of positioning the power levers below the flight idle stop during flight.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 10 British Aerospace Model ATP airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $600, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

98–05–12 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10373. Docket 97–NM–191–AD.

Applicability: All Model ATP airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Roll-over Lever

Use is restricted to ground operation only. In-flight operations at power settings below flight idle are prohibited. Power settings below flight idle may lead to a loss of aircraft control, or may result in an engine overspeed condition and consequent loss of engine power.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on April 8, 1998.

Issued in Renton, Washington, on February 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–5478 Filed 3–3–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 382

[Docket OST–96–1880]

RIN 2105–AC28

Nondiscrimination on the Basis of Disability in Air Travel

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is amending its rules implementing the Air Carrier Access Act of 1986. The amendments establish procedures for providing seating accommodations for individuals with disabilities, clarify the general nondiscrimination obligations of carriers, and provide for the in-cabin stowage of collapsible electric wheelchairs that can be stowed consistent with carry-on baggage requirements.

EFFECTIVE DATE: This rule is effective April 3, 1998.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC, 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD).

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1996, the Department published a notice of proposed rulemaking (NPRM) asking for comment on a number of issues. The NPRM proposed to require seating accommodations for certain individuals with disabilities, to clarify the general nondiscrimination obligations of carriers, and to provide for the in-cabin carriage of electric wheelchairs that could be accommodated consistent with carry-on baggage rules. The Department is today issuing final rules based on these proposals, with modifications responsive to comments we received.

The preamble to the November 1, 1996, NPRM also asked for public comment on two matters concerning which we had received suggestions or petitions from members of the public. These were additional accommodations for persons with hearing impairments (e.g., captioning of in-flight movies, on-board TDDs where air phones are made available to other passengers, better message service in gate areas) and the provision of a smoke-free accessible path through airports for persons with respiratory disabilities.

The Department received a number of comments on the issue of accommodations for hearing impairments. We are continuing to consider whether to propose requirements for accommodations of this type, but we are deferring decision on this matter until a later time.

The Department received a large number of comments concerning the petitions for accessible paths through airports for persons with respiratory disabilities, many of which went beyond the issues directly raised by the petitions, reflecting the ongoing public debate about smoking by taking broad anti-smoking or ''smokers' rights'' positions. (Some of the comments from anti-smoking groups opposed regulation in this area, on the view that existing law already requires action by airports to ban or limit smoking.) While continuing to consider the issue the petitions raised, the Department is deferring a decision on whether to propose rules on this subject until a later time. In this connection, we note that a number of airports are taking action on the local level to limit the passengers' exposure to ambient smoke.

General Nondiscrimination Obligation

NPRM Proposal

The NPRM proposed to add language making explicit the existing obligation of carriers to provide accommodations to passengers with disabilities and remove barriers, applying the standards of section 504 of the Rehabilitation Act and Title III of the Americans with Disabilities Act (ADA). The purpose of this addition was to clarify that carriers must modify policies, practices, and facilities where needed to provide service to passengers with disabilities, even if a particular accommodation was not specifically mandated elsewhere in part 382.

Comments and DOT Response

Carriers and disability groups found themselves in somewhat ironic agreement that the reference in the proposal to ADA standards should be removed and that the provision should refer only to the standards of section 504. Disability groups took this position on the basis of their view that section 504 imposes a more stringent standard on carriers than Title III of the ADA. Carriers took this position on the basis of their view that section 504 imposes a less stringent standard on carriers than Title III of the ADA. Both found the dual reference to ADA and 504 standards to be vague and confusing.

As the Department noted in the preamble to the NPRM, the history of the ACAA clearly shows that Congress enacted the statute to fill a gap in nondiscrimination coverage left by a Supreme Court decision that said that section 504 of the Rehabilitation Act did not apply to air carriers, since they do not (with the exception of participants in the Essential Air Service program) receive Federal financial assistance. The intent of the statute was to achieve the same protection from discrimination for airline passengers that section 504 provides persons affected by Federally-assisted programs. For a summary of the history of the Act, see the preamble to the Department's 1990 final ACAA rule (55 FR 8009; March 6, 1990).

Given this history, and the common concerns of disability groups and carriers that the ADA reference in the NPRM was inappropriate and confusing, the Department is changing the text of the section in the final rule. The final rule version tells carriers, in addition to following the other specific provisions of Part 382, that they must modify policies, practices, or facilities as needed to ensure nondiscrimination, consistent with the standards of section 504 of the Rehabilitation Act, as amended.

One carrier comment proposed an original list interpretation of the ACAA, under which only those accommodations that would have been required under section 504 in 1986 could ever be required under the ACAA. The Department is not persuaded that this interpretation is sound. It would, among other things, contravene the intent of Congress that airline passengers have the same protections that people with disabilities have in other situations under section 504. In interpreting what rights airline passengers have today, it is far more reasonable to look at what rights persons with disabilities have under section 504 today, rather than attempting a historical speculation about what rights they might have had in previous decades.

In any case, the nondiscrimination provisions of the DOT and Department of Justice section 504 regulations, as they read in 1986 and as they read today, clearly support the Department's amendment to § 382.7. They impose an obligation on covered entities to modify policies, practices, and facilities to ensure that persons with disabilities receive services on a nondiscriminatory basis. A carrier's argument that a requirement to modify polices, practices and facilities to ensure nondiscrimination is impermissibly vague is without merit. Like section 504 itself, the statutory language of the ACAA prohibits discrimination in general terms. There is no basis for asserting that the only modifications a carrier could ever be required to make are those specifically enumerated in the existing sections of the rule. From the beginning of section 504 rules in the 1970s, these rules have always imposed general, as well as specific, nondiscrimination obligations on covered entities.

