

regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class D and E airspace and amend existing Class E airspace at Punta Gorda Airport, Punta Gorda, FL.

#### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 will continue to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

#### Paragraph 5000 Class D Airspace.

\* \* \* \* \*

#### ASO FL D Punta Gorda, FL [New]

Punta Gorda Airport, FL  
(Lat. 26°55'08" N., long. 81°59'27" W.)

That airspace extending upward from the surface up to and including 2,500 feet MSL within a 4.5-mile radius of the Punta Gorda Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

#### Paragraph 6002 Class E Airspace Designated as Surface Areas.

\* \* \* \* \*

#### ASO FL E2 Punta Gorda, FL [New]

Punta Gorda Airport, FL  
(Lat. 26°55'08" N., long. 81°59'27" W.)

That airspace extending from the surface up to and including 2,500 feet MSL within a 4.5-mile radius of Punta Gorda Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

#### Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

\* \* \* \* \*

#### ASO FL E4 Punta Gorda, FL [New]

Punta Gorda Airport, FL  
(Lat. 26°55'08" N., long. 81°59'27" W.)

That airspace extending from the surface 2.4 mile either side of the 036° bearing from Punta Gorda Airport extending from the 4.5-mile radius to 7.0 miles northeast of the airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

#### Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

\* \* \* \* \*

#### ASO FL E5 Punta Gorda, FL [Amended]

Punta Gorda Airport, FL  
(Lat. 26°55'08" N., long. 81°59'27" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Punta Gorda Airport.

Issued in College Park, Georgia, on September 16, 2011.

**Mark D. Ward,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Part 382

#### 49 CFR Part 27

#### RIN 2105-AD96

[Docket No. DOT-OST-2011-0177]

### Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at U.S. Airports

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

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Department of Transportation (Department) proposes to revise its rule implementing the Air Carrier Access Act (ACAA) to provide greater accommodations for individuals with disabilities in air travel by requiring U.S. and foreign air carriers to make their Web sites accessible to individuals with disabilities and to ensure that their ticket agents do the same. It would also require U.S. and foreign air carriers to ensure that their proprietary and shared-use automated airport kiosks are accessible to individuals with disabilities. In addition, the Department proposes to revise its rule implementing Section 504 of the Rehabilitation Act to require U.S. airports to ensure that shared-use automated airport kiosks are accessible to individuals with disabilities. This supplemental notice of proposed rulemaking (SNPRM) applies to U.S. carriers and to foreign air carriers operating flights to, from, and in the United States. It also applies to U.S. airports with annual enplanements of 10,000 or more. The proposed rule establishes the technical criteria and procedures that apply to automated airport kiosks and to Web sites on which covered air transportation is marketed to the general public in the U.S. to ensure that individuals with disabilities can readily use these technologies to obtain the same information and services as other members of the public.

**DATES:** Comments should be filed by November 25, 2011. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number DOT-OST-2011-0177 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow

the online instructions for submitting written comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., 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–2011–0177 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, a business, a 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:

Kathleen Blank Riether, Senior Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), [kathleen.blankriether@dot.gov](mailto:kathleen.blankriether@dot.gov). 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 Ave., SE., Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), [blane.workie@dot.gov](mailto:blane.workie@dot.gov). You may obtain copies of this SNPRM in an accessible format by contacting the above named individuals.

**SUPPLEMENTARY INFORMATION: Pilot Project on Open Government and the Rulemaking Process:** On January 21, 2009, President Obama issued a *Memorandum on Transparency and Open Government* in which he described how “public engagement enhances the Government’s effectiveness and improves the quality

of its decisions” and how “knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge.” To support the President’s open government initiative, DOT Department of Transportation has partnered with the Cornell eRulemaking Initiative (CeRI) in a pilot project, Regulation Room, to discover the best ways of using Web 2.0 and social networking technologies to: (1) Alert the public, including those who sometimes may not be aware of rulemaking proposals, such as individuals, public interest groups, small businesses, and local government entities, that rulemaking is occurring in areas of interest to them; (2) increase public understanding of each proposed rule and the rulemaking process; and (3) help the public formulate more effective individual and collaborative input to DOT. Over the course of several rulemaking initiatives, CeRI will use different Web technologies and approaches to enhance public understanding and participation, work with DOT Department of Transportation to evaluate the advantages and disadvantages of these techniques, and report their findings and conclusions on the most effective use of social networking technologies in this area. DOT and the Obama Administration are striving to increase effective public involvement in the rulemaking process and strongly encourage all parties interested in this rulemaking to visit the Regulation Room Web site, <http://www.regulationroom.org>, to learn about the rule and the rulemaking process, to discuss the issues in the rule with other persons and groups, and to participate in drafting comments that will be submitted to DOT. For this rulemaking, CeRI will submit to the rulemaking docket a Summary of the discussion that occurs on the Regulation Room site; participants will have the chance to review a draft and suggest changes before the Summary is submitted. Note that Regulation Room is not an official DOT Web site, and so participating in discussion on that site is not the same as commenting in the rulemaking docket. The Summary of discussion and any joint comments prepared collaboratively on the site will become comments in the docket when they are submitted to DOT by CeRI. At any time during the comment period, anyone using Regulation Room can also submit their individual views to the rulemaking docket through the federal rulemaking portal [Regulations.gov](http://Regulations.gov), or by any of the other methods identified at the beginning of this document. For questions about this project, please

contact Brett Jortland in the DOT Office of the General Counsel at 202–366–9314 or [brett.jortland@dot.gov](mailto:brett.jortland@dot.gov).

#### Background and Organization

The Air Carrier Access Act (ACAA), passed by Congress in 1986, prohibits discrimination in airline service on the basis of disability. Since the Department of Transportation (“Department” or “DOT,” also “we” or “us”) issued the final rule implementing the ACAA, 14 CFR part 382 (Part 382) in 1990, it has amended the rule eleven times.<sup>1</sup> On May 13, 2008, the Department issued the most recent amendment to Part 382, which among other things, applied the rule to foreign air carriers and added new provisions concerning the onboard use of respiratory assistive devices and accommodations for passengers who are deaf, hard of hearing, and deaf-blind. See 73 FR 27614 (May 13, 2008). This latest amendment consolidated three separate NPRMs,<sup>2</sup> each of which proposed certain requirements and requested public comment on some issues that we did not address in the final rule due to the unavailability of critical cost and technical information. In the first NPRM [hereinafter “2004 Foreign Carriers NPRM”], for example, we had proposed to require carriers to make their Web sites accessible and asked for public comment on the cost and feasibility of making automated airport kiosks accessible (we did not propose specific accessibility requirements for automated kiosks). See NPRM entitled “Nondiscrimination on the Basis of Disability in Air Travel,” Docket DOT-OST-2004-19482, RIN No. 2105-AC97. After reviewing the public comments on this NPRM, we concluded that we did not have enough information to adequately determine the cost impact and technical feasibility of requiring accessibility for Web sites or automated airport kiosks. In the preamble to the 2008 final rule, we

<sup>1</sup> The dates and citations for these amendments are the following: April 3, 1990, 55 FR 12336; June 11, 1990, 55 FR 23539; November 1, 1996, 61 FR 56409; January 2, 1997, 62 FR 16; March 4, 1998, 63 FR 10528; March 11, 1998, 63 FR 11954; August 2, 1999, 64 FR 41781; January 5, 2000, 65 FR 352; May 3, 2001, 66 FR 22107; July 8, 2003, 68 FR 40488; and May 13, 2008, 73 FR 27614.

<sup>2</sup> Nondiscrimination on the Basis of Disability in Air Travel, Notice of Proposed Rulemaking, 69 Fed. Reg. 64364–64395 (November 4, 2004); Nondiscrimination on the Basis of Disability in Air Travel—Medical Oxygen and Portable Respiration Assistive Devices, Notice of Proposed Rulemaking, 70 Fed. Reg. 53108–53117 (September 7, 2005); and Accommodations for Individuals Who Are Deaf, Hard of Hearing, or Deaf-Blind, Notice of Proposed Rulemaking, 71 Fed. Reg. 9285–9299 (February 23, 2006).

indicated our intention to revisit these issues in a SNPRM.

In the section that follows, we discuss the proposed Web site accessibility requirements and the questions we posed on airport kiosk accessibility in the 2004 Foreign Carriers NPRM and summarize the public comments we received. We then set forth the new measures we are proposing in this SNPRM in light of the public comments from the 2004 Foreign Carriers NPRM and our further research since the final rule was issued in 2008. These measures include requirements for U.S. and foreign air carriers to ensure that the public-facing content of Web sites they own or control conforms to the Website Content Accessibility Guidelines (WCAG) 2.0 Success Criteria and all Conformance Requirements at Level A and Level AA (discussed in detail in the next section). The proposed requirements would apply to foreign carriers only with respect to public-facing pages on Web sites they own or control that market covered air transportation to the general public in the U.S. A foreign carrier Web site would be covered by the proposed requirements if it advertises or sells to the general public in the U.S. air transportation that includes flights that begin or end in the U.S. We consider the following to be indicators that a foreign carrier Web site is likely marketing air transportation to the general public in the U.S., and if so, would be covered by the proposed Web site accessibility requirements: (1) Contains an option to view content in English, (2) advertises or sells flights operating to, from, or within the U.S., and (3) displays fares in U.S. dollars. While it is our intention to require all public-facing content on the Web sites of U.S. carriers to meet the proposed Web site accessibility requirements, only those pages on the Web sites of foreign carriers involved in marketing covered air transportation to the general public in the U.S. would be subject to the Web site accessibility requirements. Web content on foreign carrier Web sites marketing air transportation to the general public outside the U.S. would not be covered. We also intend that Web site accessibility requirements cover a carrier's new or completely redesigned primary Web site brought on line 180 or more days after the effective date of the final rule. Updating the information content on one or more Web pages would not be considered a complete redesign of a Web site, which entails technical changes to a substantial portion of the site (e.g., visual design ("look and feel") of the site, an overall

upgrade of the site to ensure compliance with technical standards, reorganizing the site's information architecture). By one year after the final rule's effective date, we propose to require Web pages on an existing Web site associated with booking or changing a reservation, flight check-in, and accessing a personal travel itinerary, frequent flyer account, flight status or schedules, and carrier contact information to be conformant either on a primary Web site or by providing accessible links from the associated pages on a primary Web site to corresponding accessible pages on a mobile Web site. All covered Web pages on a carrier's primary Web site would have to be conformant by two years from the final rule's effective date. We will continue to require that a carrier make discounted Web-based fares and other Web-based amenities available to passengers who self identify as being unable to use a carrier's Web site due to their disability even if the Web site meets the WCAG 2.0 accessibility requirements. We expect that only a very small segment of the disability community would not be able to use an "accessible" Web site (e.g., an individual who is deaf-blind).

The Department considers marketing covered air transportation to the general public in the U.S. on Web sites that are inaccessible to individuals with disabilities to be discriminatory and a violation of the Air Carrier Access Act (49 U.S.C. 41705) and an unfair trade practice in violation of 49 U.S.C. 41712. The Department's authority to prohibit unfair and deceptive practices under 49 U.S.C. 41712 applies not only to carriers, but also to "ticket agents," (i.e., a person other than a carrier "that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation"). See 49 U.S.C. 40102(a)(45). This SNPRM, in addition to proposing to require U.S. and foreign air carriers to ensure that their Web sites are accessible in accordance with WCAG 2.0 standards, would explicitly require carriers to ensure that when their agents are providing schedule and fare information and marketing covered air transportation services to the general public in the U.S. on Web sites, such Web content also meets the WCAG 2.0 standards. Carriers are responsible for the activities of their agents, and as such, this NPRM would require them to ensure that those agents comply with the Web site accessibility requirements, or carriers could face enforcement action. See 14 CFR 382.15(a). Carriers would not, however, be required to ensure the compliance of agent Web

sites with WCAG 2.0 standards if the agent's annual receipts are less than the threshold established under the applicable small business size standard defined by the Small Business Administration (SBA). See 13 CFR 121.201.<sup>3</sup> Carriers would still be permitted to market covered air transportation on the inaccessible Web sites of ticket agents that meet the small business size standard. However, we would require carriers to ensure that those small ticket agents make discounted Web-based fares and other Web-based amenities available to passengers who self identify as being unable to use the agent's inaccessible Web site due to their disability. This NPRM would also require carriers to ensure that ticket agents with "accessible" Web sites still make discounted Web-based fares and other Web-based amenities available to passengers who self-identify as being unable to use the agent's Web site due to their disability.

As for automated airport kiosks, we are proposing to require U.S. and foreign air carriers that own, lease, or control automated kiosks at U.S. airports having 10,000 or more enplanements per year<sup>4</sup> to ensure that all kiosk orders initiated sixty (60) days after the effective date of the rule for installation at U.S. airports are for models that meet a specified accessibility standard. The accessibility standard for automated airport kiosks that we propose to require is based on the U.S. Department of Justice's 2010 ADA Standards for Accessible Design (2010 ADA Standards) applicable to automated teller machines (ATM) and fare machines and on other selected accessibility criteria. We propose to apply this standard to both proprietary and shared-use automated airport kiosks. Shared-use automated airport kiosks are self-service transaction machines provided by an airport, a carrier, or an independent service provider with which any carrier having a compliant data set can collaborate to enable its customers to independently access the flight-related services it offers. Where automated airport kiosks

<sup>3</sup> Under 13 CFR 121.201, travel agents and tour operators are defined as small business concerns if their annual revenues do not exceed \$3.5 million and \$7 million, respectively (excluding funds received in trust for unaffiliated third party bookings/sales, but including the commissions earned from such bookings/sales).

<sup>4</sup> The Federal Aviation Administration (FAA) recognizes 3,364 of the 19,847 airports in the U.S. as open to the public. Of these, 382 are primary airports defined as having more than 10,000 enplanements annually. Primary airports include 29 large, 37 medium, 72 small, and 244 non-hub commercial service airports.

are jointly owned, leased, or controlled by U.S. airports and carriers, we propose to require that the airport operators and carriers enter into written agreements spelling out the respective responsibilities of the parties for meeting the accessibility requirements. We also intend to continue to require that carriers ensure equivalent service to passengers with a disability who are unable to use their automated airport kiosks due to their disability (e.g., passenger is unable to use an inaccessible automated airport kiosk, passenger is unable to use an automated airport kiosk that meets the accessibility standard because the passenger cannot reach the function keys due to a disability).

We invite all interested parties to comment on the proposals set forth in this proposed rule. Our final action will be based on comments and supporting evidence from the public filed in this docket, and on our own analysis and regulatory evaluation.

