September 10th, 2008

Department of Transportation 14 CFR Part 382
Non-discrimination on the Basis of Disability in Air Travel; Final Rule

Waiver Request – Submission by Monarch Airlines Ltd

The United States has created difficulties for carriers operating flights between the European Union (EU) and the USA. By extending its regulatory competence beyond the USA it has created conflicts with regulations which govern carriers operating from the EU.

382.1 and 382.7
The main concern here follows from the fact that both regulatory regimes of US-Rule 382 on ‘Nondiscrimination on the Basis of Disability in Air Travel’ and EU Regulation 1107 ‘Concerning the rights of disabled persons and persons with reduced mobility when travelling by air’ (Art. 1.2 and 1.3) extend their regulatory competence well beyond their own territories, applying to all passengers and airlines operating between the Europe and the US. This implies that an airline flying a Transatlantic route is subject to both regimes, which can and will cause legal uncertainty to both passengers and airlines.

Monarch Airlines therefore, welcomes the Department’s recognition of this position and creation of a waiver process as described in 14 C.F.R. § 382.9. In accordance with that section, Monarch Airlines submits this waiver request.

382.17
As a carrier, you must not limit the number of passengers with a disability who travel on a flight.

Conflicts with EU OPS 1.260: In circumstances in which the number of Persons with Reduced Mobility (PRMs) forms a significant proportion of the total number of passengers carried on board: a) the number of PRMs should not exceed the number of able-bodied persons capable of assisting with emergency evacuation.

382.19
As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this Part.

Conflicts with EU Regulation Article 4.1: an air carrier or its agent or a tour operator may refuse, on the grounds of disability or of reduced mobility, to accept a reservation from or to embark a disabled person or a person with reduced mobility: (b): if the size of the aircraft or its doors makes the embarkation or carriage of that disabled person or person with reduced mobility physically impossible.

382.25
As a carrier, you must not require a passenger with a disability to provide advance notice of the fact that he or she is travelling on a flight.

Conflicts with EU Regulation Articles 6.1 and 6.2: Air carriers, their agents and tour operators shall take all measures necessary for the receipt, at all points of sale in the territory of the Member States to which the Treaty applies, including sale by telephone and visa the Internet, of notifications of the need for assistance made by disabled persons or persons with reduced mobility. When an air carrier or its agent or tour...
operator receives a notification of the need for assistance at least 48 hours before the published departure time of the flight, it shall transmit the information concerned at least 36 hours before the published departure time for the flight......

382.29
Except as provided in ........ you must not require that a passenger with a disability travel with another person as a condition of providing air transportation.

Conflicts with EU Regulation Article 4.1: an air carrier or its agent or a tour operator may refuse, on the grounds of disability or of reduced mobility, to accept a reservation from or to embark a disabled person or a person with reduced mobility:
(a): in order to meet applicable safety requirements established by international, Community or national law or in order to meet safety requirements established by the authority that issued the air operator’s certificate to the air carriers concerned.

The UK Code of Practice² (paragraph 3.14) interprets safety requirements by including the recommendation that: airlines should only require a personal assistant when it is evident that a disabled person is not self-reliant and this could pose a safety risk. In practice this means anyone who is unable to unfasten their seat belt, leave their seat and reach an emergency exit unaided, retrieve and fit a lifejacket, don an oxygen mask without assistance, or is unable to understand the safety briefing and any advice and instructions given by the crew in an emergency situation (including information communicated in accessible formats).³

Conflicts with UK CAA FODCOM: The UK CAA has issued a FODCOM incorporating the code of practice as its implementation regime.

382.95
As a carrier, you must promptly provide or ensure the provision of assistance requested by or on behalf of passengers with a disability............

Conflicts with EU Regulation Article 7.1: When a disabled person or person with reduced mobility arrives at an airport for travel by air, the managing body of the airport shall be responsible for ensuring the provision of the assistance ............

Conflict with EU Regulation Article 7.5: When a disabled person or person with reduced mobility transits through an airport......the managing body of the airport shall be responsible for ensuring the provision of the assistance ............

Conflict with EU Regulation Article 7.6: On arrival by air of a disabled person or person with reduced mobility at an airport..........., the managing body of the airport shall be responsible for ensuring the provision of the assistance ............

Conflict with EU Regulation Article 8.1: the managing body of the airport shall be responsible for ensuring the provision of the assistance.......