We agree with the comments of both carriers and disability groups that, under section 504, carriers are not required to make modifications that would constitute an undue burden or fundamentally alter the nature of the carriers' service. As in section 504 and ADA practice generally, what constitutes an undue burden or a fundamental alteration is a judgment decision that must be made on the facts of a specific situation. The ACAA clearly provides that carriers not make modifications that would violate FAA safety rules.

This approach does not represent a departure from existing ACAA interpretation or practice. Indeed, the Department has consistently operated on the basis of this understanding of the law. For example, the issue of food allergies is not specifically mentioned in the text of Part 382. On several occasions, however, the Department has learned of situations in which passengers with severe allergies to peanuts have requested

accommodations from airlines. The Department has worked informally with airlines and passengers to arrange appropriate modifications to the airlines' normal food service practices on specific flights. For example, in some cases, airlines have agreed to serve an alternate snack (e.g., pretzels rather than peanuts) to passengers seated near the allergic passenger. This is an example of a modification to normal practices that is not unduly burdensome. On the other hand, some allergic passengers have requested much more sweeping actions by carriers (e.g., special cleaning of an aircraft to ensure that peanut residue does not remain on board; screening other passengers to ensure that they do not bring their own peanut products on board). We have regarded these requested accommodations as creating undue burdens, and we have consequently not requested carriers to undertake such steps. In assessing any requested accommodation, passengers, airlines, and the Department must exercise judgment on a case-by-case basis concerning what it is reasonable to expect and what constitutes an undue burden.

Comments from disability group commenters mentioned a number of examples of types of modification they thought would be appropriate under this provision. These included chest straps for some mobility-impaired passengers to provide greater lateral stability in aircraft seats, allowing a passenger to board last to reduce pain from sitting for long periods, allowing wheelchair users to check in at the gate rather than at the airport entrance or ticket counter, and allowing people who cannot carry luggage to have luggage carts in airport concourses. These requests—whatever their merits in a particular fact situation—illustrate the point that a regulation can never possibly enumerate all possible specific situations potentially calling for accommodations to achieve nondiscrimination.

This provision is not intended to replace the rulemaking process with respect to across-the-board changes in carrier policies and practices. For example, the Department does not intend, in implementing and enforcing this provision, to address industry-wide issues like on-board oxygen use by passengers, additional accommodations for passengers with hearing impairments, or smoking in airports. The provision is intended to deal with accommodations that take the form of case-by-case exceptions to otherwise reasonable general policies or practices of carriers.

The Department wants to take this opportunity to clarify an apparent misunderstanding that a disability organization had concerning the effect of the November 1, 1996, amendment the Department made to the airport facility standards in 14 CFR Part 382 and 49 CFR Part 27 (61 FR 56420, 56422). The group's concern was that the amendments substantively weakened the requirements for airlines and airports to meet accessibility standards. The amendments were not intended to do so, and they in fact did not do so.

As noted in the preamble to the November 1, 1996, final rule (61 FR 56416–18), the coverage of the ADA, section 504, and the ACAA at airports had been overlapping and confusing. The purpose of the amendments was to harmonize these authorities, simplifying issues of statutory and regulatory coverage without affecting substantive requirements. The amendments did this by saying that airlines and airports meet their ACAA and section 504 requirements if they meet, respectively, the standards of Title III and Title II of the ADA.

In doing so, the Department knew that section 10.4 of the Americans with Disabilities Accessibility Guidelines (ADAAG) incorporated many of the specific accessibility requirements of the pre-1996 ACAA and section 504 requirements for airport facilities (56 FR 45714; September 6, 1991). The amendments refer specifically to these provisions (see 49 CFR 27.71(e); 14 CFR 382.23(e)). Requirements not specifically referenced in the ADAAG provision are retained in the amended ACAA and section 504 provisions (14 CFR 382.23 (c) and (d) and 49 CFR 27.71 (c) and (d), which concern accessible paths of travel through airports and inter-terminal transportation systems, respectively). These provisions ensure that nothing is lost between the pre-amended and amended ACAA and 504 sections.

With respect to the issue of modifications for existing facilities, section 504 has always required recipients to modify policies, practices, and facilities to ensure nondiscrimination. Section 504 has never required recipients to incur undue burdens to make these modifications. The ''program accessibility'' requirements of the Department of Justice ADA Title II regulation (28 CFR 35.150) require no less than section 504 with respect to facility accessibility. Using the program accessibility standard does not in any way relieve recipients of the obligations they had under section 504 and the pre-amended 49 CFR part 27 to modify facilities for accessibility. Indeed, it is difficult to imagine circumstances, in the context of airport facilities, in which program accessibility could be fully achieved without facilities being made accessible.

The pre-amended version of the ACAA airport facilities provision required facility modifications to be made by carriers as of April 5, 1993 (former 14 CFR 382.23(d)). By the time of the amendment, any existing facility that had not been modified for accessibility had been out of compliance for approximately 3½ years. Nothing in the amendment to § 382.83 is intended to relieve carriers of that pre-existing compliance obligation. Obviously, any new facility construction or alterations have had to be accessible since the ACAA rules first went into effect, which the amendment does not change.

Seating Accommodations

NPRM Proposal

The NPRM proposed that carriers make available to passengers with disabilities four types of seating accommodations. These included seats in rows with movable aisle armrests for wheelchair users, seats for a personal care attendant (PCA) next to a disabled passenger needing the PCA's services during the flight, seats in either bulkhead or non-bulkhead rows for persons traveling with service animals, and seats providing additional legroom for persons with fused or immobilized legs. While a carrier might have to reassign other passengers to make these accommodations, no one would be ''bumped'' from a flight and the carrier would continue to follow all FAA safety rules, including the exit row seating rule. The carrier could establish up to a 48-hour advance notice requirement for someone requesting a seating accommodation.