#### **Proposals and Questions in the 2004 Foreign Carriers NPRM on Web Site and Automated Airport Kiosk Accessibility**

##### *1. Web Site Accessibility*

Today's passengers increasingly rely on air travel Web sites for information about airline services, making reservations, and obtaining discounted airfares. While these Web sites are more accessible to people with disabilities today than ever before, the degree of accessibility can vary significantly not only from one Web site to another, but also from page to page on a given site. Not all information and services available to the public on these Web sites are accessible to people with disabilities. The Department views Web site accessibility as a vital step toward making the convenience and cost savings of booking the best airfares and checking-in online available to people with disabilities.

*The 2004 Foreign Carriers NPRM:* In the 2004 Foreign Carriers NPRM we proposed to require carriers to make their Web sites compliant with the accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended (hereinafter Section 508) as a means of ensuring that all domestic and international flight and other information on their Web sites is accessible to persons with visual impairments. For foreign air carriers, we proposed that only the portion of their Web sites displaying information related to flights serving U.S. airports would have to meet the Section 508 standard. The requirements were also to apply to

multi-carrier travel service Web sites owned by groups of carriers or with whom carriers have contractual or agency relationships. Under Section 508, Federal agencies are required to make their electronic and information technology, including Web sites, accessible to persons with disabilities. Generally, this means use of text labels or descriptors for graphics and certain formatting elements. In the 2004 Foreign Carriers NPRM, we chose to use the Section 508 standard in proposing Web site accessibility requirements under our ACAA authority. Covered entities were to have two years from the final rule's effective date to make existing Web sites accessible and new Web sites coming on line after the effective date were to be accessible immediately.

We sought public comment on whether the Section 508 standard was the appropriate accessibility standard to apply, whether the standard should be modified for the airline Web site context, and whether other domestic or foreign accessibility standards would be appropriate. We also asked for comment on whether additional or specific requirements concerning online travel agencies (e.g., Web sites that provide schedule and fare information and market for carriers) should be added to the Part 382 section on contractor compliance (now section 382.15). We noted that under the proposed requirements all services offered to passengers on a carrier's Web site (e.g., seat selection) would have to be accessible to users with disabilities and asked for comment on whether carrier Web sites that allow passengers to request special services should be required to permit passengers to request disability accommodations.

*The Comments:* Disability community commenters strongly supported all the proposed requirements for Web site accessibility, including applying the Section 508 standard to the Web sites of carriers, their affiliates, contractors, and agents offering air transportation. Some also wanted accessibility requirements specifically applicable to online travel agencies (OTAs) to be included in what is now section 382.15. A few disability commenters urged the Department to consider the Web site Content Accessibility Guidelines (WCAG) developed by the World Wide Web Consortium (W3C) Web Accessibility Initiative as an alternative to the Section 508 standard, since many Internet-based commercial transaction organizations already use those guidelines. Some disability commenters explicitly expressed support for requiring Web sites to be accessible to people with disabilities other than blindness and

other visual disabilities. There was also a strong disability community response favoring a measure discussed in the NPRM preamble to require carriers that offer passenger services online (e.g., seat selection) to also allow passengers to make special service requests online for disability accommodations. While most disability commenters did not object to a two-year timeframe from the rule's effective date to bring existing Web sites into compliance, some favored a much shorter period (e.g., six months from the effective date). Most supported requiring carriers to make lower fares and other special offers on the carrier's Web site available to any passenger with disability who could not use an inaccessible Web site by calling a customer service line.

Many carriers and carrier organizations opposed requiring Web site accessibility on the grounds that it would be too difficult and expensive to accomplish. Several made note of the fact that the regulatory analysis had not quantified the benefits of requiring carriers to make their Web sites accessible. Yet a number of carriers, including foreign carriers, supported the goal of Web site accessibility while disagreeing with the proposed standards and timeframes. A number of carriers supported applying the WCAG standards and some carriers (most of them foreign) reported already taking steps toward applying the WCAG standards to their Web sites.

Many U.S. and foreign air carriers and carrier associations contended that the Department had greatly underestimated the initial and ongoing costs of Web site accessibility. While the regulatory evaluation of the 2004 Foreign Carriers NPRM estimated the cost to U.S. carriers of making their Web sites accessible to be a one-time cost over two years of about \$17,600 per carrier, the Air Transport Association (ATA) and some individual carriers themselves put the actual cost of initial compliance as ranging from \$300,000 to more than \$1,000,000 per carrier, with recurring costs of \$10,000 to \$200,000 per carrier annually. Generally carriers felt that compliance would take much longer to accomplish initially. For example, ATA reported that two of their members estimated that it would require 4,700 and 6,000 hours respectively of planning, programming, and testing to comply. Carriers also felt that compliance would involve much more expense to maintain over the long term than the Department had estimated. Again, few carriers provided specific cost estimates, or when they did, few provided any breakdown of the cost allocation.

Some smaller carriers suggested that they would remove passenger information from their own Web sites and place it on the Web site of a mainline partner rather than incur the cost of compliance themselves. ATA not only opposed the Web site accessibility requirements as too costly, but also did not support a requirement to allow passengers with disabilities to book special service requests online. They maintained that if we adopted the proposed requirements, we should limit their application to Web sites within the U.S., and only to the portion of Web sites necessary to booking a flight. They also urged that we allow compliance with accessibility standards other than Section 508 and recommended that Web site accessibility be limited to accommodating individuals who are blind. A few carriers wanted to expand the phase in period from two to five years so compliance could be accomplished during scheduled maintenance operations.

Foreign carriers also disagreed with the Department's estimate of the cost (\$1,680 per foreign carrier over two years) and of the difficulty of making Web sites accessible, but provided little data supporting their assertions that the cost would be prohibitive. Almost unanimously, foreign carriers opposed any requirement to ensure the accessibility of contractor Web sites, explaining that they generally lacked any control over the design of these sites. This view was shared by most U.S. carriers as well. Several foreign carriers, among other commenters, asserted that limiting the applicability of Web site accessibility requirements to flights covered by Part 382 was neither practical nor technically feasible. Foreign carriers that did not oppose Web site accessibility requirements still favored much longer implementation timeframes, limiting the Web content required to be accessible (e.g., text pages only, booking function only, etc.), and allowing them to choose among various accepted accessibility standards. The International Air Transport Association (IATA) took the position that Web site accessibility requirements should only apply to foreign carrier Web sites maintained in the U.S. and only with respect to content essential for booking a flight. IATA and a number of individual foreign carriers opposed requiring carriers to allow passengers with disabilities to book special service requests online.

Associations representing travel agencies held similar views about the cost impact, insisting that our preliminary regulatory evaluation had missed the mark. The Interactive Travel

Services Association (ITSA) argued that compliance for travel agencies would be far more technically complex than we had anticipated and estimated the cost of basic Web site compliance with the Section 508 standard to be \$200,000–\$300,000 per company with millions more in ongoing maintenance costs. ITSA recommended that we (1) apply accessibility standards only to ticket agent sites geared to selling air transportation to persons in the U.S.; (2) not specify a particular Web site accessibility standard; and (3) allow a "reasonableness standard" to determine when infrequently visited Web pages could be exempted from accessibility requirements.

The American Society of Travel Agents (ASTA) reported that 90% of travel agencies are small businesses with 4–6 employees and that we had not considered the real impact of compliance on small businesses. While the majority of travel agencies have Web sites, ASTA noted that about half were created in-house, by a friend, or by using a template. ASTA reported that of these travel agency Web sites, only 12% enabled clients to book online and that bookings from online transactions generated only 5% of the agencies' total revenues.

Cendant Corporation (Cendant) addressed some of the technical problems with ensuring accessibility on Web sites where control of Web page content is shared by multiple entities and offered suggestions on how responsibility for accessibility should be allocated. Cendant suggested that when a carrier enters into a marketing agreement with a hosting Web site, the compliance responsibility should be allocated to the party that deploys or controls the site's front-end code (user interface). They recommended that carriers in co-branding relationships with other carriers or marketing agents should only be responsible for Web site platform content that they directly develop, control, manage, or maintain, and that they should provide exit notices to users advising them when they've clicked a link to an outside Web site where the content may not be accessible. Cendant also endorsed requiring the WCAG rather than Section 508 accessibility standard.

As a group, U.S. ticket agents opposed any Web site accessibility rules applying to them that did not apply to foreign ticket agents as well. Like ATA, they urged the Department to limit Web site accessibility requirements to accommodating individuals with visual disabilities.

*Decision in the 2008 Final Rule:* We deferred final action on Web site

accessibility requirements due to the wide range in estimated compliance and maintenance costs asserted by the commenters, as well as their varying claims regarding the level of difficulty and technical feasibility of bringing a Web site into compliance. We were unable to resolve these differences based on the record in that proceeding and decided the best course was to revisit the issue in a later rulemaking. In the interim, we adopted a provision in the final rule prohibiting carriers from charging fees for reservation assistance to passengers with disabilities who cannot use inaccessible Web sites and requiring carriers to make Web fare discounts available to such passengers.

*Current Proposed Rule:* In this SNPRM we propose to require U.S. and foreign air carriers to ensure that the public-facing air transportation-related content of Web sites they own or control is accessible to individuals with disabilities. The proposed accessibility requirements would apply to all public-facing content on the Web sites of U.S. carriers. Foreign carrier Web sites would be covered only with respect to Web pages involved in marketing (advertising or selling) covered air transportation to the general public in the U.S. We would consider a foreign carrier Web site that has an option to view content in English, that advertises or sells flights operating to, from, or within the U.S., and/or that shows fares in U.S. dollars as likely to be marketing air transportation to the general public in the U.S., and if so, covered by the proposed Web site accessibility requirements. Web content on a foreign carrier Web site that markets air transportation to the general public outside the U.S. would not be covered.

With respect to air transportation services advertised or sold online, we note that carriers offer an ever-expanding array of services on their Web sites today, including air travel packages. The Department's authority to regulate air transportation extends to the marketing of air travel packages that include a tour (*i.e.*, a combination of air transportation and ground accommodations), or tour component (e.g., a hotel stays) that must be purchased with air transportation. See 14 CFR Part 399.84. Over the years, the Department has taken numerous enforcement actions against travel companies and tour providers selling air tour packages for violating the Department's advertising requirements. See, e.g., *Grand Casinos, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR Part 399.84, Order 2005–5–5* (May 26, 2005); *Trafalgar Tours West, Inc. d/b/a Trafalgar Tours, Violations of 49 U.S.C.*

*§ 41712 and 14 CFR Part 399, Order 2007–8–24 (August 24, 2007); Pacific Delight Tours, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR Part 399.84, Order 2008–2–13 (February 7, 2008); Unique Vacations Inc., Violations of 49 U.S.C. § 41712 and 14 CFR Part 399.84, Order 2010–11–7 (November 8, 2010).* In this NPRM, we are proposing to require carriers offering travel packages online that include covered air transportation must ensure that their Web site pages marketing all package components (e.g., hotel or rental car reservations) are conformant with the WCAG 2.0 accessibility requirements. When carriers provide links on their Web sites to third party Web sites for booking the non-air travel components of travel packages marketed on their Web sites that include covered air transportation, the Department solicits comment on whether it should recommend or require such carriers to provide a notice that the third party Web site may not be accessible when the link is activated.

As for the time period provided for carriers to make their Web sites accessible, we propose that carriers implement the Web site accessibility requirements for primary Web sites incrementally in three phases over a two-year period.

- Newly created or completely redesigned primary Web sites placed online 180 or more days after the effective date of the final rule would have to comply with WCAG 2.0 at Level A and Level AA.

- Web pages on an existing Web site that provide core air travel services and information (*i.e.*, booking or changing a reservation, checking-in, and accessing a personal travel itinerary, flight status, personal frequent flyer account, flight schedules, or the carrier's contact information) would have to be conformant one year after the effective date of the final rule. These specific services were selected for the second phase of Web site accessibility because we view them as being essential and each appeared on most of the U.S. and foreign air carriers' mobile Web sites we reviewed. Web site conformance could be achieved in one of two ways. Web pages containing core air travel services and information could either be directly compliant with WCAG 2.0 at Level A and Level AA on a carrier's primary Web site or a carrier can provide accessible links from the non-conforming pages on its primary Web site to the corresponding pages on its mobile Web site that are conformant with WCAG 2.0 at Level A and Level AA. In addition to ensuring its mobile site conforms with WCAG 2.0 at Level

A and Level AA, we solicit comment on whether we should require a carrier to follow the World Wide Web Consortium (W3C) Recommendation 28 July 2008, Mobile Web Best Practices (MWBP) 1.0, Basic Guidelines (see <http://www.w3.org/TR/mobile-bp/>) if it elects to provide a link from a non-conforming page on its primary Web site to a page on its mobile Web site.

- All covered pages on a carrier's primary Web site, including those made conformant during the second phase by a link to a conformant page on the carrier's mobile Web site, would have to meet the WCAG 2.0 at Level A and Level AA standard two years after the effective date of the final rule.

We believe the proposed approach to implementing the requirements balances the carriers' need for flexibility and adequate time to fully implement an accessible primary Web site, while establishing priorities for accessibility of existing Web sites based on the online services of greatest interest and value to air travelers with disabilities. By allowing carriers to choose how to initially make certain online customer service functions accessible (e.g., either on their primary Web site or on a mobile site), carriers can determine which approach is most feasible for them based on factors such as the complexity of the Web pages associated with these functions on their primary Web sites, the robustness of the functions on their mobile Web sites, and how they wish to allocate their available resources for Web site accessibility. Since only entirely new or completely redesigned Web sites placed online starting 180 or more days after the rule's effective date would have to be accessible, carriers would have up to two years to make all covered pages on their primary Web sites accessible (*i.e.*, if they chose to make the core customer service functions accessible through links on the associated primary Web site pages to accessible pages on their mobile Web sites).

We note that many regional and charter carriers have Web sites that provide information related to covered air transportation (e.g., route maps, customer service plans, contracts of carriage, *etc.*) but do not sell airline tickets. In most instances, these carriers' Web sites provide links to the Web sites of their mainline partners where covered flights can be booked and other flight-related services obtained. Although the Web sites of these smaller carriers are covered for purposes of this rule, the carriers are not required to comply with interim provisions that do not apply to them (e.g., if the carrier's Web site does not provide booking or

check-in functions or flight status information, the carrier need not provide such functions in accessible format on its Web site). Such carriers would still be required to ensure that the links on their Web sites to their partner carriers' Web sites were accessible by one year after the effective date of the final rule and that all the public-facing content of their Web sites was conformant with WCAG 2.0 by two years after the effective date.

