including a digital Electronic Flight Instrument System (EFIS), attitude and heading reference systems (AHRS), and air data systems (ADS). These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters, and the growing use of sensitive electrical and electronic systems to command and control airplanes, have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the DHC–8–400, which require that new technology electrical and electronic systems, such as the EFIS, AHRS and ADS, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, and adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
110 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable initially to the DHC–8–400 airplane. Should de Havilland apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Discussion of Comments

Notice of proposed special conditions No. SC–96–3–NM was published in the Federal Register on July 22, 1996 (61 FR 37844). No comments were received.

Conclusion

This action affects certain design features only on the DHC–8–400 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113,44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the deHavilland DHC–8–400 series airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of this special condition, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 15, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 96–28107 Filed 10–31–96; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 382

49 CFR Part 27

[Docket 46872 and 45657—Amendment #6]

RIN 2105–AB62

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance; Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Office of the Secretary, Transportation.

ACTION: Final rule.

SUMMARY: The Department is amending its rules implementing section 504 of the Rehabilitation Act of 1973 and the Air Carrier Access Act of 1986 concerning the provision of equipment to facilitate the boarding by individuals with disabilities on small commuter aircraft. The rule requires air carriers and airports to work jointly to make lifts or other boarding devices available. The rule also harmonizes requirements relating to airport facilities in the Department's section 504 and Air Carrier Access Act regulations and clarifies provisions concerning communicable diseases.

EFFECTIVE DATE: This rule is effective December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, S.W., Room 10424, Washington, D.C., 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD); or Nancy Ebersole, Office of the Assistant Secretary for Transportation Policy, same street address, Room 9217, (202) 366–4864.

SUPPLEMENTARY INFORMATION:

Boarding Assistance

Background

In the Department's regulation implementing section 504 of the Rehabilitation Act of 1973, which went into effect in 1979, the Department requires Federally-assisted airports to play a role in boarding assistance for individuals with disabilities:

> Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided for enplaning and deplaning handicapped persons. Boarding by level entry boarding platforms and by passenger lounges are the preferred methods for movement of handicapped persons between terminal buildings and aircraft at air carrier airports; however, where this is not practicable, operators at air carrier airport terminals shall assure that there are lifts, ramps, or other suitable devices not normally used for freight that are available for enplaning and deplaning handicapped passengers. (49 CFR 27.71(a)(2)(v)).

This provision does not necessarily require that an airport acquire its own lifts or other devices. Airports may comply if other parties at the airport (e.g., air carriers) have devices that can be used for this purpose.

Airlines' boarding assistance responsibilities are discussed in the Department's Air Carrier Access Act (ACAA) regulations. In 1990, when the Department published its ACAA rule (14 CFR Part 382), the Department knew that the rule did not address completely the issue of boarding assistance for individuals with disabilities—particularly those with mobility impairments—on some small commuter aircraft. Section 382.49(a) requires carriers to provide boarding assistance, including, ''as needed, the services [of] personnel and the use of ground wheelchairs, boarding wheelchairs, on-board wheelchairs . . . and ramps or mechanical lifts.'' Where level entry boarding platforms are not available, ''carriers shall use ramps, lifts, or other devices (not normally used for freight) for enplaning and deplaning handicapped individuals who need them'' (§ 382.39(a)(2)). However, the rule provides a partial exception to the boarding assistance requirement:

> In the event that the physical limitations of an aircraft with less than 30 passenger seats preclude the use of existing models of lifts, boarding chairs, or other feasible devices to enplane a handicapped person, carrier personnel are not required to carry the handicapped person onto the aircraft by hand. (§ 382.39(a)(4)).

The effect of this provision is that if there is no existing model of lift, boarding chair, or other device that will work with a particular aircraft having fewer than 30 seats, so that hand-carrying (i.e., having airline personnel physically pick up a passenger in their arms and carry the passenger on board) is the only means by which the passenger can board the aircraft, the carrier is not required to provide boarding assistance. The rationale for not requiring hand-carrying is sound: hand-carrying involves significant risks of injury to both airline personnel and passengers, and it is an undignified way of providing assistance. Moreover, in some models of aircraft, the stairs that are built into the door of the aircraft are not strong enough to accommodate two or three persons at a time, as either hand-carrying or the use of a boarding chair would require. The result of this exception, however, is that airlines may legally deny boarding to persons with mobility impairments in some situations. (For discussion of this provision and its background, see 55 FR 8033–8034; March 6, 1990.)

In an advance notice of proposed rulemaking (ANPRM) issued at the same time as the Department's Air Carrier Access Act rule (55 FR 8078; March 6, 1990), the Department asked for additional information and comment on the subject of lift devices for small commuter aircraft. In the ANPRM, the Department noted that, in 1990, the development of lift devices appeared not to have proceeded to the point where imposing requirements for them through regulation would have been justified. We received little information in response to this ANPRM. Subsequently, the Department learned that a number of manufacturers had developed and were attempting to market lift devices for small aircraft (at that time for prices in the $8,000–$10,000 range), and that some airlines had tested models of these lifts in a variety of operational conditions.

In June 1992, the Department held a workshop of parties interested in this issue, including representatives of commuter airlines, disability groups, and lift and aircraft manufacturers. The Department heard presentations from lift manufacturers concerning their devices and from some air carriers that had tested various devices with their aircraft. Department staff also conducted informal surveys of carriers that tested the lifts to determine how well carrier personnel believed the devices had worked with different types of commuter aircraft. From this information, it appeared to the Department that there were available several lift devices that can effectively facilitate boarding assistance for persons with mobility impairments on most small commuter aircraft in the 19–30 seat capacity range.

At the same time, none of the participants in the workshop appeared to suggest that the existing lift devices were designed to work, or could work, with some of the smallest aircraft (e.g., those under 19 passenger seats). Carriers also raised significant concerns about the compatibility of the lift devices with certain existing aircraft models in the 19–30 seat class. For example, while lifts could be extended to the door of the Fairchild Metro and Beech 1900 models, there would be less than a foot clearance between the lift and the propeller assembly, creating a risk of costly damage (e.g., one estimate was $250,000) to the aircraft, as well as the loss of passenger revenue for the two months the aircraft might spend in the shop. Some carrier participants also expressed concerns that, once a lift got a passenger to the aircraft door, it would be difficult or impossible in some models (e.g., the Jetstream, Metro and Beech 1900) to transfer the passenger via a 12-inch-wide boarding chair into the aisle and to a seat in the aircraft (e.g., because of narrow and very limited maneuvering room in some aircraft cabins).

One of the most important discussions at the workshop concerned the allocation of responsibility for obtaining and operating lifts. Generally, commuter carriers and airport operators each believed that the other should bear the primary responsibility and cost for ensuring accessibility to small commuter aircraft. For example, the Regional Airline Association (RAA) representatives at the June 1992 workshop asserted that their efforts to interest airports in sharing the cost of lift devices had generated little response. Carriers cited what they viewed as the greater financial resources of airports (e.g., airports could apply for FAA Airport Improvement Program (AIP) funds or passenger facility charge (PFC) revenues to help fund lifts); airports cited the traditional control of carriers over passenger boarding. Both were wary of potentially increased liability exposure from using lift devices to board passengers with disabilities, and they urged FAA to issue performance specifications for lifts. Disability group representatives were concerned that, in the absence of regulatory direction from the Department, there would be an impasse that would postpone unreasonably passengers' ability to use small commuter aircraft. Lift manufacturers were concerned that lengthy delays in resolving issues in this area could

undermine the fragile, but developing, market for their products.

In February 1993, the FAA issued an advisory circular concerning recommended specifications for such lifts. (FAA Advisory Circular 150/5200XX—''Guide Specification For Mobility Impaired Passenger Boarding Devices''). Subsequently, we learned that many lift models had been modified by their manufacturers to meet the FAA specifications.

The NPRM

In September 1993, the Department published an NPRM proposing that airlines and airports, working together, would obtain lift equipment needed to provide boarding assistance to small commuter aircraft. The rationale for this proposal was that the Department views airports and carriers as key parts of an inextricably intertwined air transportation system. No one can fly between Point A and Point B without using at least one carrier and at least two airports. To complete a trip, every passenger must be able to travel to the first airport, move through the first airport (including ticketing, baggage checking, and check-in, where necessary), use the interface provided by some combination of the airport and the carrier to enter the aircraft, get to his or her seat on the aircraft, fly to the second airport, and reverse the process at that end of the trip. What matters, from the passenger's point of view, is not which participant in the system is responsible for each part of the process, but that the entire process operates so that the passenger can successfully complete the trip.

The air travel system would never work for anyone unless airports and carriers worked together to get passengers from their place of origin to their destination. This is as true for passengers with disabilities as for anyone else. From the Department's point of view, airports and carriers have the responsibility of working together to ensure that passengers with disabilities can use commuter air service, which has become an increasingly important part of the air transportation system. Consequently, the Department proposed to amend both its Air Carrier Access Act regulations (which apply to carriers) and its section 504 regulations (which apply primarily to airports) to establish the joint responsibility of both carriers and airports to ensure that passengers with disabilities have the opportunity to use commuter air service.

The NPRM proposed to create identical requirements in the ACAA and section 504 rules, directing each Federal-aid commercial service airport and each carrier serving that airport to establish a written agreement that would provide for ensuring that lifts, ramps, or other suitable devices would be provided and used to ensure that passengers could enter and leave small commuter aircraft.

The written agreement between carriers and airports, which would not have to be submitted to DOT but which would be kept on file for DOT inspection, would have to be completed within nine months of the effective date of the rule. The agreement would call for full implementation of accessibility to small commuter aircraft at the airport no later than three years from the effective date of the rule. The proposed phase-in period was intended to permit an orderly acquisition process for equipment and to avoid increasing costs through a too-abrupt startup requirement. The NPRM also included a provision allowing carriers to seek a waiver from the requirement to use a lift or other device with a particular type of aircraft on the basis that use of the device would present an unacceptable risk of significant damage to the aircraft. The NPRM asked for comment on whether there should be an exception or waiver provided from the boarding assistance requirement when aircraft design limitations would prevent a passenger with a disability from getting to a non-exit row seat after the individual has entered the aircraft door.