382.101

² Department for Transport Access to Air Travel for Disabled Persons and Persons with Reduced Mobility.
³ These exceptions are not included in the exceptions provided by 382.29.
When level-entry boarding and deplaning assistance is not required to be provided under this subpart, you must, as a carrier, provide or ensure the provision of boarding and deplaning assistance

Conflict with EU Regulation Article 7.1: When a disabled person or person with reduced mobility arrives at an airport for travel by air, the managing body of the airport shall be responsible for ensuring the provision of the assistance

Conflict with EU Regulation Article 7.5: When a disabled person or person with reduced mobility transits through an airport the managing body of the airport shall be responsible for ensuring the provision of the assistance

Conflict with EU Regulation Article 7.6: On arrival by air of a disabled person or person with reduced mobility at an airport, the managing body of the airport shall be responsible for ensuring the provision of the assistance

Conflict with EU Regulation Article 8.1: The managing body of the airport shall be responsible for ensuring the provision of the assistance

382.103
As a carrier, you must not leave a passenger who has requested assistance required by this subpart unattended by the personnel responsible for enplaning, deplaning, or connecting assistance in a ground wheelchair, boarding wheelchair, or other device, in which the passenger is not independently mobile, for more than 30 minutes

Conflict with EU Regulation Article 7.1: When a disabled person or person with reduced mobility arrives at an airport for travel by air, the managing body of the airport shall be responsible for ensuring the provision of the assistance

Conflict with EU Regulation Article 7.5: When a disabled person or person with reduced mobility transits through an airport the managing body of the airport shall be responsible for ensuring the provision of the assistance

Conflict with EU Regulation Article 7.6: On arrival by air of a disabled person or person with reduced mobility at an airport, the managing body of the airport shall be responsible for ensuring the provision of the assistance

Conflict with EU Regulation Article 8.1: The managing body of the airport shall be responsible for ensuring the provision of the assistance

382.105
At a foreign airport at which enplaning, deplaning or connecting assistance is provided by the airport operator, rather than by carriers, as a carrier you may rely on the services provided by the airport operator to meet the requirements of this subpart. If the services provided by the airport operator are not sufficient to meet the requirements of this subpart, you must supplement the airport operator’s services to ensure that these requirements are met.
Conflict with EU Regulation Article 7.1: When a disabled person or person with reduced mobility arrives at an airport for travel by air, the managing body of the airport shall be responsible for ensuring the provision of the assistance ..........

Conflict with EU Regulation Article 7.5: When a disabled person or person with reduced mobility transits through an airport.....the managing body of the airport shall be responsible for ensuring the provision of the assistance ..........

Conflict with EU Regulation Article 7.6: On arrival by air of a disabled person or person with reduced mobility at an airport............., the managing body of the airport shall be responsible for ensuring the provision of the assistance ..........

Conflict with EU Regulation Article 8.1: the managing body of the airport shall be responsible for ensuring the provision of the assistance....... 

382.133
....as a foreign carrier conducting passenger service you must permit any individual with a disability to use a ventilator, respirator, continuous positive airway pressure machine, or portable oxygen concentrator (POC) ..... 

Conflict with EU Ops, Subpart R, Art.1.1155: An operator shall not transport dangerous goods unless approved to do so by the Authority. Before the issue of an approval for the transport of dangerous goods, the operator shall satisfy the Authority that adequate training has been given, that all relevant documents contain information and instructions on dangerous goods, and that there are procedures in place to ensure the safe handling of dangerous goods at all stages of air transport.

382.141
As a carrier that operates aircraft with 19 or more passenger seats, you must provide training, meeting the requirements of this paragraph....... 

Conflict with EU Regulation Article 11: Air carriers and airport managing bodies shall...ensure that all their personnel ....have knowledge of how to meet the needs of persons having various disabilities and mobility impairments .

382.151/153/155
As a carrier providing scheduled service.....you must designate one or more CROS....When a complaint is made directly to the CRO for a carrier ......you must respond to written complaints .... 

Conflict with EU Regulation 15.1: A disabled person or person with reduced mobility who considers that this Regulation has been infringed may bring the matter to the attention of the managing body of the airport or to the attention of the air carrier concerned, as the case may be.

4 Carrier cannot be responsible for training staff who are the responsibility of the airport operator.
Queries in respect of this submission and request for waivers should be sent to

William Barton
Operations Projects Manager
Monarch Airlines Limited
Prospect House
Prospect Way
London Luton Airport
LUTON
Bedfordshire LU2 9NU
England

telephone: +44 1582 398211
facsimile: +44 1582 728231
SITA: LTNKOZB
Web: www.flymonarch.com