Rules and Regulations

Federal Register
Vol. 66, No. 86
Thursday, May 3, 2001

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

49 CFR Part 27

[OST Docket No. 1999–6159]

RIN 2105–AC81

Nondiscrimination on the Basis of Disability in Air Travel

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

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT or Department) is amending its rules implementing the Air Carrier Access Act of 1986 (ACAA) and section 504 of the Rehabilitation Act of 1973 to require airports and air carriers to provide boarding assistance to individuals with disabilities by using ramps, mechanical lifts, or other suitable devices where level-entry boarding by loading bridge or mobile lounge is not available on any aircraft with a seating capacity of 31 or more passengers. This final rule parallels the 1996 final rule for aircraft with a seating capacity of 19 through 30 passengers.

DATES: This rule is effective on June 4, 2001.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of the General Counsel, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC., 20590, 202–366–4723 (voice), (202) 755–7687 (TTY), 202–366–9313 (fax), or *blane.workie@ost.dot.gov* (email). Arrangements to receive the rule in an alternative format may be made by contacting the above named individual.

SUPPLEMENTARY INFORMATION:

Background Information

Many airline passengers have mobility impairments and must be boarded and deplaned using a wheelchair. In 1996, the Department issued a rule to require the use of ramps, lifts or similar devices on most aircraft with 19 through 30 seats. At that time, the Department considered requiring ramps, lifts, or similar devices on all aircraft with 30 or fewer seats but the development of lift devices appeared not to have proceeded to the point where imposing regulation for the smallest aircraft (*e.g.,* those under 19 passenger seats) would have been justified. Many believed that existing lift devices were not designed to work, or could not work, with aircraft with seating capacity of 19 or fewer passengers. The 1996 rule focused on smaller aircraft because many smaller aircraft don't use loading bridges, and in many cases mobility-impaired passengers have been boarded by being carried up aircraft stairs in a special ''boarding chair.'' This process is undignified for the passenger, and potentially dangerous for both the passenger and those who are providing the boarding assistance.

In August 1999, recognizing that the need for level-entry boarding for passengers with mobility impairments also existed in larger aircraft, the Department of Transportation published a notice of proposed rulemaking (NPRM) proposing to extend the applicability of the 1996 final rule to aircraft with a seating capacity of 31 or more passengers. Similar to the 1996 final rule on aircraft with 19 through 30 seats, in the 1999 NPRM the Department proposed to require airports and airlines to work together to ensure the availability of lifts to provide level-entry boarding where it was not already available for passengers with disabilities traveling on aircraft with 31 or more seats. We received 27 comments from disability community organizations, individuals with disabilities, carriers, and industry associations representing airports and airlines. Of the 27 commenters, the vast majority generally supported the proposal but suggested substantive modifications in various parts of the rule.

Discussion of Comments

1. Boarding Assistance Methods

Comments: The disability community comments had a common theme that carrying passengers up stairs by hand or in a boarding chair is a grossly offensive way of providing access, for reasons having to do with the dignity, safety, and comfort of passengers. Some disability group commenters did say, however, that using boarding chairs to carry passengers up stairs should be permitted with the consent of the passenger when a lift is inoperative or when there is an emergency. One disability group advocate, the Paralyzed Veterans of America, stressed that travelers with disabilities should be consulted about alternative arrangements (e.g. an alternative flight) when level boarding is not available.

The majority of the comments from industry also supported the use of mechanical lifts, ramps or other suitable devices in most situations where level entry-boarding bridges and accessible passenger lounges are not available. However, American Trans Air argued against the general requirement for lifts, ramps, or other suitable devices. The carrier thought that airlines should be permitted to use ''reasonable efforts'' to 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.

The Air Transport Association of America (ATA) requested clarification as to when, if ever, a passenger with a disability may be carried onto an aircraft with the use of a chair or other device and when, if ever, a passenger with a disability may be physically hand carried on board. The ATA also requested clarification as to whether carrier personnel may assist a passenger transferring from an aisle chair to a seat by directly picking up the passenger's arms or legs.

DOT Response: The Department is not persuaded that carriers should be permitted to simply use ''reasonable efforts'' to provide boarding assistance using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs. It is not enough to use ''reasonable efforts'' to provide level-entry boarding. We will carry forward the 1996 provision and apply it here. Airline personnel will generally not be

permitted to carry passengers up stairs in a boarding chair, because it is an undignified and unsafe way of providing access for passengers and it increases risks to carrier personnel involved. The Department is requiring that, under normal circumstances, on an aircraft with 31 or more seats, carrier personnel may not lift passengers in boarding chairs up stairs as a means of effectuating the change of level needed for boarding. Hand-carrying (bodily picking up a passenger for purposes of a change of level) is only allowed when necessary for an emergency evacuation. In all other abnormal circumstances (e.g. if a lift breaks down), the carrier can use whatever means are available (including boarding chairs but not hand-carrying) as a means of effectuating the change of level needed for boarding. The use of a boarding chair to carry a passenger up or down stairs in such abnormal circumstances is conditioned on the passenger's consent (except in the case of emergency evacuations).

The Department wants it to be clear that this does not mean that boarding chairs and/or aisle chairs cannot be used in the boarding assistance process. Indeed, their use is usually necessary to get the passenger to a seat from a lift. Nor does it mean that carrier personnel are relieved of their obligation to assist passengers in transferring from their own wheelchairs to a boarding or aisle chair and then from that device to an aircraft seat.