Comments and DOT Responses

1. Responsibility for Obtaining Lifts

It was apparent from comments that airlines and airports continued to disagree over who should be responsible for providing lift devices. Four airports and an airport association said that airlines are traditionally responsible for assisting passenger boarding and for obtaining equipment used for this purpose. It is inappropriate to involve the airport in this activity, since it is airlines that work with aircraft manufacturers on design issues, one of these commenters said. Another suggested that it would violate nondiscrimination provisions of 14 CFR Part 152 for an airport to participate in obtaining lifts that some, but not all, carriers might use. Another remarked that even if airports participated in the funding of lifts, airlines should be responsible for operations and maintenance. Airports, carriers, and their associations commented that insufficient airport improvement program (AIP) funding may be available for lifts, especially at smaller airports, or that the priority assigned lifts for such funding was too low.

Airline associations, on the other hand, said that since airports could use AIP and passenger facility charge (PFC) funds for the purpose of paying for lifts, airports should pay for them. This was also true, they said, because the requirement for lifts was a matter of public policy that should be paid for by the public. One airline association and three other commenters suggested that DOT should subsidize lift purchases (one suggesting that not to do so constituted an ''unfunded mandate''), apparently beyond the level provided in the AIP program.

There was also considerable discussion in comments of how the proposed joint responsibility between carriers and airports might work. One disability group urged that the carrier-airport agreements have sufficient specificity to define how lifts would be shared and used. Carriers and their organizations said that carriers should control use of the lifts, and recommended advance notice requirements of 24 or 48 hours to avoid conflicting demands for lift use.

An airport asked that there be a ''good faith'' exception to the requirement to negotiate a joint agreement, so that if a party has negotiated in good faith it would not be sanctioned for failing to come to an agreement. Other commenters expressed doubts about the negotiation process. An airport doubted that airlines would even show up for the negotiation, while an airline association thought that airports are in a superior bargaining position and do not want to use AIP funds to benefit disabled passengers. A state agency asked how DOT would enforce the requirement to negotiate an agreement, while a lift manufacturer thought the regulation should include more detail on what items should be in the agreement.

Two commenters suggested that the rules could be different for different-sized airports (e.g., airports get lifts for small airports, airlines at large airports, and a 50/50 split at medium airports). Some airports, carriers, and their organizations suggested waiving the requirement at small airports (e.g., at which there were less than a threshold number of enplanements) or where there was an airport a disabled passenger could use within 50 miles, since this is within normal travel distance to airports for many passengers. Moreover, these comments said, many smaller airports receive small amounts of AIP funds, a fact that stretching out the compliance date would not change. Airports and carriers were also concerned that since few lift passengers would be expected at smaller airports, requiring lifts may not be cost-

effective. A larger number of comments, however, mostly from disability community commenters and lift manufacturers, opposed a small airport waiver, saying that a more sensible approach to reduce burdens on small airports would be to grant an extended compliance period for them, provide higher AIP priority for this purpose, or allow the use of boarding chairs at such places.

DOT Response

Who is responsible? Who pays? The Department does not believe that there is a good conceptual or practical alternative to requiring, as proposed in the NPRM, that carriers and airports share the responsibility and cost for ensuring the accessibility of the commuter air transportation system. As discussed above, the air travel system, from the point of view of passengers with disabilities, is an integrated whole in which airports, boarding systems, and aircraft must all be accessible for travel to be possible. Carrier and airport commenters each discussed, in some detail, why they shouldn't be responsible and why the other party should. The intractable fact remains that, absent contribution and cooperation from both parties, accessibility will not happen. In the context of a nondiscrimination statute, that result is unacceptable.

The Department points out that AIP and, in some cases, PFC funds are options that can assist in the purchase of lifts. It is not persuasive to assert that AIP funds are not available for this purpose because of other, purportedly higher priority, demands on the funds. Compliance with ACAA and 504 requirements—which means assuring that passengers with disabilities can move through terminals and onto aircraft—is no less important than carrying out other projects to improve airport services and facilities for all passengers. When it enacted the ACAA and 504, Congress implicitly determined that access for passengers is just as high a priority as access for everyone else. At the same time, given the intertwined nature of the air transportation system, it is reasonable to expect carriers to make a significant contribution to accessibility as well.

The Department is aware that airports and carriers disagree on a considerable number of issues. However, ongoing working relationships exist and will continue in the future. Airports and carriers must work together and find ways of agreeing on a wide variety of matters for the air transportation system to work. Consequently, the concept of airports and carriers negotiating to determine how accessibility will be provided is not something new and foreign. It is also far more consistent with the Administration's regulatory policy of avoiding dictating national, one-size-fits-all, solutions to issues that are better decided locally by the parties concerned.

The requirement to negotiate an agreement, like other parts of these rules, is enforced through existing mechanisms. For example, if an airline failed to comply with its obligations, the enforcement procedures of 14 CFR § 382.65(c) and (d) would apply. If an airport failed to comply, the procedures of 49 CFR Part 27, Subpart C, would apply.

The Department has paid close attention to the costs of boarding assistance requirements, which are described in the regulatory evaluation placed in the docket for the rulemaking. In particular, we would note that at least one lift model is available in the $15,000 range. In order to mitigate these costs, the Department is taking two principal steps. First, those commercial service airports with 2500—10,000 annual enplanements are exempt from the boarding assistance requirement. These airports account for only about 1 percent of all enplanements, so the exemption should not significantly damage the accessibility of the air travel system to the vast majority of passengers with disabilities. If boarding assistance equipment and services exist at such an airport, however, they would have to be made available to consenting passengers (except for hand-carrying, which is not required to be used). This is not a requirement to provide such equipment and services where they do not already exist; it is an ''if you have it, use it'' requirement. Second, the Department will phase in boarding assistance requirements depending on the size of the airport. This point is discussed below under the ''Time Frames'' heading.

It is important that boarding assistance equipment be maintained properly, so that it is available for use by passengers who need it. Consistent with provisions of existing ADA regulations, the rules will require carriers and airports to maintain this equipment in proper working order.

2. Aircraft-Related Issues

The NPRM recognized that lifts may not work well with all models of commuter aircraft, and asked whether waivers or exceptions for specific aircraft types that could be damaged by lifts was appropriate. Disability community commenters and lift manufacturers generally opposed this idea. A manufacturer said its product is compatible with all aircraft in the 19–30 seat range and that any compatibility problems could be worked out between the carrier and the manufacturer. Another manufacturer said it made ''adapters'' that would make its lifts usable with various aircraft models that otherwise could be damaged, such as the Fairchild Metro and Jetstream 31. (DOT staff contacted the manufacturer, learning that it had a design for the adapter but had not built a prototype. The manufacturer estimated that if it built the adapter, it would add about $3000 to the $56,000 price of its lift.) Other commenters made quite a different point—that in some operating conditions, such as boarding a seaplane from a floating platform or in severe winter weather in Alaska, it was doubtful that use of lifts would be feasible.

Carriers and their organizations requested exemptions for the Fairchild Metro and Beech 1900 models because of the potential damage problem. Also, airports, carriers, and their organizations sought exemptions for small airports and carriers with one-employee operations. The latter request was made on the basis that it can take two persons to provide boarding assistance to some passengers and extra personnel might have to be brought in to provide the assistance.

One disability group said that inexpensive modifications can be made to lifts to make them work with most aircraft. This commenter said that carriers should have a burden of proof to demonstrate that an aircraft cannot be accessed without violating established safety standards before a waiver would be warranted. Other commenters suggested that, on 24-hour notice, an alternative means of compliance should be provided (e.g., substituting a different aircraft), or that airports should have enough different sorts of lifts to service all aircraft that stop there.

About ten comments from carriers said that there were problems with some aircraft even if a lift could get a wheelchair-using passenger to the aircraft door. For example, turning radius limits, aisle widths of 12–14 inches, or other constraints or obstruction problems may make it difficult, particularly for large, heavy, or significantly mobility-impaired passengers, to proceed to a seat, or at least to a seat in which the passenger could sit consistent with the FAA's exit row seating rule. (Some disability community comments recommended modifying the exit row rule in small aircraft to avoid this latter problem.) Carrier comments suggested that

boarding assistance should be waived for these aircraft , since it would be a futile exercise. (Waiver requests went primarily to the Fairchild Metro, the Jetstream 31, and the Beech 1900 C and D, both on this ground and/or on the ground of potential aircraft damage.) In addition, carriers and some lift manufacturers said there should be an exception to the boarding assistance requirement for situations in which a passenger's size, weight, or lack of upper body strength made it impracticable to assist him or her through a low cabin doorway to a seat without risking injury to the passenger or carrier personnel. They also said there are no flight attendants on 19-seat aircraft to assist passengers with disabilities and insufficient ground crew to assist at many non-hub airports. One disability community commenter pointed out, however, that some individuals who cannot climb steps—and therefore need a lift to get into the aircraft—can walk a few steps and therefore proceed to a seat in these aircraft.

DOT Response

From comments and from its own review of various aircraft, the Department is aware of certain ''problem aircraft'' with which existing models of lifts do not work well. For instance, float planes, which land on water and often pick up passengers from docks or floating platforms, appear to be incompatible with lift use. The final rule will not require boarding assistance for float planes.

The Department is aware that there are locations in which inclement weather can sometimes make aircraft operations difficult. The Department does not believe that it is advisable to waive boarding assistance requirements in such places, however. Even airports that face difficult climate conditions enjoy substantial periods in which weather does not preclude aircraft or lift operations. It makes sense to require accessibility for those times. Consequently, while the Department does not intend the rule to require the operation of boarding assistance equipment when it would be unsafe due to bad weather, the rule will apply to airports in all parts of the country. We do not anticipate that this will be an overwhelming problem at most times and places. Weather that is sufficiently bad to preclude boarding assistance but not bad enough to preclude aircraft operations is not likely to occur on such a large percentage of days as would make a boarding assistance requirement futile. When weather is bad enough to preclude aircraft operations, the problem is obviously moot.