Comments

Disability community commenters unanimously supported the proposal. Many of these comments said that even if some other passengers had their seats changed as a result, their inconvenience did not outweigh the need of passengers with disabilities for seats that they could readily access and use. These commenters argued that making seating accommodations was a reasonable modification of policies and practices that did not impose an undue burden on carriers or fundamentally alter the nature of the airlines' services.

There were some modifications that disability community commenters requested, however. Generally, they opposed the advance notice provision,

saying it was discriminatory and worked a hardship of passengers who had to make short-notice travel plans. They also objected to any requirement for documenting a disability, saying that this was burdensome for passengers. Some of these comments also suggested that, on airlines that do not assign seats in advance, carriers should be required to let people needing seating accommodations preboard before other passengers (e.g., families with small children) who also can preboard. In all preboardings, commenters said, carriers should give people with disabilities enough time to get settled in their seats before other passengers board. (It should be noted that some carriers are reported to be cutting back or eliminating traditional preboarding procedures. Since some provisions of the ACAA rule, such as the requirement for on-board stowage of wheelchairs, are premised on the availability of preboarding to passengers with disabilities, this change in industry practice may have implications for the accessibility of air travel to disabled passengers. The Department intends to watch developments in the preboarding policy area to determine if future rulemaking may be needed.)

Disability community commenters said that the four categories of people who the NPRM proposed as eligible for seating accommodations were too narrow. There would always be individual cases that did not fit into these or any set of categories, they said, so the rule should be structured in an ''including but not limited to * * *'' fashion. Examples of other disabilities cited as requiring accommodations included a person with a painful disability that made it necessary for her to minimize being jostled by other people (who thereby needed a window seat), someone with multiple sclerosis who could walk a few steps but needed a seat near the entrance to the aircraft, and someone with bladder or bowel control problems who needed an aisle seat near a lavatory.

Two commenters suggested that the movable aisle armrest row accommodation be limited to persons who need an aisle chair to board or who cannot transfer over a fixed armrest (as distinct from persons who could walk a few steps to a seat). Other commenters suggested that reservation systems ''block'' seats needed for accommodations so that disabled passengers needs could be met without having to displace other passengers. Alternatively, there could be designated ''priority'' seats for persons with disabilities, from which other passengers would move if a seating accommodation became necessary.

Carriers objected to the proposal on a number of grounds. The one they identified as the most significant had to do with the limitations of their computer reservation systems. These systems, the carriers said, could not retrieve the names of passengers by reference to seat assignments. That is, if a disabled passenger were assigned seat 6C as an accommodation, the carrier would not be able to determine who had previously been assigned the seat so as to be able to notify that passenger of a changed assignment. To provide this notice and avoid an unpleasant surprise, the carrier would either have to modify its computer system or comb through individual passenger records, both of which would be very expensive and unduly burdensome.

In any case, carriers said, it was unfair to impose inconvenience on other passengers who had expectations of sitting in their original seat assignment, especially since some of those had good reasons (e.g., they were tall, traveling with infants) for wanting a particular seat. This would create confusion, make the other passengers unhappy, increase denied boarding compensation claims and flight delays, and distract flight attendants from safety duties. If passengers requesting accommodations were not really disabled, it would add to this discontent. One carrier noted that its policy was to ask other passengers to move in situations where an expected accommodation for a disabled passenger did not materialize (e.g., because the equipment for a flight changed).

The proposal would make carriers discriminate against those disabled passengers who were not in one of the four categories and force carriers to ask inappropriate questions of disabled passengers, carrier comments added. Carriers who do not assign seats in advance requested that the NPRM preamble statement that their obligations could be met by their preboarding process be included in the final regulatory text (a comment seconded by a disability group).

Finally, carriers made a legal argument against the proposal, saying that it required ''preferential'' treatment and ''affirmative accommodation'' for disabled passengers, while the Department's authority was limited to ensuring nondiscrimination. The carriers already practiced nondiscrimination, they said, by treating all passengers the same through their ''first-come/first-served'' seat assignment policy. Requiring a change in this policy, especially as applied to seats withheld from the general passenger population for frequent fliers' benefit, would be a fundamental alteration of the carrier's services, the comments said.

Carriers noted that they already block seats in the reservation process, including some bulkhead and movable aisle armrest rows, for people with disabilities. One carrier said that it holds some of the seats for passengers with disabilities who may not have made their needs known until check-in.

DOT Response

With some substantive modifications in response to comments, the Department is adopting the NPRM proposal. Requiring seating accommodations is necessary to ensure nondiscrimination, is consistent with the language and intent of the ACAA, and does not create an undue burden or fundamentally alter the nature of airline services.

The Department strongly disagrees with carrier comments' characterization of a seating accommodations requirement as preferential treatment that exceeds the Department's authority under the ACAA. This requirement simply compels nondiscriminatory seating policies. It tells airlines they must provide to passengers with disabilities exactly what they provide to other passengers—a seat the passenger can readily access and use. A facially neutral policy that assigns seats to non-disabled passengers that they can readily access and use but fails to ensure that disabled passengers are assigned seats they can readily access and use is discriminatory. Comments to the NPRM, as well as the Department's experience in listening to consumer concerns about inability or unwillingness of airlines to provide seats that individuals can readily access and use, persuade us that this accommodation must be required if the intent of Congress in mandating nondiscrimination in air travel is to be properly carried out.

Under the ACAA, as with section 504, the Department has authority to require regulated parties to take steps to ensure nondiscrimination, as long as these steps do not create an undue burden or fundamentally alter the nature of an entity's program. This requirement is consistent with these provisions of disability law.

