Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–22321; Directorate Identifier 2005–NM–123–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 24, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain Boeing Model 767–200 and –300 series airplanes, as identified in Boeing Special Attention Service Bulletin 767–25–0336, Revision 2, dated August 11, 2005; certificated in any category.

Unsafe Condition

(d) This AD results from test data indicating that outboard overhead stowage bins are unable to withstand the 4.5g down-load standard intended to protect passengers during flight turbulence or a hard landing. We are issuing this AD to prevent the stowage bins from opening during flight turbulence or a hard landing, which could result in the contents of the stowage bins falling onto the passenger seats below and injuring passengers, or blocking the aisles, impeding the evacuation of passengers in an emergency.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replacement of Placards and Installation of Partial Divider Panels and Life Raft Straps

(f) Within 60 months after the effective date of this AD: Replace the placards on certain stowage bins with new placards, install partial dividers in certain other stowage bins, and install straps on stowage bins containing life rafts, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0336, Revision 2, dated August 11, 2005.

Actions Required To Be Accomplished Prior to or Concurrently With Paragraph (f) of This AD

(g) For Group 1 airplanes as identified in Boeing Special Attention Service Bulletin 767–25–0336, Revision 2, dated August 11, 2005: Prior to or concurrently with the accomplishment of paragraph (f) of this AD, replace the door latches, strikes, and thresholds on the outboard overhead stowage compartments with new latches, strikes, and thresholds. Do the replacement in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–25–0211, Revision 1, dated July 14, 1994.

Actions Accomplished Previously

(h) Accomplishment of the stowage bin modifications required by paragraph (f) of this AD before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 767–25–0336, dated May 15, 2003; or Revision 1, dated October 21, 2004; is considered acceptable for compliance with the corresponding modifications specified in this AD.

Parts Installation

(i) As of the effective date of this AD, no person may install on any airplane a stowage bin having a part number identified in Table 2 of Figure 1 of Boeing Special Attention Service Bulletin 767–25–0336, Revision 2, dated August 11, 2005, unless it has been modified by performing the applicable actions in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on August 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–17670 Filed 9–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. OST–2005–22298]

RIN 2105–AC29

Nondiscrimination on the Basis of Disability in Air Travel—Medical Oxygen and Portable Respiration Assistive Devices

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Transportation proposes to amend its rules implementing the Air Carrier Access Act of 1986, 14 CFR part 382, to provide greater accommodations in air travel for persons with respiratory disabilities. This notice of proposed rulemaking (NPRM) applies to U.S. air carriers and foreign air carriers operating flights in, to and from the U.S. The proposed rule establishes procedures within applicable U.S. and foreign safety rules for the carriage and use of portable respiration-related assistive devices and medical oxygen devices aboard commercial flights by passengers with disabilities.

DATES: Comment Closing Date: Comments must be received by November 7, 2005. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Please include the docket number of this document in all comments submitted to the docket. Written comments should be sent to Docket Clerk, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590. For confirmation of the receipt of written comments, commenters may include a stamped, self-addressed postcard. The Docket Clerk will date-stamp the postcard and mail it back to the commenter. Comments are available for inspection at this address from 9 a.m. to 5 p.m., Monday through Friday. Comments can also be reviewed through the Dockets Management System (DMS) pages of the Department's Web site (*http://dms.dot.gov)*. Commenters may also submit comments electronically. Instructions appear on the DMS Web site.

FOR FURTHER INFORMATION CONTACT: Ann G. Gawalt and Blane A. Workie, Office of Assistant General Counsel for Aviation Enforcement and Proceedings, 400 7th Street, SW., Room 4116, Washington, DC 29590. Phone: (202) 366–1677. TTY: (202) 366–9342. Fax: (202) 366–7152. E-mail: *ann.gawalt@dot.gov* or *blane.workie@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1986, Congress passed the Air Carrier Access Act (ACAA) which prohibits discrimination in airline service on the basis of disability. Since the Department issued the final rule implementing the ACAA, 14 CFR part 382 (part 382) in 1990, it has amended part 382 ten times.[1] Part 382 does not require any specific accommodations by air carriers for passengers who use supplemental medical oxygen during commercial flights.[2] In November 2004, the Department issued an NPRM proposing to revise part 382 to cover foreign air carriers (hereinafter Foreign Air Carrier NPRM). *See* 69 FR 64364. That Foreign Air Carrier NPRM does not contain any proposed substantive regulatory changes relating to the carriage and use of medical oxygen by passengers with disabilities aboard commercial flights.

The Department is proposing a rule at this time to address the carriage and use of supplemental oxygen devices by passengers on commercial flights. There are several reasons for this initiative. First, the Department consistently receives complaints from consumers regarding the lack of accommodations in air travel for passengers who use medical oxygen. These complaints generally allege that there are a limited number of carriers that provide supplemental oxygen service (several major carriers do not); that the service, when available, is prohibitively expensive, at times exceeding the cost of air transportation [3]; and that those passengers who need supplemental oxygen have to independently arrange with medical supply companies for additional supplies of oxygen during layovers and connections between flights. As a result, many passengers with respiratory disabilities are not able to avail themselves of air transportation readily available to the general public. Because the Department views these consumer complaints and the issues they raise seriously, the Department is proposing to amend part 382 to address these matters.

Second, we believe a rulemaking is necessary because of the technological advances in oxygen-delivery systems. In April 2002, a letter from a coalition of medical and patient groups made the Department aware of state of the art technology in three types of oxygen delivery systems: portable oxygen concentrators, portable liquid oxygen units, and safety-sealed compressed oxygen. The Department then carefully considered how these devices could be approved for carriage and use by passengers during commercial flights within the existing safety regulatory scheme.

During this process, the Department's Pipeline and Hazardous Materials Safety Administration (PHMSA), formerly the Research and Special Programs Administration (RSPA), determined that the portable concentrator units manufactured by AirSep Inc. and Inogen Inc. do not contain hazardous materials and therefore are not subject to PHMSA's regulations. The other two devices (liquid oxygen units and safety-sealed compressed oxygen), unless exempted, would be subject to 49 CFR 175.75(a), PHMSA's safety regulation covering the carriage of hazardous materials aboard commercial aircraft.