The Department is persuaded that it is not reasonable to impose boarding assistance requirements with respect to aircraft models in which a lift would create a significant risk of damage to the aircraft (e.g., by coming within less than a foot of the propeller assembly) or in which the internal configuration of the aircraft effectively precludes a passenger using a boarding or aisle chair from getting to a non-exit row seat. To the Department's knowledge, the following are the only aircraft models that would be exempt from boarding assistance requirements on this basis:

- *Fairchild Metro*—The major problem with accessing this aircraft via a lift is a propeller assembly that juts out almost on line with the passenger entrance door. Even if a lift is able to access the door at an angle, there would be only 4–11 inches of space between the lift and the propeller assembly. This presents a high risk of costly damage to the aircraft (e.g., according to carriers, up to an estimated $250,000 plus lost revenue from the approximately two months of repair time) if lifts are deployed with only slight imprecision. In addition, the four foot-high doorway, 12-inch aisle, and high platform on which seats are located present nearly insurmountable barriers to access for non-ambulatory passengers to non-exit row seats.
- *Jetstream 31*—Some lifts cannot access this aircraft because of a curvature of the aircraft doorsill that prevents lifts from interfacing with the aircraft door without damaging the aircraft. Other lifts can interface with the aircraft; however, the low door makes passenger boarding from the lift a very awkward procedure (e.g., a passenger may have to be tilted backward to a nearly supine position to enter the aircraft). The more serious problem, however, is enabling a passenger to get from the aircraft door to a non-exit row seat. To get to the aircraft aisle from the door requires a passenger in a boarding chair to make a 45-degree turn in the aisle (which is possible only for a passenger with a 12.5 inch width or less). This aircraft has a 13-inch aisle, but seats overhang the aisle, making it impossible for even a 12-inch wide boarding aisle to access more than one non-exit row seat. If a passenger is able to get to this seat, the passenger must have good upper body strength and the help of two carrier personnel to be transferred from the chair and lifted over the back of the seat.
- *Beach 1900 (C and D models)*—A cabin configuration similar to that of the Jetstream 31 presents very significant barriers to providing access to non-exit row seats for non-ambulatory passengers. The four-foot high aircraft door makes it necessary to tilt a boarding chair to a nearly supine position, with the carrier personnel assisting the boarding having to bend over while maneuvering the chair through the door. A 12-inch chair cannot fit down the aircraft aisle, and does not allow the maneuvering room necessary for an independent transfer. Passengers must have good upper body strength and assistance from two carrier personnel to rotate and swing their bodies into a seat located behind the chair (or must crawl down the aisle to a seat).

The rule includes exceptions from boarding assistance requirements for these three aircraft models. If there are other aircraft that have similar difficulties, the rule gives the Department of Transportation discretion to add to the list. It should be emphasized that air carriers are not authorized to exempt other aircraft from boarding assistance services on their own initiative.

It should be noted that there may be situations in which the ability of a passenger to use a boarding chair to get to a non-exit row seat may vary with the passenger's size and weight. For example, a very large, heavy passenger may not be able to fit into the boarding chairs used on narrow-aisle commuter aircraft, or may not be able to walk through a narrow aisle to a seat, while a smaller passenger does not have the same problem. If, for this reason, the passenger cannot get to a seat he or she can use, providing boarding assistance is a futile gesture that the carrier is not required to make. On the other hand, a passenger who cannot climb steps—and therefore needs a lift to board—may be able to walk a few steps to a seat. In such a situation, providing boarding assistance is not a futile gesture, and the rule requires carriers to provide it. If a passenger with a disability asserts that he or she can walk the needed distance from the aircraft door to a non-exit row seat, the carrier must provide the boarding assistance and allow the passenger to attempt to reach the seat.

Passengers who use lifts to access commuter aircraft need to know, in advance, whether lift service is available. Passengers are unlikely to be aware which aircraft model their flight will use. Consequently, the Department is amending the information section of the ACAA rule to direct carriers to tell passengers who request the information or who note that they use a wheelchair for boarding whether the aircraft model scheduled to be used for a particular flight is one on which boarding assistance is available. This information would include notice of the availability of boarding assistance at boarding, departure, and intermediate points. In addition, carriers should make such information routinely available on all media through which they make information available to the general public (e.g., 800 numbers, reservation systems, published schedules). The Department emphasizes the critical need for this information to be conveyed accurately and promptly, because, in its

absence, the travel plans of individuals with disabilities are likely to be disrupted. Airlines and their agents *must* ensure that this function is performed. Like other violations of the Air Carrier Access Act, failure to comply with this information provision can subject regulated parties to enforcement action, including civil penalties.

Consideration of issues concerning aircraft design for accessibility is beyond the scope of this rulemaking. We note, however, that some older models of commuter aircraft that present some of these problems appear to be gradually being phased out of the commuter fleet. The 1996 FAA commuter safety standards are likely to accelerate the elimination of some older 19-seat models from the fleet. The exit row rule is part of an FAA safety rule separate from Part 382. Consideration of changes in that rule related to seat availability in small commuter aircraft are also beyond the scope of this rulemaking.

The Department does not believe, given the way aircraft are used and scheduled by carriers, that it would be practicable to require more accessible models of aircraft to be designated or substituted for flights that passengers with disabilities want to use, even on advance notice.

3. Boarding Assistance Methods

The NPRM proposed that boarding assistance should be provided using ''suitable devices (not normally used for freight)'' but that ''hand-carrying'' (i.e., picking up a passenger's body in the arms of airline personnel) would never be required. There was general agreement among commenters that hand-carrying was a bad idea, for both safety and dignity reasons. Some disability community commenters did say, however, that it should be permitted in an emergency or when a lift was not available or inoperative, at least with the consent of the passenger.

The NPRM, like the present rule, did not exclude boarding chairs, used to carry passengers up airstairs, from the scope of ''suitable devices'' that could be used to provide boarding assistance. It did ask for comment on whether the use of boarding chairs was appropriate for this purpose. Several commenters (including lift manufacturers, disability community commenters, and an airline) said that boarding chairs should be used for this purpose only when a lift is inoperable or when there is an emergency. For most disability community commenters, using a boarding chair in this way is tantamount to hand-carrying and therefore strongly disfavored. (One commenter noted that the use of boarding chairs for vertical access, which it regarded as objectionable, should be distinguished from the use of aisle or transfer chairs on board the lift or aircraft, which are needed to assist many passengers to their seats.) On the other hand, many other commenters (including airlines and their groups, airports, and one disability group) advocated permitting the continued use of boarding chairs when it was more cost-effective to do so (e.g., at an airport with few enplanements), when it would avoid delay (e.g., when an airport's lift was being used elsewhere), or when a lift was broken. These commenters said allowing the use of boarding chairs in at least some situations would provide greater flexibility to all concerned.

DOT Response

The main point of this regulation is to ensure that, in as many situations as possible, passengers with disabilities be able to travel by air, with safety and dignity. Having airline personnel carry a passenger up stairs in a boarding chair increases risk of injury both to passengers and airline personnel, and it can often be an undignified and frightening experience for passengers. Consequently, the rule does not permit this practice.

This does not mean that boarding chairs and/or aisle chairs cannot be used in the boarding assistance process. Indeed, their use is necessary to get the passenger to a seat from a lift. Nor does it mean that carrier personnel are relieved of their obligation, as part of the boarding assistance process, to assist passengers in transferring from their own wheelchair to a boarding or aisle chair, and then from that device to an aircraft seat. It just means that, under normal circumstances on 19–30 seat aircraft, carrier personnel may not lift passengers in boarding chairs up stairs as the means of effecting the level change needed for boarding. Boarding stairs are not ''suitable devices'' for this purpose on 19–30 seat aircraft.

In abnormal circumstances (e.g., if a lift breaks down and needs to be repaired) or with respect to aircraft that are exempt from the boarding assistance requirement, the carrier would use whatever means are available (including boarding chairs but not hand-carrying) to provide boarding assistance. The use of alternative means is conditioned on the passenger's consent. This is not a requirement to create a means of boarding assistance where none exists or is feasible. It simply means that if a practicable alternative means of providing assistance in fact exists in a particular situation, carriers are to use it. In an emergency evacuation situation, the carrier would obviously do whatever is needed to deal with the emergency, regardless of other considerations.

There is apparent unanimity that hand-carrying (in the sense of bodily picking up a passenger for purposes of a level change, as distinct from providing assistance using a boarding or aisle chair or assisting in the transfer of a passenger) is a bad idea. The final rule specifically provides that this practice is never required (other than when necessary for an emergency evacuation).

The Department notes that the requirements of this amendment concern boarding assistance only for 19–30 seat commuter aircraft. The existing provisions of Part 382 concerning boarding assistance for larger aircraft (*see* § 382.39(a) (1)–(3)) remain in effect, without change. Under these requirements, airlines may carry passengers up airstairs in boarding chairs. Airstairs used with larger aircraft are more likely to have sufficient weight-bearing capacity for this type of boarding assistance, and many of the lift models designed for 19–30 seat aircraft do not work with larger aircraft. While the Department believes that use of lifts for boarding is preferable for larger as well as smaller aircraft, changes in the methods of boarding assistance used for the larger aircraft are outside the scope of this rulemaking.

4. Time Frames

The NPRM contained two time frames. First, it proposed 9 months from the effective date of the rule for carriers and airports to complete agreements to provide lifts. Second, it proposed 3 years from the effective date of the rule as the implementation date for lift service under the agreements.

With respect to the time period for the agreements, airline associations, airlines and some airports suggested a year, principally because they believed it would take that time to work out the multiple agreements necessary under the NPRM. Lift manufacturers and disability groups, on the other hand, favored shorter time frames (e.g., 2–6 months), principally because many years have passed since the ACAA regulations have been in place, lifts have been available for some time, further delay would work a financial hardship on manufacturers, and airlines and airports have had a long time to prepare to provide boarding assistance. Given the accessibility needs of passengers, these commenters did not believe that a longer negotiation period was warranted. An airport association,

an airport, and an airline favored the proposed 9-month period.