Airlines regularly provide their customers seats they can access and use. The seating accommodation requirement does not fundamentally alter the nature of this service. The rule explicitly provides that no one will be bumped from a flight to make a seating accommodation and that the airline will

continue to follow all applicable FAA safety rules. Contrary to carrier comments, it is hard to imagine denied boarding compensation claims increasing under a rule which explicitly provides that no one will be denied boarding on a flight to accommodate a disabled passenger. Carriers who assign seats in advance may continue to do so. Carriers who do not assign seats in advance may continue their practice. The provision does not require carriers to provide service to classes of passengers they do not now serve (e.g., passengers who have to travel on stretchers). Even carriers who hold back some seats for the benefit of frequent fliers (something that it is difficult to construe reasonably as fundamental to the nature of air transportation) can continue to do so, as long as they make exceptions when necessary to accommodate a passenger with a disability.

Particularly given the modifications the Department is making from the NPRM (see discussion below), the final rule does not impose undue burdens. In this connection, the Department observes that the ACAA permits the Department to impose some burdens on carriers. What the Department cannot do is impose ''undue'' burdens. The use of this term in disability law necessarily implies that some burdens are ''due,'' as a consequence of the obligation of regulated parties to ensure nondiscrimination. The Department can legally impose these ''due burdens.'' The primary ''undue burden'' alleged in carrier comments is the difficulty carriers cite with their computer systems. The Department accepts the carriers' representations about the limitations of their computer systems. However, these problems do not result in an undue burden in the context of the final rule.

This is true because the airlines do not have to do what they say their computer systems will not allow them to do. The NPRM did not propose, and the final rule does not require, that airlines retrieve the names of passengers previously assigned a seat and individually inform those passengers that their seat assignment has been changed. The structure of the final rule makes such a mechanism unnecessary, from a customer relations as well as a legal standpoint.

The first method carriers can use, suggested by both carrier and disability community comments, is for carriers to ''block'' an adequate number of seats usable for seating accommodations (e.g., seats in bulkhead rows, seats in rows with movable aisle armrests, some pairs of seats) from advance assignment until 24 hours before scheduled departure time. By an ''adequate'' number of seats, we mean enough seats to handle a reasonably expectable demand for seating accommodations of various kinds. It might not be necessary, for example, to block all aisles with movable armrests or, in an aircraft with multiple bulkhead areas, all bulkhead rows. Nor would it necessarily be essential to block all the seats in such rows. Carriers who use this approach should be aware, however, that they will need to block some pairs of seats, since someone who is eligible to receive an accommodation (e.g., a wheelchair user with respect to a row with a movable aisle armrest) may also be traveling with a personal care attendant. We anticipate that the burden of implementing this approach would be light, given that carriers already block seats for disability and other purposes.

If a disabled passenger specified in the rule calls the carrier prior to 24 hours before the scheduled departure time, the carrier will assign the person one of these seats. This would be done even if the seat is also one that is otherwise held for use of frequent fliers. Because these seats would never have been assigned to another passenger, reassignment of the seat will not be an issue, and no other passenger will ever have to be displaced from a previously assigned seat. If the disabled passenger makes his or her request later than 24 hours before scheduled departure, the carrier would still try to meet the passenger's seating accommodation need, but would not have to change another passenger's seat assignment to do so.

There could be rare situations in which all the seats blocked for a particular sort of accommodation are filled with individuals with disabilities and, subsequently but prior to 24 hours before departure, an additional passenger with a disability requests the same kind of accommodation. In this case, the carrier would not be required to change a seat assignment that had already been given to another disabled passenger. However, the carrier would have meet the disabled passenger's request by assigning him or her to a seat that provided the needed accommodation, was not a seat blocked for passengers listed in paragraph (a), and was still unassigned, even if that seat was otherwise blocked for frequent fliers or another category of passenger.

Under the second approach available to carriers, suggested by disability community comments and somewhat analogous practices in other modes of transportation, carriers would designate an adequate number of seats as ''priority seats'' for seating accommodations for disabled passengers. Carriers would provide notice that passengers who are assigned these seats are subject to being reassigned to another seat if necessary to accommodate a passenger with a disability.

In the Department's view, the best way to provide this information would be through notice to the passenger at the time he or she made a seat selection (e.g., by the airline reservationist or travel agent, via a screen notice when the passenger is making an on-line seat assignment, or via a recording when the passenger makes a seat selection through an automated telephone system). Other methods are acceptable, however, such as ticket notices, gate announcements, counter signs, seatback cards, notices in advertisements, timetables, web sites, or frequent flier literature. Whatever system a carrier chooses to provide this information, the Department believes it would be useful to place a sticker or decal (e.g., on the armrest for the seat or the tray table facing the seat) with an accessibility symbol and words like ''Priority Seat for Passengers with Disabilities,'' which would help inform passengers about this requirement.

By receiving this information, passengers would know that if they sat in a priority seat, they could be moved to another seat if a disabled passenger needed that seat for a seating accommodation. Because passengers would be on notice that sitting in a priority seat might occasionally result in having to change seats, passengers who had to move would not be surprised or have grounds for feeling that their legitimate expectations had been infringed.

In order to give carriers time to make any necessary adjustments, carriers could request that passengers with disabilities wishing to make use of designated priority seats must check in and make their request an hour before departure. If a passenger failed to do so, the airline would still have to try to accommodate the person's request, but would not have to reassign another passenger's seat to do so.