2. Implementation Schedules

Comments: Both carriers and airports commented that the 18-month time frame for negotiating and implementing an agreement for the acquisition and use of level-entry boarding assistance devices was not sufficient to allow for the re-programming of funding, negotiations between carriers and airports, and employee training. On the other hand, disability community organizations and individuals with disabilities seemed to feel that the proposed 18-month time frame was too long and advocated for shortening the time to 12-months. These commenters argued for a shortening of time because years have passed since the ACAA regulations have been in place, lifts have been available for some time, and commenters believe that airlines and airports are capable of providing boarding assistance within the 12-month time frame.

DOT Response: The Department believes that existing lifts or lifts put in place in response to the 1996 small aircraft lift rule will assist in meeting the requirements of this rule. We expect that there may be many situations in which the same boarding assistance equipment used to provide access to 19 through 30 seat aircraft can be used for larger aircraft. Further, the final rule provides an 18-month time frame to permit an orderly acquisition process for additional equipment and to avoid increasing costs through an overly abrupt start-up requirement. In choosing an 18-month schedule, the Department has tried to balance the need to provide accessibility as soon as possible and the need to give parties a reasonable amount of time to do the work. The Department continues to believe that 18 months accomplishes this objective.

3. Private Charters and Irregular or Emergency Operations

Comments: Carriers and airports argued that the requirement for airports and carriers to negotiate concerning the acquisition of boarding assistance devices should be limited to situations where the carrier is a regular, scheduled-service, or frequent user of the airport. These commenters asserted that the rule should not apply to private charters and irregular or emergency operations at airports where the carrier does not provide regular scheduled service. They also contended that the requirement for an agreement for the acquisition and use of boarding assistance devices should not apply to certain seasonal service.

DOT Response: The Department does not believe that it is advisable to waive its level-entry boarding assistance requirements in situations where a carrier provides seasonal service or the carrier is not a regular, scheduled-service, or frequent user of an airport. 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. Carriers have ongoing working relationship with every airport that they fly to regardless of how infrequent the flights to that particular airport may be. For instance, carriers must pay airports take-off and landing fees. It is not persuasive to assert that the infrequency or irregularity of the relationship between a carrier and an airport should result in the Department not requiring them to negotiate with one another to acquire mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs. Given the mandate of the Air Carrier Access Act, it is reasonable to require accessibility even where a carrier provides seasonal service or the carrier is not a regular, scheduled-service, or frequent user of an airport.

4. Responsibility for Obtaining and Maintaining Lifts

Comments: Carriers and airports disagreed over who should be responsible for providing lift devices and maintaining them in proper working condition. Two airport commenters, the American Association of Airport Executives and the City of Billings Aviation and Transit Department, contended that airports must have flexibility to assess costs/charges against airlines for procurement and maintenance of lifts. These two commenters also wanted flexibility to require airlines to be responsible for the training of all employees in the use of lifts and the establishment of basic safety and insurance requirements. American Trans Air commented that under most circumstances airports and not carriers should be responsible for maintaining all lifts and other accessibility equipment in proper working condition. This commenter stated that joint responsibility between a carrier and an airport is appropriate only if a carrier is a frequent user, is responsible for more than 10% of the enplanements at the airport, or has regularly scheduled service to that point.

DOT Response: The Department believes that airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for and maintaining mechanical lifts or other suitable devices. Airports and carriers have worked together for decades to find a basis for agreement on a wide variety of air transportation matters, so the concept of airports and air carriers negotiating to determine how accessibility will be provided is appropriate. The Department will not dictate one-size-fits-all solutions to issues that are better decided locally by the parties concerned. Carriers and airports share a joint responsibility to ensure that passengers with disabilities have the opportunity to use aircraft with 31 or more seats.

5. Regulatory Evaluation

Comments: The Regional Airline Association disputed the Department's statement in the NPRM that the incremental cost of the rule would be negligible because lifts are already in place or required to be in place by existing rules. The commenter seemed to be arguing that the cost of the rule would be more than negligible because 860 aircraft (40% of the total regional fleet) have more than 30 seats and lifts are not required by existing rules for these aircraft. American Trans Air also

disagreed with the Department's certification that the proposed rule would not have a significant impact on carriers and airports. American Trans Air stated that they fly to any airport that is certified to accept their fleet type and argued that airport operating authorities of smaller stations do not generally have the sustained traffic that would justify the capital costs of developing a lift capability.

DOT Response: The Department realizes that this is the first time that lifts or other suitable devices have been required to access an aircraft with 31 or more seats, but we expect that there may be many situations in which the same boarding assistance equipment that is currently required to be used to provide access to smaller aircraft can be used to provide access to aircraft with 31 or more seats. The Department believes that this rule which covers aircraft with more than 30 seats would require only minimal increase in the number of lifts already acquired by airports and air carriers because the demand for lifts is determined primarily by the size of the airport. For example, every airport needs at least one lift, and large airports, where gates are far apart and short turn-around time is important, need two or more. The frequency of lift usage by passengers with disabilities is only a secondary factor because the lifts acquired in response to the 1996 final rule on aircraft with seating capacity of 19 through 30 passengers are not used to their full potential. The Department estimates that the average use of a lift per day is less than 1 operation.

Further, the requirement to provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices apply only at airports with 10,000 or more annual enplanements, primary airports that have commercial service and where lifts would receive more use. Airports with less than 10,000 annual enplanements (small airports which often may not have regularly scheduled service) are not covered by this rule. The 10,000 enplanement threshold is also the same standard that has applied since 1996 to ramp/lift assistance for aircraft with 19 through 30 seats.