There was a similar variety of views with respect to the implementation date for the agreements. Disability groups and equipment manufacturers favored a 1 or 1½-year implementation period, rather than the three-year period proposed in the NPRM, but supported extensions of up to five years for small airports, as opposed to waivers. These commenters said that lifts are available, that airports and airlines have had a long time to prepare to provide boarding assistance, and that equipment costs were small compared to other costs regularly incurred by airlines and airports. One disability group said that boarding chairs should be required to provide access immediately.

On the other hand, an airline association and some state and local transportation agencies favored the proposed 3-year period. Many of these commenters added that the rule should be flexible, with provisions for granting relief from the deadline if factors such as funding delays or the inability of manufacturers to meet demand prevented parties from complying on time. One airline association said the 3-year period should start to run from the date of the agreement, rather than the effective date of the rule, because manufacturers would not be able to meet the demand otherwise.

Two disability agencies said that implementation should be required as soon as practicable, with three years being the outside limit. Two commenters, an airline and an individual, favored a two-year period. Two lift manufacturers suggested a staggered implementation schedule, with 12–15 months for larger airports, two years for medium-size airports, and three years for small airports. They expressed the concern that, absent such a schedule, acquisition of lifts would be back-loaded at the end of the implementation period.

DOT Response

The Department's task is to find a good balance between the need to implement accessibility as soon as possible and the need to give parties a reasonable amount of time to do the work needed to accomplish this objective. With respect to the time to conclude agreements, the Department believes that the NPRM proposal of 9 months is a good middle ground between these two considerations, as well as between the concerns expressed by different groups of commenters.

With respect to implementation time, the Department will require the agreements to be carried out as soon as practicable, as is the typical practice in disability regulations requiring modifications to facilities or practices (e.g., program accessibility changes required under the Department of Justice ADA Title II regulation). The maximum time for implementation will be two years for large and medium hubs (1.2 million or more annual enplanements), three years for small hubs (250,000–1.2 million annual enplanements), and four years for non-hub primary airports (10,000–250,000 annual enplanements). This phase-in will result in accessibility at the airports carrying the greatest number of passengers sooner (hubs handle 97–98 percent of total enplanements), while reducing costs and burdens at the smaller airports. Again, these time frames represent what the Department believes to be a good balance among the policy considerations and commenter concerns involved.

5. Other issues

The NPRM raised the question of whether use of lifts would create schedule disruptions or delays, particularly when multiple demands on lift use might be made. Commenters had a number of thoughts on this point. An airline association said that it takes 10–15 minutes to get a lift to a given aircraft and board a disabled passenger, possibly interfering with the 5–20 minute turnaround time many carriers try to achieve, leading the group to request a 48-hour advance notice requirement for assistance. Another airline association and an airline also supported the idea of advance notice for boarding assistance, to avoid or help deal with conflicting demands for lift service. Two airlines and an airport expressed concern about delays, particularly at hub airports where there might be multiple demands for assistance, but one of these airlines noted it had no accurate data on the time needed to complete a boarding using a lift. However, airline commenters generally said that boarding passengers in chairs was faster and more cost-effective than using lifts.

Two commenters noted that airlines encounter flight delays for a variety of reasons, and thought that assisted boardings would not significantly add to this problem, given their relative infrequency. A lift manufacturer said an actual boarding with its lift took just 3–5 minutes, faster, it said, than using a boarding chair. Another manufacturer and a state agency noted that, under an FAA advisory circular for lift devices, lift boardings are to be accomplished in six minutes or less, which would also be unlikely to create significant delays. Several disability community commenters also expressed doubts that delays would be a significant problem, saying there was no data to support the idea that a problem would exist.

The NPRM also asked about what, if any, training requirements there should be for personnel who provide boarding assistance. Two airline associations and two airlines said that no additional training requirements—beyond the general training requirement provided in the existing ACAA rule—was warranted. Airlines already have a vested interest in making sure their personnel perform their duties safely and effectively, one of the associations added. Three equipment manufacturers also opposed additional training requirements, one noting that the FAA advisory circular already called for training for lift operators, one asserting that the training required by the FAA circular was too lengthy, and the other expressing concern about the cost of training to manufacturers.

A larger group of commenters, including disability groups, individuals, and state and local agencies, supported more specific training requirements. Four of these specified that sensitivity training should be required. A disability group said DOT should strenuously monitor training, since they saw poorly trained employees as one of the biggest problems that passengers with disabilities encounter. An airport supported training but suggested that it should be provided by manufacturers and carriers (unless the airport actually operated the lift).

Three commenters suggested that the use of lifts should be required for aircraft with fewer than 19 seats, if the lifts work with the particular aircraft. One of these commenters noted two small aircraft models with which lifts would work. An airport suggested that this requirement would make sense only in cases where there was an accessible means of deboarding at the destination point. Several disability community commenters said that, whatever the final requirements, allowing denied boardings was not acceptable. Lift manufacturers emphasized their products were available.

DOT Response

The final rule, like the NPRM, requires boarding assistance under the agreement required by this amendment only for 19–30 seat aircraft. There may be some situations in which the same boarding assistance equipment can be used to provide access to larger or smaller aircraft. Where this is the case, the Department recommends that carriers and airports use it for this

purpose, in preference to denying transportation on smaller aircraft or using less desirable means of boarding assistance for larger aircraft.

The general ACAA requirement of training to proficiency (including refresher training, as needed, to maintain proficiency) in matters affecting transportation of passengers with disabilities applies to boarding assistance as well as other activities (*see* § 382.61(a); to the extent that airport personnel are involved in boarding assistance at a given airport, a similar requirement extends to airports through the amendment to 49 CFR Part 27). While training is clearly important for all aspects of transportation accessibility, the Department does not believe, as a general matter, that a separate training requirement specifically focused on boarding assistance is needed. We note that § 382.61 requires refresher training, as appropriate to the duties of each employee, to ensure that proficiency is maintained. Because, in the absence of means of boarding assistance, some commuter carriers may have served few persons with mobility impairments, carrier employees trained previously may not have maintained proficiency in boarding assistance and other matters necessary to proper service to such passengers. Where this is the case, the training requirements of the ACAA call for bringing relevant personnel up to proficiency in all these matters.

There is one exception. The training requirements of § 382.61(a) apply only to carriers who operate aircraft with more than 19 seats. Carriers who operate aircraft with 19 seats, but do not operate larger aircraft, are not covered by this requirement. Consequently, this rule will require any carriers falling into this category to provide training to proficiency in boarding assistance for those personnel who perform boarding assistance duties. This amendment does not require such carriers to carry out other training responsibilities under § 382.61(a), although it is intended that employees of these carriers receive refresher training as needed to maintain proficiency in boarding assistance services.

The information provided by commenters concerning the time required for assisted boarding varied considerably. Even given the lengthier scenarios, however, it is not reasonable to conclude—absent a massively larger demand for assisted boardings than any commenters have anticipated—that significant systemic schedule disruption is likely to occur. As some commenters pointed out, individual flights are delayed for a variety of reasons—weather, mechanical problems, air traffic congestion, waiting for passengers from incoming connecting flights, etc.—on a routine basis. No one likes these delays, but it seems fanciful to suggest that delays from lift boardings of disabled passengers will make a significant difference in the overall pattern of delayed flights, or have a measurable effect on a carrier's overall on-time performance record.

The Department is not persuaded that this concern warrants adding a 48-hour advance notice requirement for boarding assistance. Obviously, passengers may wish to inform carriers of their plans in advance to attempt to make their arrangements as smooth as possible. However, as in the case of passengers who are traveling with electric wheelchairs, we believe it is reasonable for airlines to have some reasonable amount of time to provide the service in question. Consequently, carriers will be permitted to require that an individual needing lift service check in at least an hour before scheduled departure.

Airport Facility Requirements

Background/NPRM

The Department's current section 504 and ACAA provisions concerning airport facilities differ in a number of details. This NPRM proposed to make changes to harmonize the two sets of requirements. The Department published a notice of proposed rulemaking for section 504 and an advance notice of proposed rulemaking under the ACAA that would have harmonized the two provisions in 1990, at the same time as it published its ACAA final rule. The Department received very few comments in response to those notices, and many of the specific points raised by the commenters have been overtaken by the enactment of the Americans with Disabilities Act (ADA).

The NPRM proposed to add requirements in the ACAA and section 504 rules for a ''program accessible'' path from the beginning of a passenger's encounter with the airport facility to the aircraft door, with emphasis on the means of moving between the gate and the aircraft. This is a particular concern with respect to commuter aircraft, which typically do not use loading bridges, and passengers often have to descend from the gate level to the tarmac level to board the aircraft. The proposal suggested that meeting Title III or Title II ADA standards was an appropriate requirement for airports and airlines under the ACAA and section 504, respectively.

Because ADA facility accessibility standards say little specifically about airports, the Department proposed to retain, with some modifications, the airport-specific requirements of the current ACAA and 504 rules. The NPRM sought comment on whether doing so would be confusing or duplicative. The NPRM repeated the existing language of the ACAA regulation concerning telecommunication devices for the deaf (TDDs), saying that at least one TDD shall be placed in each terminal. The NPRM asked for comment on how this requirement should be interpreted and implemented.

Comments

Two issues predominated in commenters' discussion of this portion of the proposal: the idea of an accessible path through the airport and the placement of TDDs. A disability group objected to the accessible path proposal on the basis that it fell short of what was required by the ADA and ACAA. This commenter also said that such steps as using a boarding chair to carry a passenger down steps from the gate level to the tarmac was not a proper part of an accessible path. A state agency said that using program accessibility approaches other than facility modification had saved the commenter a substantial amount of money. Three disability community commenters said that the ADA accessibility guidelines (ADAAGs) should apply to an accessible path through airports. An airport association and an individual suggested that airports should have five years to implement an accessible path. An airport supported the accessible path concept, as long as the rule made clear that boarding assistance was the airlines' job. An individual said that airports should have a disability specialist available to assist passengers. A state agency noted that there were some inconsistencies between the ADAAGs and the ACAA provisions that the NPRM proposed to retain, and also pointed to inconsistencies between the ADAAGs and the Uniform Federal Accessibility Standard (UFAS), which public entities could choose to use under Title II of the ADA.