The Federal Aviation Administration (FAA) also made several important determinations with respect to oxygen delivery systems. First, it decided that the carriage and use of all oxygen delivery devices, including portable concentrators deemed not to contain hazardous material, would require either an exemption from 14 CFR 121.574, 125.219, or 135.91, its rules covering oxygen delivery systems, or approval through a separate rulemaking. Because it did not receive an exemption petition from an air carrier prior to July 2004, the FAA issued an NPRM proposing to permit air carriers to allow passengers to use certain types of portable oxygen concentrators during commercial flights subject to certain conditions. *See* 69 FR 42324. On July 12, 2005, the FAA issued a final rule that permits air carriers to allow passengers to use Air Sep Lifestyle and Inogen One portable oxygen concentrator units during commercial flights provided carriers and passengers comply with certain conditions. *See* 70 FR 40156. As a corollary to the FAA rulemaking on allowing the use of certain portable oxygen concentrators, the Department is now proposing a rulemaking to address the treatment of these portable oxygen concentrators as an assistive device in air travel.

The FAA also determined that other passenger-owned medical oxygen devices could be used during commercial flights if the air carrier agrees to inspect and test the equipment in accordance with 14 CFR 121.574, 125.219, or 135.91, as appropriate, and then furnish the devices to the passengers for their flights.

Finally, the Department is proposing a rule because passengers who use other respiratory assistive devices such as respirators and ventilators have also complained that they have not been able to travel on certain flights because carriers were concerned about possible electromagnetic interference (EMI) with aircraft navigation and communication systems. Because portable electronic devices including portable electronic assistive devices emit some type of electromagnetic waves, FAA safety regulations require that air carriers test these devices to determine if the devices' radio frequencies interfere with its aircrafts' systems before permitting the devices to be used in flight. We believe a number of foreign governments have similar requirements.

[1] The dates and citations for these amendments are the following: April 3, 1990; 55 FR 12341; June 11, 1990; 55 FR 23544; November 1, 1996; 61 FR 56422; January 2, 1997; 62 FR 17; March 4, 1998; 63 FR 10535; March 11, 1998; 63 FR 11954; August 2, 1999; 64 FR 41703; January 5, 2000; 65 FR 352; May 3, 2001; 66 FR 22115; July 8, 2003; 68 FR 40488.

[2] Under 14 CFR 382.33(b)(1), an air carrier may require a passenger to provide 48 hours advance notice to request medical oxygen for use on board the aircraft, if the carrier chooses to make this service available on the flight.

[3] The Department is aware of one survey which shows that the cost of supplemental oxygen can range from an additional $64 to $1500 per trip. James Stoller, A Comparative Analysis of Arranging In-Flight Oxygen Aboard Commercial Air Carrier, Chest (April 1999).

Currently, part 382 requires carriers to permit the carriage and the use of ventilators and respirators in accordance with PHMSA and FAA regulations. As proposed, the Foreign Air Carrier NPRM would impose the same requirement on foreign air carriers. However, neither part 382 nor the Foreign Air Carrier NPRM requires carriers to conduct the necessary EMI evaluation required under FAA rules or applicable foreign rules to determine whether the use of these devices would cause interference with aircraft navigation and communication systems. Therefore, the Department is proposing this rule to address this gap in the regulations so that passengers who use ventilators or respirators can be assured greater access to air travel.

Formatting

This NPRM has been formatted in accord with the format of the Foreign Air Carrier NPRM issued on November 4, 2004, which proposes to apply 14 CFR part 382 to foreign air carriers and convert part 382 into a question-and-answer format. The Department proposes that the instant NPRM apply to foreign carriers. Additionally, the Department will ultimately merge the final rule resulting from the instant NPRM with any final rule that results from the November 4, 2004, Foreign Air Carrier NPRM. Because of this, the instant NPRM is in a question-and-answer format and the section numbering is consistent with the November 4, 2004, NPRM.

Section-by-Section Analysis

This portion of the preamble discusses each section of the proposed rule.

Section 382.3 What do the Terms in This Part Mean?

This section proposes to supplement the proposed rule text of the November 2004 Foreign Air Carrier NPRM by adding the meaning of the term ''PHMSA.''

Section 382.5 To Whom do the Provisions of This part apply?

This NPRM proposes to be applicable to certain U.S. and foreign air carriers. The instant NPRM applies to foreign air carriers in nearly the same manner as proposed in the November 4, 2004, Foreign Air Carrier NPRM since the proposed rule would apply to any flight that begins or ends at a U.S. airport, as the word ''flight'' is defined in the NPRM. To the extent that individuals have already submitted comments regarding the extension of part 382 to foreign carriers in response to the November 4, 2004, Foreign Air Carrier NPRM, those comments will be considered with regard to the final rule issued as a result of the instant NPRM.

However, this NPRM does not propose to make the requirements relating to the carriage and use of portable respiration assistive devices and medical oxygen devices aboard commercial flights applicable to all U.S. carriers and foreign air carriers operating to and from the U.S. but rather proposes to limit the applicability of the requirements to certain U.S. and foreign air carriers as described in sections 382.133 and 382.135. As a result, the instant NPRM would change section 382.5 as proposed in the Foreign Air Carrier NPRM by adding the phrase ''except as otherwise indicated within this part'' to section 382.5(a) which addresses the applicability of part 382 to U.S. carriers and 382.5(b) which addresses the applicability of part 382 to foreign air carriers. No other change to section 382.5 has been made.

Section 382.133 What Are the Requirements Concerning the Evaluation and use of Passenger-Owned Electronic Devices That Assist Passengers With Respiration in the Cabin During Flight and That do not Contain Hazardous Materials?

FAA regulations state that U.S. air carriers may not permit passengers to operate portable electronic devices during a flight except for certain devices listed in those sections and any other device that the carrier has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used. *See,* 14 CFR 91.21, 121.306 and 135.144. The Department recognizes that foreign carriers operate under a variety of safety laws and regulations, and is proposing that foreign carriers permit passengers to carry and use electronic devices consistent with the foreign law involved. In proposed section 382.133, the Department is proposing that U.S. and foreign air carriers be required to (1) test certain types of electronic respiratory assistive devices in accordance with U.S. and foreign safety rules, as applicable, and (2) permit the use of those devices within applicable U.S. and foreign safety regulations during all phases of commercial flight if they have had positive safety determinations.

