disability. (See  
Response to Application of Aerovias Del  
Continente Americano S.A., for an  
Equivalent Alternative Determination  
from 14 CFR 382.67 and 14 CFR  
382.123, Docket DOT-OST-2008-0273-  
0101.)

The Department believes that the  
issues raised by carriers with regard to  
using the seat-  
strapping method should

be considered further. Therefore, the  
Department is seeking comment on  
whether carriers should be allowed to  
use the seat-  
strapping method to stow a  
passenger's manual folding wheelchair  
in the cabin of "new" aircraft. The  
Department wants to make clear that, by  
issuing this NPRM, we are not taking a  
position on the merits of the use of seat-  
strapping. The proposed regulatory text  
is language that the Department could  
use if we decide to change the rule. Its  
presence does not mean that making  
such a change is the Department's  
policy preference at this time.

In addition to comments on whether  
or not seat-  
strapping should be allowed  
as an alternative to the requirement for  
a designated stowage space in the cabin  
for a passenger wheelchair, the  
Department has developed a series of  
questions to assist us in determining the  
impact of seat-  
strapping on passengers  
with a disability, other members of the  
traveling public, and carriers. The  
Department will consider information in  
response to the questions posed below  
in determining whether carriers should  
be allowed to use seat-  
strapping. The  
Department specifically seeks comments  
on the following broad categories:  
Potential stigmatization associated with  
the seat-  
strapping method, impact on  
other passengers that may result from  
the seat-  
strapping method, compliance  
cost if the prohibition on the use of the  
seat-  
strapping method remains,  
complaints relating to damage to  
wheelchairs or delay in the return and  
stowage of a passenger's wheelchair,  
training of carrier employees,  
identification of priority space for  
assistive devices, additional  
accommodations that may be required if  
seat-  
strapping method is permitted, and  
other miscellaneous questions.

#### Stigmatization

(1) Concerns over potential  
stigmatization or embarrassment  
associated with the seat-  
strapping  
method, including but not limited to,  
how a passenger might feel if he or she  
is made aware that other passengers  
could be denied boarding on a full flight  
in order to accommodate his or her  
wheelchair in the cabin of the aircraft  
and how carriers might address such  
situations; and

(2) Procedures currently used, or that  
could be created, to minimize the  
potential stigmatization or  
embarrassment associated with the seat-  
strapping method.

#### Impact on Other Passengers

(1) The effect the seat-  
strapping  
method would have on passengers other

than those stowing a wheelchair in the  
cabin of an aircraft;

(2) Procedures currently used, or that  
could be created, to minimize the  
possibility that passengers will be  
denied boarding due to the use of the  
seat-  
strapping method; and

(3) The number of passengers denied  
boarding per year due to the use of the  
seat-  
strapping method on old aircraft  
(i.e., aircraft ordered on or before May  
13, 2009, or aircraft delivered on or  
before May 13, 2011) and a description  
of the process by which such data were  
collected.

#### Compliance Cost

(1) The cost to carriers if the  
prohibition on the use of the seat-  
strapping method remains as currently  
written in 14 CFR 382.123(c) (i.e.,  
prohibited on any aircraft ordered after  
May 13, 2009, or delivered after May 13,  
2011);

(2) The effects, other than cost, that  
continuing the prohibition of the seat-  
strapping method would have on  
carriers; and

(3) Benefits to using the seat-  
strapping  
method, aside from cost savings to  
carriers, over the requirement to have a  
priority stowage space.

(4) Any increased costs to carriers,  
such as increased purchases of  
wheelchair strapping kits, that would  
result from allowing the seat-  
strapping  
method.

#### Complaints Regarding Damage to Wheelchairs and Timely Stowage and Return of a Passenger's Wheelchair

(1) Concerns regarding damage to a  
wheelchair if the seat-  
strapping method  
is allowed;

(2) Complaints received regarding  
wheelchair damage from using the seat-  
strapping method;

(3) Complaints received regarding  
wheelchair damage from stowing a  
wheelchair in a priority space in the  
cabin (e.g., closets), using a method  
other than the seat-  
strapping method; and

(4) Concerns regarding less timely  
stowage and return of a passenger's  
manual folding wheelchair when using  
the seat-  
strapping method.

