

Air Carrier Access Act: Department of Transportation Finalizes New Rules Governing Accessibility of Airline Web Sites and Kiosks

December 2, 2013

As part of its continuing implementation of the Air Carrier Access Act of 1986, 49 U.S.C. 41705, the United States Department of Transportation ("DOT") recently issued a series of final rules (the "Rules") geared to improve air travel accessibility for individuals with disabilities. The Rules, which go into effect on December 12, 2013 ("Effective Date"), primarily focus on the use of accessible technology, requiring covered airlines and airports to take steps to make both the public-facing content on their Web sites and automated shared-use airport kiosks under their ownership, lease, or control accessible to individuals with disabilities.

Web site Accessibility

The portion of the Rules regarding Web site accessibility (the "Web site Accessibility Rules") cover United States and foreign air carriers who: (i) operate as least one aircraft with a seating capacity of more than sixty passengers; and (ii) own or control a primary Web site that markets air transportation to consumers in the United States.

The Web site Accessibility Rules require all public-facing content on Web sites owned or operated by covered entities to be made compliant with the World Wide Web Consortium's ("W3C") Web Content Accessibility Guidelines ("WCAG") version 2.0, Levels A and AA ("WCAG 2.0"). WCAG 2.0 was developed by the W3C (an international community that develops open [standards](#) to ensure the long-term growth of the Web) with the goal of helping teach Web site developers how to make the content of their Web sites more accessible to individuals with disabilities. WCAG 2.0 sets forth "the Four Principles of Accessibility" (perceivable, operable, understandable, and robust), each of which has its own set of guidelines and success criteria. WCAG 2.0 also suggests specific technical methods to meet and/or test each of these success criteria, which a Web developer can utilize to appropriately design the Web site so that it is accessible to individuals with disabilities.

Compliance with the Web site Accessibility Rules is broken into two phases:

- Phase 1 mandates all public-facing essential function pages of a covered entity's Web site (including reservations, check-in, flight status and schedules, frequent flyer accounts, and contact information) meet the WCAG 2.0 Level AA standards within two years of the Effective Date, December 12, 2015; and
- Phase 2 requires all remaining public-facing pages of a covered entity's Web site meet the WCAG 2.0 Level AA standards within three years of the Effective Date, December 12, 2016.

The rules further require that ticket agents disclose Web-only fares to customers who contact them via an alternate method and who indicate an inability to use the Web site due to a disability. Passengers may not be charged an additional fee for making reservations by phone if the phone is being used as equivalent facilitation to online travel booking.

Shared-Use Airport Kiosks

The portion of the final Rules governing automated shared-use airport kiosks (the "Accessible Kiosk Rules") cover both: (i) airlines that own, lease, or control such kiosks at United States airports with 10,000 or more enplanements per year, and (ii) United States airports with 10,000 or more enplanements per year that own, lease, or control shared-use kiosks. Kiosks located outside of airports (e.g., those located in hotel lobbies) are not covered by the new rules. Automated shared-use kiosks include those used for purposes such as printing boarding passes and baggage tags.

Compliance with the Accessible Kiosk Rules is based on the following timeline:

- All automated shared-use kiosks installed on or after December 12, 2016 must be accessible until 25 percent of kiosks provided in each location at the airport are accessible. This means that, in a given location, 25 percent of each cluster of kiosks or 100 percent of stand-alone kiosks must be accessible; and
- Covered entities must further provide a minimum of 25 percent accessible kiosks within 10 years following the Effective Date even if no new kiosks are installed in the regular course of business in the interim.

Covered airlines and airports share responsibility for ensuring compliance and maintenance of shared-use kiosks under the rules.

The technical standards set forth under Accessible Kiosk Rules cover nearly all aspects of the operation and use of automated shared-use kiosks, including the display screen and operable parts, inputs and outputs, Braille instructions, clear floor space, privacy, and biometrics (drawing upon aspects of both the existing regulations for ATMs contained in Title III of the Americans with Disabilities Act's 2010 Standards for Accessible Design and Section 508 of the Rehabilitation Act's standards for self-contained closed products (such as copiers)).

Other Provisions

The new rules also provide guidance and increased flexibility regarding acceptable means for storing and transporting manual wheelchairs in the airplane cabins of new aircraft with 100 or more passenger seats ordered after April 5, 1990 or delivered after April 5, 1992 (for United States carriers), and in new aircraft ordered after May 13, 2009 or delivered after May 13, 2010 (for foreign carriers).

If you have any questions or concerns regarding the final rules, please contact Proskauer's Accessibility & Accommodations Practice Group or your Proskauer relationship lawyer.