With respect to TDDs (one commenter suggested using the term ''TTYs'' instead), two commenters suggested requiring improved signage to direct passengers to where the instruments were located. A number of commenters asked for more specificity in the definition of ''terminal,'' to avoid differing interpretations. A disability agency suggested simply using the ADAAG standard for placement of these

phones, while a TDD manufacturer supported specifying a number of specific locations in terminals where TDDs would have to be placed. (This manufacturer quoted a $995 price for a vandal-resistant public unit.) An airline favored keeping the existing standard, to avoid confusion between ADA and ACAA requirements.

DOT Response

The Department believes that the simplest and best solution to the issue of airport accessibility standards is to make applicable to airports (through section 504) and airlines (through the ACAA) the requirements applicable to other public facilities and public accommodations of Titles II and III of the ADA, respectively. This means that there will be one common standard for airport access, under which airports and airlines will be subject to the same obligations as other transportation facilities and places of public accommodation. Special airport-related standards that, as some commenters pointed out, could cause confusion will be eliminated.

This approach is consistent with the relationship among disability statutes that Congress intended. Air carriers' terminal facilities appear not to be subject to direct ADA coverage. Under the Department of Justice (DOJ) rules implementing Title III of the ADA, airport terminals are not viewed as a place of public accommodation. The reason is that places of public accommodation include only those terminals used for the provision of ''designated'' or ''specified'' public transportation, and transportation by aircraft does not constitute ''designated'' or ''specified'' public transportation. Congress excluded transportation by aircraft from these ADA provisions because Congress had already subjected carriers to the ACAA, and it did not want to impose duplicative requirements.

The language and legislative history of the ADA, however, reveal no Congressional intent that carriers' facilities be subject to any different substantive requirements from those affecting places of public accommodation. It is clear that carriers have an ACAA obligation with respect to airport facilities. In defining the standard by which carriers' compliance with this obligation is judged, the Department believes it makes sense to refer to the ADA standard for public accommodations. Consequently, the final rule provides that carriers, with respect to terminal facilities and services, would be deemed to comply with their ACAA obligations if they meet the requirements spelled out for places of public accommodation in Department of Justice Title III ADA rules.

Under Department of Justice regulations implementing Title II of the ADA (28 CFR Part 35), ''title II applies to everything and anything a public entity does * * * All governmental activities of public entities are covered.'' (56 FR 35696; July 26, 1991). Public airport authorities are public entities for purposes of Title II; consequently, their activities and facilities appear subject to the requirements of DOJ Title II rules. It has long been clear that airport authorities that receive DOT financial assistance are subject to section 504 of the Rehabilitation Act of 1973, as amended. In amending the Department's section 504 rule provision concerning DOT-assisted airports, it makes sense to refer to ADA standards. (Congress, in enacting the ADA, made clear that it intended for consistent substantive standards to apply under both statutes.) Therefore, under the final rule, the basic standard for judging whether a public airport authority complies with section 504 is compliance with the DOJ rules for Title II of the ADA.

Obviously, there are some portions of airports at which airport operators' section 504 obligations and the ACAA obligations of carriers overlap. The Department believes that these overlaps can be treated in the same manner as the relationships between public entity landlords and private entity tenants discussed in the Department of Justice ADA regulations. This means, of course, that airports and airlines will have to work out accessibility issues and relationships at the local level.

This approach means that there will not be special requirements in the DOT rules concerning such issues as placement of TDDs and inter-terminal transportation. Inter-terminal transportation will be subject to the DOT ADA regulations affecting transportation services generally. (*Intra*-terminal transportation, as a service provided by airlines and/or airports, is subject to the same Title II or Title III requirements as any other service. There are no ADAAG standards applicable to the design or construction of intra-terminal vehicles, such as the electric carts used in many airports.) Placement of TDDs will be subject to the same standards affecting public facilities and places of public accommodation under the ADA. Consequently, the issue concerning the definition of ''terminal'' for TDD placement purposes becomes moot.

We point out that not only the general terminal areas, but also some areas open to part of the traveling public (e.g., the airline ''clubs'' providing special accommodations in terminals to frequent fliers or persons who pay a fee to the airlines) are subject to the accessibility requirements of this rule. These are spaces that, in Title III terms, would be places of public accommodation, and it is unlikely that most would fall within the limited ''private club'' exception to the ADA, as defined in the Department of Justice Title III rules. One implication of this coverage is that, if telephone service is provided to ''members'' within the club space, then TDD requirements would apply to the ''club.'' It would not be consistent with the rules for the carrier to refer the passenger to a TDD phone in the general passenger area of the terminal, since the whole point of the club is to provide a refuge from the noise and bustle of the terminal.

The rule provides that the Americans with Disability Act Accessibility Guidelines (ADAAGs) will be the standard by which airport facility accessibility will be judged. The ADAAGs include a provision (10.4.1) dealing with new construction at airports. This provision applies directly to new construction and alterations at airports. It is also the standard for modifying facilities to meet accessibility requirements for existing facilities, under the ''program accessibility'' (see 28 CFR § 35.150) or ''barrier removal'' (see 28 CFR § 36.304–305) provisions of the Department of Justice Title II and Title III rules.

The Department is aware that, for the present, public entities subject to Title II of the ADA can choose between compliance with the ADAAGs and compliance with the Uniform Federal Accessibility Standards (UFAS), which differ in some particulars from the ADAAGs. The Department of Justice, DOT, and the Architectural and Transportation Barriers Compliance Board (Access Board) have proposed applying the ADAAGs as the exclusive standards for Title II entities. Rather than further amend the ADA and ACAA rules after this ADA rule change goes into effect, we believe it is more sensible to use the ADAAGs as the standard for airport accessibility at this time. We regard the ADAAGs as the pre-eminent accessibility standard at this time, and its use will also avoid any inconsistency between the standards applicable to airlines and airports under this rule.

Given the application of ADA requirements and standards to airport facilities, the only point on which the Department believes it is necessary to spell out an additional specific requirement concerns an ''accessible

path'' for level changes between gate and aircraft boarding areas. The Department clearly interprets ADA requirements as applying to the path an individual must take between the entrance to the airport and the means of boarding the aircraft, specifically including the way a passenger moves between the gate and the aircraft. This is important because, in many cases, the gate area will be on an upstairs level of an airport, while aircraft—particularly small commuter aircraft—are boarded from the tarmac. The basic idea is that a key aspect of airports' and carriers' program—getting someone through the airport and onto an aircraft—must be accessible to individuals with disabilities, including those using wheelchairs.

Communicable Diseases

Background

Section 382.51 of the existing ACAA rule provides that a carrier may not refuse transportation to a passenger, require the person to provide a medical certificate, or impose other conditions or restrictions on passengers, on the basis that the passenger has a communicable disease, except

> with respect to an individual who has a communicable disease or infection which has been determined by the U.S. Surgeon General, the Centers for Disease Control, or other Federal public health authority knowledgeable about the disease or infection, to be transmissible to other persons in the normal course of flight.

This provision was originally designed in response to a number of incidents in the 1980s in which persons with AIDS had been denied transportation or otherwise discriminated against by air carriers, apparently because of fear of, or misinformation about, HIV infection and how it is transmitted. It subsequently became apparent to the Department that this provision of the rule needed clarification. Given the absence of definitive guidance from the Surgeon General, the Centers for Disease Control, or the Public Health Service, (which the Department has unsuccessfully sought), the closest approach to medical guidance the Department has been able to find is a Food and Drug Administration (FDA) regulation listing several diseases (e.g., infectious tuberculosis, several viral hemmoragic fevers) appropriate for travel restrictions. The Department issued guidance based on this FDA list, stating that since other diseases have not been named by Federal public health authorities, carriers may not deny or restrict transportation of persons with other diseases.

Carrier medical personnel expressed the concern that this guidance is too restrictive, leading to potential conflicts between the rule and their normal, prudent medical judgment. They have cited persons in the infectious stages of chicken pox or measles as persons who it may be appropriate to restrict, to protect the health of other passengers. In response to their concern, an airline association requested that the Department withdraw the guidance in question. In addition, it has been pointed out that, read literally, the current regulatory provision could be construed to allow carriers to exclude persons with illnesses that are clearly communicable by airborne transmission or casual contact but which are not serious for most persons, such as the common cold (the Department would not construe the rule in this fashion, however).

The Department based its NPRM proposal on three principles:

> (1) It is reasonable for carriers to impose restrictions on transportation only of persons with diseases that are readily communicable, in the normal course of flights, by airborne transmission or casual contact. (For example, restrictions could not be imposed on persons because they were infected with HIV.)
>
> (2) It is reasonable for carriers to impose restrictions on transportation only of persons with diseases that normally have serious consequences for the health of persons who catch the disease. (For example, restrictions could not be imposed on persons because they have a common cold.)
>
> (3) Carriers should impose restrictions on persons for reasons relating to communicable diseases only with the advice and concurrence of a physician. (That is, airline personnel such as pilots, flight attendants, or gate agents could not make unilateral decisions to impose restrictions on passengers.)

NPRM

The Department proposed rewriting the current § 382.51(b) to reflect these three principles. The NPRM proposed two methods carriers could use to implement these principles. First, when faced with someone who may have a contagious disease that may make travel inadvisable, the carrier can obtain a specific recommendation from a physician. Second, the carrier, together with its medical staff or consultants, could devise a list of diseases that can affect travel, consistent with the three principles. The list would include information on the stages of various diseases during which travel would be contraindicated. The list would be made part of the carrier's regular information base for employees (e.g., manuals, computer reservation system instructions). The NPRM suggested that carriers, to promote consistency, should coordinate a single, unified list, so the same diseases have the same consequences on all airlines.

Under the proposal, in cases where there is no dispute between the carrier and a passenger over the fact that a passenger has a disease on the list at a point in time when it is contagious, the passenger could be denied transportation until a later time without the carrier having to obtain a recommendation from a physician in the particular case. However, if the passenger denied that he or she has a disease on the list, or acknowledges having the disease but insists that it is not at the stage which the list describes as infectious, then the carrier employee would have to consult a physician.