6. Availability of Lifts

Comments: One commenter, Broward County, expressed its view that existing lifts on the market will not accommodate certain widebody aircraft and requested that the failure of airports to have lifts for widebodies on-site not constitute non-compliance. This commenter explained that it represents an airport and that this airport had purchased a ''Lift-A-Loft'' transporter but the ''Lift-A-Loft'' will reportedly not accommodate a 747 or a DC–10. Two other commenters, the Eastern Paralyzed Veterans Association and the National Association of Protection and Advocacy Systems, wrote that they were aware of two companies that manufacture lifts that service large aircraft. They stated that Lift-A-Loft Corporation manufactures at least one lift that can service aircraft as large as a 747. A second company, Wollard Airport Equipment Company, was also cited as a company that manufactures lifts that access commuter, regional and jet aircraft up to Boeing 727.

DOT Response: The Department is not convinced that existing lifts will not accommodate certain widebody aircraft. No carrier or carrier association voiced concerns that existing lifts on the market would not accommodate larger aircraft. Nevertheless, the final rule has a provision permitting airports and air carriers to seek a written waiver, under limited circumstances, from the requirement that they must provide boarding assistance to persons with disabilities by using ramps or mechanical lifts where level-entry boarding by loading bridge or mobile lounge is not available. A waiver will be granted only if the carrier can demonstrate that no existing lift or other suitable device on the market will accommodate the aircraft, and the carrier agrees to provide enplaning/deplaning assistance using boarding chairs as was allowed prior to the adoption of this final rule. If the use of existing models of lifts or other feasible devices to enplane a passenger would present an unacceptable risk of significant damage to the aircraft or injury to passenger or employees, then the Department would view this as meaning that there is no suitable device to accommodate the aircraft.

7. Funding

Comments: One commenter, the City of Billings Aviation and Transit Department, requested that the Department of Transportation develop procedures establishing the number of lifts needed and how many will be eligible for Airport Improvement Program (AIP) funding.

DOT Response: The Department does not perceive a need to dictate procedures establishing the number of lifts needed in each airport for each carrier. The Department would prefer that the parties concerned develop their own procedures establishing the number of lifts needed in their specific situations. AIP is an option that can assist in the purchase of lifts but the amount of AIP funding available varies each year.

8. Foreign Air Carriers

Comments: The Air Transport Association requested clarification as to what extent this final rule will apply to foreign air carriers and U.S. airline operations wholly outside the United States.

DOT Response: This rule does not specifically mention foreign air carriers or U.S. airline operations wholly outside the United States because we did not propose to cover them in the notice of proposed rulemaking and it would be outside the scope of the notice to now cover foreign air carriers. Also, § 382.3(c) of the Department's Air Carrier Access Act rule states that this rule (part 382) does not apply to foreign air carriers or to airport facilities outside the United States, its terrorities, possessions or commonwealths. However, on May 18, 2000, the Department of Transportation, through the Office of Aviation Enforcement and Proceedings, notified foreign airlines serving the United States that effective April 5, 2000, as mandated by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), they are now subject to the requirements of the Air Carrier Access Act. The Department is currently working on a separate rulemaking to make the regulations implementing the Air Carrier Access Act applicable to foreign air carriers.

9. Penalties

Comments: The Paralyzed Veterans of America thought DOT should establish specific and automatic penalties against carriers that fail to provide level-entry boarding regardless of any alternative arrangements accepted by the disabled passenger.

DOT Response: The Department does not need to create a new penalty provision in order to bring an enforcement case against an airport or an airline for failure to provide level-entry boarding. If an airline fails to comply with its obligations, the enforcement procedure of 14 CFR 382.65(c) and (d) would apply. If an airport fails to comply, the procedures of 49 CFR part 27, subpart C would apply.

10. Definitions

Comments: The ATA requested clarification on the meaning of ''acquisition.'' The Paralyzed Veterans of America requested a change to § 382.29(a)(3) to state ''passenger with a disability'' rather than ''handicapped passenger.''

DOT Response: The Department uses the word ''acquisition'' of equipment to mean the purchase or lease of equipment. The Department assumes the disability group commenter is referring to § 382.39(a)(3) since § 382.29(a)(3) does not exist. The Department amended part 382 in 1996 to change terms containing the word ''handicap'' or ''handicapped'' to ''disability.'' See 61 FR 56422. Most occurrences of the words ''handicap'' or ''handicapped'' were subsequently replaced by the word ''disability'' in the published rule. However, certain phrases that contain a version of the word ''handicap'' were inadvertently overlooked. We are correcting that in this final rule. These changes are editorial in nature and do not require notice and comment.

11. Unrelated Issues

Comments: The Colorado Cross-Disability Coalition expressed frustration at the refusal of operators of small aircraft to transport or even sell a ticket to persons who cannot walk or who need in-flight medical oxygen. Another individual commenter requested a standard, industry-wide protocol for transporting of power wheelchairs and expressed anger at removal of gel batteries and damage to a chair.

DOT Response: Since their inception, the ACAA rules have required carriers using aircraft of all sizes to transport and provide enplaning/deplaning assistance to passengers who require it (although level-entry boarding might not be required in all cases). However, in some models of small aircraft, no existing model of lift or other device will work and 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 the use of a boarding chair would require. The result is that airlines may legally deny boarding to persons with mobility impairments in some limited situations. See 55 FR 8033–8034, March 6, 1990. This rulemaking does not concern small aircraft, in-flight oxygen, or the transportation of power wheelchairs and any new requirements on these topics would be outside the scope of the notice.

Section-By-Section Analysis

The Department has revised the format and subsequently the numbering of the rule text language in part 382 from that proposed in the August 1999 NPRM. The August 1999 NPRM placed the boarding assistance requirements for large aircraft in subpart (b) of § 382.39 which is titled ''Provision of services and equipment.'' The Department now realizes that it will be clearer if we simply create a new § 382.40a for boarding assistance requirements concerning large aircraft. The comments that the Department received for each individual section are discussed below under the revised section number.