Applicability to Carriers

As proposed, section 382.133 applies to all U.S. carriers that conduct passenger-carrying service other than those carriers that are operating as on-demand air taxis. An on-demand air taxi is an air taxi operator which carries passengers or property and is not a commuter air carrier as defined in 14 CFR part 298. A commuter air carrier is an air taxi operator that carries passengers on at least 5 round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week and places between which those flights are performed. *See,* 14 CFR 298.2. This proposal also applies to foreign air carriers operating to and from the United States that conduct passenger-carrying service and are not on demand air taxi operators. We specifically request comment as to whether the Department should limit coverage of this section to carriers operating larger than 60 seat aircraft, *i.e.*, excluding carriers operating only small aircraft. Do carriers that operate only small aircraft have special needs or problems with complying with proposed section 382.133 of which the Department should be aware? Also, should the scope of this section be further limited so that flights performed by commuter carriers would not be covered?

Types of Portable Respiration-Related Assistive Devices Covered

Section 382.133 proposes to address the carriage of four types of respiratory devices: ventilators, respirators, continuous positive airway pressure (CPAP) machines, and portable oxygen concentrators excepted from coverage under 14 CFR 121.574 and 135.91. The language of 382.133(a) is intended to make clear that this section covers only those oxygen concentrators that the FAA, through a rulemaking, has specifically excepted from 14 CFR 121.574 and 14 CFR 131.91 coverage. Currently, the Air Sep Lifestyle and Inogen One portable concentrator units have been excepted from such coverage and qualify under subsection (1).

If an applicable foreign safety regulation precludes a foreign carrier from permitting passengers to carry the four types of respiratory devices mentioned above, this section would not require their carriage or use. The language of 382.133(b) is intended to make clear that this section only covers those respirators, ventilators, CPAP machines and oxygen concentrators that are not restricted by foreign government safety rules. As stated previously, it is the Department's intention to address the carriage and use of electronic respiratory devices within applicable safety rules. Therefore, as an example, if a foreign carrier is prohibited from carrying an oxygen concentrator because of its homeland safety requirements,

then that foreign carrier would not be required to test, carry, or permit the use of such device on flights to and from the U.S. The Department seeks comment and information from foreign governments, foreign carriers, and other interested parties on the following questions regarding foreign safety restrictions affecting the carriage and use of electronic respiratory assistive devices. What foreign governments, if any, prohibit the carriage and use of respiratory devices? What devices, if any, are specifically prohibited by foreign safety rules? Describe safety restrictions other than prohibitions on these types of devices. Other than safety prohibitions or restrictions, what other foreign restrictions apply to the carriage and use of electronic assistive devices?

Proposed Testing Requirements

Section 382.133 proposes to require that, upon a request from a person with a disability or manufacturer of a device described above to a U.S. or foreign air carrier, the carrier would make a one-time determination whether such respiration assistive device can be carried safely in accordance with FAA or applicable foreign safety rules. For U.S. carriers, the rule proposes that carriers first determine whether the device is electronic and therefore subject to FAA regulations, *i.e.*, 14 CFR 91.21, 121.306 or 135.144. If the device is subject to those regulations, proposed section 382.133(a)(2) would require that U.S. air carriers conduct the necessary evaluation and/or electromagnetic (EMI) testing to determine whether such a respiratory assistive device causes interference with aircraft communication and navigation systems. Under subsection 382.133(b) foreign air carriers would also be required to make any necessary evaluations or conduct any necessary testing under applicable foreign requirements to determine if such device can be safely used during flight.[4] The Department requests comments as to the benefit or detriment of requiring passengers requesting the testing of ventilators, respirators, CPAP machines, and portable oxygen concentrators to either provide carriers with the applicable manufacturer's contact information when submitting the device for testing or to have the manufacturer provide the device directly to the carrier.

This section also proposes that U.S. air carriers test each device model for each model of aircraft that they operate. With respect to foreign carriers, this section proposes to require that foreign carriers test each device model for each aircraft model that they operate on flights to and from the United States. The testing for a device model is intended to be limited to a one-time testing event for each aircraft model covered by the rule. The Department intends that once a carrier completes the review and testing of a device, then the carrier would permit all positively tested devices of the same model to be used by passengers with disabilities on that model of aircraft. In other words, if a carrier determines that ''Acme ventilator'' owned by Passenger X does not cause interference with its Airbus A–320 or Boeing 747–400 aircraft that it operates and therefore permits Passenger X to use it on his flight, then Passenger Y and all other qualified passengers should be permitted to use the same model of the ''Acme ventilator'' during all flights on A–320's or 747–400's operated by that carrier.

The Department expects that carriers will test any device submitted for use during all phases of flight, including take-offs and landings. Since these devices are used to assist a person to breathe, a passenger may need to use his or her device during ascent and descent. Of course if a device is found to interfere with navigation or communications equipment during a particular phase of a flight, then its use must be prohibited during that phase of flight.

The Department recognizes that this proposal could require a carrier to conduct a number of tests during the initial compliance phase that other carriers will conduct or have conducted. However, as noted by the FAA in its July 12, 2005, final rule on use of certain portable oxygen concentrator devices onboard aircraft, if a medical portable electronic device (M–PED) such as the Inogen One or the AirSep Lifestyle has been tested to meet the Radio Technical Commission for Aeronautics (RTCA) standard found in FAA Advisory Circular 91.21–1A, and the test results are provided to, and verified by, the aircraft operator, no further testing by the aircraft operator would be required. The Department seeks comment on other ways, if any, to streamline the testing requirement for respiratory devices, including whether aircraft manufacturers should have a role in evaluating devices for use on a given model of aircraft.

Time Limits for Testing and Acceptance of a Device

The Department is proposing that a carrier have 90 days from receipt of a request to test a device on each model of aircraft it operates, and 30 days from the date of a positive determination to implement procedures to permit the device's use. The Department is proposing a total of 120 days to conduct the evaluation and make operational decisions and changes, if any, because such a timeframe appears to be a reasonable time given the number of models of aircraft some carriers operate. The Department seeks comment with respect to the amount of time reasonably necessary to conduct required evaluations and testing.