The Department considered proposing to require that carriers post WCAG 2.0 "conformance claims" on their Web sites to support easy identification of accessible Web pages and verification of a Web site's compliance status.

("Conformance claim" is W3C's term of art for a statement by an entity giving a brief description of the Web page(s) on its Web site for which the claim is made, the date of conformance, the WCAG guidelines and conformance level satisfied, and the Web content technologies relied upon. Conformance is defined only for Web pages, but a conformance claim may be made to cover one Web page, a series of pages, or multiple related pages.) While conformance claims appear to be our best option for identification and compliance verification purposes, we are concerned that the resources involved in preparing and maintaining conformance claims for complex and dynamic carrier Web sites may not be feasible. We therefore invite public comment on effective alternative means for readily identifying compliant Web pages during the Web site conversion period and for verifying overall Web site accessibility after the compliance deadline.

During the interim period while the inaccessible public-facing content of their Web sites is being updated in accordance with the implementation timeframes, the Department will continue to require carriers to make discounted Web-based fares and other Web-based amenities available to passengers who self-identify as being unable to use a carrier's inaccessible Web site due to their disability. This means, for example, that Web-based discount fares must be disclosed to any prospective passenger who inquires about fares through other channels (e.g., telephone or walk-in) and who states that he or she has a disability and is unable to use the inaccessible Web site, if his or her itinerary qualifies for the discounted fare. In addition, after carriers' Web sites are fully conformant with all applicable accessibility requirements, we will continue to require them to make Web-based discounts and amenities available as

described above to any passenger who states that due to a disability, he or she is unable to use a carrier's accessible Web site.

With respect to carriers that market their airline tickets on their agents' Web sites, we propose to require that they ensure that their airline tickets are marketed and sold on ticket agent Web sites that conform to the accessibility standards set forth in WCAG 2.0. We are proposing to provide carriers two years from the effective date of the rule to ensure that their agents' Web sites are accessible as described above. After this time, the Department would take enforcement action against carriers that market air transportation on an agent's inaccessible Web site, unless the agent qualifies as a small business (*i.e.*, having annual revenues less than the applicable threshold set forth in 13 CFR 121.201). In those situations, carriers would be required to ensure that those small ticket agents make discounted Web-based fares and other Web-based amenities available on the carrier's behalf to passengers who self identify as being unable to use the agent's inaccessible Web site due to their disability (*e.g.*, an individual who is deaf-blind and contacts the carrier by relay service to make a reservation). Methods carriers could use to ensure that ticket agent Web sites marketing their travel services are accessible include sending a notice to their agents regarding their obligations to have an accessible Web site and make discounted fares or other applicable Web-based amenities available to individuals who are unable to use an agent's Web site due to a disability. Carriers could also periodically (once or twice a year) monitor ticket agent Web sites, marketing their travel services to ensure that the Web sites are accessible. Another possibility is for carriers to monitor disability complaints received by its ticket agents to see if any of the complaints allege that a ticket agent's Web site is inaccessible or if a ticket agent refused to make the services discussed above available to individuals who cannot use their Web sites due to a disability.

Although we asked for comment in the 2004 Foreign Carriers NPRM, we decided against proposing a requirement for carriers to provide a Web site function allowing passengers to add special service requests for disability accommodations to their passenger record. Our decision was based on comments from several carriers indicating the importance of passengers speaking directly with an agent when requesting disability services to avoid any misunderstandings

about their specific accommodation needs.

The departure from our proposal in the 2004 Foreign Carriers NPRM to require Web site conformance with the Section 508 standards is based in part on comments from the 2004 Foreign Carriers NPRM but mostly on developments that have occurred since the final rule was issued. Comments on our proposal in the 2004 Foreign Carriers NPRM to adopt the Section 508 Web site accessibility standard were mixed. Although there was significant support for the Section 508 standard, a number of commenters urged us to consider adopting the WCAG standard or at least allowing carriers to choose which standard to apply. We did not consider adopting the then current WCAG 1.0 standard, however, because some requirements were not testable, thus compromising compliance verification. In December 2008, following a lengthy development process with Web developers, accessibility experts, and the disability community, the W3C adopted WCAG 2.0, incorporating developments in Web technology and lessons learned since WCAG 1.0 (1999).

WCAG 2.0 has 12 guidelines organized under four design principles: Perceivable, operable, understandable, and robust. Each guideline has testable success criteria defined at three levels (A, AA, and AAA) for determining Web site conformance. Level A conformance is the minimum level of conformance for providing basic accessibility and means that Web pages satisfy all the Level A success criteria. Level AA conformance provides a stronger level of accessibility and means that the Web pages satisfy all the Level A and Level AA success criteria. Level AAA conformance provides a very high level of accessibility and means that the Web pages satisfy all the Level A, Level AA, and Level AAA success criteria. Level AA conformance provides better accessibility and barrier reduction for accessing Web content than Level A (*e.g.*, Level AA success criteria include the capability to resize text up to 200% without loss of content or functionality and consistent identification of components that have the same functionality within a set of Web pages). While Level AAA conformance provides the most robust level of accessibility, W3C does not recommend requiring it for entire Web sites because it is not possible to satisfy all Level AAA success criteria for some content.

For each conformance level, a non-conforming page is considered compliant if it provides an accessible mechanism for reaching a conforming

alternate version of the page that meets the success criteria, is up to date, and contains the same information and functionality in the same language. A conforming alternate version of a Web page is intended to provide people with disabilities equivalent access to the same content and functionality as a directly accessible Web page under WCAG 2.0. Nonetheless, WCAG 2.0 implementation guidance notes that providing a conforming alternate version of a Web page is a fallback option for WCAG conformance and that the preferred method of conformance is to make all Web page content directly accessible. Therefore, the intent of these proposed accessibility requirements is that Web site content be directly accessible whenever possible. However, the proposal does not explicitly require that a conforming alternate version be used *only* when needed to provide the Web content as effectively to individuals with disabilities as to those without disabilities. The Department seeks comment on whether we should explicitly prohibit the use of conforming alternate versions except *when necessary* to provide the information, services, and benefits on a specific Web page or Web site as effectively to individuals with disabilities as to those without disabilities.

In early 2010, the U.S. Access Board (Board) issued an advance notice of proposed rulemaking (ANPRM) to update various accessibility standards and guidelines, including the Section 508 standard which has been in effect for more than a decade and that applies to electronic and information technology developed, procured, maintained, or used by Federal agencies. See 75 FR 13457 (March 22, 2010). Due to the scope and complexity of this rulemaking, it may take two or more years to issue a refreshed Section 508 standard, which we anticipate will be significantly different from the current version. While the timing and scope of the Section 508 refresh were significant factors in our decision to propose WCAG 2.0 as the Web site accessibility standard, the most important consideration was the Board's stated intention in the ANPRM to "seek[s] to harmonize, to the extent possible, its criteria with other standards and guidelines in order to improve accessibility and facilitate compliance." See 75 Fed. Reg. 13457, 13458 (March 22, 2010). The Board adopted this position based on the recommendations of the Telecommunications and Electronic and Information Technology Advisory Committee (TEITAC), which it

established in 2006 to review the existing Section 508 standards and Telecommunications Act accessibility guidelines and to recommend changes. As part of its review, TEITAC, which represented industry, disability groups, standard-setting bodies in the U.S. and abroad, and government agencies, sought to address key issues driving the development of electronic information technology, including the need for standardization across markets globally. In its report to the Board in 2008, TEITAC recommended that the Board seek to harmonize the Section 508 standards with WCAG 2.0 (which were still being finalized) in order to improve accessibility and facilitate compliance. As a result, in the March 2010 ANPRM, the Board sought comment on a harmonization approach with WCAG 2.0 in which Web pages (as defined by WCAG 2.0), which are Level AA conformant, be deemed to be in conformance with the technical criteria it proposed in Chapter 4 (Platforms, Applications, and Interactive Content), Chapter 5 (Electronic Documents), and Chapter 6 (Synchronized Media Content and Players), and certain other specified provisions of the draft. See 75 Fed. Reg. 13457, 13460 (March 22, 2010). WCAG 2.0, which is internationally recognized as the most up-to-date and widely used accessibility standard available, addresses to varying degrees, access issues for people with visual, hearing, motor, cognitive, and neurological disabilities. The WCAG 2.0 specification and detailed technical guidance are available to the public free of charge at <http://www.w3.org/TR/WCAG20/>. Although the Department initially intended to require accessibility for visual disabilities only, recognition by TEITAC and other technology experts of the significant commercial and other benefits of harmonizing with international accessibility standards persuaded us to propose the more inclusive WCAG 2.0 standard for air travel Web site accessibility at this time. We anticipate that approximately 4.3 million Web site visitors with disabilities will benefit from these proposed Web site accessibility requirements in the first 10 years after the effective date of the rule.

**Request for Public Comments:** Below we discuss the requirements we are proposing in more detail, report some preliminary findings of our regulatory evaluation, and pose questions for public comment.

**Applicability**—We propose to apply the Web site accessibility requirements to the public-facing content of U.S. and foreign carrier primary Web sites that market air transportation and to limit

the application to foreign carrier Web sites to Web pages involved in marketing covered air transportation to the general public in the U.S. Is there any reason to limit the applicability of this requirement to the largest U.S. and foreign air carriers, such as those that operate at least one aircraft with more than 60 seats for example? Should carriers that only provide charter service be subject to different Web site accessibility requirements than carriers that provide scheduled service? Should we exclude from Web site accessibility requirements carriers that advertise air transportation but do not sell airline tickets?

We also propose to indirectly cover the Web sites of ticket agents that exceed the small business revenue thresholds established by the SBA. Should carriers not be required to ensure that the Web pages on which online ticket agencies market and sell their airline tickets are accessible? Should carriers only be required to ensure Web page accessibility of online ticket agencies that market and sell more than a certain percentage (e.g., 10%) of the carrier's total ticket sales annually? Should this rule apply to ticket agents directly with respect to ensuring that their Web pages on which they market and sell covered air transportation to the general public in the U.S. are accessible? Should DOT wait for the Department of Justice to move forward with its rulemaking under Title III of the Americans with Disabilities Act before promulgating regulations that require ticket agent Web sites to be accessible?

**Technical Accessibility Standard**—Should the Department consider requiring a set of technical or performance accessibility standards other than WCAG 2.0? Besides the Section 508 standards, what other accepted Web site accessibility standards are available? In the final rule, should the Department permit carriers to comply with Web site accessibility requirements by meeting any accepted Web site accessibility standard? Does WCAG 2.0 Level AA conformance provide a sufficient level of accessibility? Are there sufficient technical assistance resources available to support companies in implementing the standard? As an alternative, should Level A conformance or Level A plus conformance with some number of selected Level AA success criteria be required as long as the result is at least as strong as the current Section 508 Web accessibility standard? As stated earlier, the intent of the proposed accessibility requirements is that Web site content be directly accessible whenever possible. A

conforming alternate version of a Web page must meet the WCAG 2.0 success criteria, be up to date, contain the same information and functionality in the same language, and be reachable via an accessible mechanism from the primary Web site. The Department seeks comment on whether it should explicitly prohibit the use of conforming alternate versions except when necessary to provide the information, services, and benefits on a specific Web page or Web site as effectively to individuals with disabilities as to those without disabilities. The Department is also interested in public comment on what circumstances would make it necessary to use a conforming alternate version to provide the information, services, and benefits on a specific Web page or Web site as effectively to individuals with disabilities as to those without disabilities. With respect to specific technical criteria, we ask for comment on whether timeouts present barriers to using Web sites and on the cost or difficulty potentially associated with providing timeout capability.

In addition to a requirement to comply with the proposed technical accessibility criteria for Web sites, we are considering requiring covered entities to also ensure their Web sites are usable by individuals with disabilities. During a meeting between DOT officials and representatives of the National Federation of the Blind (NFB) held on June 29, 2011, NFB recommended that any DOT proposal on Web site accessibility contain not only technical standards but also a performance standard to ensure that a Web site that meets specific technical criteria is also useable by people with visual impairments. NFB emphasized that compliance with a technical standard without a clear understanding of the underlying accessibility goal can lead to implementing the standard in a way that hinders access for people with disabilities. For example, the WCAG 2.0 requirement for headings to identify items on a Web page (information, navigation controls, graphics, etc.) can result in a Web page with so many headings that it cannot be efficiently navigated by a screen reader. Similarly, full compliance with the WCAG 2.0 requirement to label links on a Web page with an “alt-tag” is not helpful if the alt-tags do not adequately explain the link’s purpose. Because implementing the WCAG 2.0 requirements for headings and alt-tags to label Web page content is somewhat subjective, there is a need to ensure that a Level AA-compliant Web page is usable by persons with a disability. To

ensure that Web pages are technically compliant in a manner that ensures accessibility and usability to people with disabilities, NFB recommends that, in addition to any proposed technical accessibility standards, covered Web pages meet a performance standard such that the Web pages ensure that persons with disabilities “may access or acquire the same information, engage in the same interactions, and enjoy the same products and services” offered to Web site users without disabilities “with a substantially similar ease of use.” We recognize that whether ease of use is “substantially similar” depends to a significant extent on the user’s screen reader or other assistive technology, which is beyond the control of the carrier. For this reason, we may need to specify the types and versions of various assistive technologies to which the performance standard must apply. The Department, therefore, seeks comments on the adoption of a performance standard in the final rule, in addition to the proposed technical standards, as well as on the types and versions of assistive technologies to which a performance standard should apply. We also seek comment on the feasibility and value of requiring airlines to work with the disability community (e.g., establish a committee on Web site accessibility) to assist them in maintaining the accessibility of their Web site through periodic monitoring and feedback on the Web site’s usability.

*Scope of the requirements*—We are proposing the accessibility standards to cover public-facing content on Web sites owned or controlled by U.S. carriers and foreign carriers where air transportation is marketed to the general public in the U.S. Should accessibility requirements cover all public-facing Web site content on the Web sites, or only the portion(s) of the Web site necessary to book a flight? Should the accessibility requirements apply to either mobile Web sites or primary Web sites, or to both? Are the services and information available on mobile Web sites generally as easy to use as their counterparts on a carrier’s main Web site or not? We also solicit comment on whether the Department should require carriers to ensure that their mobile Web sites are conformant with WCAG 2.0 at Level A and Level AA, or follow the World Wide Web Consortium (W3C)

Recommendation 28 July 2008, Mobile Web Best Practices (MWBP) 1.0, Basic Guidelines, or both?

Should carriers be required to ensure that any third party software that is downloadable from a link on the carrier’s Web site (e.g., deal finding software) is accessible? Can mobile

applications be programmed to comply with WCAG 2.0 accessibility standards? Should the Department require electronic communications generated by a carrier, such as reservation confirmation, flight status notifications, and special offer e-mails to be accessible? What are the costs and technical difficulties of ensuring that such content is accessible?