14 CFR 382.39

1. 14 CFR 382.39(a)(2)

Comments: Several disability advocates were concerned about exemptions for aircraft carrying less than 19 passengers, and for float planes. They believe that it is technically feasible to provide safe and dignified access to small aircraft currently exempt from level boarding requirements. These commenters suggest widening the scope of air carrier regulations to require boarding access for all commercial airline flights regardless of aircraft size. Representatives of industry supported the current exemptions in § 382.40 for three specific 19-seat aircraft models, aircraft with fewer than 19 passengers, and float planes.

The Paralyzed of America pointed out that in the proposed § 382.39(a)(2) in the NPRM the Department mistakenly referred to paragraph (c) instead of paragraph (b).

DOT Response: This rulemaking concerns only aircraft with seating capacity of 31 or more passengers. In November 1996, the Department published a final rule concerning aircraft with 19 through 30 seats. In the 1996 final rule, the Department explained that it was aware of three 19-seat ''problem aircraft'' with which existing models of lifts do not work well, and the Department exempted the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models) from the boarding assistance requirements. The Department also exempted float planes, which often pick up passengers from docks or floating platforms, because they are incompatible with lift use. In addition, in the 1996 final rule, the Department decided to exempt all aircraft carrying fewer than 19 passengers because the existing lift devices did not appear designed to work with, or able to work with, some of the smallest aircraft. Additionally, the smallest aircraft carry a very small share of the national air traffic.

The commenter is correct in noting that in the proposed § 382.39(a)(2) in the NPRM the Department mistakenly referred to paragraph (c) instead of paragraph (b). This error has been rectified in the final rule.

14 CFR 382.40a

1. 14 CFR 382.40a(a)

Comments: The American Association of Airport Executives suggested creating two categories of aircraft (31 through 50, and greater than 50 passenger seats) and exempting airports that have no regularly scheduled operations by aircraft with more than 50 seats from having to have lifts or other boarding devices suitable for aircraft with more than 50 seats. The commenter reasoned that most existing equipment designed to facilitate boarding by disabled passengers would serve most turboprop and regional jet equipment but not aircraft with more than 50 seats.

DOT Response: The Department is not adopting this suggestion. Carriers have ongoing working relationships with every airport that they fly to regardless of how infrequent the flights to that particular airport may be. Further, the Department has provided carriers and airports an 18-month implementation schedule to permit an orderly acquisition process for additional equipment and to avoid increasing costs through an overly abrupt start-up requirement.

2. 14 CFR 382.40a(b)

Comments: Many of the comments from persons with a disability and organizations representing the interests of persons with a disability supported not allowing enplaning and deplanning of passengers with disabilities through hand-carrying or the use of boarding chairs under any circumstances. These commenters felt the rule should require lifts for boarding access when there are no level entrances or loading bridges. Several of the disability group commenters supported allowing enplaning and deplaning of disabled passengers using boarding chairs in emergency situations or if a lift is temporarily not working. The Paralyzed Veterans of America (PVA) stressed that disabled travelers should be consulted about alternative arrangements (i.e. an alternative flight) when level boarding is not available and requested that the Department more thoroughly set forth and more prominently display within its rules the carrier's duties with respect to alternative arrangements.

American Trans Air wrote that it did not support the requirement to provide boarding assistance by using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs and preferred the use of ''reasonable efforts to provide boarding assistance.''

The Air Transport Association requested clarification as to when, if

ever, a passenger with a disability may be carried onto an aircraft with the use of a chair or other device and when, if ever, a passenger with a disability may be physically hand-carried on board. The ATA also requested clarification as to whether carrier personnel may assist a passenger transferring from an aisle chair to a seat by directly picking up the passenger's arms or legs.

DOT Response: The Department is not persuaded by the argument that carriers be permitted to use ''reasonable efforts'' to provide boarding assistance using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs in boarding chairs. It is not enough to use ''reasonable efforts'' to provide level-entry boarding. Airline personnel will generally not be permitted to carry passengers up stairs in a boarding chair because it is an undignified and unsafe way of providing access for passengers and it increases risks to carrier personnel involved. The Department is requiring that, under normal circumstances, on an aircraft with 31 or more seats, carrier personnel may not lift passengers in boarding chairs up stairs as a means of effectuating the change of level needed for boarding. Hand-carrying (bodily picking up passenger for purposes of a change of level) is only allowed when necessary for an emergency evacuation. In all other abnormal circumstances (e.g., if a lift breaks down), the carrier can use whatever means are available (including boarding chairs or an alternative flight, but not hand-carrying) as a means of effectuating the change of level needed for boarding. The use of a boarding chair to carry the passenger up or down stairs is conditioned on the passenger's consent (except in the case of emergency evacuations).

The Department wants it to be clear that 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 to assist passengers in transferring from their own wheelchairs to a boarding or aisle chair and then from that device to an aircraft seat.

The Department does not agree with the PVA's comment that there is a need for the Department to set forth in more detail and more prominently display in its rules the carrier's duties with respect to alternative arrangements. Section 382.45(a)(2) already requires the carrier to inform a passenger with a disability of any limitations on the ability of the aircraft to accommodate the passenger whenever a passenger states he uses a wheelchair for boarding. In addition, alternative arrangements due to an inoperable lift should not be commonplace. Section 382.40a(c)(6) requires that the agreement between carriers and airports ensure that all lifts and other accessibility equipment are in proper working condition. Further, carriers on their own often ensure that a passenger with a disability is provided the option of an alternative flight when the required boarding assistance cannot be provided.