In addition, the proposed amendment stated that airlines would have to impose the least restrictive alternative in communicable disease situations (e.g., should not deny transportation when requiring a medical certificate is sufficient); would allow a passenger to travel at his or her original fare if travel is postponed as the result of having a communicable disease; and would provide, on request, a written explanation of any restrictions that are imposed for reasons relating to communicable diseases.

Comments

One airline and a number of disability community commenters supported the NPRM proposal. One disability group suggested adopting the Department of Justice's ''direct threat'' standard (from DOJ's ADA Title III rule), including its requirement that there be an individualized assessment, based on reasonable judgment that relies on current medical knowledge or the best objective evidence available, to ascertain the nature, duration, and severity of the risk, as well as mitigation measures that could apply. Providing the passenger a face mask was one mitigating measure suggested by two commenters. Another such group recommended that the carrier should be required to consider the recommendations of the passenger's treating physician, while a carrier said that the passenger's personal physician should certify that the individual can fly safely.

With respect to the idea of a list of communicable diseases, airlines and their associations had a variety of comments. One airline wanted DOT to create the list. Other airlines wanted a Federal health agency to create a list, said the medical community's input

should be obtained, that there should be flexibility to add new diseases to the list, and that there should be uniformity in any such list given that passengers often use more than one carrier for a trip. Two carriers said that airlines, which do not have extensive medical staffs, should not be assigned the task off creating a list. For the same reason, one association said that an industry group should be formed to compile the list. Another association questioned the utility of such a list, since new diseases appear from time to time, and reliance on a list would be a disincentive to considering individual circumstances.

With respect to the idea of consultation with a physician, two carriers objected that it was impractical to seek medical advice in each case, and that airline personnel should have the discretion to deny boarding. An airline association suggested that qualified medical personnel other than a physician should be permitted to make the determination involved, since physicians might not be available in a timely fashion.

Other comments included a request by an airline association that diseases transmissible by casual contact, as well as by airborne means, should be a ground for restricting travel, a suggestion by the same group that any ability to travel at a later date be limited to 60 days, and a request by a disability organization that carriers be required to reimburse passengers for expenses incurred because of a carrier's decision to postpone travel.

DOT Response

The Department has considered the comments on this issue carefully, recognizing the difficulty that carriers and passengers can have in making judgments about when it may be inappropriate for a passenger to travel because of illness. Based on comments, the Department's discussions with Federal health officials over a period of several years, and the lack of expertise within the Department, we have decided that it is not feasible for us to compile a list of diseases that would warrant a denial of transportation or to ask carriers to do so. Consequently, we are not adopting the portion of the proposal concerning lists.

With respect to the criteria for making decisions on these issues, the Department believes the best available model is the ''direct threat'' language in the Department of Justice's Title III ADA regulation. The DOJ language reads as follows:

> Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services. In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the actual injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. 28 CFR § 36.208).

This is well-established language that gives due regard to both nondiscrimination on the basis of disability and the need of a public accommodation to make reasoned judgments to protect the health and safety of other persons. Consequently, the final rule adapts this language to the context of air travel.

This approach is compatible with the Department's purposes in publishing its NPRM. For example, a communicable disease that is not readily transmissible by airborne means or by casual contact is unlikely to pose a direct threat; nor would a disease that, if communicated by these means, does not pose a significant health threat to the general passenger population. AIDS, on one hand, and the common cold, on the other, are examples of communicable diseases that would not generally pose direct threats. Making medical judgments cannot be entrusted to personnel without medical training. Consequently, it is unlikely that a ''direct threat'' finding could be made about a communicable disease that did not rest on a medical determination by a physician or nurse.

This direct threat concept dovetails with the requirement that the airline find the least restrictive means of addressing an identified risk. It is not consistent with this provision to deny transportation to someone if a medical certificate, or a face mask, or seating the individual a few rows away from other passengers on a half-full flight, or some other action will be sufficient to mitigate the risk to other passengers involved to the point where the individual can travel without endangering others.

While it would be useful for an airline concerned about a passenger's condition to consult with the passenger's physician, we do not believe that it is necessary to mandate such consultation in the regulation. Such consultation occurs in many cases now; certainly it would be a reasonable part of the process needed to make a direct threat determination. Nor do we believe it would be appropriate to require carriers to compensate passengers whose travel is delayed for medical reasons under this section. Denial of service by a carrier under these circumstances does not constitute improper conduct that should result in compensation. We note that the NPRM already covered diseases spread by casual contact as well as airborne means, and the final rule retains this point. Finally, we agree with the comment that someone whose travel is postponed for this reason should not have perpetual right to make the trip. We think that a 90-day limit could fairly be imposed by the carrier.

The FAA is conducting research into cabin air quality issues, which, beginning next year, will include research into the risk of passengers and crews contracting infectious diseases. In addition, there is a multiagency working group under the auspices of the Committee on International Science, Engineering, and Technology Policy of President Clinton's National Science and Technology Council. This group is reviewing the U.S. role in detecting, reporting, and responding to outbreaks of new and re-emerging infectious diseases. To the extent that research or recommendations from these or other sources provides additional information bearing on policies affecting airline transportation of individuals with communicable diseases, the Department can take account of it in future rulemaking.

Other Issues

In both the ACAA and section 504 rules, the NPRM proposed updating terminology (e.g., changing ''handicapped person'' to ''individual with disabilities'') consistent with practice under the ADA. The proposed section 504 amendment would also make two administrative additions, requiring the submittal of transition plans by any airports which had not already done so and specifically applying nondiscrimination on the basis of disability requirements to subsidized Essential Air Service (EAS) carriers. Unlike most carriers, who do not receive Federal assistance, these carriers have been covered under the existing section 504 rule, but they have not been mentioned specifically, since Part 27 was promulgated before the Essential Air Service program came under DOT jurisdiction in January 1985. This administrative addition does not create any new obligations for subsidized EAS carriers.

One airline commented that airlines should not have to change the terminology in their compliance manuals if the rule's terms change. We agree, and we are not imposing such a requirement. There were not any other

comments on these proposals, which the Department will adopt as proposed.

The NPRM asked for comment on three other issues—seating accommodations for persons with disabilities, provisions concerning collapsible electric wheelchairs, and matters relating to the use of oxygen by passengers. These issues are addressed in a separate supplemental notice of proposed rulemaking in today's Federal Register.

Withdrawal of 1990 Supplemental Notice of Proposed Rulemaking

In the March 6, 1990, issue of Federal Register in which the Department published the original 1990 Air Carrier Access Act final rule, the Department also published a supplemental notice of proposed rulemaking (SNPRM; 55 FR 8076; RIN 2105–AB61). The Department is withdrawing this SNPRM at this time.

The SNPRM concerned three subjects: airport transportation systems, standards for boarding chairs, and substitute service when boarding assistance is not available for small commuter aircraft. These matters have been overtaken by the present rulemaking, which applies ADA standards to airport transportation systems and requires boarding assistance, using lifts rather than boarding chairs, for small commuter aircraft. The withdrawal is an administrative action that will remove from the Department's regulatory agenda an item pertaining to an NPRM on which no further action is anticipated.

Guidance Concerning Service Animals in Air Transportation

The Department receives frequent questions about the transportation of service animals by airlines. On July 26, 1996, the Department of Justice issued Americans with Disabilities Act guidance concerning the access of service animals to places of public accommodation. The following guidance is based on the DOJ issuance, with adaptations to the context of air transportation and answers to questions the Department has been asked.

The Department of Transportation's rules protecting the rights of air travelers with disabilities require air carriers to permit passengers to fly with their service animals. The Air Carrier Access Act (ACAA) rules say the following:

Carriers shall permit dogs and other service animals used by individuals with disabilities to accompany the person on a flight.

(1) Carriers shall accept as evidence that an animal is a service animal identification cards, other written documentation, presence of harnesses or markings on harnesses, tags or the credible verbal assurances of the qualified individual with disabilities using the animal.

(2) Carriers shall permit a service animal to accompany a qualified individual with disabilities in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation.

(14 CFR § 382.55(a))

If a service animal cannot be accommodated at the seat location of the qualified individual with disabilities whom the animal is accompanying . . . the carrier shall offer the passenger the opportunity to move with the animal to a seat location, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel with checked baggage.

(14 CFR § 382.37(c))

The questions and answers below are intended to help carriers and passengers understand how to respond to service animal issues.

1. Q: What is a service animal?

A: Under the ACAA, a service animal is any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If the animal meets this definition, it is considered a service animal regardless of whether it has been licensed or certified by a state or local government.

2. Q: What work do service animals perform?

A: Service animals perform some of the tasks and functions that the individual with a disability cannot perform for him or herself. Guide dogs that help blind individuals are the type of service animal most people are familiar with. But there are service animals that assist persons with other types of disabilities in their day-to-day activities. Some examples include—

- Alerting persons with hearing impairments to sounds.
- Pulling wheelchairs or carrying and picking up things for persons with mobility impairments.
- Assisting persons with mobility impairments with balance.

An animal that does not perform identifiable tasks or functions for an individual with a disability probably is not a service animal. However, it is not essential that the animal perform the functions for the individual while he or she is traveling on the aircraft. The functions can be ones that the animal performs for the individual at his or her destination.

3. Q: What must an airline do when an individual with a disability using a service animal seeks to travel?

A: The service animal must be permitted to accompany the passenger with a disability on the flight. The animal must be allowed to accompany the individual in any seat the individual uses, except where the animal would obstruct an aisle or other area required by Federal Aviation Administration safety rules to remain unobstructed for emergency evacuation purposes. Service animals are typically trained to curl up under seats, which should reduce the likelihood of such an obstruction.

If such an obstruction would occur, the animal (and passenger, if possible) should be relocated to some other place in the cabin where it will not create such an obstruction. If there is no space in the cabin that will accommodate the animal without causing such an obstruction, then the animal is not permitted to travel in the cabin.