Requirements Regarding Use of Respiratory Assistive Devices

Section 382.133(d) proposes to require that carriers allow passengers to carry on board and use a portable respiratory assistive device on any aircraft model on which the device passed its safety evaluation and testing. Consistent with the FAA final rule on portable oxygen concentrators, subsection (d) does not propose to permit carriers to prohibit the use of these respiratory assistive devices during the ascent and descent stages of the flight, assuming use of the device is determined to be safe. However, if a carrier determines that a respiratory device can not be safely used during the ascent and descent, but can be used during all other phases during a flight, the carrier must permit use of that device during those phases when it can be safely used. The reason for this proposal is that some users of CPAP machines and oxygen concentrators do not need to use their devices until they reach a certain altitude such as cruising altitude or can go without using their devices during takeoff and landing. Because this proposal deviates from some carriers' standard practice in which all electronic devices are turned off during take-off and landing, the Department seeks comments as to any issues that may arise as a result of this particular proposal.

The intent of section 382.133 as proposed is to create a system where on the day of flight a passenger with a disability can carry his or her approved respiratory device, such as a portable oxygen concentrator, from his or her home to the airport, through check-in, to the gate, and then on to the aircraft for

[4] Foreign air carriers that are operating U.S. registered aircraft on flights in, to, and from the United States could be subject to the safety requirements of 14 CFR 91.21. Foreign air carriers operating non-U.S. registered aircraft may also be subject to foreign requirements similar to section 91.21.

use during flight.[5] It is also worth noting that section 382.41(c) of the current rule requires U.S. carriers to permit passengers with disabilities to stow assistive devices, including the four types of respiratory devices addressed in this NPRM, in the cabin consistent with FAA safety regulations. The November 4, 2004, NPRM proposed to extend this same requirement to foreign carriers in section 382.121. The instant NPRM maintains this requirement of the current rule and proposed section 382.121 of the November 4, 2004, NPRM. Further, it raises five additional issues on which the Department solicits comment:

(1) Passenger Information. We believe that a passenger who uses a respiratory device could have an extremely frustrating travel experience if he or she discovers on the day of the flight that the carrier will not accept his or her particular model of device because it can cause interference with the navigation or communication systems on the aircraft model the carrier is using to operate the passenger's flight. Part 382 currently requires that when a passenger with a disability requests information about an accommodation, the carrier must provide this passenger information on any limitation involved in providing the accommodation in question. *See* 14 CFR 382.45(a)(2). *Also see*, 14 CFR 382.41 in the November 4, 2004 Foreign Air Carrier NPRM. We have interpreted this section to mean that carriers must inform passengers who inquire about oxygen service or who make reference to a respiratory disability if accommodations such as the provision of medical oxygen are not offered for certain flights. Therefore, we believe that 382.45(a)(2) would require that carriers inform passengers, on request, about any restrictions on using their personal respiratory assistive devices aboard the carrier's flights. For example, we would expect that a carrier would explain to a passenger who requests to use an ''Acme CPAP machine'' on flight 123 that this device can only be used on flight 123 after takeoff and before landing, if appropriate. We would also expect that a carrier would inform the passenger, upon request, about the availability or lack thereof of electrical outlets on board aircraft that might be available to power the device.

To provide this type of information, we anticipate that carriers would need to maintain a list or some type of operational guidance for its reservations agents itemizing the devices the carriers have evaluated and the results of the evaluations. The Department seeks comments on the following questions: What issues are involved in air carriers maintaining a centralized list of approved and disapproved devices? To what extent should carriers be required to provide information to disabled air travelers? Should carriers be required to inform passengers if a device is in the process of being evaluated? Should information about evaluations and acceptance/rejection of particular devices be placed on each carrier's Web site? What issues are raised if carriers are required to provide information on the limitations of the carriers' codeshare partners to accommodate the use of respiratory devices? What issues are raised in connection with codeshares if the ticketing carrier is aware that the carrier operating the codeshared flight has not conducted the necessary testing to allow for the use of a respiratory device? What process or procedures do U.S. carriers use today to ensure their travel agents comply with current requirements in section 382.45 regarding providing information to passengers about the accessibility features of an aircraft (*e.g.*, location of movable armrests, limitations on the ability of the aircraft to accommodate qualified individuals with disabilities)? Would carriers be able to use the same or similar method to ensure their travel agents inform passengers who inquire about oxygen service or who make reference to a respiratory disability if appropriate accommodations are not offered for certain flights?

(2) Advance Notice: Currently, section 382.33(b) permits carriers to require passengers who request medical oxygen service for their flight or who plan to hook up their respirator to the aircraft's electrical supply to provide 48 hours advance notice. What are the operational reasons, if any, in support of permitting carriers to require a passenger with a disability to provide advance notice of his or her intention to use a battery-operated CPAP machine, an approved portable oxygen concentrator, or a respirator or ventilator aboard a flight? What are the operational reasons, if any, in support of permitting carriers to require a passenger with a disability to provide advance notice of his or her intention to use the aircraft electrical system? What issues would arise for passengers with disabilities if carriers were permitted to require advance notice for use of a respiratory device? What is a reasonable amount of advance notice?

(3) Advance check-in time: Current section 382.33(b) also permits air carriers to require that passengers who request medical oxygen service for their flight or who plan to hook up their respirator to the aircraft's electrical supply to check in an hour prior to their flight. What are the operational reasons, if any, for requiring passengers who request to use their respiratory assistive device to comply with an advance check-in deadline? What issues would passengers who use respiratory assistive devices face if carriers were permitted to require an advance check-in deadline? What would be a reasonable length of time for the advance check-in? Would an hour before the check-in time set by the carriers for general boarding passengers to present themselves at the airport be a reasonable amount of time to conduct any necessary check-in procedures associated with the carriage of the device? Should the length of time for advance check-in differ for international flights?

(4) Seating accommodations: We believe that a passenger who uses electronic respiratory assistive devices (*e.g.*, ventilator, respirator, CPAP machine, or portable oxygen concentrator) should be given priority over users of other types of electronic equipment that are not assistive devices (*e.g.*, laptops) to plug the device into the aircraft's power supply consistent with FAA and foreign safety requirements. As such, we are seeking comment on whether to require that, if an electrical outlet is available on the aircraft and can safely be used, carriers must provide a seat, in the same class of service, closest to the electrical outlet to a passenger who self-identifies as using the electronic respiratory assistive device and requests such a seat. The Department also seeks comment on whether there are any practical problems to implementing the proposed seating accommodation. If there are problems, we seek comment on how to avoid them while still accommodating passengers in this situation.