3. 14 CFR 382.40a(c)(1)

Comments: The vast majority of comments from carriers, airports, and industry associations argued that the requirement for a carrier to negotiate in good faith with the airport operator at each airport should be limited to those situations where the carrier is a regular, scheduled-service, or frequent user of the airport. They contended that § 382.40a should not apply to private charters and irregular or emergency operations at airports where the carrier does not provide regular scheduled service. They also asserted that § 382.40a should not apply to as carriers and airports with limited seasonal-only service and regional airlines that provide seasonal service because demand is not adequate to support year-round service. In general, the industry comments declared that in these circumstances the rule should allow boarding and deplaning assistance by any means available, including hand-carrying with the express consent of the passenger.

The American Association of Airport Executives also requested an exemption for airports without regularly scheduled operations by aircraft with more than 50 seats from having lifts or other boarding devices suitable for aircraft with larger seating capacity. The same commenter requested clarification as to whether the phrase ''to negotiate in good faith with each carrier serving the airport'' applied to charters and non-scheduled carriers. Two other industry association commenters, the ATA and the Regional Airline Association, thought the requirement for agreements with airports was unnecessarily broad. They suggested revising § 382.40a(c)(1) to read as follows: ''a carrier that does not provide passenger boarding by level-entry boarding bridges or accessible passenger lounges at an airport at which it provides regular scheduled service shall negotiate in good faith with that airport concerning the acquisition and use of boarding assistance devices.''

American Trans Air commented that it supports the provision but would like the costs to be allocated between operator and carrier based on proportionate use of facility. Two commenters representing airports argued that airports must have flexibility to: assess costs/charges for procurement and maintenance of lifts, require airlines to be responsible for training of all employees in the use of lifts, establish basic safety and insurance requirements before airlines can use lifts, and release the airports of liability if carriers do not follow these procedures.

The Paralyzed Veterans of America thought DOT should require that copies of all contracts negotiated under this rule be submitted to DOT for review and made available to the public as a means of ensuring compliance and determining the responsible party.

DOT Response: The Department does not believe it is necessary to require copies of all contracts negotiated under this rule be submitted to DOT for review since the written agreements between carriers and airports must be made available to DOT upon request. Also, airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for and maintaining mechanical lifts or other suitable devices. See response to comments regarding ''Responsibility for Obtaining and Maintaining Lifts'' for a fuller discussion of why the Department believes airports and carriers can negotiate among themselves.

The Department will adopt the suggestion of two industry commenters to narrrow the requirements of § 382.40a(c)(1) by limiting the type of carrier that must negotiate in good faith to those carriers that do not provide passenger boarding by level-entry boarding bridges or accessible passenger lounges at an airport. However, the Department does not believe that it is advisable to waive its level-entry boarding assistance requirements in situations where a carrier provides seasonal service or the carrier is not a regular, scheduled-service, or frequent user of an airport. See response to comments regarding ''Private Charters and Irregular or Emergency Operations'' for a fuller discussion of why the Department believes it is reasonable to require accessibility even where a carrier provides seasonal service or the carrier is not a regular, scheduled-service, or frequent user of an airport.

4. 14 CFR 382.40a(c)(2)

Comments: Most of the disability groups and persons with disabilities argued that a 12-month total time frame rather than 18-month total time frame was appropriate. They contended that a

3-month time frame for airport operators and air carriers to negotiate and sign a written agreement allocating responsibility for providing boarding assistance was sufficient and argued that a 9-month time frame to implement the agreement would be more than enough time. One person with a disability commented that 18 months is enough time to start using lifts for larger aircraft. The PVA stated that it would like for the final rule to require immediate implementation where level-entry boarding equipment is available to carriers or airports and is usable on aircraft affected by these regulations.

Representatives of industry strongly argued that more time than the Department's proposed 18-month schedule was needed to complete all actions necessary to ensure accessible boarding for passengers with disabilities. Two commenters, the American Association of Airport Executives and the City of Billings Aviation and Transit Department, requested a change to a minimum of a 24-month deadline in lieu of 18 months to allow for funding re-programming, air carrier negotiations, and employee training. The Regional Airline Association requested 36 months in lieu of 18 months due to what it perceived to be significant costs to regional airlines. American Trans Air commented that it would support the18-month timeline only if carrier negotiation with airports is restricted to those carriers that are frequent users of airports, airports that are responsible for more than 10% of the enplanements, or carriers that have regular scheduled service at airports.

The Air Transport Association requested exemptions on a case-by-case basis for carriers and airports unable to secure lifts or other devices due to lack of availability from manufacturers and their demonstrated good faith efforts to obtain lifts, ramps, or other devices in a timely manner.

DOT Response: The Department believes existing lifts or lifts put in place in response to the 1996 small aircraft lift rule will assist in meeting the requirements of this rule. See response to comments regarding ''Implementation Schedules'' for a fuller discussion of why the Department chose an 18-month time frame. The Department notes that the rule already requires immediate implementation where level-entry boarding equipment is available to carriers and airports. Section 382.39(a)(2) states that boarding shall be by level entry boarding platforms or accessible passenger lounges, where these means are available. Otherwise, carriers shall use ramps, lifts, or other devices for enplaning and deplaning persons with disabilities who need this kind of assistance. In sum, carriers are required to use these devices as soon as they are ready where level-entry boarding platforms are not available for a flight (i.e., a carrier cannot decline to use an available lift).