#### Training

(1) How do carriers currently ensure  
that their employees know that  
passengers can use the seat-  
strapping  
method to stow wheelchairs; and

(2) Whether the existing requirement  
for carriers to train their public contact  
employees to proficiency on the proper  
and safe operation of any equipment  
used to accommodate passengers with a  
disability is sufficient to ensure carrier

employees know the proper manner in which stow a wheelchair across a row of seats using a strap kit.

#### Identification of Priority Space for Stowage of Assistive Devices

(1) Whether the Department should require carriers to visually identify through some sort of placard (e.g., a placard that notes the space is a "Priority Stowage Space for Assistive Devices," with the International Symbol for Access) that wheelchairs, other mobility aids, and other assistive devices have priority for stowage in the cabin compartment over other items; and

(2) Whether there is any benefit in requiring airlines to inform passengers of the location of seats where a folding manual wheelchair may be stowed.

#### Additional Accommodations if Seat Strapping Method Is Allowed

(1) Whether the dimensions of a wheelchair that must fit without disassembly into the priority space currently 13 inches by 36 inches by 42 inches or less should be increased if the Department allows carriers to use the seat-strapping method as a means of stowing a folding manual wheelchair in the passenger cabin;

(2) Given the wide variety of wheelchairs and mobility devices on the market, what dimensions would be a reasonable compromise between the needs of passengers and the space constraints of carriers using the seat-strapping method to stow wheelchairs; and

(3) If seat-strapping is allowed, should carriers be required to accommodate more than one folding wheelchair in the passenger cabin when the stowage of additional wheelchairs would not displace other passengers.

#### Other

(1) Whether the Department should prohibit or allow U.S. and foreign carriers to remove existing closets or other priority spaces used for stowing a passenger's wheelchair on aircraft covered by Part 382 (i.e., should any requirement that is adopted only apply to new aircraft);

(2) Whether the Department should allow the use of the seat-strapping method only on single-aisle aircraft as there is sufficient space for a closet or other priority stowage space on twin-aisle aircraft; and

(3) Any other information or data that are relevant to the Department's decision.

We invite all interested persons to comment on the issues raised in this notice. Our final action will be based on

the comments and supporting evidence filed in this docket and on our own analysis.

#### Regulatory Analysis and Notices

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

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review) and is consistent with the requirements in both orders. Executive Order 13563 refers to nonquantifiable values, including equity and fairness.

The Regulatory Evaluation estimates that the monetary benefit of allowing airlines to use seat-strapping exceeds the monetary costs. Specifically, the benefit of allowing carriers to use seat-strapping would likely result in a total net revenue gain over a 20-year period of \$243–\$273 million present value. This represents revenue derived from seats that would not have to be removed in order to make space for a permanent wheelchair stowage area. No mandatory additional cost will be imposed on carriers if seat-strapping is allowed as an alternative to complying with the current requirement to provide a priority space for wheelchair stowage. It is unclear whether allowing carriers to use the seat-strapping method would impose costs related to damage or delayed stowage and return of wheelchairs on passengers with disabilities. Based on a review of the Department's consumer complaint database and discussions with the industry, the Department has no evidence that such consequences are likely and seeks comment particularly from persons with disabilities and disability organizations. Furthermore, non-disabled, ticketed passengers may be required to forego their seats on a full flight in order to accommodate a wheelchair, but the Department has not received any complaints regarding this practice. We request from the public any information that will improve the accuracy of our estimates or aid us in determining whether seat-strapping offers advantages or disadvantages that have not been considered. A copy of the Preliminary Regulatory Analysis has been placed in the docket.

B. Executive Order 13132 (Federalism)

This Notice of Proposed Rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This notice does not propose any regulation that 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. It does not propose any regulation that imposes substantial direct compliance costs on State and local governments. It does not propose any regulation that preempts State law, because States are already preempted from regulating in this area under the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination With Indian Tribal Governments"). Because none of the options on which we are 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 13084 do not apply.

D. 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. We hereby certify that the rule proposed in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A direct air carrier or a foreign air carrier is a small business if it provides air transportation only with small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds). See 14 CFR 399.73. The subject matter of this notice only affects aircraft with 100 or more passenger seats. Therefore, this requirement would not apply to small businesses. In addition, the proposed change would lessen the burden on U.S. and foreign air carriers by allowing the carriers to retain their current seating configuration and not remove seats to install a priority space in the cabin for a passenger

wheelchair. We invite comment to facilitate our assessment of the potential impact of these initiatives on small entities.