(5) Batteries: Because respirators, ventilators, CPAP machines and the covered oxygen concentrators can be powered by batteries, the Department is seeking additional information in this area. More specifically, DOT requests comments as to whether it should allow carriers to require users of electronic respiratory devices to carry a certain number of batteries in instances where electrical outlets are not available on an aircraft. Should the Department also allow carriers to require users of electronic respiratory devices to carry a certain number of batteries even in instances where an aircraft has an electrical outlet available as a way of protecting against unexpected

[5] The Transportation Security Administration has developed standard operating procedures to screen respiratory devices for security purposes.

occurrences (*e.g.*, the aircraft electrical system is inoperative or otherwise unusable or an aircraft without outlets is suddenly substituted for an aircraft with outlets)? The Department recognizes that the FAA final rule on use of certain portable oxygen concentrator devices onboard aircraft issued on July 12, 2005, states that the user of a portable oxygen concentrator must carry on the flight a sufficient number of batteries to power the device for the duration of the oxygen use specified in the user's physician statement, including a conservative estimate of any unanticipated delays. DOT seeks comment regarding what action it should authorize the carrier to take if a passenger does not have available to carry on a flight a sufficient number of batteries to power an electronic respiratory assistive device.

The Department further seeks comment and information as to whether manufacturers place labels on all ventilators, respirators, CPAP machines, and/or Air Sep Lifestyle and Inogen One portable oxygen concentrators which would provide carriers assurance that the batteries to be used for these devices are approved for air travel. If such a label is not present on a device, DOT seeks comment on whether carriers should be permitted to prohibit a passenger with a disability from carrying the device or using it during flight. The Department requests comments regarding the benefit or determinant of such an approach. DOT also seeks comment regarding what action it should authorize the carrier to take or what action to require the carrier to take if a passenger does not ensure that the electronic device batteries carried are packaged in a manner that protect them from physical damage as required by the FAA.

Section 382.135 What Are the Requirements Concerning the Provision of Medical Oxygen for Passengers With Disabilities?

In this section, the Department is proposing to require carriers to provide in-flight medical oxygen to passengers with disabilities who request and require it on commercial flights in accordance with applicable safety rules.

Applicability to Carriers

As proposed, section 382.135 would apply to U.S. carriers that conduct passenger-carrying service with at least one aircraft having a designed seating capacity of more than 60 passengers and foreign air carriers operating to and from the United States that conduct passenger-carrying service with at least one aircraft having a designed seating capacity of more than 60 passengers. It is worth noting that under this NPRM if a U.S. carrier operates both large aircraft (aircraft with more than 60 seats) and small aircraft, then all flights of that airline are covered regardless of the size of the aircraft used on a particular flight. If a foreign airline operates both large and small airplanes to and from the United States, the flights on the small airplanes would be covered because the airline holds authority to fly large airplanes. We request comment about the feasibility and/or difficulties inherent in providing in-flight medical oxygen in small aircraft. Should the scope of this section be limited to large aircraft (aircraft with more than 60 seats)? What would be the harm or benefit of such a limitation? The kinds of foreign air carriers that we propose to cover under this NPRM in terms of scheduled carriers flying large aircraft are as similar as possible to the U.S. air carriers that we propose to cover considering the different legal authority applicable to foreign operators.

Applicable Safety Regulations

This NPRM is designed to create greater access to air travel for persons who use medical oxygen by proposing a system within the existing aviation safety regulatory structure concerning oxygen. U.S. and foreign air carriers are subject to 14 CFR 121.574 and 135.91. Sections 121.574 and 135.91 specifically apply to U.S. carriers. Although these two sections do not specifically apply to foreign carriers, foreign carriers are nonetheless required to follow 14 CFR 121.574 and 135.91 when providing medical oxygen because of the U.S. regulations regarding the carriage of hazardous materials. Specifically, 49 CFR 175.10(a) (7) requires foreign carriers to follow the standards set forth in 14 CFR 121.574 or 135.91 when providing medical oxygen on commercial flights in U.S. airspace.

Sections 121.574 and 135.91 set forth a number of safety requirements for carriers to follow when providing medical oxygen. Some of these requirements include: (1) The medical oxygen device used by the passenger must be provided by the carrier, (2) a passenger who uses a carrier-supplied medical oxygen device must demonstrate to the carrier that he or she has a medical need for such device by providing a medical statement signed by a licensed physician which specifies the maximum quantity of oxygen needed each hour and the maximum flow rate needed for the pressure altitude corresponding to the pressure in the cabin of the aircraft, and (3) no person, other than carrier personnel, may connect or disconnect a passenger to and from a gaseous oxygen cylinder while any other passenger is aboard the aircraft.

This section also proposes to require that U.S. and foreign air carriers adhere to any applicable Transportation Security Administration (TSA), FAA, PHMSA, and foreign safety regulations when providing medical oxygen service. The Department recognizes that in some situations more restrictive foreign aviation regulations rather than FAA, TSA, or PHMSA rules may govern the actions of foreign carriers with respect to the carriage and use of medical oxygen aboard aircraft.

Type of Carrier-Supplied Oxygen Devices

Section 382.135 proposes a system where carriers would be required to provide oxygen devices covered by 14 CFR 121.574 or 135.91, such as compressed oxygen canisters. The Department understands that compressed medical oxygen dispensed from canisters can provide a purity of oxygen and flow rate that are required by most if not all individuals dependent on medical oxygen. The Department recognizes that devices such as the Air Sep AirLife oxygen concentrator unit,[6] Air Sep Lifestyle portable oxygen concentrator unit, and Inogen One portable oxygen concentrator unit did not exist when 14 CFR 121.574 or 135.91 were initially adopted by the FAA. However, it appears from the manufacturers' materials that oxygen concentrators can deliver a comparable purity of oxygen and flow rate to that of a canister. The Department would be willing to consider a carrier that provides a concentrator in lieu of a compressed oxygen canister to be in compliance with this proposed requirement if the concentrator provided the same medical oxygen service as a compressed oxygen canister. Therefore, the Department seeks comment from the medical professional community, manufacturers of oxygen devices, persons dependent on medical oxygen, air carriers, and all other interested parties to address the following questions: Do oxygen concentrators provide medical oxygen at a purity level and flow rate required by most individuals dependent on medical oxygen? What other devices dispense medical oxygen with the same or comparable purity and flow rate as compressed oxygen delivered from a

[6] This is a large concentrator unit designed to fit underneath the seat of an aircraft and is apparently used by some foreign air carriers to provide medical oxygen to passengers with disabilities.

canister? What medical reasons would prevent a person who requires medical oxygen from using a large (*e.g.* the Air Life concentrator) or portable oxygen concentrator?