As in the case of carriers who use the ''seat blocking'' mechanism, there could be rare situations in which all the designated priority seats are filled with individuals with disabilities, and subsequently an additional passenger with a disability requests the same kind of accommodation. In this case, the carrier would not be required to change a seat assignment that had already been given to another disabled passenger. However, the carrier would have meet the disabled passenger's request by

assigning him or her to a seat that provided the needed accommodation, was not a designated priority seat, and was still unassigned, even if that seat was otherwise blocked for frequent fliers or another category of passenger.

The Department believes that, to implement these requirements appropriately, carriers would have to block or give priority designation to seats in all classes of service. This does not mean, however, that a passenger with a disability would have to be given an upgrade (e.g., provide a seat in first class to a purchaser of a coach ticket) in order to be accommodated.

To provide greater flexibility, the rule permits carriers to devise different approaches to achieving the objectives of this section. To implement a different approach, a carrier would have to obtain the written concurrence of the Office of the Secretary, DOT. Carriers interested in getting approval of a different approach should contact the Aviation Consumer Protection Division of the Office of the Assistant General for Aviation Enforcement and Proceedings in the DOT Office of General Counsel (202–366–5957).

The foregoing discussion has focused on carriers who assign seats in advance. Carriers who do not assign seats in advance would, as the NPRM suggested, meet the requirements of this section through the preboarding process. As requested, this provision has been made part of the final rule text. In response to a disability community comment, these carriers would permit persons needing seat accommodations under this section to preboard before other passengers, including other passengers who preboard. Regardless of whether the carrier assigns seats in advance or not, the rule never requires a carrier to choose between disabled persons who need the same seat accommodation.

The Department believes that these approaches minimize both the potential burdens on carriers and inconvenience to other passengers. To the extent that some inconvenience remains, the Department believes that the inconvenience to a non-disabled passenger who moves from one seat he or she can readily access and use to another such seat is far outweighed by the nondiscrimination-related necessity of ensuring that a disabled passenger can have a seat he or she can readily access and use. The Department has a statutory responsibility to ensure nondiscrimination on the basis of disability; there is no parallel mandate to preclude inconvenience to other passengers who may prefer some of the same seats that are needed to accommodate a disabled passenger.

As noted above, the rule specifically provides that no other passenger would ever be bumped off a flight to make room for an accommodation needed by a passenger with a disability. For example, suppose that all seats but one have confirmed reservations for a particular flight. A disabled passenger then calls to make a reservation for himself and his PCA. Someone who already had a confirmed reservation would not lose that reservation to make room for the PCA. This does not mean, however, that a carrier could not take action against a passenger who had a seat on the aircraft (e.g., a designated priority seat) who refused to move to another seat to accommodate a disabled passenger when the carrier requested it.

The Department is also modifying the types of situations in which airlines are required to provide seating accommodations. One important clarification is that carriers are required to provide seating accommodations only to passengers who self-identify as needing one of the specified accommodations. It is not unreasonable to ask passengers seeking a particular accommodation to take the initiative to specify the nature of their need for it. This will also mitigate the problem cited by carriers of having their personnel asking awkward or inappropriate questions about passengers' disabilities.

Paragraph (a) of the new rule sets forth four situations in which seat assignment accommodations are required. As suggested by commenters, the first accommodation (seating in a row with a movable aisle armrest) is clarified to apply to people who board the aircraft using an aisle chair and who cannot readily transfer over a fixed armrest. The third accommodation—a seat in either a bulkhead or non-bulkhead row for someone traveling with a service animal—is unchanged from the NPRM. It was not the subject of any specific comment. Some passengers with service animals prefer bulkhead rows, while others do not. The point of this accommodation is to allow the passenger to choose which type of row he or she and the service animal will occupy.

The second accommodation has been expanded in response to comments. In the NPRM, it was limited to persons traveling with a personal care attendant. Commenters pointed out that a deaf person traveling with an interpreter was in a similar situation. A blind person traveling with a reader also may need to have the person next to him or her during the flight. Unless a blind or deaf person were also eligible for a specific seat location as an accommodation—for example, because the person was a wheelchair user or was traveling with a service animal—the pair of seats could be anywhere in the aircraft.

In each case, the accommodation—a seat for the assistant next to the individual with a disability—is required to be provided only if the assistant is actually going to provide services to the disabled passenger during the course of the flight. Someone who is traveling to the same destination as the person with a disability to perform services there, but who will not actually perform services on the flight, is not covered by this paragraph.

Finally, for a person with a fused or immobilized leg (e.g., a surgically fused leg), the required accommodation is a bulkhead row seat or some other seat providing additional legroom for the leg. This provision is the same as in the NPRM, except for a clarification that the seat must be provided on the side of the aircraft aisle that is more useful to the passenger.

All these circumstances are likely to be visible to carrier personnel, and we agree with commenters that documentation of these circumstances is unnecessary and burdensome. We do not agree with the carrier comment that identifying these categories somehow discriminates against passengers with other disabilities. In any disability law or regulation, accommodations are specific to the specific disabilities in question. Having a ramp into a building for wheelchair users does not discriminate against ambulatory deaf people. Braille signage does not discriminate against individuals with mental disabilities. Nor does requiring a seat in a row with a movable armrest for a wheelchair user discriminate against blind passengers.

In the course of implementing the ACAA's nondiscrimination requirement, the Department has already required numerous accommodations for persons with specific disabilities, from movable aisle armrests, boarding assistance and wheelchair storage requirements for persons with mobility impairments to information in accessible formats for visually impaired persons. Seating accommodations are just one more set of such specific accommodations, of the sort that carrier comments, in the context of their argument concerning the general nondiscrimination requirement, agreed that the Department had the authority to impose.

