

**Final Regulatory Flexibility Analysis**

**Final Rule on  
Accessible Kiosks and Web Sites**

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## Introduction and Summary

The U.S. Department of Transportation has developed additional regulatory requirements that will help to ensure nondiscrimination on the basis of disability in air travel. The requirements in the accompanying Rule address widespread problems with the accessibility of automated airport kiosks and air travel Web sites to passengers with disabilities who need assistance or accommodation in one or more of the following areas:

- Hearing
- Vision
- Mobility
- Fine-motor dexterity
- Cognition

The Department proposed requirements in each of these areas in the supplemental notice of proposed rulemaking (SNPRM) published on September 26, 2011. Econometrica, Inc., provided a preliminary regulatory analysis (PRA) and initial regulatory flexibility analysis (IRFA) to accompany the SNPRM. The Department is now issuing a Final Rule that:

- Retains the technical standards that ensure accessibility for automated airport kiosks and air travel Web sites proposed in the SNPRM.
- Provides a longer period of time after the effective date of the Rule before accessible kiosks must be installed (3 years in the Rule versus 60 days in the SNPRM).
- Eliminates the proposed requirements for small carriers to bring their primary Web sites into compliance with the accessibility requirements in the Rule.

### *IRFA Assessment of the Impact on Small Entities*

In the IRFA, we were not able to identify any small carriers or small airport authorities that owned or operated kiosks that would be covered by the proposed accessibility requirements. There were no comments from small carriers, small airport authorities, or other stakeholders on this issue. Accordingly, we did not conduct any new analysis of the impact of the kiosk accessibility requirements on small entities in connection with the publication of the Final Rule.

In the IRFA, we indicated that small carriers will incur potentially significant costs to develop accessible Web sites. In addition to the direct costs associated with programming and site redesign for greater accessibility, small carriers may incur indirect costs related to program management and training, as well as potential opportunity costs in applying technical resources toward accessibility, rather than other Web-based business strategies (e.g., social networking). We also noted that while small carriers have staff members or contractors with the professional skills to publish and maintain their current Web sites, it is not clear that these employees or contractors have the specific expertise and professional skills that may be required to ensure that air travel Web sites comply with the accessibility requirements proposed in the SNPRM. The Department did not include Web site accessibility requirements for small carriers in the Rule.

The Rule requires large ticket agents make discounted Web-based fares and other Web-based amenities available upon request to passengers who are unable to use the agent's Web site due to their disability. Small ticket agents are not covered by this Rule requirement.

### ***Regulatory Flexibility Act Requirements***

The Regulatory Flexibility Act of 1980, as amended, requires Federal agencies to conduct a separate analysis of the economic impact of rules on small entities. The Regulatory Flexibility Act requires that Federal agencies take small entities' particular concerns into account when developing, writing, publicizing, promulgating, and enforcing regulations. To this end, the Act requires that agencies detail how they have met these concerns by including a regulatory flexibility analysis (RFA). The Final RFA (FRFA) must include the following five elements:

1. A succinct statement of the need for, and objectives of, the rule.
2. A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.
3. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available.
4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.
5. A description of the steps the agency has taken to minimize the significant adverse economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency was rejected.

In this FRFA, we provide the required information on each of these five elements.

## **1. Need for the Rule**

There are currently no Federal statutes or regulations establishing accessibility standards for automated airport kiosks or air travel Web sites. In the accompanying Rule, the accessibility requirements for automated airport kiosks will help to mitigate the physical barriers faced by users with mobility, hearing, cognitive, or fine-motor skill disabilities, as well as make them usable by those with vision disabilities. The Rule requirements for ensuring Web site accessibility primarily address the need to provide people with vision disabilities access to online information and services related to air travel.

In the Final Regulatory Analysis (FRA), we estimated that the Rule requirements relating to kiosk accessibility will provide benefits to 29.3 million passengers with disabilities during the

period from 2017 through 2026 (the first 10 years during which accessible kiosks would be installed and available for use). The FRA estimates that 15.0 million air travelers with disabilities will benefit from the Web site accessibility requirements in the Rule during the 10-year period from 2016 through 2025.

## 2. Comments Received on the SNPRM Relating to Small Entity Impact

### *Comments Received on Accessible Kiosks*

The Department received a substantial number of comments about various aspects of the PRA evaluation of the proposed requirements for kiosk accessibility. Major issues addressed included the timetable for compliance, the advantages and drawbacks of allowing a phase-in period or a less than 100-percent requirement for accessibility, and feasibility and cost concerns with retrofitting existing kiosks. The Department also received some specific comments about various aspects of the benefit and cost calculations in the PRA. In general, carriers and ticket agents indicated that the proposed compliance date would be impossible to meet, that the estimation of time savings for people with disabilities from accessible kiosks was overstated, and that compliance costs were understated. Disability advocates supported the shortest possible time frame for compliance and stressed the unquantifiable benefits of equal access to automated airport kiosks.

The Department did not receive any comments specifically relating to the impact of the proposed accessibility requirements for automated airport kiosks on small entities. An extensive discussion of the comments relating to the impact of the requirements proposed in the SNPRM is provided in Section 5.3 of the FRA.

### *Comments Received on Accessible Web Sites*

The Department received a substantial number of comments about various aspects of the PRA evaluation of the proposed requirements for Web site accessibility. Major issues addressed included the timetable for compliance, the nature and extent of the benefits and costs, and the data and procedures used to quantify these benefits and costs. In general, carriers and ticket agents indicated that the tiered compliance requirements would be difficult to meet and would increase compliance costs, that the estimation of time savings for people with disabilities from accessible Web sites was overstated, and that compliance costs were understated. Disability advocates supported the shortest possible time frame for compliance and stressed the unquantifiable benefits of equal access to online air travel-related information and services.