*Costs and Benefits*—Our preliminary regulatory evaluation estimates the net benefits of the proposed air travel Web site accessibility requirements over the entire 10-year analysis period at \$55.3 million using the 7 percent discount rate and \$74.7 million using the 3 percent discount rate. The total estimated benefits of \$122.1 million discounted at 7% and \$147.3 million discounted at 3% were calculated based on the expected time savings for people with disabilities who can use an accessible Web site, as well as the savings to carriers resulting from avoided calls (assisting passengers with disabilities who cannot use their Web sites). The monetized value of the time savings for individuals with disabilities and cost savings to carriers associated with compliant air travel Web sites is estimated at more than \$14 million in the first year after air travel Web sites become fully compliant with the proposed Web site accessibility standards. Our preliminary regulatory analysis underscores that many unquantifiable benefits are also expected to result from the proposed requirements, including increased air travel by persons with disabilities, reaching more consumers with disabilities, and improved understanding by carriers of their Web sites’ content, structure, and performance issues.

The total estimated costs associated with the proposed accessibility requirements were based on the Web site size (class sizes of largest, large, small, smallest), estimated number of revision hours by type of task (site layout and home page reorganization, conformance evaluation/certification, per individual site page) and the cost per hour for programming and overhead. The estimated cost per site for making primary Web sites completely accessible is estimated at \$225,000 for the largest sites having an average of 900 pages (1,500 hours), \$105,000 for large sites having an average of 300 pages (700 hours), \$50,400 for small sites having an average of 120 pages (420 hours) and \$31,200 for the smallest sites having an average of 60 pages (260 hours). These costs for bringing the Web sites into initial compliance, which are based on a review of carrier Web sites

using a collection of Web development tools, would be incurred during the first 2 years of the 10-year analysis period. Thereafter, U.S. and foreign carriers would incur an estimated \$2.0 million annually and ticket agents an estimated \$2.6 million annually in costs to ensure that their primary Web sites remain fully compliant. We are seeking comment on whether these cost estimates for Web site compliance are reasonable and address the relevant cost components. Total compliance costs for all entities, including U.S. and foreign carriers and their agents that are not small business concerns, to comply with the proposed Web site accessibility standards are estimated at \$66.8 million using the 7 percent discount rate, and \$72.6 million using the 3 percent discount rate. As with the estimated benefits, potentially important categories of cost identified for which no quantitative data are available include the cost of maintaining Web site accessibility, reallocating resources used to create Web pages to ensuring regulatory compliance, and possible impacts on Web site innovation options.

We note that the Air Transport Association (ATA) reported significantly higher estimated hours and overall costs for making carrier Web sites accessible in its comments on the Web site accessibility requirements proposed in the 2004 Foreign Carriers NPRM (e.g., two member carriers estimated that it would require 4,700 and 6,000 hours respectively for planning, programming, and testing to comply with the Web site requirements). In a similar vein, the Interactive Travel Services Association (ITSA) estimated the cost of basic Web site compliance with the Section 508 standard to be \$200,000–\$300,000 per company with millions more in ongoing maintenance costs. There are several factors accounting for the differences between our current cost estimates and the earlier estimates of both ATA and ITSA. The number of hours needed to comply depends on the size, type of programming, and current accessibility of a carrier’s Web site. Carrier and travel agent Web sites vary significantly with respect to these factors, particularly Web site size and current level of accessibility. We believe very few carriers, if any, would need up to 6,000 hours to comply with the proposed accessibility standards; the vast majority would be able to achieve fully accessible Web sites within the number of hours we’ve estimated above. Another key factor driving the difference in estimated costs for both initial compliance and maintenance is

that the programming tools available in Web design software were far less sophisticated in 2004 than today. For example, Cascading Style Sheets (CSS), which make maintenance and updating of Web pages far easier and less time-consuming, were just beginning to be used in 2004 and now are nearly universal. Building accessibility into new Web pages today is estimated to add only about 3–6 percent to the cost, making the ongoing costs for maintaining an accessible Web site significantly less than for achieving initial compliance. Yet another factor in the cost difference is that the section 508 accessibility standard we proposed in 2004 was not as widely used in the private sector, nor as well supported as WCAG 2.0, which today is widely recognized as a more robust, more current, better-supported, and more easily implemented standard.

In light of the above, the Department seeks input from the public on the following questions. Do any carriers currently have Web sites that conform to the WCAG 2.0 standard? If so, what was the cost the carriers incurred in bringing their Web site into conformance with this standard? Is there agreement or disagreement with the Department's cost per site estimate? If not, what is an accurate estimate and on what specific component costs is the estimate based? What is a reasonable estimate of the time required to make embedded content (such as PDFs and multimedia) accessible? Does the initial cost of creating accessible Web content differ in any significant way from non-accessible Web content? Do the maintenance costs of an accessible Web site differ in any significant way from those of an inaccessible Web site once the conversion is completed? What would be the cost and technical difficulty associated with conforming mobile Web content to the WCAG 2.0 accessibility standard or any other accessibility standard? How much time is needed to make an existing mobile Web site or primary Web site entirely accessible? What is the cost impact of disclosing Web-based fare discounts and other Web-based amenities to passengers with disabilities who indicate they are unable to use a carrier's Web site due to their disability and who inquire about air transportation with the carrier using another means? Are there any unintended impacts, positive or negative, that could result from requiring carrier and ticket agent Web sites to be accessible?

**Implementation Approach and Time Frame**—The Department seeks comment on alternative time frames and approaches for implementation of Web

site accessibility requirements. We are proposing a three-phase approach that attempts to expedite accessibility of Web pages on a Web site based on when individual Web pages were created as well as the relative importance of the information or service (functionality) carriers make available for air travelers. For the initial phase,, we propose to require that a carrier's new or completely redesigned primary Web site be accessible if placed online 180 or more days after the effective date of the final rule. By one year after the final rule's effective date, we propose to require Web pages associated with booking or changing a reservation, flight check-in, and accessing a personal travel itinerary, frequent flyer account, flight status or schedules, and carrier contact information to be conformant either on a primary Web site or by providing an accessible link from the associated pages on a primary Web site to corresponding conformant pages on a mobile Web site. All covered Web pages on a carrier's primary Web site would have to be conformant by two years from the final rule's effective date. We believe a gradual phasing in, deferring the most extensive Web site conversion tasks until last, will make the cost burden more manageable. Is the reservation booking mechanism more difficult to render accessible than other Web site functions? Is one year a reasonable time frame for making this function accessible? Is it feasible to require that just the booking function be made accessible within 180 days of the rule's effective date? Is a two-year time frame sufficient to render all public-facing content on a carrier's main Web site accessible? In its ANPRM on Web site accessibility for entities covered by the ADA, DOJ sought comment on compliance time frames based on when the Web sites or individual Web pages were created and on the feasibility of achieving compliance for new pages on existing Web sites. For newly created or completely redesigned Web pages—or all new Web sites (*i.e.*, those placed online for the first time), DOJ asked about requiring compliance starting six months after the publication of the final rule. Recognizing that completely new or redesigned Web sites and pages can more easily be made fully accessible than new pages on existing Web sites where certain features such as navigation components cannot be changed or replaced without redesigning the entire Web site, DOJ asked whether requiring compliance to the maximum extent feasible for new pages on existing Web sites (which may result in pages that are not completely

accessible) would be the appropriate standard. Finally, considering that existing Web sites may have hundreds to thousands of pages to be made accessible, DOJ also asked whether it would be reasonable to apply the Web site accessibility requirements to existing Web sites or pages effective two years after the date of publication of the final rule. See 75 FR 43460, 43466 (July 26, 2010). DOT requests comment on the approach we are proposing in this rulemaking for a three-phase implementation timeframe based on whether the Web page or site is new, which is similar to DOJ's approach, and the relative importance of the information or service (functionality) carriers make available for air travelers on existing Web sites. We also solicit comment on the approach DOJ proposed in its ANPRM which is based primarily on when Web sites/Web pages were created and the feasibility of compliance for new pages on existing Web sites, as well as any other approach for determining the time frame that should be adopted for carriers and ticket agents to bring their Web sites into compliance. Should the time frames for implementing the phased Web site accessibility requirements be expanded (e.g., 12 months for the first phase, 18 months for the second phase and 30 months for the third phase)?

**Identifying Accessible Web Pages on Partially Accessible Web Sites**—Should the Department require carriers to ensure that accessible Web pages can be readily identified as such by people with disabilities (*e.g.*, contain a tag readable by screen reader software)? If flight-related functions that must be accessible 180 days or one year after the rule's effective date cannot be accessed from a carrier's inaccessible home page, are alternative means for accessing those functions (*e.g.*, through a Google search) acceptable until the carrier's entire Web site is accessible?

**Compliance Verification and Web Site Usability**—Can the available protocols and procedures for testing Web content conformance with WCAG 2.0 be implemented cost effectively by carriers? The Department believes that requiring carriers to post and maintain WCAG 2.0 conformance claims on their Web sites may be too costly given the size, complexity, and dynamic nature of many carrier Web sites. We are seeking comment on alternative means to readily identify a Web site's conformance with applicable accessibility requirements. What methods might DOT use to ensure/verify compliance with the applicable standards? Should the Department initiate random “spot” investigations of

carrier and online ticket agency Web sites to monitor compliance after the rule becomes effective? Are there any specific technical barriers to maintaining air carrier Web site accessibility after full Web site compliance is initially achieved?

Among the issues raised by NFB in the aforementioned June 29 meeting with the Department was the need for accessibility training for airline employees involved in programming, coding, or editing a carrier's Web site so that the underlying goals of technical accessibility requirements are well understood by those who develop and maintain the carriers' Web sites. Should the Department require carriers to develop guidance manuals for such personnel on how to implement technical accessibility standards so that their Web sites are also functionally usable by individuals with disabilities (*i.e.*, they are able to access or acquire the same information, engage in the same interactions, and enjoy the same products and services as non-disabled users of their Web site with substantially equivalent ease of use)?

**Ensuring Ticket Agents Meet Web Site Accessibility and Service Obligations—**The Department seeks public comment on the specific methods carriers might use to ensure that their ticket agents marketing air transportation to the general public in the U.S. are complying with both the requirements to make the Web pages on their Web sites related to covered air transportation accessible and to provide Web-based discounts and amenities to individuals who are unable to use their Web sites due to a disability. With respect to ensuring Web site accessibility, should we require carriers to notify their agents that their Web sites must be in compliance with WCAG 2.0 by two years after the rule's effective date? Would such notification to agents be sufficient, or should we require carriers to obtain certification from their agents by two years after the rule's effective date that their Web sites are compliant? Should we permit carriers to rely solely on their agents' certifications of Web site compliance, or should we also require carriers to monitor their agents' Web sites once or twice a year? What about simply requiring carriers to bring any inaccessible agent Web sites that they become aware of to the attention of the those agents, and if the agent does not respond, bring those agent Web sites to the Department's attention? What would be the costs associated with any of the approaches discussed above?

Regarding accessible agent Web sites that cannot be used by certain individuals due to a disability or

inaccessible Web sites of small ticket agents, should the Department require carriers to notify agents of their obligations to provide Web-based discounts and amenities as of the rule's effective date to individuals who cannot use an agent's Web site? Should the Department require that carriers verify their agents' compliance with these obligations through test calls or some other method? Would it be sufficient to allow carriers to rely on a written statement from their agents certifying that as of a certain date the agent provides these services? Should we require carriers to monitor complaints against ticket agents alleging that an agent refused to provide these services to consumers who could not access its Web site due to a disability? What would be the costs associated with any of these approaches? Are there any other methods of monitoring/ensuring ticket agents' Web sites are accessible and discounted fares are available to individuals who can't use the ticket agent's Web site because of a disability that we should consider?

**Other Issues—**Should the Department require carriers and ticket agents to provide a mechanism for passengers to provide online notification of their requests for disability accommodation services (*e.g.*, enplaning/deplaning assistance, deaf/hard of hearing communication assistance, escort to service animal relief area, *etc.*)?

## 2. Automated Airport Kiosk Accessibility

Most airlines today are using automated kiosks at airports to perform customer service functions such as automated flight check-in and printing of boarding passes. The speed and efficiency of automated airport kiosks make them the check-in option of choice for many air travelers. Participants in the Airline IT Trends Survey 2009 reported that over half of all travellers use an automated airport kiosk to check-in, making it the primary means for passenger processing at 29% of airports. By 2012, automated airport kiosks are expected to be the primary passenger check-in method at more than 75% of airports. Of 116 carriers (both U.S. and foreign) responding to the 2009 Airline IT Trends Survey, 60% had automated check-in kiosks at airports and 86% planned to have them by the end of 2012. See SITA, Airports Council International, & Airline Business, (June 2009). The Airport IT Trends Survey 2009 Executive Summary. *SITA and Airline Business Magazine*. Retrieved February 11, 2011, from <http://www.sita.aero/content/airport-it-trends-survey-2009>.

Increasingly, carriers are implementing kiosk technology for other customer service functions at airports such as bag tag printing, rebooking passengers from cancelled flights, and reporting lost luggage, resulting in significant cost savings. But the trend has bypassed a significant number of passengers with visual and mobility impairments for whom automated airport kiosks remain largely inaccessible. While Part 382 currently requires carriers to provide equivalent service to passengers with disabilities when automated airport kiosks are inaccessible, such service typically involves assistance from carrier personnel in operating the kiosk or permitting a passenger to move to the first class ticket counter line. Many passengers with disabilities consider these solutions inadequate because they do not allow for independent access and call attention to a passenger's disability. Indeed, advocacy organizations for individuals with visual disabilities have initiated lawsuits against carriers and an airport for failure to provide accessible automated airport kiosks. In addition, the trend in the air travel industry toward self-service and technology-driven service models has continued to grow rapidly since the 2008 final rule was issued.

**The 2004 Foreign Carriers NPRM:** The Department sought comment on whether automated kiosks operated by carriers in airports or other locations (*e.g.*, for ticketing and dispensing of boarding passes) are sufficiently accessible to people with vision and mobility impairments, whether the final rule should mandate specific accessibility requirements, and if so, what accessibility standards should apply. The Department asked specifically if it should adopt the Section 508 standard for self-contained closed products (36 CFR 1194.25) by reference for electronic kiosks, but did not propose any rule text.