To accommodate service animals, airlines are not required to ask other passengers to relinquish space that they would normally use. For example, the passenger sitting next to an individual traveling with a service animal would not need to allow the space under the seat in front of him or her to be used to accommodate the animal.

4. Q: Is a service animal a pet?

A: A service animal is not a pet. A service animal is a working animal that performs important functions for an individual with a disability. The individual with a disability has been trained in the use of the service animal and is responsible for all handling of the animal. Consequently, carrier personnel and other passengers should not attempt to pet, play with, direct, or in any way distract service animals.

It is also important to realize that a pet is not a service animal. Many people enjoy the companionship of animals. But this relationship between an individual and an animal, standing alone, is not sufficient to cause an animal to be regarded as a service animal.

5. Q: How do the requirements of the ACAA rule concerning service animals relate to an airline's rules about carrying pets?

A: Airlines may have whatever policy they choose concerning pets, consistent with U.S. Department of Agriculture animal welfare rules. For example, they can refuse to carry any pets. They can carry pets only in containers stowed in the cargo compartment. They can allow small pets in carriers that fit under the

seat. Since service animals are not pets, the ACAA requires airlines to modify their pets policies to allow service animals to accompany persons with a disability in the cabin. When an animal is determined by the airline not to be a service animal, then the airline would apply to the animal the same policy that applies to pets.

In any situation in which the airline determines that an animal is not a service animal, the airline must continue to give the passenger the opportunity to travel without having the service animal in the cabin. It is not appropriate to deny transportation to a passenger because the passenger's animal is determined not to be a service animal.

6. Q: How can I tell if an animal really is a service animal and not just a pet?

A: Some, but not all, service animals, wear special collars or harnesses. For example, guide dogs used by persons with vision impairments typically wear harnesses that enhance their ability to guide the visually impaired person. Some, but not all, service animals are licensed and certified and have identification papers.

If airline employees are not certain that an animal is a service animal, they may ask the person who has the animal if it is a service animal required because of a disability. However, an individual who is planning to travel by air is not necessarily going to be carrying around documentation of his or her medical condition or disability. Therefore, while such documentation may be requested as a means of verifying that the animal is a service animal, it *generally* may not be required as a condition of permitting an individual to travel with his or her service animal. (See Question 9 for a situation in which documentation may be required.) Likewise, while a number of states have programs to certify service animals, airline employees may not insist on proof of state certification before permitting the service animal to accompany the person with a disability.

7. Q: What are ''credible'' verbal assurances that an animal is a service animal?

A: In the absence of documentation or other obvious evidence that an animal is a service animal, the only information available to airline employees about the animal may be what a passenger says about his or her disability and the use of the animal. Airline employees may exercise their judgment concerning whether the passenger's statements about the training and functions of the animal make it reasonable to think that the animal is a service animal.

The factors discussed in this guidance (e.g., the nature of the individual's disability, the training the animal is said to have received, its ability to behave properly in public places, the functions it is said to perform for the individual) can be used in evaluating the credibility of the passenger's statements. An airline complaints resolution official (CRO), whom the Department's ACAA rules require to be available at each airport that the airline serves, is a resource that passengers and airline employees can use to resolve difficult cases.

8. Q: What about unusual or multiple animals?

A: Most people are familiar with the use of dogs as service animals. On some occasions, however, individuals may ask to be accompanied in an aircraft cabin by other kinds of animals. For example, in a few cases, monkeys have been trained to provide services to persons with severe mobility impairments. There have been cases of passengers requesting to be accompanied by reptiles or rodents. In addition, some passengers have asked to travel with more than one animal at a time.

In evaluating these situations, airline employees should keep in mind some of the important characteristics of service animals. Service animals are trained to perform specific functions for an indivudal with a disability, and they are trained to behave properly in public places. Service animals are generally trained to work on a one-to-one basis with an individual with a disability. Airline employees may inquire about these matters and may use their judgment about whether, in light of these factors, a particular animal is a service animal, as distinct from a pet that a passenger wants to bring on board.

9. Q: How should airline employees respond to a claim that being accompanied by an animal is necessary for the emotional well-being of an individual with a mental or emotional disability?

A: Many people receive emotional support from being near an animal. The assertion of a passenger that an animal remaining in his or her company is a needed accommodation to a disability, however, may often be difficult to verify or to distinguish from the situation of any person who is fond of a pet. In addition, the animal may not, in such a situation, perform any visible function. For these reasons, it is reasonable for airline employees to request appropriate documentation of the individual's disability and the medical or theraputic necessity of the passnger's traveling with the animal. Moreover, the animal, like any service animal, must be trained to behave properly in a public setting.

10. Q: What about service animals that are not accompanying a passenger with a disability?

Sometimes, an animal that is trained to work with people with disabilities may travel by air but not be accompanied by an individual with a disability for whom the animal performs service animal functions. For example, a non-disabled handler may transport a ''therapy dog'' to a location, such as a rehabilitation center, where it will perform services for individuals with physical or mental disabilities.

The Department's Air Carrier Access Act regulation intended to assist passengers with disabilities by ensuring that they can travel with the service animals that perform functions for them. When a service animal is not accompanying a passenger with a disability, the rule's rationale for permitting the animal to travel in the cabin does not apply. While the animal may be traveling to a location where it will perform valuable services to other people, it would be subject to the airline's general policies with respect to the carriage of animals.

11. Q: What if an animal acts out of control?

A: Service animals are trained to behave properly in public settings. For example, a properly trained service animal will remain at its owner's feet. It does not run freely around an aircraft or airport gate area, bark or growl repeatedly at other persons on the aircraft, bite or jump on people, or urinate or defecate in the cabin or gate area. An animal that engages in such disruptive behavior shows that it has not been successfully trained to function as a service animal in public settings. Therefore, airlines are not required to treat it as a service animal, even if the animal is one that performs an assistive function for a passenger with a disability. However, airline personnel should consider available means of mitigating the effect of an animal's behavior that are acceptable to the individual with a disability (e.g., muzzling a dog that barks frequently) that would permit the animal to travel in the cabin.

While an airline is not required to permit an animal to travel in the cabin if it engages in disruptive behavior, or other behavior that poses a direct threat to the health or safety of persons on the aircraft, airline employees may not make assumptions about how a

particular animal is likely to behave based on past experience with other animals. Each situation must be considered individually. Airline employees may inquire, however, about whether a particular animal has been trained to behave properly in a public setting.

12. Q: Can airlines charge a maintenance or cleaning fee for customers who bring service animals onto aircraft?

A: No. The ACAA prohibits special charges, such as deposits or surcharges, for accommodations required to be made to passengers' disabilities. This is true even if such charges are routinely required to transport pets.

However, an airline can charge passengers with disabilities if a service animal causes damage, so long as it is the regular practice of the airline to charge non-disabled passengers for the same types of damages. For example, the airline can charge passengers with a disability for the cost of repairing or cleaning seats damaged by a service animal if it is the airline's policy to charge when non-disabled passengers cause similar damage.

13. Q: Are airlines responsible for the animal while a person with a disability is on the aircraft?

A. No. The care and supervision of a service animal is solely the responsibility of its owner. The individual with a disability has been trained in the use of the service animal and is responsible for all handling of the animal. The airline is not required to provide care or food or special facilities for the animal.

Regulatory Analyses and Notices

This is not a significant rule under Executive Order 12866. It is a significant rule under the Department's Regulatory Policies and Procedures. A regulatory evaluation that examines the projected costs and impacts of the lift requirements in the rule has been placed in the docket. Briefly, the Department estimates that equipment and operational costs of the lift requirement (net present value over 20 years) will range between $18.6 and $51.8 million. In terms of benefits, the analysis suggests that an additional 450,000 trips to mobility-impaired travelers could result from the availability of lift devices, resulting in a net present value profit to carriers of $48 million over 20 years. There are, in addition, non-quantifiable benefits (e.g., greater travel opportunities for passengers, greater dignity in the boarding process). The airport accessibility provisions of the rule are not projected to have significant costs.

We note that Federally-assisted airports have been subject to very similar requirements under section 504 since the first publication of 49 CFR Part 27 in 1979. Airlines have been subject to very similar requirements since the first publication of 14 CFR Part 382 in 1990. New costs related to moving to ADA-based standards should not be great, and are limited in any case by the readily achievable/program accessibility provisions made applicable to airlines and airports, respectively.

The Department certifies that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. There are not a substantial number of small air carriers covered by this rule, particularly given the exclusion of ''problem aircraft'' and aircraft with fewer than 19 seats from boarding assistance requirement. These aircraft are heavily represented among the smallest air carriers. The smallest airports are excluded from the boarding assistance rule altogether; other small airports will have costs reduced by the 4-year phase-in for them. For all airports, terminal accessibility requirements are not expected to be costly. They are very similar to existing requirements, and they include provisions ensuring that unduly burdensome changes are not required. Consequently, the Department does not anticipate a significant economic effect on small airports.

The Department has determined that there would not be sufficient Federalism impacts to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 382 and 49 CFR Part 27

Aviation, Handicapped.

Issued this 8th day of October, 1996, at Washington, D.C.

Federico Peña,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 14 CFR Part 382 and 49 CFR Part 27 as follows:

1. The authority citation for 14 CFR Part 382 is revised to read as follows:

Authority: 49 U.S.C. 41702, 47105, and 41712.

2. In 14 CFR Part 382, including the title thereof, the word ''handicap'' is revised to read ''disability'' wherever it occurs. The term ''handicapped individual'' is revised to read ''individual with a disability'' wherever it occurs. The term ''handicapped individuals'' is revised to read ''individuals with a disability'' whenever it occurs. The term ''qualified handicapped individual'' is revised to read ''qualified individual with a disability'' wherever it occurs. The term ''qualified handicapped individuals'' is revised to read ''qualified individuals with a disability'' wherever it occurs.

3. In 14 CFR Part 382, § 382.23 is revised to read as follows:

§ 382.23 Airport facilities.

(a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by an air carrier at a commercial service airport, including parking and ground transportation facilities.