The Department did not receive any comments specifically relating to the impact of the proposed accessibility requirements for air travel Web sites on small entities. An extensive discussion of the comments relating to the impact of the requirements proposed in the SNPRM is provided in Section 6.3 of the FRA.

### 3. Number and Type of Affected Small Entities

#### 3.1. U.S. and Foreign Carriers

##### *Aircraft Size-Based Distinctions Among Carriers*

Carriers that provide passenger service exclusively using aircraft originally designed with 60 seats or fewer are considered small entities for purposes of assessing impact under the relevant requirements of the Regulatory Flexibility Act (Table 1). Some regulatory requirements for these carriers are somewhat less extensive than for larger carriers. For example, carriers are not required to provide on-board wheelchairs on aircraft with fewer than 60 seats, nor are they required to submit annual disability-related complaint reports to the Department. Carriers that operate passenger service exclusively with aircraft having fewer than 30 seats are exempt from additional regulatory requirements, including the requirement that at least half of the seats have movable armrests.

**Table 1—Number of U.S. Carriers by Size Class, 2011**

Carrier Group	Number of Seats on Largest Aircraft	Total Carriers*	Charter Carriers**	All Scheduled Service Carriers	Contract Carriers	Other Scheduled Service Carriers
Large	>60	43	17	26	11	15
Small	30–60	14	1	13	6	7
Very small	<30	45	10	35	0	35
<b>Total</b>		<b>102</b>	<b>28</b>	<b>74</b>	<b>17</b>	<b>57</b>

\*Excludes carriers that were no longer operating independently by the end of 2012.

\*\*Five charters offered some scheduled service; all are very small Alaska or sightseeing tour carriers.

Nearly all small and very small U.S. carriers that market scheduled air transportation directly to the public operate flights exclusively in Alaska or Hawaii, or among islands in the Pacific or Caribbean.

Small and very small carriers will not be required to comply with the Web site accessibility requirements in the Rule.

#### 3.2. Travel Agencies and Tour Operators

The most recent Economic Census data indicate that there were 96 ticket agents with 500 or more employees in 2007. The Economic Census also provides estimates of the numbers of travel agents and tour operators with annual revenues firms of more than \$25 million and those with \$10-25 million in annual revenues (Table 2).

**Table 2—Travel Agencies and Tour Operators, 2007**

Sector	Total Firms	Firms with Annual Revenues of \$25 million or more	Firms with Annual Revenues of \$10 to \$25 million
Travel Agencies	11,803	39	67
Tour Operators	2,627	22	33
<b>All Ticket Agents</b>	<b>14,430</b>	<b>72</b>	<b>100</b>

Source: Bureau of the Census, Economic Census, 2007.

The 2013 SBA standards classify travel agencies and tour operators with no more than \$19 million in annual revenues as small businesses. Small travel agents and tour operators are not covered by any rule requirements.

### 3.3. Airports

The Federal Aviation Administration (FAA) classifies airports into a set of size-based categories based on the annual number of passengers boarded (“enplanements”). The requirements in this Rule concerning automated airport kiosk accessibility will apply only at U.S. airports having 10,000 or more annual enplanements. There were 387 U.S. airports with at least 10,000 passenger enplanements in 2011. About 70 percent of domestic and international passengers departed from 29 major metropolitan hubs, and another 18 percent departed from 35 medium-hub airports in 2011 (Table 3).

**Table 3—Passenger Enplanements by Size of Airport, 2011**

Category	Minimum Number of Passengers	Number of Airports	Passengers (millions)	Percent of Total Passengers	Average Number of Passengers per Airport
Large hub	>1% of total	29	509.4	70.2%	17,565,573
Medium hub	>0.25% of total	35	130.1	17.9%	3,716,396
Small hub	>0.05% of total	74	61.0	8.4%	824,182
Non-hub	>10,000/year	249	23.7	3.3%	95,155
Other commercial	>2,500/year	124	0.6	0.1%	5,181
<b>Total</b>		<b>511</b>	<b>724.8</b>	<b>100.0%</b>	<b>1,418,397</b>

FAA, “Enplanements at Primary and Non-primary Commercial Service Airports,” October 9, 2012.

Small Business Administration size standards define privately owned airports as small businesses if their annual revenues do not exceed \$30 million. Publicly owned airports are categorized as small entities if they are owned by jurisdictions with fewer than 50,000 inhabitants. As of 2011, Burlington International Airport in Vermont was the only small-hub airport owned by a small entity.

Airports with shared-use kiosks will incur costs to comply with the Rule requirements. According to information from a proprietary market research report, about 30 U.S. airports have

shared-use kiosks installed. None of the 29 large-hub airports in 2011 appears to be a small private airport or owned by a small government jurisdiction. Therefore, the Rule does not appear to have any impact on small privately or publicly owned airports.

#### **4. Nature and Impact of the Rule on Affected Small Entities**

No small carriers, airports, or ticket agents are estimated to incur compliance costs under the Rule.

#### **5. Steps Taken to Mitigate the Impact of the Rule on Affected Small Entities**

The Web site accessibility provisions in the SNPRM would have required small-carrier Web sites to comply with the Level A and Level AA standards within 2 years of the effective date of the Rule (i.e., the compliance deadline for large carriers and ticket agents). Based on a review of the benefits and costs associated with requiring small-carrier Web sites to be accessible, the Department has excluded small carriers from the Web site accessibility requirements in the Rule.

Large travel agents and tour operators selling air transportation will be required to provide Web-based discounts and other Web-based amenities on request to passengers who contact them offline when the agents' Web sites cannot be used by those passengers because of their disability. The Department has excluded small ticket agents from the obligation to comply with this requirement.