**The Comments:** Comments from disability community representatives were universally supportive of requiring automated airport kiosks to be accessible for people with visual and mobility impairments. Some disability commenters urged that accessibility be required for those with hearing, cognitive, and dexterity disabilities. A number of large disability advocacy organizations strongly supported applying the standards in section 707 of the ADA and ABA Accessibility Guidelines of 2004 for automated transaction machines (ATM) and fare machines, as well as the Section 508 requirements for self-contained closed

products, to both built-in and freestanding automated airport kiosks.

The public comments did not, however, provide any specific technical or cost information on which to determine the feasibility of imposing accessibility requirements for automated airport kiosks. The Air Transport Association (ATA) opposed including any accessibility requirements for automated airport kiosks in the final rule, asserting that the technology was still maturing and adopting standards at that stage would be inappropriate. In ATA's view, a kiosk should be considered accessible as long as airline personnel are available to assist passengers with a disability in accomplishing kiosk ticketing and check-in processes. A number of carriers emphasized the cost burden of retrofitting automated airport kiosks for accessibility, including increased airport facilities charges due to expansion of the automated kiosk footprint. IATA cited not only the prohibitive cost of adapting existing automated kiosks, but also the complications arising from shared ownership of automated kiosks by airlines, airport operators, and even government entities at foreign airports and the difficulty of allocating the costs of adapting such kiosks when not all of the kiosk owners must comply with Part 382. Some individual foreign carriers pointed out their inability to control the operation and use of automated airport kiosks through contractual provisions at foreign airports where kiosks are provided by airport operators.

*The Decision in the 2008 Final Rule:* We determined that we did not have sufficient information to accurately estimate the cost and technical impact of imposing accessibility standards on automated airport kiosks and concluded that new requirements for kiosk accessibility were not appropriate at that time. As an interim measure, we did require carriers whose automated airport kiosks are not accessible to provide equivalent service to passengers with disabilities who cannot use the kiosks and announced our intention to seek further comment about kiosk accessibility in an SNPRM.

*The Proposed Rule:* The Department believes that accessibility for people with disabilities cannot be viewed as a dispensable design feature. Increasingly, the business community also is recognizing the importance of accessibility as a baseline technology design factor to support expansion of customer bases and market shares. IBM, a leading manufacturer of kiosks and other self-service applications, has developed an automated airport kiosk

equipped with an industry standard audio connector, accessible hardware controls, and text-to-speech output. The model was tested by dozens of people with vision and mobility impairments who were able to complete the check-in process with an unprecedented level of independence. In this SNPRM, we propose to amend section 382.57 to require U.S. and foreign air carriers at every U.S. airport with 10,000 or more enplanements per year where they own, lease, or control automated kiosks providing flight-related services to their customers (e.g., ticket purchase, seat selection, issuance of boarding passes, bag tags, etc.) to ensure that all new kiosk orders initiated 60 days after the rule's effective date are for accessible units. This means that carriers would be required to ensure that all new automated kiosk orders initiated 60 days after the effective date of the final rule, including those to be installed at new locations and those replacing existing automated kiosks taken out of service in the normal course of operations (e.g., due to end of life cycle, a general equipment upgrade, a terminal renovation, etc.), are for models that meet the technical accessibility criteria set forth in this proposal.

Research conducted in conjunction with the regulatory evaluation for this SNPRM indicates that the average life cycle for airport kiosks is five years.<sup>5</sup> The National Federation of the Blind (NFB) indicated in a meeting with the Department on June 29, 2011, that a major U.S. airline disclosed to them that the average life cycle of its automated airport kiosks is seven to ten years. The same carrier also disclosed that automated airport kiosks may have various components replaced or upgraded (e.g., printer, motherboard) during the life cycle before the equipment is taken out of service. Assuming a longer functional life cycle for automated airport kiosks, NFB recommended that the Department consider requiring carriers to retrofit some portion of their kiosk fleet at each airport location to meet any proposed accessibility standards. At the same time, we are aware that retrofitting existing kiosks to meet accessibility standards would involve not only hardware modifications but also updated carrier software applications that may not be operable on older kiosk

machines. In light of the variations in the life cycle estimates and the software issues, the Department is considering requiring either retrofitting or replacement of a certain percentage or number of airport kiosks (e.g., retrofit 25% of existing kiosks or retrofit at least one kiosk at each airport location by a certain date). Given the estimated five-to ten-year life cycle of automated airport kiosks, we are concerned that our proposal may take too long for accessible kiosks to be available to individuals with disabilities. We are seeking additional information from the public on the accuracy of our assumption about the life cycle of automated airport kiosks and to determine the ability of the manufacturing sector to meet the demand for accessible automated airport kiosks. Such information will enable us to determine the appropriate timeframe for achieving accessibility of all automated airport kiosks. Although we are not proposing to require retrofitting or replacement of existing kiosks at this time, if the average life cycle for automated airport kiosks is seven to ten years, the transition time to achieve accessibility of all such kiosks at each airport location could be more than a decade. In such a situation, should the Department require carriers to retrofit or replace a certain portion of their kiosk fleet to meet the accessibility standards during the interim period until 100% of all automated airport kiosks are accessible?

Despite the advantages of the various incremental approaches we considered, there were difficulties with any proposed requirement that would result in less than 100% accessible automated kiosks at an airport. For example, if we required only 25% of a carrier's automated kiosks in an airport location to be accessible, would we also need to require that the carrier give priority access to any individual who needs an accessible kiosk? If the accessible automated airport kiosks at an airport location are used by all passengers, the wait time for passengers who need an accessible automated kiosk may end up being significantly longer than the wait for non-disabled passengers who can use any available automated kiosk at that location. At the same time, any mandate to reserve accessible automated kiosks at an airport location exclusively for passengers who need an accessible kiosk carries the potential of segregating and stigmatizing such passengers. In terms of independent use, passengers with visual impairments would still need assistance from carrier personnel in identifying an accessible model at

<sup>5</sup> U.S. Department of Homeland Security. U.S. Visitor and Immigrant Status Indicator and Technology (US-VISIT) Program. *Air/Sea Biometric Exit Project Regulatory Impact Analysis*. Washington, DC: U.S. Department of Homeland Security, U.S. VISIT Program, 2008. <http://airlineinfo.com/dhsdpdf/3.pdf> (accessed May 27, 2011).

airport locations where the carrier owned, leased, or controlled both accessible and inaccessible automated kiosks. Since these outcomes would undermine some of the benefits we are seeking to achieve, we view our best alternative as requiring that all new automated airport kiosks ordered after a certain date be accessible so that eventually 100% of kiosks at all airport locations will be accessible. We nonetheless seek public comment on the need to require that all new automated airport kiosks be accessible, and on any alternative approaches we should consider in addition to those discussed above (*e.g.*, requiring only 25% of a carrier's automated kiosks in an airport location to be accessible).

As mentioned above, while we are not requiring any retrofitting of existing kiosks, we are cognizant of the market impact of a requirement that would create a significant demand for a product that may not yet be widely available. We have posed a number of questions for public comment related to these potential impacts in the next section.

Until all automated kiosks in an airport location are accessible, we are also proposing to require carriers to ensure that each accessible automated kiosk they own, lease, or control at an airport location is visually and tactiley identifiable as such to users (*e.g.*, a raised international symbol of accessibility affixed to the front of the device) and is maintained in proper working condition. These requirements will no longer be applicable when 100% of the automated kiosks in an airport location are accessible, since it will not be necessary for automated kiosks to be identifiable as accessible to users, and carriers will have a business incentive to maintain their automated kiosks in working condition throughout the airport. During the transition to accessible kiosks, carriers would continue to be responsible to provide equivalent service as is required under the current rule (*e.g.*, by assistance from carrier personnel in using the kiosk or allowing the passenger to come to the front of the line at the check-in counter) to any passenger who cannot use a carrier's inaccessible automated kiosk at an airport location where the carrier has not yet installed an accessible kiosk. We also propose to require that carriers provide equivalent service during and after the transition is complete to passengers who cannot readily use an accessible automated airport kiosk due to his or her disability (*e.g.*, passenger is unable to reach the function keys on an automated kiosk that meets the accessible reach range requirement).

The Department is aware that not all automated kiosks at airports are owned by carriers and that some number of them are shared-use automated kiosks, owned, leased, or controlled jointly with the airport authority or other carriers. Our intention is that the same technical specifications and similar implementation requirements apply to shared-use automated airport kiosks. Carriers that jointly own, lease, or control shared-use automated kiosks with the airport operator at a U.S. airport with 10,000 or more enplanements per year would be required to enter into and implement a written, signed agreement with the operator by 60 days after the effective date of the final rule. The agreement must allocate responsibility among the parties for ensuring that all new orders for shared-use automated airport kiosks initiated 60 days after the effective date of the final rule, including replacements for older installed models, meet the technical accessibility criteria set forth in this proposal. The agreement would also have to spell out the respective responsibilities of the parties for ensuring that the accessible shared-use automated airport kiosks are maintained in proper working condition until all shared-use automated kiosks at each airport location are accessible. The Department's intention is to hold carriers and U.S. airport operators jointly and severally responsible for the timely and complete implementation of the agreement provisions.

We are proposing to apply parallel requirements to U.S. airport operators receiving Federal financial assistance that jointly own, lease, or control shared-use automated airport kiosks with carriers by amending our regulation implementing section 504 of the Rehabilitation Act of 1973 in 49 CFR part 27. Provisions nearly identical to those we propose to apply under 14 CFR 382.57 to carriers that jointly own, lease, or control shared-use automated kiosks with airport operators would also apply to those operators under proposed sections 49 CFR 27.71(j) and (k). The provisions applying to the carriers and the airport operators respectively would become effective at the same time to avoid any delays in implementing accessible shared-use automated kiosks. We estimate that under these proposed requirements travelers with disabilities will check-in using an accessible kiosk more than 12.4 million times in the first 10 years after the effective date of the rule, resulting in time savings to them and reduced labor costs to airlines having a total monetized value of nearly \$123 million.

Since carriers and airport operators that own, lease, or control shared-use automated airport kiosks must comply with the applicable requirements under Part 382 and Part 27, respectively, the burden will be on them both to ensure that any outside vendors with whom they have contracts to supply shared-use automated airport kiosks provide accessible models in accordance with the rule's provisions.

Currently there is no ACAA-derived accessibility standard that applies to automated airport kiosks owned, leased, or controlled by carriers. Accessibility standards for ATMs and fare vending machines (Section 707 of the 2010 ADA Standards), which were adopted as part of the Department of Justice's Americans with Disabilities Act (ADA) title II and III regulations (28 CFR Parts 35 and 36) in September 2010, do not cover automated airport kiosks. The Section 508 standard for self-contained, closed products (36 CFR 1194.25) adopted by the Access Board requires electronic information products used in or provided to the public by the Federal sector to be accessible, but also does not cover automated airport kiosks.

In addition to proposing changes to the Section 508 standards and section 255 guidelines for electronic and information technology on Web site accessibility, the ANPRM issued by the Access Board in March 2010, proposed to revise its ADA Accessibility Guidelines (ADAAG) to address, among other things, accessibility of self-service machines (kiosks) used for ticketing, check-in or check-out, seat selection, or boarding passes. See 75 FR 13457 (March 22, 2010). The comment period closed on June 21, 2010; however, further revisions to the ADAAG are not expected to become final for several years and will not become enforceable thereafter until adopted by DOT and DOJ. In July 2010, DOJ also published an ANPRM seeking comment on revisions to the Americans with Disabilities Act (ADA) regulations to ensure, among other things, the accessibility of electronic and information technology equipment and furniture such as kiosks, interactive transaction machines, point of sale devices and ATMs. See 75 FR 43452 (July 26, 2010). The ANPRM comment period closed on January 24, 2011, but a final rule amending the DOJ regulations is unlikely to become effective for some time. The DOJ ADA rules would have some application to automated airport kiosks, (*e.g.*, shared-use automated kiosks owned, leased, or controlled by publicly operated airports).

Given the agencies' separate rulemaking activities concerning self-service transaction machines, the Access Board, the Department of Justice, and the Department of Transportation formed an informal interagency working group and began collaborating in 2010 on the appropriate accessibility criteria for such machines generally, regardless of the type of services and information they are designed to provide to users. The accessibility standard proposed in this SNPRM for automated airport kiosks is based on DOJ's 2010 ADA Standards applicable to ATMs and fare machines (section 707 of the 2010 ADA Standards) and on selected provisions from the current Section 508 standard for self-contained closed products (36 CFR 1194.25). Collectively, these technical criteria address accessibility for individuals with visual, mobility, tactile, and hearing disabilities. For purposes of this SNPRM, proposed section 382.57(a) indicates how these common technical criteria generally apply in the airport environment. The accessibility standard in this proposed rule is intended to apply to automated airport kiosks with respect to their physical design and the functions they perform. Some common technical criteria included in the proposed standard do not presently apply to automated airport kiosks as they are currently configured, but may apply to them at some time in the future (e.g., criteria for biometric security features, captioning of multi-media content). We intend that those technical criteria addressing the accessibility of functions not currently available on automated airport kiosks will not apply until those functions are available on kiosks in the future.

**Request for Public Comment:** The Department is seeking public comment on the following questions concerning factors affecting the costs and benefits of the proposed requirements.

**Applicability**—The requirements for accessible automated airport kiosks are proposed to apply only at U.S. airports with 10,000 or more enplanements per year. To the extent that kiosks located at hotel lobbies and other non-airport venues in the U.S. are owned, leased, or controlled by carriers, DOT has authority under the ACAA to require the carriers to ensure that such kiosks be accessible. The Department recognizes that such venues may also be places of public accommodation to which DOJ regulations under title III of the Americans with Disabilities Act (ADA) apply. As such, title III entities would have to ensure that self-service transaction machines located in their facilities (e.g., ATMs, information

kiosks, airline check-in kiosks) also meet any technical and scoping requirements applicable under the ADA. (The 2010 DOJ ADA standards for new ATMs and fare machines become effective on March 15, 2012, and standards applicable to other self-service transaction machines used in programs and services provided by public entities and public accommodations are being addressed in a DOJ rulemaking now in progress.) In instances where airline kiosks are located in the facility of a title III entity, the airline and title III entity would have to comply respectively with the ACAA rules applicable to automated kiosks and the DOJ ADA standards applicable to self-service transaction machines. In light of the overlapping scope of the ACAA and the ADA rules, should automated kiosks that are owned, leased, or controlled by carriers and perform functions similar to airport kiosks, but are located in non-airport venues (e.g., hotel lobbies), be covered in this rulemaking?