The Department recognizes, as commenters pointed out, that some individuals with disabilities who do not fit into the four categories listed in paragraph (a) (e.g., individuals whose disabilities or needs for accommodation

are not obvious to observers) may need seat assignment accommodations in order to readily access and use airline services. No set of categories can ever encompass every possible individual or situation. At the same time, the Department wants to define the requirements for accommodations sufficiently narrowly as to facilitate implementation and limit the possibility of abuse. We also understand the objections of disability community commenters to requirements for documentation.

To address all these concerns, the final rule provides a different mechanism for individuals with disabilities other than those in the four categories specified in paragraph (a) who need seat assignment accommodations in order to readily access and use airline services. Such individuals will be assigned, on their request, any seat that has not already been assigned to another passenger, even if that seat is not otherwise available to the general passenger population at the time of the request. Such individuals would not be entitled to be assigned seats ''blocked'' for passengers specified in paragraph (a). If assigned to a designated priority seat, such an individual could, like other passengers, be reassigned to another seat if needed to accommodate a passenger specified in paragraph (a).

For example, suppose there are 100 seats available on a given flight operated by a carrier that blocks seats to provide the accommodations required by paragraph (a). The seats on the flights fall into three categories: Category A consists of 10 seats blocked for persons with disabilities specified in paragraph (a); Category B consists of 20 seats which are held for assignment to frequent fliers and full-fare passengers; Category C consists of the rest of the seats, which are available for assignment to all passengers. A person with a disability not specified in paragraph (a) calls for a reservation, self-identifying as to the nature of his or her disability and the need for a particular kind of seat assignment to accommodate the disability. The carrier would not assign the person a Category A seat. The carrier would assign any seat in Category B or C that successfully provided the needed accommodation and that had not already been assigned to someone, even though Category B seats are not normally made available to persons other than frequent fliers or full-fare passengers at this stage of the process. The carrier would not be required to reassign other passengers who had already received their seat assignments.

Carriers using the designated priority seats mechanism to comply with paragraph (a) would follow a somewhat similar pattern. In this case, Category A consists of designated priority seats. A person with a disability not specified in paragraph (a) calls for a reservation, self-identifying as to the nature of his or her disability and the need for a particular kind of seat assignment to accommodate the disability. The carrier would assign a seat in any of the three categories that successfully provided the needed accommodation and that had not already been assigned to someone, even though some or all Category A or B seats are not normally made available to other than frequent fliers or full-fare passengers at this stage of the process. The carrier would not be required to reassign other passengers who had already received their seat assignments. In the event that the passenger was assigned a Category A seat, the passenger would receive the same notice as non-disabled persons assigned Category A seats that he or she was subject to reassignment if needed to accommodate someone with a disability specified in paragraph (a).

Carriers that do not assign seats in advance would simply accommodate passengers with disabilities not specified in paragraph (a) in the same way as those who are, affording them priority in the preboarding process.

Carriers are not required to provide the seating accommodations specified in this section if the passenger does not request them. As noted in the NPRM, carriers are not required to provide more than one seat to a passenger per ticket (e.g., carriers could require a very obese passenger, who occupies the space of two seats, to purchase two tickets).

The Department realizes that carriers may need some time to implement the requirements of this section. For this reason, the final rule establishes a compliance date of six months from the effective date of the rule.

Collapsible Electric Wheelchairs

NPRM Proposals

The NPRM proposed to add collapsible, folding, or break-down electric wheelchairs to existing provisions requiring in-cabin storage for manual wheelchairs. These chairs would be regarded in the same way as manual wheelchairs are for in-cabin storage, and would be subject to FAA rules for carry-on items. In addition, a provision was proposed to be added to the section of the rule on battery stowage, providing that when a wheelchair was to be folded or broken down, the carrier would remove the battery and fold the wheelchair for in-cabin storage. Carriers would continue to follow DOT hazardous materials rules with respect to removal, packaging, and stowing of batteries.

Comments and DOT Response

There was less disagreement about this proposal than others in the NPRM. Both carriers and disability community commenters generally supported it. A number of these commenters, as well as some battery manufacturers, expressed concern about the issue of how to handle batteries. This has been a troublesome issue over time, primarily because carriers have had difficulty in distinguishing spillable from nonspillable batteries and believe they cannot rely on passengers' representations on the matter. The two kinds of batteries are treated differently under DOT hazardous materials rule. Several commenters sought additional clarification of rules concerning batteries.

One suggestion that has merit is that batteries labeled by manufacturers as nonspillable, as provided in a DOT hazardous materials rule (49 CFR 173.159(d)(2)), should be carried in the cabin. Carriers would be authorized to detach, package, and carry as cargo batteries that are not so labeled. Existing advance notice requirements for handling electric wheelchairs would continue to apply, regardless of whether the wheelchair itself were to be stowed in the cabin or as cargo. As a general matter, carriers and passengers should be aware that, except for the new reference to 49 CFR § 173.159(d)(2), today's amendment does not alter existing rules concerning batteries, but concerns merely the stowage location for the wheelchair itself.

The Department notes that the one-hour advance check-in provision of § 382.41(g)(1) would apply to electric wheelchairs that are carried in the cabin as well as to those that are carried as checked items. In addition, while the rule provides that carriers would not treat manufacturer-labeled nonspillable batteries as spillable batteries, there still may be circumstances under which carriers might have to take steps to prepare batteries for safe transportation (e.g., disconnect and tape connections to prevent possible sparking). Of course, if a labeled non-spillable battery appeared to be damaged or leaking, the carrier could determine that, for safety's sake, it was necessary to package it separately (or, even deny transportation for the battery if the potential safety hazard were serious enough).