The Department believes it is unnecessary to grant waivers on a case-by-case basis for carriers and airports unable to secure lifts or other devices due to lack of availability from manufacturers and their demonstrated good faith efforts to obtain lifts, ramps, or other devices in a timely manner. Air carriers and airports have 18 months from the effective date of the rule to acquire lifts or other suitable devices. We expect that there may be many situations in which the same boarding assistance equipment used to provide access to smaller aircraft can be used to provide access to aircraft with 31 or more seats. The final rule includes a provision permitting airports and air carriers to seek a written waiver only if the carrier can demonstrate that no existing lift or other suitable device on the market will accommodate the aircraft and the carrier agrees to provide enplaning/deplaning assistance using boarding chairs as was allowed prior to adoption of this final rule. See response to comments regarding ''Availability of Lifts'' for a fuller discussion of when the Department will grant a waiver.

5. 14 CFR 382.40a(c)(3)

Comments: American Trans Air commented that it supported the provision whereby a passenger requiring lift assistance may be required to check in at least one hour before the scheduled departure time.

DOT Response: The Department agrees with the commenter and the final rule is the same as the proposal in the NPRM.

6. 14 CFR 382.40a(c)(4)

Comments: Broward County expressed its view that existing lifts on the market will not accommodate certain widebody aircraft and requested that the failure of airports to have lifts for widebodies on-site not constitute non-compliance. The Eastern Paralyzed Veterans of America and the National Association of Protection and Advocacy Systems wrote that they were aware of two companies that manufacture lifts that service large aircraft.

DOT Response: The Department is not convinced that existing lifts will not accommodate widebody aircraft. Nevertheless, the final rule includes a new provision waiving the requirement for boarding assistance to persons with disabilities by using ramps or mechanical lifts under limited circumstances. Boarding assistance by lift is not required on any widebody aircraft determined by the Department of Transportation to be unsuitable on the basis that no existing boarding assistance device on the market will accommodate the aircraft without significant risk of serious damage to the aircraft or injury to passenger or employee.

7. 14 CFR 382.40a(c)(5)

Comments: American Trans Air commented that it supports this provision and understands that it would be able to refuse transport for passengers with disabilities without jeopardy according to § 382.31 (refusal of service) since hand-carrying is not an option. The Paralyzed Veterans of America expressed concern that the phrase ''for reasons beyond the control of the parties to the agreement'' in proposed § 382.40a (c)(5) seems to limit mandatory alternative boarding to situations where the air carrier or airport was not at fault for the failure to provide level-entry boarding. The PVA requested that the Department ensure that passengers have an option of alternative boarding or an alternative flight regardless of who is responsible for the failure to provide entry level boarding.

DOT Response: A carrier may not refuse transport on an aircraft with seating capacity of 31 or more passengers when level-entry boarding assistance through lift, ramp or other suitable device is not available. If a lift is not available, regardless of the reason, then the airline must consult with the passenger and provide boarding assistance by any available means to which the passenger consents (except hand-carrying as defined in § 382.39(a)(2)). For example, carrier personnel may carry a passenger up stairs in a boarding chair if the passenger consents. The Department is not aware of any model of aircraft with seating capacity of 31 or more seats with stairs that are built into the door of the aircraft that are not strong enough to accommodate two or three persons at a time, as the use of boarding chairs would require. If the passenger does not consent to being carried in a boarding chair, then the carrier may offer other options such as an alternative flight. The Department has removed the phrase ''for reasons beyond the control of the parties to the agreement'' from § 382.40a (c)(5) because it is confusing and could appear to some as limiting the situations in which alternative boarding must be provided.

8. 14 CFR 382.40a(c)(6)

Comments: American Trans Air thought that airports and not carriers should be responsible for maintaining all lifts and other accessibility equipment in proper working condition. This commenter stated that joint responsibility between a carrier and an airport is appropriate only if the carrier is a frequent user, is responsible for more than 10% of enplanements, or has regularly scheduled service. The PVA would like for the final rule to include a regular schedule for deployment and testing of lifts to ensure that any mechanical difficulties are discovered and resolved before a passenger needs the equipment to board an aircraft. This disability organization thought the final rule should require regular maintenance and testing on a schedule consistent with manufacturer instructions. If equipment cannot be repaired the same day, then the disability group commenter would like for the carrier to be required to make arrangements for replacement.

DOT Response: The Department believes that airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for and maintaining mechanical lifts or other suitable devices. See response to comments regarding ''Responsibility for Obtaining and Maintaining Lifts'' for a fuller discussion of why the Department believes airports and carriers can negotiate among themselves.

Additionally, the Federal Aviation Administration (FAA) has an Advisory Circular on Lift Maintenance titled ''Guide Specification for Devices Used to Board Airline Passengers With Mobility Impairments'' (AC No. 150/5220–21B) as guidance on how to maintain lifts in proper working condition. Carriers and airports share a joint responsibility to ensure that passengers with disabilities have the opportunity to use aircraft with 31 or more seats.

9. 14 CFR 382.40a(d)(1)

Comments: American Trans Air requested that the Department consider requiring Fixed Base Operators (FBOs) and other contract service providers involved in the use of boarding assistance equipment to be responsible for their own training. This commenter also suggested that the Department require airports where the carrier is not a frequent user to be responsible for ensuring service/contract providers are trained/certified. A disability group advocate, the PVA, recommended that the training requirements for personnel be stronger and suggested regular training of personnel with periodic refreshers.

DOT Response: Carriers and airports are ultimately responsible for ensuring that contract service providers are adequately trained in the use of boarding assistance equipment. The general part 382 requirement of training to proficiency includes refresher training, as needed, to maintain proficiency. We note that § 382.61, which applies to carriers that operate aircraft with more than 19 seats, requires refresher training as appropriate to the duties of each employee to ensure that proficiency is maintained. For example, for personnel involved in providing boarding assistance, training to proficiency would cover the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

49 CFR Part 27

1. 49 CFR 27.72(a)

Comments: One person with a disability expressed concern about the fact that the NPRM is limited to boarding assistance at airports with more than 10,000 annual enplanements.