(b) Air carriers shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Air carriers shall be deemed to comply with this Air Carrier Access Act obligation if they meet requirements applying to places of public accommodation under Department of Justice (DOJ) regulations implementing Title III of the Americans with Disabilities Act (ADA).

(c) The carrier shall ensure that there is an accessible path between the gate and the area from which aircraft are boarded.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rule.

(e) The Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including section 10.4 concerning airport facilities, shall be the standard for accessibility under this section.

(f) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part for carriers and applicable section 504 and ADA rules of the Department of Transportation and Department of Justice for airport operators.

4. In paragraph (a)(2) of § 382.39 of 14 CFR Part 382, in the first sentence thereof, the word ''suitable'' is added before the word ''devices'' and two sentences are added at the end of the paragraph reading as follows.

§ 382.49 Provision of services and equipment.

* * * * *

(a) * * *

(2) * * * In no case shall carrier personnel be required to hand-carry a passenger in order to provide boarding assistance (i.e., directly to pick up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft). Requirements for providing boarding assistance to commuter aircraft with fewer than 30 seats are found in § 382.40.

* * * * *

§ 382.39 [Amended]

5. In § 382.39 of 14 CFR Part 382, paragraph (a)(4) is removed.

6. A new § 382.40 is added, to read as follows:

§ 382.40 Boarding assistance for small aircraft.

(a) Paragraphs (b) and (c) of this section apply to air carriers conducting passenger operations with aircraft having 19–30 seat capacity at airports with 10,000 or more annual enplanements.

(b) Carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(c) (1) Each carrier shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998 at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999 for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 4, 2000 for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements) . All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight using a 19–30 seat aircraft check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(5) When boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in § 382.39(a)(2) of this part.

(6) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d)(1) The training of carrier personnel required by § 382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

(2) Carriers who do not operate aircraft with more than a 19-seat capacity shall ensure that those personnel involved in providing boarding assistance are trained to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

7. In § 382.45 of 14 CFR Part 382, paragraph (a)(2) is revised to read as follows:

§ 382.45 Passenger information.

(a) * * *

(2) Any limitations on the ability of the aircraft to accommodate qualified individuals with disabilities, including limitations on the availability of boarding assistance to the aircraft, with respect to the departure and destination points and any intermediate stops. The carrier shall provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information.

* * * * *

8. In § 382.51 of 14 CFR Part 382, paragraph (b) is revised to read as follows:

§ 382.51 Communicable diseases.

* * * * *

(b)(1) The carrier may take the actions listed in paragraph (a) of this section with respect to an individual who has a communicable disease or infection only if the individual's condition poses a direct threat to the health or safety of others.

(2) For purposes of this section, a direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(3) In determining whether an individual poses a direct threat to the health or safety of others, a carrier must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; that the potential harm to the health and safety of others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(4) In taking actions authorized under this paragraph, carriers shall select the alternative, consistent with the safety and health of other persons, that is least restrictive from the point of view of the passenger with the communicable disease. For example, the carrier shall not refuse to provide transportation to an individual if provision of a medical certificate or reasonable modifications to practices, policies, or procedures will mitigate the risk of communication of the disease to others to an extent that would permit the individual to travel.

(5) If an action authorized under this paragraph results in the postponement of a passenger's travel, the carrier shall permit the passenger to travel at a later time (up to 90 days from the date of the postponed travel) at the fare that would

have applied to the passenger's originally scheduled trip without penalty or, at the passenger's discretion, provide a refund for any unused flights, including return flights.

(6) Upon the passenger's request, the carrier shall provide to the passenger a written explanation of any action taken under this paragraph within 10 days of the request.

* * * * *

9. The authority citation for 49 CFR Part 27 is revised 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.).

10. In 49 CFR Part 27, including the title thereof, the word ''handicap'' is revised to read ''disability'' wherever it occurs. The term ''handicapped individual'' is revised to read ''individual with a disability'' wherever it occurs. The term ''handicapped individuals'' is revised to read ''individuals with a disability'' wherever it occurs. The term ''qualified handicapped individuals'' is revised to read ''qualified individuals with a disability'' wherever it occurs.

11. In § 27.5 of 49 CFR Part 27, the definition of ''Air Carrier Airport'' is removed, and a new definition of ''Commercial Service Airport'' is added in the appropriate alphabetical placement, to read as follows:

§ 27.5 Definitions.

* * * * *

Commercial service airport means an airport that is defined as a commercial service airport for purposes of the Federal Aviation Administration's Airport Improvement Program and that enplanes annually 2500 or more passengers and receives scheduled passenger service of aircraft.

* * * * *

12. Section 27.71 of 49 CFR Part 27 is revised to read as follows:

§ 27.71 Airport facilities.

(a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by a recipient of DOT financial assistance at a commercial service airport, including parking and ground transportation facilities.

(b) Airport operators shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Airport operators shall be deemed to comply with this section 504 obligation if they meet requirements applying to state and local government programs and facilities under Department of Justice (DOJ) regulations implementing Title II of the Americans with Disabilities Act (ADA).

(c) The airport shall ensure that there is an accessible path between the gate and the area from which aircraft are boarded.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rules.

(e) The Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including section 10.4 concerning airport facilities, shall be the standard for accessibility under this section.

(f) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part and applicable ADA rules of the Department of Transportation and Department of Justice for airport operators and applicable Air Carrier Access Act rules (49 CFR part 382) for carriers.

(g) If an airport operator who receives Federal financial assistance for an existing airport facility has not already done so, the recipient shall submit a transition plan meeting the requirements of § 27.65(d) of this part to the FAA no later than March 3, 1997.

13. A new § 27.72 is added to 49 CFR Part 27, to read as follows:

§ 27.72 Boarding assistance for small aircraft.

(a) Paragraphs (b) and (c) of this section apply to airports with 10,000 or more annual enplanements.

(b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs.

(c)(1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices. The airport operator and the carrier(s) shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998 rule at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999 rule for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 4, 2000 rule for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(4) When boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in § 382.39(a)(2) of this part.

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

14. A new § 27.77 is added to 49 CFR Part 27, to read as follows:

§ 27.77 Recipients of Essential Air Service subsidies.

Any air carrier receiving Federal financial assistance from the Department of Transportation under the Essential Air Service program shall, as a condition of receiving such assistance, comply with applicable requirements of this part and applicable section 504 and ACAA rules of the Department of Transportation.

[FR Doc. 96–28084 Filed 10–31–96; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 960717195–6280–02; I.D. 070196E]

RIN 0648–AI95

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Fisheries Research Plan; Interim Groundfish Observer Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues a final rule to implement Amendment 47 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, Amendment 47 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Groundfish FMPs), Amendment 6 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area (Crab FMP), and a technical amendment to clarify existing regulations that the observer coverage requirements for catcher vessels participating in the community development quota (CDQ) fisheries are in addition to the observer coverage requirements for the open access groundfish fisheries. This action also repeals regulations implementing the North Pacific Fisheries Research Plan (Research Plan). This action is necessary to respond to the North Pacific Fishery Management Council's (Council) recommendation to repeal the Research Plan and implement Amendments 47 and 47 to the Groundfish FMPs to establish mandatory groundfish observer coverage requirements through 1997. Amendment 6 to the Crab FMP removes reference to the Research Plan. This action establishes an Interim Groundfish Observer Program until a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, and observer compensation and working conditions is recommended by the Council and implemented by NMFS.

EFFECTIVE DATE: January 1, 1997.

ADDRESSES: Copies of Amendments 47, 47, and 6 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the amendments may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501–2252; telephone: 907–271–2809. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attn: NOAA Desk Officer.

Copies of the information regarding observer qualifications, observer training/briefing requirements, and NMFS' selection criteria for observer contractors are available from the Observer Program Office, Alaska Fisheries Science Center, Building 4, 7600 Sand Point Way Northeast, Seattle, WA 98115, telephone: 206–526–4197.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI) in the exclusive economic zone are managed by NMFS under the Groundfish FMPs. The FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*; Magnuson Act) and are implemented by regulations for the U.S. fisheries off Alaska at 50 CFR part 679. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 600. The Crab FMP delegates management of the crab resources in the BSAI to the State of Alaska (State) with Federal oversight. Regulations necessary to carry out the Crab FMP appear at 50 CFR part 679.

This action implements regulations authorized under Amendments 47 and 47 to the Groundfish FMPs and Amendment 6 to the Crab FMP. These amendments were approved by NMFS on October 3, 1996, and authorize the repeal of the Research Plan and the establishment of an Interim Groundfish Observer Program for 1997.

A full description of and background information on the repeal of the Research Plan and the establishment of an Interim Groundfish Observer Program and its specific elements may be found in the preamble to the proposed rule published in the Federal Register on August 2, 1996 (61 FR 40380), and in the EA/RIR prepared for this action.

Existing observer coverage requirements under Amendment 1 to the Research Plan are scheduled to expire on December 31, 1996. At its April 1996 meeting, the Council adopted an Interim Groundfish Observer Program that would supersede the Research Plan and authorize mandatory groundfish observer coverage requirements through 1997. The Interim Groundfish Observer Program will extend 1996 groundfish observer coverage requirements through 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, observer compensation and working conditions, and other concerns raised by the Council. Under this action, observer coverage requirements for the BSAI king and Tanner crab fisheries will no longer be specified in Federal regulations. Observer coverage requirements for the crab fisheries will revert back to a Category 3 measure in the Crab FMP and will be specified by the Alaska Board of Fisheries.

Except for the minor changes noted below, the elements of the Interim Groundfish Observer Program as provided in the preamble of the proposed rule are unchanged in this rule. Three elements of the Interim Groundfish Observer Program will not be codified in regulation: (1) Observer qualifications, (2) observer training/briefing requirements, and (3) NMFS' selection criteria for observer contractors. These elements were also provided in the preamble of the proposed rule and are unchanged in the final rule. They are available upon request (see **ADDRESSES**). Although they will not be codified, they are viewed as a part of the program. Prior to proposing future changes to these three elements, NMFS will publish a document in the Federal Register describing the proposed change(s) and providing an opportunity for public comment.