Disability community commenters said there were continuing problems

with airlines' handling of wheelchairs, especially electric wheelchairs. Carriers too often fail to do the job properly, they asserted. One commenter asked for additional training requirements for carrier personnel concerning handling of wheelchairs; we do not believe that additional specific requirements are necessary at this time, given that the training to proficiency requirements already in the rule encompass handling of wheelchairs.

Some carrier comments suggested there should be discretion exercised by carrier personnel concerning on-board stowage of wheelchairs or parts of them, because the chairs or parts may be heavy or bulky, exceeding the capacity of storage bins and other spaces. The Department does not believe that any special rule language is necessary to accommodate this concern. Wheelchairs and parts stowed in the cabin must comply with FAA carry-on baggage requirements. In the enforcement of such FAA requirements, carrier personnel can exercise the same discretion concerning wheelchairs or parts that they do with respect to other items that passengers bring on board (though wheelchairs and other assistive devices do not count against a passenger's carry-on bag limit). Carriers should note, however, that § 382.41(e)(2) gives wheelchairs priority over other passengers' carry-on luggage.

Regulatory Analyses and Notices

This final rule is not a significant rule under Executive Order 12866 or the Department's Regulatory Policies and Procedures. The Department certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this statement is that the modifications to airline practices and procedures that the rule requires involve little additional cost or burden to carriers or airports, whatever their size.

The Department has determined that there would be not be sufficient Federalism impacts to warrant the preparation of a Federalism Assessment. As it implements a nondiscrimination statute, this rule is not subject to scrutiny under the Unfunded Mandates Act.

List of Subjects in 14 CFR Part 382

Aviation, Handicapped.

Issued this 24th day of February, 1998, at Washington, D.C.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 14 CFR part 382 as follows:

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

1. The authority citation for 14 CFR part 382 would continue to read as follows:

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

2. In 14 CFR 382.7, a new paragraph (c) would be added to read as follows:

§ 382.7 General prohibition of discrimination.

* * * * *

(c) Carriers shall, in addition to meeting the other requirements of this part, modify policies, practices, or facilities as needed to ensure nondiscrimination, consistent with the standards of section 504 of the Rehabilitation Act, as amended. Carriers are not required to make modifications that would constitute an undue burden or would fundamentally alter their program.

3. A new § 382.38 is added, to read as follows:

§ 382.38 Seating accommodations.

(a) On request of an individual who self-identifies to a carrier as having a disability specified in this paragraph, the carrier shall provide the following seating accommodations, subject to the provisions of this section:

(1) For a passenger who uses an aisle chair to access the aircraft and who cannot readily transfer over a fixed aisle armrest, the carrier shall provide a seat in a row with a movable aisle armrest.

(2) The carrier shall provide a seat next to a passenger traveling with a disability for a person assisting the individual in the following circumstances:

(i) When an individual with a disability is traveling with a personal care attendant who will be performing a function for the individual during the flight that airline personnel are not required to perform (e.g., assistance with eating);

(ii) When an individual with a vision impairment is traveling with a reader/assistant who will be performing functions for the individual during the flight; or

(iii) When an individual with a hearing impairment is traveling with an interpreter who will be performing functions for the individual during the flight.

(3) For an individual traveling with a service animal, the carrier shall provide, as the individual requests, either a bulkhead seat or a seat other than a bulkhead seat.

(4) For a person with a fused or immobilized leg, the carrier shall provide a bulkhead seat or other seat that provides greater legroom than other seats, on the side of an aisle that better accommodates the individual's disability.

(b) A carrier that provides advance seat assignments shall comply with the requirements of paragraph (a) of this section by any of the following methods:

(1) The carrier may ''block'' an adequate number of the seats used to provide the seating accommodations required by this section.

(i) The carrier shall not assign these seats to passengers not needing seating accommodations provided under this paragraph until 24 hours before the scheduled departure of the flight.

(ii) At any time up until 24 hours before the scheduled departure of the flight, the carrier shall assign a seat meeting the requirements of this section to an individual who requests it.

(iii) If an individual with a disability does not make a request at least 24 hours before the scheduled departure of the flight, the carrier shall meet the individual's request to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so.

(2) The carrier may designate an adequate number of the seats used to provide seating accommodations required by this section as ''priority seats'' for individuals with disabilities.

(i) The carrier shall provide notice that all passengers assigned these seats (other than passengers with disabilities listed in paragraph (a) of this section) are subject to being reassigned to another seat if necessary to provide a seating accommodation required by this section. The carrier may provide this notice through its computer reservation system, verbal information provided by reservation personnel, ticket notices, gate announcements, counter signs, seat cards or notices, frequent-flier literature, or other appropriate means.

(ii) The carrier shall assign a seat meeting the requirements of this section to an individual who requests the accommodation and checks in at least one hour before the scheduled departure of the flight. If all designated priority seats that would accommodate the individual have been assigned to other passengers, the carrier shall reassign the seats of the other passengers as needed

to provide the requested accommodation.

(iii) If the individual with a disability does not check in at least an hour before the scheduled departure of the flight, the carrier shall meet the individual's request to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so.

(c) On request of an individual who self-identifies to a carrier as having a disability other than one in the four categories listed in paragraph (a) of this section and as needing a seat assignment accommodation in order to readily access and use the carrier's air transportation services, a carrier that assigns seats in advance shall provide such an accommodation, as described in this paragraph.

(1) A carrier that complies with paragraph (a) this section through the ''seat-blocking'' mechanism of paragraph (b)(1) of this section shall implement the requirements of this paragraph as follows:

(i) When the passenger with a disability not described in paragraph (a) of this section makes a reservation more than 24 hours before the scheduled departure time of the flight, the carrier is not required to offer the passenger one of the seats blocked for the use of passengers with disabilities listed under paragraph (a) of this section.