DOT Response: The Department made the tentative decision not to apply this rule to airports with fewer than 10,000 enplanements because these airports are non-primary airports—small airports that often may not have regularly scheduled service. Airports with 10,000 or more annual enplanements are primary airports that have more commercial-service traffic and where lifts would receive more use. The 10,000 enplanement threshold is the same standard that has applied since 1996 to ramp/lift assistance for aircraft with 19 through 30 seats.

2. 49 CFR 27.72(b)

Comments: One commenter agreed that sub-section (c) of § 27.72 should apply to aircraft with a seating capacity of 19 through 30 passengers only so long as exemption for 19-seat aircraft models such as the Jetstream 31 remain.

DOT Response: The requirement for airports and carriers to jointly provide ramps or lifts for aircraft with 19 through 30 passenger seats does not override the existing exemption for certain aircraft such as the Jetstream 31. Indeed, the requirement as it pertains to 19 through 30 seat aircraft and the exemption for three aircraft types have been in existence since 1996. Nothing in the current proceeding affects them.

3. 49 CFR 27.72(c)(1)

Comments: American Trans Air supported the requirement that airport operators negotiate in good faith with each carrier, but would like the cost of boarding devices to be apportioned between operator and carrier based on enplanements and/or departures.

DOT Response: Again, the Department believes that airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for mechanical lifts or other suitable devices. Airports and carriers have worked together for decades to find a basis for agreement on a wide variety of air transportation issues, so the concept of airports and air carriers negotiating to determine how accessibility will be provided is appropriate.

4. 49 CFR 27.72(c)(2)

Comments: American Trans Air commented that Chicago Express's aircraft are currently exempt from the requirement to implement agreement within the specified time frame because its entire fleet consists of the Jetstream 31, a 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift. On behalf of Chicago Express, its affiliate/code-share partner, this carrier requested an 18-month period from the date Chicago Express acquires aircraft/equipment that is not exempt to the date that it must use mechanical lifts.

DOT Response: The Department will not allow an additional 18-month compliance period for carriers that choose to begin operating aircraft for which boarding assistance by lift is required. The purpose of the initial phase-in period was to enable carriers to avoid costs through an overly abrupt start-up requirement. By now all carriers should be aware of the general boarding assistance requirements for aircraft with19 through 30 seats and realize that they must acquire lifts or other suitable devices if they operate aircraft for which boarding assistance by lift is required.

5. 49 CFR 27.72(c)(3)

Comments: Some disability advocates such as Access to Independence and Mobility were concerned about exemptions for aircraft carrying fewer than 19 passengers, and for float planes. They believe that it is technically feasible to provide safe and dignified access to small aircraft currently exempt from level boarding requirements. These commenters suggest widening the scope of air carrier regulations to require boarding access for all commercial airline flights regardless of aircraft size.

Representatives of industry supported the current exemptions in § 382.40 for three specific 19-seat aircraft models, aircraft with fewer than 19 passenger seats, and float planes. One disability group recommended replacing the word ''lift'' in § 27.72(c)(3)(iv) with ''boarding assistance device'' since not all boarding assistance devices are lifts.

DOT Response: The Department has replaced the word ''lift'' in § 27.72(c)(3)(iv) with the phrase ''lifts, ramps, or other suitable boarding devices'' because a lift is not the only acceptable boarding device. See response to comments regarding § 382.39(a)(2) for a discussion of why the Department has exempted small aircraft and float planes from level boarding requirements.

6. 49 CFR 27.72(c)(4)

Comments: American Trans Air commented that it supports this provision and understands that it would be able to refuse transport for passengers with disabilities without jeopardy according to § 382.21 (refusal of service) since hand-carrying is not an option.

DOT Response: See response to comments regarding § 382.40a(c)(5).

7. 49 CFR 27.72(c)(5)

Comments: American Trans Air commented that it supports the provision but believes the responsibility for maintaining the lifts and other accessibility equipment should be apportioned based on proportionate use of the facility.

DOT Response: See response to comments regarding § 382.40a(c)(6).

8. 49 CFR 27.72(d)(1)

Comments: One carrier commented that it supports the provision but would like the costs to be allocated between operator and carrier based on proportionate use of facility. Two commenters representing airports argued that airports must have flexibility to: assess costs/charges for procurement and maintenance of lifts, require airlines to be responsible for training of all employees in the use of lifts, establish basic safety and insurance requirements before airlines can use lifts, and release the airports of liability if carriers do not follow these procedures. The Paralyzed Veterans of America thought DOT should require copies of all contracts negotiated under this rule be submitted to DOT for review and made available to the public as a means of ensuring compliance and determing the responsible party. The American Association of Airport Executives suggested adding ''where level entry boarding is not otherwise available'' to the end of the first sentence to conform the airport requirement with the air carrier requirement.

DOT Response: The Department will add the sentence ''where level entry boarding is not otherwise available'' to the end of the first sentence to conform the airport requirement with the air carrier requirement. The Department will not allocate the costs between operator and carrier based on proportionate use of facility. Airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for and maintaining mechanical lifts or other suitable devices. See response to comments regarding § 382.40a(c)(1) for further detail.

9. 49 CFR 27.72(d)(2)

The comments and issues here are identical to those discussed in § 382.40a(c)(2) earlier. See that section for a discussion of comments and DOT response.

10. 49 CFR 27.72(d)(3)

Comments: One commenter expressed his view that existing lifts on the market will not accommodate widebody aircraft and requested that the failure of airports to have lifts for widebodies on-site not constitute non-compliance. Two commenters wrote that they were aware of two companies that manufacture lifts that service large aircraft.