Extent of the Medical Oxygen Service

Proposed section 382.135 would require that U.S. and foreign carriers provide only in-flight medical oxygen service. This means that under this proposal, carriers are only required to provide a medical oxygen device to a requesting passenger with a disability for use on board the aircraft. Passengers who require medical oxygen in canisters in the airport must arrange with oxygen suppliers for separate airport service for several reasons.[7] First, FAA safety rules contemplate that carrier-supplied oxygen will only be provided on the aircraft itself and not in the airports. Second, the cost to provide medical oxygen service from a passenger's arrival at the curb for departing flight to the curb upon arrival of a passenger's flight would be prohibitively expensive because a carrier would have to train and assign personnel to stay with the oxygen device while in the airport in order to maintain control of the device as required by FAA rules.

Advance Notice Requirements

This section would not amend the current requirement that carriers that provide medical oxygen to passengers with disabilities may require up to 48 hours' advance notice from the passenger for the service. Should the Department require a longer period of time for advance notice for international flights?

Timeframe To Implement a Carrier-Supplied Medical Oxygen System

Carriers would have up to six months from the date the rule becomes final to establish a system to provide medical oxygen to passengers with disabilities upon request. The Department seeks comment on what a reasonable amount of time would be to establish a system to provide medical oxygen to passengers with disabilities.

Other Issues

The Department seriously considered proposing that U.S. and foreign air carriers be required to implement a system that would allow passengers before their trips to submit their own canisters of compressed oxygen to carriers for testing. The Department considered a system in which a passenger would have been permitted to submit his or her own canisters of compressed oxygen to a carrier at least five days prior to his or her flight for carrier inspection and maintenance of the canisters in accordance with applicable safety regulations. The carrier would then have been required to furnish the devices to the passenger for use during the passenger's flight if the canisters were deemed safe. If the canisters were not deemed safe, the Department considered proposing that the carrier be required to return the oxygen canisters to the passenger with a written explanation as to why the passenger's device was not acceptable no later than 24 hours prior to the passenger's flight and refund any unused portion of the passenger's ticket.

However, after further review, it became apparent that the above approach, if proposed, would create several problematic issues for both passengers and air carriers. First, the system would have deprived oxygen users of their oxygen canisters for at least 5 days in order to allow enough time for the carriers to conduct FAA-mandated testing, inspection, and maintenance of the canisters. This would have created a burden on passengers who would have had to order additional canisters from suppliers in order to be assured they had enough canisters to cover the 5 days the carrier had control of their devices.

This system also would have created a complicated procedure requiring coordination between passengers, air carriers, and oxygen suppliers. For example, a carrier would have had to create a place to accept and stow the devices, communicate clearly to the passenger where to deliver the devices and train employees to appropriately accept the devices in order to obtain the necessary information about the canisters. The carrier would then have had to either create an in-house system to inspect and test the canisters or create a system in which it transported the oxygen canisters to approved medical oxygen suppliers to conduct the testing. All carriers would also have had to arrange for the oxygen canisters to be delivered to the passenger's point of departure. This coordination would have had to have been accomplished at least 36 hours prior to the passenger's flight in order to provide the carrier with enough time to inform the passenger if the canister failed the required tests.

Most importantly, under current FAA regulations, an air carrier can only provide oxygen canisters to passengers for use during flight that the carrier has purchased new or those on which the carrier has performed its last hydrostatic safety test. In order to conduct a hydrostatic test on the canister, the canister must be purged of its compressed oxygen. Therefore, because of current FAA safety regulations, carriers would still be required to fill empty canisters after their testing and inspection by the carriers. Moreover, oxygen tanks can be subjected to hydrostatic testing only a limited number of times for safety reasons. For all of the reasons discussed above, the Department has concluded that an effective system in which a passenger submits his or her own compressed oxygen canister system for carrier inspection and maintenance cannot be created at this time. Therefore, the Department will address the use of medical oxygen tanks by proposing to require a system in which carriers' supply their own medical oxygen tanks to the passengers.

The Department has also received a letter from a coalition of medical professionals and users of supplemental oxygen asking the Department to consider creating a system for the provision of medical oxygen by using pre-approved oxygen delivery kits. The coalition asked if the Department would consider whether passengers could rent or purchase oxygen kits from an oxygen vendor approved by DOT, FAA or the Department of Homeland Security. A passenger would pick up his or her device from a pre-approved vendor and carry the device in its tamper proof container to the airport for check-in on the day of the flight. The passenger would present the unopened tamper-proof oxygen kit to the airline staff. The airline staff would be responsible for ensuring that the oxygen kit (1) has not been tampered with and (2) is an approved oxygen system. As a preliminary response, the Department notes that the provision of any oxygen delivery device that contains hazardous material or has not been the subject of a rulemaking or an exemption from FAA rules must comply with the requirements set forth in 14 CFR 121.574 or 135.91. Chief among these is the requirement that the carriers maintain and furnish any oxygen-delivery system. The Department seeks comments and information on how such a pre-approved delivery kit proposal could be implemented consistent with FAA and foreign government safety regulations.

[7] Passengers may also use their own oxygen concentrator units in airports.

Section 382.137 May a Carrier Charge a Passenger for Costs Related to the Use of Passenger-Owned Respiration Assistive Devices or the Provision of Carrier-Supplied Medical Oxygen Devices?

This section proposes that respiratory assistive devices and oxygen delivery systems be accorded the same treatment as other assistive devices and disability-related services required under part 382 such that a passenger would not be charged a fee for carrier-supplied medical oxygen, excess baggage fees for a passenger's respiratory assistive device, or fees for the cost associated with inspecting or testing a passenger's respiratory assistive device.