(ii) However, the carrier shall assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(2) A carrier that complies with this section through the ''designated priority seats'' mechanism of paragraph (b)(2) of this section shall implement the requirements of this paragraph as follows:

(i) When a passenger with a disability not described in paragraph (a) of this section makes a reservation, the carrier shall assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(ii) If such a passenger is assigned to a designated priority seat, he or she is subject to being reassigned to another seat as provided in paragraph (b)(2) of this section.

(d) A carrier that does not provide advance seat assignments shall provide seating accommodations for persons described in paragraphs (a) and (c) of this section by allowing them to board the aircraft before other passengers, including other ''pre-boarded'' passengers, so that the individuals needing seating accommodations can select seats that best meet their needs if they have taken advantage of the opportunity to pre-board.

(e) A carrier may comply with the requirements of this section through an alternative method not specified in paragraphs (b) through (d) of this section. A carrier wishing to do so shall obtain the written concurrence of the Department of Transportation (Office of the Secretary) before implementing the alternative method.

(f) The carrier shall assign a seat providing an accommodation requested by an individual with a disability, as specified in this section, even if the seat is not otherwise available for assignment to the general passenger population at the time of the individual's request.

(g) If the carrier has already provided a seat to an individual with a disability to furnish an accommodation required by paragraph (a) or (c) of this section, the carrier shall not reassign that individual to another seat in response to a subsequent request from another individual with a disability, without the first individual's consent.

(h) In no case shall any individual be denied transportation on a flight in order to provide accommodations required by this section.

(i) Carriers are not required to furnish more than one seat per ticket or to provide a seat in a class of service other than the one the passenger has purchased.

(j) In responding to requests from individuals for accommodations required by this section, carriers shall comply with FAA safety rules, including those pertaining to exit seating (see 14 CFR 121.585 and 135.129).

(k) Carriers are required to comply with this section beginning August 31, 1998.

§ 382.41 [Amended]

4. In 14 CFR 382.41(b), the citation ''49 CFR 173.260(d)'' is amended to read ''49 CFR 173.159(d).''

5. In 14 CFR 382.41(e), the introductory paragraph is amended by adding, after the word ''wheelchairs'', the following words: ''(including collapsible or break-down battery-powered wheelchairs, subject to the provisions of paragraph (g)(5) of this section) as carry-on baggage''.

6. In 14 CFR 382.41(e)(2), in the first sentence, the word ''an'' is added before the word ''aircraft'' and a comma and the words ''collapsible, or break-down'' are added after the word ''folding,'' in both places where that word occurs.

7. In 14 CFR 382.41(e)(3), a comma and the words ''collapsible, or break-down'' are added after the word ''folding,''

8. In 14 CFR 382.41(f), the words ''When passenger compartment storage is not available'' are removed and the following words are added in their place: ''When a folding, collapsible, or break-down wheelchair cannot be stowed in the passenger cabin as carry-on baggage,''.

9. In 14 CFR 382.41, paragraph (g) is revised and paragraph (h) is added to read as follows:

§ 382.41 Stowage of personal equipment.

* * * * *

(g) Whenever baggage compartment size and aircraft airworthiness considerations do not prohibit doing so, carriers shall accept a passenger's battery-powered wheelchair, including the battery, as checked baggage, consistent with the requirements of 49 CFR 175.10(a)(19) and (20) and the provisions of paragraph (f) of this section.

(1) Carriers may require that qualified individuals with a disability wishing to have battery-powered wheelchairs transported on a flight (including in the cabin) check in one hour before the scheduled departure time of the flight. If such an individual checks in after this time, the carrier shall nonetheless carry the wheelchair if it can do so by making a reasonable effort, without delaying the flight.

(2) If the battery on the individual's wheelchair has been labeled by the manufacturer as non-spillable as provided in 49 CFR 173.159(d)(2), or if a battery-powered wheelchair with a spillable battery is loaded, stored, secured and unloaded in an upright position, the carrier shall not require the battery to be removed and separately packaged. Notwithstanding this requirement, carriers may remove and package separately any battery that appears to be damaged or leaking.

(3) When it is necessary to detach the battery from the wheelchair, carriers shall, upon request, provide packaging for the battery meeting the requirements of 49 CFR 175.10(a)(19) and (20) and package the battery. Carriers may refuse to use packaging materials or devices other than those they normally use for this purpose.

(4) Carriers shall not drain batteries.

(5) At the request of a passenger, a carrier shall stow a folding, break-down or collapsible battery-powered wheelchair in the passenger cabin stowage area as provided in paragraph

(e) of this section. If the wheelchair can be stowed in the cabin without removing the battery, the carrier shall not remove the battery. If the wheelchair cannot be stowed in the cabin without removing the battery, the carrier shall remove the battery and stow it in the baggage compartment as provided in paragraph (g)(3) of this section. In this case, the carrier shall permit the wheelchair, with battery removed, to be stowed in the cabin.

(h) Individuals with disabilities shall be permitted to provide written directions concerning the disassembly and reassembly of their wheelchairs.

[FR Doc. 98–5525 Filed 3–3–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300606; FRL–5767–1]

RIN 2070–AB78

Hydramethylnon; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of hydramethylnon in or on pineapple. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on pineapple. This regulation establishes a maximum permissible level for residues of hydramethylnon in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on January 31, 1999.

DATES: This regulation is effective March 4, 1998. Objections and requests for hearings must be received by EPA on or before May 4, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300606], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300606], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300606]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Virginia Dietrich, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9359, e-mail: dietrich.virginia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the insecticide hydramethylnon, in or on pineapple at 0.05 part per million (ppm). This tolerance will expire and is revoked on January 31, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.