**Effective Date**—Should the proposed time frame for accessible kiosks (*i.e.*, kiosks ordered 60 days after the effective date of the rule) be reduced or increased assuming the rule is effective 30 days after publication in the **Federal Register**? Is it reasonable to require that all new kiosk orders initiated after the effective date of the rule be for accessible models? Should there be a delay in the effective date of this provision? If so, what is a reasonable amount of time to delay the effective date of this provision? Should the effective date for carriers to enter into and implement agreements with airport operators concerning the provision and maintenance of accessible shared-use automated airport kiosks be more than 60 days after the final rule's effective date? If so, what is a reasonable time to enter into such agreements and commence implementation?

**Alternatives**—Should less than 100% of new automated airport kiosks ordered after the effective date of the rule be required to be accessible? If so, what is a reasonable percentage to be accessible at each airport location? If only some kiosks are accessible at each location, how would carriers ensure that the accessible kiosks are available to passengers with disabilities when needed? Would a phasing in period over 10 years, gradually increasing the percentage of automated airport kiosks required to be accessible, meaningfully reduce the costs of implementing this requirement (e.g., 25% of new automated kiosks must be accessible within 3 years of the rule's effective

date, 50% within 5 years, 75% within 7 years and 100% within 10 years)?

Should existing automated airport kiosks be required to be retrofitted? What percentage or number of existing kiosks should we require to be retrofitted? How much time should be provided to carriers/airports to retrofit existing automated airport kiosks? What about automated airport kiosks currently in use that have inactive accessibility features (*e.g.*, equipped with headset jack but lacks internal software to use this accessibility feature)? Should airlines be required to activate any dormant accessibility features on existing automated airport kiosks immediately upon the effective date of the rule or does the activation of such features require extensive programming? What would be the cost of activating dormant accessibility features on existing automated airport kiosks? What alternative requirements for automated airport kiosk accessibility might be proposed and what would be the associated benefits and costs for each?

**Costs and Benefits**—Our preliminary regulatory evaluation estimates the net benefits of time saved by air travelers with disabilities and reduced labor costs to carriers from adoption of the proposed automated airport kiosk accessibility requirements at \$70.4 million at the 7 percent discount rate and \$86.2 million at the 3 percent discount rate over the entire 10-year analysis period. This estimate assumes that an average of 1.2 million travelers with disabilities would be able to use accessible kiosks in each of the first 10 years after the effective date of the rule (more than 12.4 million total), with a five-year phase-in period as accessible kiosks installations gradually increase.

Quantitative estimates of the benefits to air travelers with disabilities who can use accessible automated kiosks were developed for the evaluation based on an average reduction of 13 minutes in check-in waiting times. The value of time saved using an accessible kiosk by a traveler with a disability was calculated by multiplying this average amount of time saved by the standard value of time for air travel passengers specified in the applicable FAA guidance (\$28.60 per hour). See “Preliminary Regulatory Analysis: ACAA SNPRM Accessible Kiosks and Web Sites,” July 29, 2011, p. 27.

The preliminary regulatory analysis also assumes that carriers will experience a reduction in per-person check-in costs, as more persons with disabilities use accessible kiosks instead of requiring check-in assistance from agents. The value of the reduced

assistance costs benefits were calculated using the average carrier savings per passenger when using an automated airport kiosk to check-in instead of going to the counter (estimated at \$3.70 per transaction in a recent trade publication), multiplied by the number of passengers with disabilities who are projected to use accessible kiosks. See “Preliminary Regulatory Analysis: ACAA SNPRM Accessible Kiosks and Web Sites,” July 29, 2011, p. 27.

Information obtained from kiosks vendors indicates that the bulk of the incremental costs associated with making kiosk hardware, middleware, and software applications accessible are fixed, therefore they do not vary appreciably with the number of units sold. The preliminary regulatory analysis estimates that these modifications would add \$750 to the cost of each new kiosk installed at a new location or replacing an existing older model, with the variable costs for kiosk hardware modifications (e.g., keypads, audio output jacks) representing no more than 10 to 20 percent of this amount. Total compliance costs were estimated at \$21,375,000 based on a \$750 cost increase per accessible unit and the number of newly added and replacement kiosks (28,500) projected to be installed during the 10-year analysis period. See “Preliminary Regulatory Analysis: ACAA SNPRM Accessible Kiosks and Web Sites,” July 29, 2011, p. 30–31. Costs associated with the kiosk accessibility requirements are not expected to accrue until six months after the effective date of the rule when the initial deliveries of accessible kiosks ordered 60 days after the rule’s effective date would take place.

In light of the above, the Department seeks additional information and comment from the public in response to the following questions. What would be the average amount of time a passenger with a disability would save by using an accessible automated airport kiosk? Would the amount of time saved vary by airport and what airport-specific factors could affect the amount of time saved? What would be the estimated impact on average wait times for an accessible automated kiosk at airport locations where only 25% are accessible as compared to locations where 100% are accessible? Would the wait time for a passenger with a disability to use an accessible automated kiosk be less if such passengers were given priority access to such kiosks in airport locations where less than 100% of the automated kiosks are accessible? If such passengers are not given priority access to accessible automated kiosks, how

much longer would their wait time be versus non-disabled passengers who can use any available machine? What factors have the greatest impact on wait time for an automated airport kiosk (e.g., number of flights scheduled for departure, distance of the flight, destination of the flight, time between scheduled departures, number of passengers per flight, etc.)?

What percentage of persons with a disability who cannot use an inaccessible automated airport kiosk would use an accessible one if available? Do passengers with disabilities prefer to check-in online at home to using an automated airport check-in kiosk? Is there a quantifiable benefit associated with reduced risk in having to provide sensitive personal information to strangers in order to receive assistance at an inaccessible kiosk? Is there a quantifiable benefit associated with reduced risk of legal action related to kiosk inaccessibility?

What cost savings can be expected from the reduction in resources carriers will have to allocate to provide equivalent alternative service to passengers with disabilities who cannot use a carrier’s inaccessible kiosk at an airport location (e.g., assisting passengers at the ticket counter or at an inaccessible kiosk versus directing passengers to the carrier’s accessible automated kiosk at that airport location)? What is the cost impact of requiring carriers to provide equivalent service to passengers who cannot use an accessible kiosk due to their disability at airport locations where all automated kiosks are accessible?

Would a requirement for accessible automated airport kiosks have a significant impact on the cost, inventory, or delivery of such kiosks, and if so, for how long? Can manufacturers of accessible automated airport kiosks meet the market demand if 100% of new kiosks ordered starting 60 days after the final rule’s effective date be accessible? If not, up to what percentage of new automated airport kiosks could the Department require to be accessible (e.g., 50% or 75%) before the demand would exceed what the manufacturers could meet? How often are automated airport kiosks replaced typically? How many manufacturers currently make automated airport kiosks? How many manufacturers currently make accessible automated airport kiosks? How many manufacturers that make inaccessible automated airport kiosks are capable of making an accessible model? How much lead-time does a company that manufactures inaccessible automated airport kiosks need to develop and start

manufacturing an accessible model as proposed in this SNPRM? What is the size of companies that manufacture automated airport kiosks? How many manufacturers of automated airport kiosks are small businesses? Do these smaller companies manufacture products other than automated airport kiosks? Do smaller companies have the capital and technology available to make accessible automated airport kiosks? Would smaller companies be able to handle the market demand for accessible automated airport kiosks resulting from this rule or might cost or other reasons delay the manufacturing technology for such kiosks causing these companies to be pushed out of the market? What is the cost difference between manufacturing a new automated airport kiosk that meets accessibility standards and one that does not? What is the cost of retrofitting an existing kiosk to meet accessibility standards versus manufacturing a new accessible kiosk? What are the costs of developing accessible carrier software applications that are capable of running on proprietary or shared-use kiosks that have accessible hardware features?

Are there significantly greater quantitative and qualitative benefits and lower costs associated with requiring carriers to ensure that only 50% versus 100% of the automated airport kiosks are accessible? Do airlines anticipate an increase in the number of automated airport kiosks used for check-in and other services? If so, what would be the percentage of increase in the number of automated airport kiosks and what additional types of services are anticipated and over what period of time?

**Shared-Use Automated Airport Kiosks**—As discussed above, automated airport kiosks used by carriers may be either proprietary or shared-use. Is the term “shared-use automated airport kiosk” adequately described in the rule text? What are the most common kiosk ownership arrangements at airports? What is the current number of automated check-in kiosks that are proprietary, that are jointly owned, leased, or controlled with airports, and that are jointly owned, leased, or controlled by carriers only? Who typically is responsible for the purchase, operation, and maintenance of shared-use automated kiosks at airports? What are the procurement and maintenance costs incurred by carriers for proprietary automated airport kiosks? What are the procurement and maintenance costs incurred by carriers that provide the shared-use automated kiosk hardware at an airport? What are the procurement and maintenance costs incurred by

carriers that collaborate with shared-use automated airport kiosks using compatible software and data sets? What are the procurement and maintenance costs incurred by airports for shared-use automated kiosks? Carriers and airport operators would be jointly and severally responsible for ensuring that new orders for automated shared-use kiosks initiated 60 days after the rule's effective date are for accessible units and that the automated kiosks are maintained in proper working condition. Are there potential difficulties associated with meeting this requirement given that responsibility for the hardware and middleware components of shared-use automated kiosks generally falls to airports and the responsibility for compatible software applications and data sets to carriers? If a single carrier is the provider of shared-use automated kiosks at a given airport, is a written agreement needed between the provider carrier and the collaborating carriers concerning the accessibility and maintenance of the kiosks? If so, would additional time be needed after the rule's effective date for carriers to enter into such a written agreement? We understand that some shared-use automated airport kiosks are owned neither by the airport nor a carrier, but by an outside service provider. It is our intention that carriers and airports ensure that their orders initiated 60 days after the effective date of the rule for automated airport kiosks to be supplied by such service providers are for accessible models.

**Technical Criteria**—As discussed above, the proposed accessibility standard for automated airport kiosks is based on the technical specifications in Section 707 of the 2010 ADA Standards that apply to fare machines and ATMs. It also includes certain specifications from the Section 508 standard for self-contained closed products (36 CFR 1194.25). We propose to apply this accessibility standard to automated airport kiosks with respect to their physical design and the functions they perform. Is the term “automated airport kiosk” adequately described in the rule text? What functions other than those described in the rule text and the preamble are presently performed by automated airport kiosks? Are there any other accessible features not covered by the proposed standard that should be included?

#### *1. Use of Assistive Technology*

The standard would require that automated airport kiosks be accessible to those with visual impairments without attaching assistive technologies other than a personal headset or audio

loop. A telephone handset or an industry standard connector would be provided so that users with visual impairments can attach personal headsets or use a handset to listen to the speech output during a transaction while maintaining their privacy. What are the costs associated with providing a handset or industry standard connector on the kiosk? Is technology available that would allow people with disabilities to use wireless technology such as mobile phones and Bluetooth at an automated airport kiosk in lieu of requiring the kiosk itself to have a handset or headset connector? If so, should we require that automated airport kiosks use such technology?

#### *2. Operable Parts*

We propose to require that the operable parts on new automated airport kiosks be tactiley discernable by users to avoid unintentional activation and request comment regarding the cost of meeting the requirement. This specification is based on the current Section 508 standard 36 CFR 1194.25(c) and 1123.23(k). We are also proposing that where a timed response is required, the automated airport kiosks alert the user by sound or touch and give the user an opportunity to indicate that more time is needed. We ask for comment on whether timeouts present barriers to using automated airport kiosks and on the cost or potential difficulties associated with meeting this requirement.

#### *3. Outputs*

Speech outputs will be required to be coordinated with the information on the visual display so that users with low vision or cognitive disabilities may benefit from using the display along with the speech. Regarding the exceptions and the advisory listed under proposed section 382.57(c)(5)(i)(2) “Receipts, Tickets, and Transaction Outputs,” are there any other types of information that should be required on the printed output other than the types listed in the advisory or that may be excluded from the required printed output listed in the exceptions? Should speech output be required through either a handset, standard connector headset, or an audio loop? Are considerations for speech output other than those defined in proposed section 382.57(c)(5)(i) needed? What about requiring volume control for the automated airport kiosk's speaker only, without requiring any other mode of voice output? What about privacy concerns under such an arrangement? What are the costs/benefits of requiring

a speaker only, without handset and headset output capabilities?

#### *4. Volume Control*

If both volume control and the ability to use a personal audio loop are mandated accessibility features, can the same industry-standard connector be used for both speech navigation and the automated airport kiosk's audio output? If so, how would users select the function that meets their particular disability-related needs? Would volume controls similar to those provided in speech-enabled ATMs be useful in the airport environment? Should the dB amplification gain associated with the volume control for private listening be specified? Is incremental volume control up to an output amplification of at least 65 dB sufficient for voice output in public areas? When ambient noise at the airport is above 45 dB, is a selectable volume gain up to 20 dB sufficient? Should the same decibel gains apply to outputs delivered both in public areas and through assistive listening headsets or should different amplification gains apply to each output type? If volume control is required, are the specified dB gains appropriate to address the needs of individuals who are hard of hearing? See proposed section 382.57 (c)(5)(ii)2).

#### *5. Captioning*

For automated airport kiosks having certain multi-media content, captioning would be required. See (c)(5)(iii). This proposed requirement is based on the Section 508 standard for video and multi-media products. See 36 CFR 1194.24(c).

#### *6. Input Controls*

Software applications are now available to give individuals who are blind access to touch screen-based technology, including entering and reviewing text via a touch screen. As a result, certain touch screen devices (e.g., recent versions of Apple's iPhone, iPod Touch, and iPad; mobile devices with Google's Android platform; etc.) are becoming very popular with consumers who are blind. These devices are equipped with a screen-reading technology that uses built-in voiceover software and a touch-sensitive track pad to give the user a spoken description of what is on the display screen as he/she drags a finger over the track pad. The location of a verbal descriptor on the track pad corresponds to its location on the display screen. Should the requirement that input controls be tactiley discernable be revised to allow for input methods similar to the Apple devices? Are most users who are blind or who have low vision familiar with

how to use such touch screens? Proposed section 382.57 (c)(6)(ii) specifies an arrangement of the numeric keypad which typically is provided at ATMs. How should symbols be indicated on a numeric input keypad? Automated airport kiosks generally provide a touch screen keyboard or sometimes a physical alphabetic keyboard. When either a virtual alphabetic or a physical keyboard is provided, should the arrangement of the keys be specified? Are the function keys specified in proposed section 382.57 (c)(6)(iii) sufficient to address the types of functions typically available on automated airport kiosks? Besides the keypad functions and corresponding tactile symbols indicated in proposed section 382.57 (c)(6)(iii)(2), what other function keys are needed and what tactile symbols should identify them? Should the status of all locking or toggle controls be required to be visually discernable and discernable through either touch or sound?