#### E. Paperwork Reduction Act

This rule imposes no new information reporting or record keeping necessitating clearance by the Office of Management and Budget.

#### F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

Issued this 26th day of May 2011, at Washington, DC.

**Ray LaHood,**

*Secretary of Transportation.*

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

Air carriers, Civil rights, and Individuals with disabilities.

For the reasons set forth in the preamble, the Department is proposing to amend 14 CFR part 382, as follows:

#### 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.

2. Section 382.67 is revised to read as follows:

##### **§ 382.67 What is the requirement for priority space in the cabin to store passengers' wheelchairs?**

(a) As a carrier, you must ensure that there is a priority space (e.g., a closet or a row of seats where a wheelchair may be strapped using a strap kit approved by the Federal Aviation Administration or applicable foreign government) in the cabin of sufficient size to stow at least one typical adult-sized folding, collapsible, or break-down manual passenger wheelchair, the dimensions of which are 13 inches by 36 inches by 42 inches or less without having to remove the wheels or otherwise disassemble it. This requirement applies to any aircraft with 100 or more passenger seats.

(b) This space must be other than the overhead compartments and under-seat spaces routinely used for passengers' carry-on items.

(c) If passengers holding confirmed reservations are not able to travel on a flight because their seats are being used to stow a passenger's wheelchair as required by paragraph (a) of this section, carriers must compensate those passengers in an amount to be calculated as provided for in instances of involuntary denied boarding under

14 CFR part 250, where part 250 applies.

(d) As a carrier, you must never request or suggest that a passenger should not stow his or her wheelchair in the cabin to accommodate other passengers (e.g., informing a passenger that stowing a wheelchair in the cabin will require other passengers to be removed from the flight), or for any other non-safety related reason (e.g., easier for the carrier if the wheelchair is stowed in the cargo).

(e) As a foreign carrier, you must meet the requirement of paragraph (a) of this section for new aircraft ordered after May 13, 2009, or delivered after May 13, 2010. As a U.S. carrier, this requirement applies to you with respect to new aircraft you operate that were ordered after April 5, 1990, or which were delivered after April 5, 1992.

##### **§ 382.123 [Amended]**

3. Section 382.123(c) is removed.

[FR Doc. 2011-13802 Filed 6-2-11; 8:45 am]

**BILLING CODE 4910-9X-P**

#### ENVIRONMENTAL PROTECTION AGENCY

##### **40 CFR Part 52**

**[EPA-R04-OAR-2010-0719-201115; FRL-9314-9]**

##### **Approval and Promulgation of Air Quality Implementation Plans; Ohio, Kentucky, and Indiana; Cincinnati-Hamilton Nonattainment Area; Determination of Attainment of the 1997 Annual Fine Particulate Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to make two determinations regarding the tri-state Cincinnati-Hamilton (Ohio, Kentucky, and Indiana) fine particulate matter (PM<sub>2.5</sub>) nonattainment area (hereafter referred to as "the Cincinnati Area" or "the Area"). First, EPA is proposing to determine that the Area has attained the 1997 annual average PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS). This proposed determination of attainment is based upon complete, quality-assured and certified ambient air monitoring data for the 2007-2009 period showing that the Area has monitored attainment of the 1997 annual PM<sub>2.5</sub> NAAQS. If EPA finalizes this proposed determination of attainment, the requirements for the Area to submit an attainment demonstration and associated

reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended for so long as the Area continues to attain the annual PM<sub>2.5</sub> NAAQS. Second, EPA is also proposing to determine, based on quality-assured and certified monitoring data for the 2007-2009 monitoring period, that the Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS by its applicable attainment date of April 5, 2010.

**DATES:** Comments must be received on or before July 5, 2011.

**ADDRESSES:** Submit your general comments and your comments specifically regarding the Kentucky portion of the Cincinnati Area, identified by Docket ID No. EPA-R04-OAR-2010-0719, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

3. *Fax:* (404) 562-9040.

4. *Mail:* EPA-R04-OAR-2010-0719, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Submit your comments regarding the Ohio and Indiana portions of the Cincinnati Area, identified by Docket ID No. EPA-R04-OAR-2010-0719, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

3. *Fax:* 312-353-6960.

4. *Mail:* Douglas Aburano, Chief, Control Strategies Section, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604-3507.

5. *Hand Delivery:* Douglas Aburano, Chief, Control Strategies Section, U.S.