DOT Response: See response to comments regarding § 382.40a(c)(4).

11. 49 CFR 27.72(d)(4)

The comments and issues here are identical to those discussed in § 382.40a(c)(5) earlier. See that section for a discussion of comments and DOT response.

12. 49 CFR 27.72(d)(5)

The comments and issues here are identical to those discussed in § 382.40a(c)(6) earlier. See that section for a discussion of comments and DOT response.

13. 49 CFR 27.72(e)

Comments: American Trans Air supported the provision that airports shall ensure that airport personnel involved in providing boarding assistance are trained. This commenter also requested that the Department impose responsibility on the airports where the carrier is not a frequent user of the airport for ensuring that service/contract providers are trained. The PVA recommended that the training requirements for personnel be stronger and suggested regular training of personnel with periodic refreshers.

DOT Response: See response to comments regarding § 382.40a(d)(1).

Regulatory Analysis and Notices

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

This action has been determined to be non-significant under Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures. Any costs or benefits resulting from this action would be so minimal that no further assessment is required since existing lifts, or lifts previously in place in response to the small aircraft lift rule, will be sufficient to meet the proposed requirements in many situations. The Office of the Secretary has prepared and placed in the docket a regulatory evaluation of the final rule.

B. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule 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.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. We hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities because the overall national

annual costs are not great, few of the aircraft covered by this rule are operated by small entities, and few of commercial service airports covered by this rule could properly be regarded as small entities.

E. Paperwork Reduction Act

This rule imposes no new information reporting or record keeping necessitating clearance by the Office of Management and Budget.

F. 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

14 CFR Part 382

Air carriers, Consumer protection, Individuals with disabilities, Reporting and recordkeeping requirements.

49 CFR Part 27

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

For the reasons set forth in the preamble, 14 CFR part 382 and 49 CFR part 27 are amended 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, the term ''handicapped person'' or ''handicapped passenger'' is revised to read ''individual with a disability'' wherever it occurs. The term ''handicapped persons'' or ''handicapped passengers'' is revised to read ''individuals with a disability'' whenever it occurs.

3. Section 382.39(a)(2) is revised to read as follows:

§ 382.39 Provision of services and equipment.

* * * * *

(a) * * *

(2) Boarding shall be by level-entry loading bridges or accessible passenger lounges, where these means are available. Where these means are unavailable, assistance in boarding aircraft with 30 or fewer passenger seats shall be provided as set forth in § 382.40, and assistance in boarding aircraft with 31 or more seats shall be provided as set forth in § 382.40a. In no case shall carrier personnel hand-carry a passenger in order to provide boarding or deplaning assistance (i.e., directly pick up the passenger's body in the arms of one or more carrier personnel to effect a change of level that the passenger needs to enter or leave the aircraft). Hand-carrying of passengers is permitted only for emergency evacuations.

* * * * *

4. A new section 382.40a is added to read as follows:

§ 382.40a Boarding assistance for large aircraft.

(a) Paragraphs (b) and (c) of this section apply to air carriers conducting passenger operations with aircraft having a seating capacity of 31 or more passengers at airports with 10,000 or more annual enplanements, in any situation where passengers are not boarded by level-entry loading bridges or accessible passenger lounges.

(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 that does not provide passenger boarding by level-entry loading bridges or accessible passenger lounges 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 March 4, 2002, 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 4, 2002. 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 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) Level-entry boarding assistance under the agreement is not required with respect to float planes or with respect to any widebody aircraft determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp, or other device on the basis that no existing boarding assistance device on the market will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees.

(5) When level-entry 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 (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).

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

(d) 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.

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

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

6. In 49 CFR part 27, § 27.72 is revised to read as follows:

§ 27.72 Boarding assistance for aircraft.

(a) Paragraphs (b)–(e) 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. Paragraph (c) of this section applies to aircraft with a seating capacity of 19 through 30 passengers. Paragraph (d) of this section applies to aircraft with a seating capacity of 31 or more passengers.

(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 for aircraft with a seating capacity of 19 through 30 passengers. 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, 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 2, 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) 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, ramp or other suitable device 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)(3) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section (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 14 CFR 382.39(a)(2).

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

(d)(1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 31 or more passengers where level entry boarding is not otherwise available. The airport operator and the carrier(s) shall, by no later than March 4, 2002 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 4, 2002. All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Level-entry boarding assistance under the agreement is not required with respect to float planes or with respect to any widebody aircraft determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp, or other device on the basis that no existing boarding assistance device on the market will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees.

(4) When level-entry boarding assistance is not required to be provided under paragraph (d)(3) of this section, or cannot be provided as required by paragraphs (b) and (d) of this section (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 14 CFR 382.39(a)(2).

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

(e) 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.

Issued this 27th day of April 2001 at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 01–11201 Filed 5–1–01; 10:22 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, 529, and 558

Animal Drugs, Feeds, and Related Products; Tylosin Tartrate for Injection, etc.; Withdrawal of Approval of NADAs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions that reflect approval of 13 new animal drug applications (NADAs) listed below. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADAs.

DATES: This rule is effective May 14, 2001.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5593.

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the NADAs listed below because the products are no longer manufactured or marketed:

Sponsor	NADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
Elanco Animal Health, A Div. of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285.	NADA 12–585 Tylan Injectable (tylosin tartrate)	522.2640b (000986)
	NADA 15–207 Hyferdex Injection (iron dextran complex).	522.1183(c) (000986)
	NADA 30–330 Tylocine Sulfa Tablets (sulfadiazine, sulfamerazine, sulfamethazine, tylosin).	not applicable