#### 7. Biometric Systems

Where automated airport kiosks employ biometrics as a means of user identification, we are including a requirement in proposed section 382.57 (c)(9) that at least two options using different biological characteristics be available. This will ensure that where finger print identification is used, for example, a person without arms can still use an alternate biometric method (e.g., iris scanner) provided by the kiosk. We are requesting comment on the importance of this provision and the costs associated with implementing it.

#### Regulatory Analysis and Notices

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

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 13563 (Improving Regulation and Regulatory Review) and Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 12866 (Regulatory Planning and Review) and is consistent with the requirements in both orders. Among other things, Executive Order 13563 directs agencies to use the best possible techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by

law, agencies may consider values that are difficult or impossible to quantify, including equity, human dignity, and fairness. In developing this proposed rule, the Department has sought to use the best possible techniques to quantify the benefits and costs.

We have produced a preliminary regulatory evaluation addressing the economic impact the proposed requirements in this SNPRM would impose on U.S. and foreign air carriers covered by the ACAA rule, as well as on their agents. We recognize that compliance with the accessibility standards for Web sites and automated airport kiosks set forth in this SNPRM will incur both implementation and ongoing operational costs, as well as potentially lead to the expanded customer bases and reduced customer service personnel costs for carriers. Our preliminary regulatory evaluation estimates benefits and costs over the 10-year period starting 6 months after the effective date of the rule, because no Web site benefits (and no kiosk benefits or costs) will accrue until 6 months after the effective date of the rule. Some carriers may need to incur costs to comply with the proposed Web sites accessibility requirements starting as early as 6 months before the 10-year analysis period begins. These "Year 0" compliance costs have been included in the 10-year estimates of benefits and costs.

We estimate the expected present value (PV) of the benefits of the proposed automated airport kiosk accessibility requirements at \$86.2 million over the 10-year analysis period, using a 7 percent discount rate and \$104.8 million, using a 3 per cent rate. The expected PV of compliance costs incurred by carriers and airports over the same period to meet these proposed requirements is \$15.8 million, discounted at 7 percent and \$18.6 million, discounted at 3 per cent. The expected PV of net benefits for these proposed requirements over the 10-year analysis period, therefore, is estimated at \$70.4 million using the 7 percent discount rate and \$86.2 million using a 3 percent discount rate.

With respect to the proposed requirements to ensure air travel Web site accessibility, our preliminary regulatory evaluation estimates the expected PV of the benefits at \$122.1 million over the 10-year analysis period, discounted at 7 percent and \$147.3 million, discounted at 3 per cent. The expected PV of costs incurred by carriers and airports to comply with these proposed requirements over the same period is estimated to be \$66.8 million, discounted at 7 percent and

\$72.6 million, discounted at 3 per cent. The expected PV of net benefits to accrue from the proposed Web site accessibility requirements over the 10-year analysis period, therefore, is estimated at \$55.3 million, using a 7 percent discount rate and \$74.7 million, using a 3 percent discount rate.

We believe this rule would have important benefits in support of values that are difficult to monetize or quantify, including independence and promoting a more inclusive society. We have carefully considered these values in developing this SNPRM. The benefits we seek to achieve include greater access for individuals with disabilities to conveniences and services offered to the general public that currently either are not available to them or are not independently accessible by them. The value of time spent comfortably using accessible Web sites and automated airport kiosks, as well as the value of avoiding time spent struggling with or seeking assistance in using inaccessible technologies, are benefits in addition to the conventional measurement of time saved by the use of accessible technologies. (Lewis, D., & Suen, S. L., & Federing, D. (2010). Countering the economic threat to sustainable accessibility. Paper presented at the 12th International Conference on mobility and transport for elderly and disabled persons (TRANS 2010) held in Hong Kong on 2–4 June 2010.) This rulemaking affirms the human dignity of individuals with disabilities by affording them greater independence overall in accessing air travel. In keeping with the guidelines in Executive Order 12866 as amended, we believe that enhanced independence is a viable consideration in assessing the benefits of these proposed measures. We further believe that these measures requiring Web site and automated airport kiosk accessibility may eventually lead to the permanent removal of existing access barriers for people with disabilities to use these services and eliminate the costs associated with providing alternative forms of assistance to compensate for the widespread inaccessibility of these technologies. These are important factors to consider in estimating the benefits we expect would be achieved by ensuring that airline Web sites and automated kiosks at airports conform to the applicable accessibility standards. The Department seeks comment on the Preliminary Regulatory Evaluation, its approach, and the accuracy of its estimates of costs and benefits. A copy of the Preliminary Regulatory

Evaluation 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 proposed rule 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 ACAA and 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 13175

This proposed rule 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 proposals 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 13175 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. The regulatory initiatives discussed in this SNPRM would have some impact on small carriers and some indirect impact on small ticket agents. However, based on our small entity economic evaluation, I certify that they would not have a significant economic impact on a substantial number of small entities. We invite comment to facilitate our assessment of the potential impact of these initiatives on small entities.

This SNPRM would require small U.S. carriers that own, lease, or operate proprietary or shared-use automated kiosks at U.S. airports with 10,000 or more annual enplanements to begin ordering and installing accessible models when adding or replacing

automated kiosks in the normal course of business operations. The same requirement would apply to operators of airports with 10,000 or more annual enplanements that own, lease, or operate shared-use automated kiosks. Based on our preliminary research, however, it appears that no small airports or small U.S. carriers own, lease, or operate shared-use automated kiosks, and that no small U.S. carriers own, lease, or operate proprietary automated airport kiosks at covered U.S. airports. At this time, therefore, it appears that neither small airports nor small carriers would incur any costs associated with the kiosk requirements. We are seeking public comment on these findings.

There are 50 U.S. carriers meeting the DOT definition of "small carrier" that would have to comply with the proposed Web site accessibility requirements at a cost of \$37,800 to \$61,200 over the two-year implementation period, depending on the number of pages on the site. The annual revenues for these carriers appear to range from \$10 million to over \$100 million, indicating that the cost impact on small carriers would not be significant. Although the proposal would not require small ticket agents that sell air transportation to ensure that their Web sites are accessible, it would require carriers to ensure that their agents that are small business entities provide Web-based fares and other Web-based amenities to passengers who self-identify as being unable to use the agents' Web sites due to a disability. Carriers already must provide this service to passengers who cannot use their Web sites due to a disability under the current rule, but they would be required to ensure that their agents that are small business entities do so for the first time under the proposed rule. We anticipate that there will be some indirect compliance costs on 1,704 small travel agencies and 384 small tour operators that have Web sites with online booking capability, and on as many as 9,921 small travel agencies and 2,336 small tour operators without online sales capability that will have to make any discounted fares advertised on their Web sites and any other amenities that may be offered on these Web sites available upon request to passengers who are unable to use the agents' Web sites due to their disabilities. Our research indicates that about 90% of these small entities employ less than ten people, and 80% employ less than five. Given that the requirement would rely largely on existing employee skills to find and

book Web-based discount fares and amenities, and considering the small number of employees in the majority of these businesses, we believe the economic impact on most covered entities to implement the requirements would not be significant. We also request public comment on the cost impact of this proposed requirement.

#### E. Paperwork Reduction Act

This SNPRM proposes a new collection of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 49 U.S.C. 3501 *et seq.*). Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to the Office of Management and Budget (OMB) for approval, it must publish a document in the **Federal Register** providing notice of and a 60-day comment period on the proposed collection of information. This SNPRM proposes to require airlines and U.S. airport operators to enter into agreements outlining their joint responsibilities for implementing the accessibility requirements for shared-use automated kiosks. These agreements will help ensure that the accessibility requirements for shared-use automated airport kiosks are effectively implemented by the parties at each U.S. airport and provide information to assist the Department in assessing carrier compliance with these requirements. The Department intends to publish a separate notice in the **Federal Register** inviting OMB, the general public, and other Federal agencies to comment on this new information collection requirement. As prescribed by the PRA, the requirements will not go into effect until OMB has approved them and the Department has published a notice announcing the effective date of the information collection requirement.

#### F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995, which does not apply to nondiscrimination civil rights requirements, do not apply to this proposed rule.

#### List of Subjects

##### 14 CFR Part 382

Air carriers, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

##### 49 CFR Part 27

Airports, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

Issued this 15th day of September, 2011, at Washington, DC.  
**Raymond H. LaHood,**  
Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR part 382 and 49 CFR part 27 as follows:

## TITLE 14—AERONAUTICS AND SPACE

### 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. 41702, 41705, 41712, and 41310.

2. Section 382.3 is amended by adding definitions for “automated airport kiosk”, “flight-related services” and “shared-use automated airport kiosk” in alphabetical order to read as follows:

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

\* \* \* \* \*

*Automated airport kiosk* means a self-service transaction machine that a carrier owns, leases, or controls and makes available at a U.S. airport to enable customers to independently obtain flight-related services.

\* \* \* \* \*

*Flight-related services* mean functions related to air travel including, but not limited to, ticket purchase, rebooking cancelled flights, seat selection, and obtaining boarding passes or bag tags.

\* \* \* \* \*

*Shared-use automated airport kiosk* means a self-service transaction machine provided by an airport, a carrier, or an independent service provider with which any carrier having a compliant data set can collaborate to enable its customers to independently access the flight-related services it offers.

#### § 382.31 [Amended]

3. Section 382.31(c) is removed.  
4. Section 382.43 is amended by revising the section heading and adding paragraphs (c) through (f) to read as follows:

#### § 382.43 Must information and reservation services of carriers be accessible to individuals with visual, hearing, and other disabilities?

\* \* \* \* \*

(c) As a U.S. or foreign carrier that owns or controls a primary Web site that markets air transportation, you must ensure the public-facing Web pages on

your Web site are accessible to individuals with disabilities in accordance with this section. As a foreign carrier, only Web pages on your Web site involved in marketing covered air transportation to the general public in the U.S. must be accessible to individuals with disabilities. Covered Web pages and Web sites must conform to all Level A and Level AA Success Criteria and all Conformance Requirements from the World Wide Web Consortium (W3C) Recommendation 11 December 2008, Web site Content Accessibility Guidelines (WCAG) 2.0, as specified in paragraphs (c)(1) through (c)(3) of this section:

(1) A new or completely redesigned primary Web site placed online on or after [insert date 180 days from the effective date of the final rule] shall be conformant. A complete redesign means technical changes affecting a substantial portion of the site such as its visual design (the site’s “look and feel”), upgrading the site to ensure its overall compliance with technical standards, or reorganizing the site’s information architecture. Updating the information content of one or more Web pages alone would not constitute a Web site redesign.

(2) Web pages on an existing Web site associated with obtaining the following services and information shall either be directly conformant on your primary Web site or have accessible links from the non-conforming pages on your primary Web site to corresponding pages on your mobile Web site that are conformant by [insert date one year from the effective date of the final rule]:

- (i) Booking or changing a reservation;
- (ii) Checking-in for a flight;
- (iii) Accessing a personal travel itinerary;
- (iv) Accessing the status of a flight;
- (v) Accessing a personal frequent flyer account;
- (vi) Accessing flight schedules; and
- (vii) Accessing carrier contact information.

(3) All covered Web pages on your primary Web site, including those made conformant during the second phase by a link to a conformant page on your mobile Web site, shall be conformant by [insert date two years from the effective date of this rule].

(d) As a carrier, when marketing your airline tickets on the Web site of a ticket agent whose annual receipts exceed the maximum established in 13 CFR 121.201, you must ensure that the Web pages on which such tickets are marketed conform to all WCAG 2.0 Level A and Level AA Success Criteria and all Conformance Requirements by

[insert date two years from the effective date of the final rule]. You are not required to apply this requirement with respect to ticket agents whose annual receipts do not exceed the maximum established in 13 CFR 121.201; however, you must ensure that Web-based fare discounts and other Web-based amenities provided to customers by such agents on your behalf are made available to a person with a disability who indicates that he or she cannot use the agents’ Web sites and who purchases a ticket using another method.

(e) As a carrier, until your Web sites are fully accessible in accordance with the requirements of this section, you must assist a prospective passenger who contacts you through another channel (e.g., telephone or walk-in) and indicates that he or she is unable to use your inaccessible Web site due to a disability as follows:

(1) Disclose Web-based discount fares, if his or her itinerary qualifies for the discounted fare.

(2) Waive any applicable fee to make a reservation or purchase a ticket using a method other than your Web site (e.g., by phone).

(f) As a carrier, you must assist a prospective passenger who indicates that he or she is unable to use your accessible Web site due to a disability and contacts you through another channel (e.g., telephone or walk-in) in accordance with paragraphs (e)(1) and (e)(2) of this section.

5. Section 382.57 is revised to read as follows:

#### § 382.57 What accessibility requirements apply to automated airport kiosks?

(a) As a carrier, you must ensure that the requirements set forth below are followed for any automated airport kiosk you own, lease, or control for which an order is initiated after [insert date 60 days after the effective date of the rule] for installation at a U.S. airport with 10,000 or more enplanements per year.

(1) You shall ensure that all new orders for automated airport kiosks are for models that meet the design specifications set forth in paragraph (c) of this section. You are not required to retrofit existing kiosks.

(2) Until all automated airport kiosks you own, lease, or control at an airport location meet the design specifications in paragraph (c) of this section, you must ensure that each such kiosk you order is:

(i) Visually and tactiley identifiable to users as accessible (e.g., a raised ADA-compliant international symbol of

accessibility affixed to the front of the device).

(ii) Maintained in proper working condition.

(b) As a carrier, you must ensure that the requirements set forth below are followed for any shared-use automated airport kiosk you jointly own, lease, or control with the airport operator for which an order is initiated after [insert date 60 days after the effective date of the rule] for installation at a U.S. airport with 10,000 or more enplanements per year.

(1) By [insert 60 days after the effective date of the rule], you must have a written, signed agreement with the airport operator allocating responsibility for ensuring that the shared-use automated airport kiosks meet the design specifications set forth in paragraph (c) in accordance with the requirements of paragraphs (b)(2) through (3) of this section. Carriers and airport operators are jointly and severally responsible for the timely and complete implementation of the agreement provisions.

(2) You shall ensure that all new orders for shared-use automated airport kiosks are for models that meet the design specifications set forth in paragraph (c) of this section. You are not required to retrofit existing kiosks.

(3) Until all shared-use automated airport kiosks meet the design specifications in paragraph (c) of this section, you must ensure that each such kiosk you order is:

(i) Visually and tactilely identifiable to users as accessible (e.g., a raised ADA-compliant international symbol of accessibility affixed to the front of the device).

(ii) Maintained in proper working condition.