The Department recognizes that this proposal would end the ability of air carriers to charge for the provision of medical oxygen, as they currently do. The Department also wishes to carefully evaluate the impact that the costs of such a required system would have on the airline industry. The regulatory evaluation prepared in conjunction with this NPRM found that the provision of a medical oxygen service at no cost to the disabled passengers would be a cost beneficial system. However, the Department is well aware that because of the unique characteristics of medical oxygen, the provision of medical oxygen can be costly. For example, medical oxygen is more costly than other type of compressed oxygen because it's required to be highly pure oxygen.

Generally, carriers may not charge passengers for disability-related services that provide equal access to air transportation because such charges would have a discriminatory effect. However, the Department seeks comment on whether the law would permit carriers to charge for the provision of medical oxygen? Specifically, the provision of medical oxygen may be distinguishable from other disability-related services because it requires a physician's prescription in order to obtain the service from the air carrier. In addition, the Department seeks comment on whether the Department has the authority to regulate the reasonableness of such charges under the ACAA or limit the charges to the carrier's costs if the law would permit carriers to charge for the provision of medical oxygen?

The Department also wishes to clarify that under this proposal carriers cannot charge passengers for an additional seat if the oxygen canisters or other dispensing equipment is stowed under the passenger's seat or beneath the seat in front of the passenger using the medical oxygen. However, if the passenger who requires medical oxygen must in fact use more than one passenger seat because the equipment takes the space of two seats, then that passenger can be charged for an additional seat. On lengthy flights, carriers would have to stow oxygen tanks not in use in other stowage space on a priority basis.

Regulatory Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The Department has determined that this proposed rule is nonsignificant for purposes of both Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures. Because this NPRM will impose new requirements on U.S. and foreign carriers, however, the Department has produced a regulatory evaluation. The evaluation has determined that the proposals as set out in this NPRM are cost beneficial.

Specifically, the regulatory evaluation estimates that for all U.S. carriers covered by these proposals, the average annual costs associated with this NPRM for U.S. carriers, when discounted to present value, would range from $18.6 million to $39.1 million. The analysis determined that for U.S. carriers the total annual benefits, also discounted to present value, would range from $40.2 million to $100.6 million. For foreign carriers, the regulatory evaluation estimated that the average annual total costs associated with this NPRM would range from $4 million to $6.87 million and the total benefits would range between $18.52 million and $59.6 million. The Department seeks comment on the regulatory evaluation, its approach, and the accuracy of its estimates of costs and benefits.

Executive Order 13132 (Federalism)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This notice of proposed rulemaking would not (1) have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) impose substantial direct compliance costs on state and local governments; or (3) preempt State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13084

This notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. I hereby certify that the rule proposed in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A direct air carrier or a foreign air carrier is a small entity if it provides air transportation only with small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds). *See* 14 CFR 399.73. This NPRM reduces costs to small carriers by proposing not to apply to them the more costly provision which would require a carrier to provide in-flight medical oxygen upon request. Taking into account the flexibility of the NPRM and the low overall costs, we conclude that the cost of compliance with this rule for small businesses will not have a significant impact on small businesses. Therefore, this rule will not have a significant economic impact on a substantial number of small businesses.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 2507 *et seq.*).

Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 14 CFR Part 382

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

Issued this 17th day of August, 2005, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation is further proposing to amend the proposed rule published at 69 FR 64364, November 4, 2004, as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 41702, 41310, 41705, and 41712.

2. In § 382.3, add the definition of ''PHMSA'' in alphabetical order.

§ 382.3 What do the terms in this part mean?

* * * * *

PHMSA means the Pipeline and Hazardous Materials Safety Administration.

* * * * *

3. Revise § 382.5 to read as follows:

§ 382.5 To whom do the provisions of this part apply?

(a) If you are a U.S. air carrier, this part applies to you with respect to all your operations and aircraft, regardless of where your operations take place, except as otherwise indicated within this Part.

(b) If you are a foreign air carrier, this part applies to you with respect to flights that begin or end at a U.S. airport and to aircraft used for these flights, except as otherwise indicated within this Part. For purposes of this part, a ''flight'' means a continuous journey in the same aircraft or with one flight number that begins or ends at a U.S. airport. The following are some examples of the application of this term:

Example 1. A passenger books a nonstop flight from Paris to Chicago. This is a ''flight'' for purposes of this part.

Example 2. A passenger books a journey on a foreign carrier from Washington, DC, to Berlin. The foreign carrier flies nonstop to Frankfurt. The passenger gets off the plane in Frankfurt and boards a connecting flight, on the same or a different foreign carrier that goes to Berlin. The Washington-Frankfurt leg of the journey is a ''flight'' for purposes of this part; the Frankfurt-Berlin leg is not (unless it is a code-shared flight with a U.S. carrier; see paragraph (c) of this section).

Example 3. A passenger books a journey on a foreign carrier from New York to Cairo. The plane stops for refueling and a crew change in London. The passengers reboard the aircraft (or a different aircraft, assuming the flight number remains the same) and continue to Cairo. Both legs are parts of a covered ''flight'' for purposes of this part, with respect to passengers who board the flight in New York.

Example 4. In Example 3, the carrier is not required to provide services under this part to a passenger who boards the aircraft in London and goes to Cairo. Likewise, on the return trip, the foreign carrier is not required to provide services under this part to a passenger who boards the aircraft in Cairo and whose journey ends in London.

Subpart I—Stowage of Wheelchairs, Other Mobility Aids, and Other Assistive Devices; Oxygen for Passengers

4. Revise the title of subpart I of part 382 to read as set forth above.

5. In subpart I of part 382, add §§ 382.133, 382.135, and 382.137, to read as follows:

§ 382.133 What are the requirements concerning the evaluation and use of passenger-owned electronic devices that assist passengers with respiration in the cabin during flight and that do not contain hazardous materials?

(a) Upon receiving a request from any manufacturer of a ventilator, respirator, continuous positive airway pressure machine, or portable oxygen concentrator excepted from coverage under 14 CFR 121.574 or 135.91, or from an individual who desires to use such a device during a flight in air transportation, a U.S. air carrier that conducts passenger carrying service, other than an on-demand air taxi operator must:

(1) Make a one time determination as to whether the device is subject to 14 CFR 91.21, 121.306 or 135.144; and

(2) If the device is subject to 14 CFR 91.21, 121.306 or 135.144, conduct any necessary evaluation or testing to determine if under 14 CFR 91.21(b)(5), 121.306(b)(5) or 135.144(b)(5) such device will cause interference with the navigation or communication systems of each model of its aircraft irrespective of where aircraft is operated.

(b) Upon receiving a request from any manufacturer of a ventilator, respirator, continuous positive airway pressure machine, or portable oxygen concentrator whose use during flight is not restricted by a foreign government safety requirement, or from an individual who desires to use such a device during a flight in air transportation, a foreign air carrier that conducts passenger carrying service other than an on-demand air taxi operator must conduct any necessary evaluation or testing, consistent with applicable foreign safety regulations, to ascertain whether such device can be used safely by passengers with disabilities during a flight on each model of its aircraft that it operates on flights to and from the United States.

(c) U.S. and foreign air carriers must complete the necessary evaluation or testing described in paragraphs (a) and (b) of this section, respectively, within 90 days after receiving a request from any manufacturer of devices listed in paragraphs (a) or (b) or from an individual who desires to use such a device during a flight in air transportation.

(d) Within 30 days after making the determinations described in paragraphs (a) through (c) of this section that a device may be operated safely during a flight, a carrier as defined in paragraphs (a) and (b) of this section must permit use of that model of device by passengers with disabilities aboard each aircraft model that it operates during those phases of flight in which the carrier has determined that the device may be safely used and consistent with applicable TSA, FAA, PHMSA, and foreign government safety regulations.

§ 382.135 What are the requirements concerning the provision of medical oxygen for passengers with disabilities?

Each U.S. and foreign air carrier operating to, from, and in the United States conducting passenger operations with at least one aircraft with a designed seating capacity of more than 60 passenger seats shall provide in-flight medical oxygen, upon request, to a passenger with a disability in accordance with 14 CFR 121.574 or 135.91, respectively, and consistent with any other applicable TSA, FAA, PHMSA and foreign government safety regulations. Carriers covered by this section have six months from the date of the issuance of the final rule to comply with the requirements of this section.

§ 382.137 May a carrier charge a passenger for costs related to the use of passenger-owned respiration assistive devices or the provision of carrier-supplied medical oxygen devices?

Carriers required to permit the use of respiratory assistive devices described in § 382.133 and to provide medical oxygen under § 382.135 may not charge a passenger for transportation, testing, inspection, maintenance or provision of a device described in § 382.133 or § 382.135 and that a passenger intends to use during flight. Prohibited charges include, but are not limited to, charges for medical oxygen supplied by the carrier, excess baggage charges, and charges for any transportation of a

device to or from a testing, inspection, or maintenance facility.

[FR Doc. 05–17605 Filed 9–6–05; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

[Docket No. RM05–30–000]

Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards

September 1, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005, which added a new section 215 to the Federal Power Act (FPA), the Commission is proposing to amend its regulations to incorporate:

(1) Criteria that an entity must satisfy in order to qualify to be the Electric Reliability Organization (ERO) that will propose and enforce Reliability Standards for the Bulk-Power System in the United States, subject to Commission approval;

(2) Procedures governing enforcement actions by the ERO and the Commission;

(3) Criteria under which the ERO may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing Reliability Standards;

(4) Procedures for the establishment of Regional Advisory Bodies that may provide advice to the Commission, the ERO or a Regional Entity on matters of governance, applicable Reliability Standards, the reasonableness of proposed fees within a region, and any other responsibilities requested by the Commission;

(5) Regulations governing the issuance of periodic reliability reports by the ERO that assess the reliability and adequacy of the Bulk-Power System in North America; and

(6) Regulations pertaining to the funding of the ERO.

DATES: Comments are due October 7, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Commenters unable to file comments electronically must send an original and fourteen (14) copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT: William Longenecker (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8570.

David Miller (Technical Information), Office of Markets, Tariffs and Rates, Division of Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6473. Jonathan First (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8529.

Christy Walsh (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6523.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. Pursuant to Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005,[1] which added a new section 215 to the Federal Power Act (FPA), the Commission is proposing to amend its regulations to incorporate:

(1) Criteria that an entity must satisfy in order to qualify to be the Electric Reliability Organization (ERO), which the Commission will certify as the organization that will propose and enforce Reliability Standards for the Bulk-Power System in the United States, subject to Commission approval;

(2) Procedures under which the ERO may propose new or modified Reliability Standards and procedures to enforce such standards, for Commission review;

(3) Procedures governing enforcement actions by the ERO and the Commission;

(4) Criteria under which the ERO may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing Reliability Standards;

(5) Procedures for the establishment of Regional Advisory Bodies that may provide advice to the Commission, the ERO or a Regional Entity on matters of governance, applicable Reliability Standards, the reasonableness of proposed fees within a region, and any other responsibilities requested by the Commission;

(6) Regulations governing the issuance of periodic reliability reports by the ERO that assess the reliability and adequacy of the Bulk-Power System in North America; and

(7) Regulations pertaining to the funding of the ERO.

II. Background

A. Commission Reliability Activity Prior to the Electricity Modernization Act of 2005

2. The Electricity Modernization Act of 2005 was enacted into law by President George W. Bush on August 8, 2005. Subtitle A of the Electricity Modernization Act amended the FPA by adding a new section 215, titled ''Electric Reliability.'' Prior to enactment of section 215, the Commission had acted primarily as an economic regulator of wholesale power markets and the interstate transmission grid. In this regard, the Commission acted to promote a more reliable electric system by promoting regional coordination and planning of the interstate grid through regional independent system operators (ISOs) and regional transmission organizations (RTOs), adopting transmission pricing policies that provide price signals for the most reliable and efficient operation and expansion of the grid, and providing pricing incentives at the wholesale level for investment in grid improvements and assuring recovery of costs in wholesale transmission rates. Section 215 of the FPA buttresses the Commission's efforts to strengthen the reliability of the interstate grid through the grant of new authority which provides for a system of mandatory Reliability Standards developed by the ERO and reviewed and approved by the Commission. The ERO can initiate an enforcement action and impose penalties for the violation of Reliability Standards, subject to Commission review; or the Commission can initiate its own enforcement action.

B. Voluntary Reliability Standards

3. In the aftermath of the 1965 blackout in the northeast United States, the electric industry established the North American Electric Reliability Council (NERC), a voluntary reliability organization. Since its inception, NERC has developed Operating Policies and Planning Standards that provide

[1] H.R. 6, Title XII, Subtitle A, 109th Cong. (2005).