(c) You must ensure that the automated airport kiosks provided in accordance with this section conform to the following technical accessibility standards with respect to their physical design and the functions they perform:

(1) Self Contained. Except for personal headsets and audio loops, automated kiosks shall be operable without requiring the user to attach assistive technology.

(2) Clear Floor or Ground Space. A clear floor or ground space complying with 36 CFR Part 1191, appendix D, section 305 of the U.S. Department of Justice's 2010 ADA Standards for Accessible Design shall be provided.

(3) Operable Parts. Operable parts shall comply with subsection (c)(3) and 36 CFR Part 1191, appendix D, section 309 of the 2010 ADA Standards.

(i) Identification. Operable parts shall be tactilely discernible without activation.

(ii) Timing. Where a timed response is required, the user shall be alerted by touch or sound and shall be given the opportunity to indicate that more time is required.

(iii) Status Indicators. Status indicators, including all locking or toggle controls or keys, shall be discernible either through touch or sound.

(iv) Color. Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(4) Privacy. Automated airport kiosks shall provide the opportunity for the same degree of privacy of input and output available to all individuals.

(5) Output. Automated airport kiosks shall comply with this paragraph (c)(5).

(i) Speech Enabled.

(A) Automated airport kiosks shall be speech enabled. Operating instructions and orientation, visible transaction prompts, user input verification, error messages, and all displayed information for full use shall be accessible to and independently usable by individuals with vision impairments. Speech shall be delivered through a mechanism that is readily available to all users, including but not limited to, an industry standard connector or a telephone handset. Speech shall be recorded or digitized human, or synthesized. Speech shall be coordinated with information displayed on the screen.

(B) Audible tones shall be permitted instead of speech for visible output that is not displayed for security purposes, including but not limited to, asterisks representing personal identification numbers.

(C) Advertisements and other similar information shall not be required to be audible unless they convey information that can be used in the transaction being conducted.

(D) Speech for any single function shall be automatically interrupted when a transaction is selected. Speech shall be capable of being repeated and paused.

(E) Where receipts, tickets, or other outputs are provided as a result of a transaction, speech output shall include all information necessary to complete or verify the transaction, except that:

(1) Automated airport kiosk location, date and time of transaction, customer account numbers, and the kiosk identifier shall not be required to be audible.

(2) Information that duplicates information available on-screen and

already presented audibly shall not be required to be repeated.

(3) Printed copies of a carrier's contract of carriage, applicable fare rules, itineraries and other similar supplemental information that may be included with a boarding pass shall not be required to be audible.

(F) The information necessary to complete or verify a transaction depends on the nature of the transaction and the automated kiosk type. Where automated kiosks provide boarding passes and other similar transactional outputs, information such as concourse, gate number, seat number, and boarding group is necessary to complete and verify a transaction.

(G) Receipts, tickets, and similar transactional output usually are printed, but this is not always the case. For example, a boarding pass might be transferred to a smart phone or personal digital assistant. Regardless of the delivery method, the automated kiosk must convey to the user the information provided in receipts, tickets and other similar transactional outputs that is necessary to complete and verify a transaction.

(ii) Volume Control. Automated kiosks shall provide volume control complying with paragraphs (c)(5)(ii)(A) and (B) of this section.

(A) Private Listening. Where speech required by paragraph (c)(5)(i) of this section is delivered through a mechanism for private listening, the automated kiosk shall provide a means for controlling the volume.

(B) Speaker Volume. Where sound is delivered through speakers on the automated kiosk, incremental volume control shall be provided with output amplification up to a level of at least 65 dB SPL. Where the ambient noise level of the environment is above 45 dB SPL, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.

(iii) Captioning. Multimedia content that contains speech or other audio information necessary for the comprehension of the content shall be open or closed captioned.

Advertisements and other similar information shall not be required to be captioned unless they convey information that can be used in the transaction being conducted.

(iv) Tickets and Boarding Passes. Where tickets or boarding passes are provided, tickets and boarding passes shall have an orientation that is tactilely discernible if orientation is important to further use of the ticket or boarding pass.

(6) Input. Input devices shall comply with paragraphs (c)(6)(i) through (c)(6)(iii) of this section.

(i) Input Controls. At least one tactilely discernible input control shall be provided for each function. Where provided, key surfaces not on active areas of display screens shall be raised above surrounding surfaces. Where touch or membrane keys are the only method of input, each shall be tactilely discernible from surrounding surfaces and adjacent keys.

(ii) Numeric Keys. Numeric keys shall be arranged in a 12-key ascending or descending telephone keypad layout. The number five key shall be tactilely distinct from the other keys.

(iii) Function Keys. Function keys shall comply with paragraphs (c)(6)(ii)(A) and (B) of this section.

(A) Contrast. Function keys shall contrast visually from background surfaces. Characters and symbols on key surfaces shall contrast visually from key surfaces. Visual contrast shall be either light-on-dark or dark-on-light. However, tactile symbols required by paragraph (c)(6)(iii)(B) shall not be required to comply with paragraph (c)(6)(iii)(A) of this section.

(B) Tactile Symbols. Function key surfaces shall have tactile symbols as follows: Enter or Proceed key: raised circle; Clear or Correct key: raised left arrow; Cancel key: raised letter ex; Add Value key: raised plus sign; Decrease Value key: raised minus sign.

(7) Display Screen. The display screen shall comply with paragraphs (c)(7)(i) and (c)(7)(ii) of this section.

(i) Visibility. The display screen shall be visible from a point located 40 inches (1015 mm) above the center of the clear floor space in front of the automated kiosk.

(ii) Characters. Characters displayed on the screen shall be in a sans serif font. Characters shall be 3/16 inch (4.8 mm) high minimum based on the uppercase letter "I." Characters shall contrast with their background with either light characters on a dark background or dark characters on a light background.

(8) Braille Instructions. Braille instructions for initiating the speech mode shall be provided. Braille shall comply with 36 CFR part 1191, appendix D, section 703.3 of the 2010 ADA Standards.

(9) Biometrics. Biometrics shall not be the only means for user identification or control, except that where at least two biometric options that use different biological characteristics are provided, automated kiosks shall be permitted to use biometrics as the only means for user identification or control.

(d) Until you have met the requirements of paragraphs (a) or (b), and (c) of this section, you must provide equivalent service upon request to passengers with a disability who cannot readily use your automated airport kiosks (e.g., by directing a passenger who is blind to an accessible automated kiosk, assisting a passenger in using an inaccessible automated kiosk, or allowing the passenger to come to the front of the line at the check-in counter).

(e) You must provide appropriate equivalent service as described in paragraph (d) of this section upon request to any passenger, who due to his or her disability, cannot readily use an accessible automated kiosk that you own, lease, or control at a U.S. airport.

## TITLE 49—TRANSPORTATION

### PART 27—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

6. The authority citation for Part 27 continues to read as follows:

**Authority:** Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310(a) and (f); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

7. Section 27.71 is amended by adding paragraphs (j) and (k) as follows:

#### § 27.71 Airport facilities.

\* \* \* \* \*

(j) *Shared-use automated airport kiosks.* This paragraph (j) applies to U.S. airports with 10,000 or more annual enplanements.

(1) With respect to shared-use automated airport kiosks that are jointly owned, leased, or controlled with carriers, the airport operator must ensure that all automated kiosks installed at each airport location are accessible to passengers with disabilities by following the design specifications set forth in paragraph (k) of this section.

(2) No later than [insert date 60 days after the effective date of the rule], the airport operator shall have a written, signed agreement with the carriers at that airport that are subject to 14 CFR 382.57(b) allocating responsibility for ensuring that shared-use automated kiosks meet the design specifications set forth in paragraph (k) in accordance with the requirements of paragraphs (k)(1), (3), and (4) of this section.

(i) The agreements must ensure that accessible shared-use automated airport kiosks are maintained in proper working

condition until all automated kiosks installed at each airport location are accessible to passengers with disabilities.

(ii) Airport operators and carriers are jointly and severally responsible for the timely and complete implementation of the agreement provisions.

(3) Airport operators that jointly own, lease, or control automated airport kiosks with carriers shall ensure that all new orders for shared-use automated kiosks initiated [insert date 60 days after the effective date of the rule] meet the design specifications set forth in paragraph (k) of this section. There is no requirement to retrofit existing kiosks.

(4) Until all automated airport kiosks meet the design specifications in paragraph (k), each shared-use automated kiosk that meets the design specifications in paragraph (k) of this section shall be visually and tactilely identifiable to users as accessible (e.g., a raised ADA-compliant international symbol of accessibility affixed to the front of the device).

(k) *Technical standards for shared-use automated kiosks.* Shared-use automated airport kiosks provided in accordance with paragraph (j) of this section must conform to the following technical accessibility standards with respect to their physical design and the functions they perform:

(1) Self Contained. Except for personal headsets and audio loops, automated kiosks shall be operable without requiring the user to attach assistive technology.

(2) Clear Floor or Ground Space. A clear floor or ground space complying with 36 CFR Part 1191, appendix D, section 305 of the U.S. Department of Justice's 2010 ADA Standards for Accessible Design shall be provided.

(3) Operable Parts. Operable parts shall comply with subsection (c)(3) and 36 CFR Part 1191, appendix D, section 309 of the 2010 ADA Standards.

(i) Identification. Operable parts shall be tactilely discernible without activation.

(ii) Timing. Where a timed response is required, the user shall be alerted by touch or sound and shall be given the opportunity to indicate that more time is required.

(iii) Status Indicators. Status indicators, including all locking or toggle controls or keys, shall be discernible either through touch or sound.

(iv) Color. Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(4) Privacy. Automated airport kiosks shall provide the opportunity for the same degree of privacy of input and output available to all individuals.

(5) Output. Automated airport kiosks shall comply with this paragraph (k)(5).

(i) Speech Enabled.

(A) Automated airport kiosks shall be speech enabled. Operating instructions and orientation, visible transaction prompts, user input verification, error messages, and all displayed information for full use shall be accessible to and independently usable by individuals with vision impairments. Speech shall be delivered through a mechanism that is readily available to all users, including but not limited to, an industry standard connector or a telephone handset. Speech shall be recorded or digitized human, or synthesized. Speech shall be coordinated with information displayed on the screen.

(B) Audible tones shall be permitted instead of speech for visible output that is not displayed for security purposes, including but not limited to, asterisks representing personal identification numbers.

(C) Advertisements and other similar information shall not be required to be audible unless they convey information that can be used in the transaction being conducted.

(D) Speech for any single function shall be automatically interrupted when a transaction is selected. Speech shall be capable of being repeated and paused.

(E) Where receipts, tickets, or other outputs are provided as a result of a transaction, speech output shall include all information necessary to complete or verify the transaction, except that:

(1) Automated airport kiosk location, date and time of transaction, customer account numbers, and the kiosk identifier shall not be required to be audible.

(2) Information that duplicates information available on-screen and already presented audibly shall not be required to be repeated.

(3) Printed copies of a carrier's contract of carriage, applicable fare rules, itineraries and other similar supplemental information that may be included with a boarding pass shall not be required to be audible.

(F) The information necessary to complete or verify a transaction depends on the nature of the transaction and the automated kiosk type. Where automated kiosks provide boarding passes and other similar transactional outputs, information such as concourse, gate number, seat number, and boarding group is necessary to complete and verify a transaction.

(G) Receipts, tickets, and similar transactional output usually are printed, but this is not always the case. For example, a boarding pass might be transferred to a smart phone or personal digital assistant. Regardless of the delivery method, the automated kiosk must convey to the user the information provided in receipts, tickets and other similar transactional outputs that is necessary to complete and verify a transaction.

(ii) Volume Control. Automated kiosks shall provide volume control complying with paragraphs (k)(5)(ii)(A) and (B) of this section.

(A) Private Listening. Where speech required by paragraph (k)(5)(i) of this section is delivered through a mechanism for private listening, the automated kiosk shall provide a means for controlling the volume.

(B) Speaker Volume. Where sound is delivered through speakers on the automated kiosk, incremental volume control shall be provided with output amplification up to a level of at least 65 dB SPL. Where the ambient noise level of the environment is above 45 dB SPL, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.

(iii) Captioning. Multimedia content that contains speech or other audio information necessary for the comprehension of the content shall be open or closed captioned. Advertisements and other similar information shall not be required to be captioned unless they convey information that can be used in the transaction being conducted.

(iv) Tickets and Boarding Passes. Where tickets or boarding passes are provided, tickets and boarding passes shall have an orientation that is tactilely discernable if orientation is important to further use of the ticket or boarding pass.

(6) Input. Input devices shall comply with paragraphs (k)(6)(i) through (k)(6)(ii) of this section.

(i) Input Controls. At least one tactilely discernible input control shall be provided for each function. Where provided, key surfaces not on active areas of display screens shall be raised above surrounding surfaces. Where touch or membrane keys are the only method of input, each shall be tactilely discernible from surrounding surfaces and adjacent keys.

(ii) Numeric Keys. Numeric keys shall be arranged in a 12-key ascending or descending telephone keypad layout. The number five key shall be tactilely distinct from the other keys.

(iii) Function Keys. Function keys shall comply with paragraphs (k)(6)(iii)(A) and (B) of this section.

(A) Contrast. Function keys shall contrast visually from background surfaces. Characters and symbols on key surfaces shall contrast visually from key surfaces. Visual contrast shall be either light-on-dark or dark-on-light. However, tactile symbols required by paragraph (k)(6)(iii)(B) shall not be required to comply with paragraph (k)(6)(iii)(A) of this section.

(B) Tactile Symbols. Function key surfaces shall have tactile symbols as follows: Enter or Proceed key: raised circle; Clear or Correct key: raised left arrow; Cancel key: raised letter ex; Add Value key: raised plus sign; Decrease Value key: raised minus sign.

(7) Display Screen. The display screen shall comply with paragraphs (k)(7)(i) and (k)(7)(ii) of this section.

(i) Visibility. The display screen shall be visible from a point located 40 inches (1015 mm) above the center of the clear floor space in front of the automated kiosk.

(ii) Characters. Characters displayed on the screen shall be in a sans serif font. Characters shall be  $\frac{3}{16}$  inch (4.8 mm) high minimum based on the uppercase letter "I." Characters shall contrast with their background with either light characters on a dark background or dark characters on a light background.

(8) Braille Instructions. Braille instructions for initiating the speech mode shall be provided. Braille shall comply with 36 CFR part 1191, appendix D, section 703.3 of the 2010 ADA Standards.

(9) Biometrics. Biometrics shall not be the only means for user identification or control, except that where at least two biometric options that use different biological characteristics are provided, automated kiosks shall be permitted to use biometrics as the only means for user identification or control.

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