

**U.S. DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**14 CFR Part 382**

**[Docket No. DOT-OST-2018-0068]**

**RIN No. 2105-AE63**

**Traveling by Air with Service Animals**

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

**ACTION: Notice of proposed rulemaking (NPRM).**

**SUMMARY:** The U.S. Department of Transportation (Department or DOT) is seeking comment in this Notice of Proposed Rulemaking (NPRM) on proposed amendments to the Department's Air Carrier Access Act (ACAA) regulation on the transportation of service animals by air. The proposed amendments are intended to ensure that our air transportation system is safe for the traveling public and accessible to individuals with disabilities. Specifically, the Department proposes to define a service animal, under its ACAA regulations in 14 CFR Part 382, as a dog that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.<sup>1</sup> Furthermore, this NPRM proposes to allow airlines to recognize emotional support animals as pets rather than service animals. The NPRM also proposes to allow airlines to require all passengers with a disability traveling with a service animal to complete and submit to the airline forms developed by DOT attesting to the animal's training and good behavior,

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<sup>1</sup> The Department's proposed definition of a service animal in this rulemaking is similar to the definition of a service animal in the Department of Justice (DOJ) regulations implementing the Americans with Disabilities Act (ADA), 28 CFR 35.104 and 28 CFR 36.104. However, the Department proposes a number of service animal provisions in this proposed rulemaking that differ from DOJ's ADA service animal requirements.

certifying the animal's good health, and attesting that the animal has the ability either not to relieve itself on a long flight or to relieve itself in a sanitary manner. In addition, this NPRM would clarify existing prohibitions on airlines' imposing breed restrictions on service animals and would allow airlines to set policies to limit the number of service animals that one passenger can bring onboard an aircraft. This NPRM would also generally require service to be harnessed, leashed, or otherwise tethered. This NPRM also proposes requirements that would address the safe transport of large service animals in the aircraft cabin and would clarify when the user of a service animal may be charged for damage caused by the service animal. Finally, this NPRM addresses the responsibilities of code-share partners, among other provisions.

**DATES:** Comments should be filed by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number DOT-OST-2018-0068 by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251

*Instructions:* You must include the agency name and docket number DOT-OST-2018-0068 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Privacy Act:* Anyone can search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (65 FR 19477-78), or you may visit <https://www.transportation.gov/privacy>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Maegan Johnson, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, D.C., 20590, 202-366-9342, 202-366-7152 (fax), [maegan.johnson@dot.gov](mailto:maegan.johnson@dot.gov) (e-mail). You may also contact Blane Workie, Assistant General Counsel, Office of Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Ave. SE., Washington, D.C., 20590, 202-366-9342, 202-366-7152 (fax), [blane.workie@dot.gov](mailto:blane.workie@dot.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Executive Summary**

#### **1. STATUTORY AUTHORITY**

The Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, prohibits discrimination in airline service on the basis of disability. When enacted in 1986, the ACAA applied only to U.S. air carriers. On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) amended the ACAA to include foreign carriers. The ACAA now reads in relevant part:

*In providing air transportation, an air carrier, including (subject to [49 U.S.C.] section 40105(b)) any foreign air carrier, may not discriminate against an otherwise qualified individual on the following grounds:*

- (1) The individual has a physical or mental impairment that substantially limits one or more major life activities.*
- (2) The individual has a record of such an impairment.*
- (3) The individual is regarded as having such an impairment.*

The ACAA, while representing a watershed mandate of nondiscrimination in air transportation for passengers with disabilities, does not specify how U.S. and foreign air carriers must act to avoid such discrimination. The statute similarly does not specify how the Department should regulate with respect to these issues. In addition to the ACAA, the Department's authority to regulate nondiscrimination in airline service on the basis of disability is based in the Department's rulemaking authority under 49 U.S.C. § 40113, which states that the Department may take action that it considers necessary to carry out this part, including prescribing regulations.

The Department issued its first ACAA regulation in 1990 following a lengthy rulemaking process that included a regulatory negotiation involving representatives of the airline industry and representatives from disability communities. Since then, the Department's disability regulations have been amended approximately 15 times to enhance access. The ACAA regulations define the rights of qualified individuals with disabilities<sup>2</sup> and the obligations of airlines. The regulations also specify that airlines may refuse to provide transportation to any passenger on the basis of safety or to any passenger whose carriage would violate Federal Aviation Administration (FAA) or Transportation Security Administration requirements or applicable requirements of a foreign government.<sup>3</sup> For example, the FAA, which is charged with promoting safe flight of aircraft,<sup>4</sup> has long prohibited conduct aboard flights that interferes with crewmember duties. FAA regulations state that "no person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated."<sup>5</sup> The ACAA regulations are intended to help ensure that individuals with disabilities enjoy equal access to the air transportation system.

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<sup>2</sup> DOT defines the term Qualified individual with a disability in 14 CFR 382.3.

Qualified individual with a disability means an individual with a disability--

(a) Who, as a passenger (referred to as a "passenger with a disability"),

(1) With respect to obtaining a ticket for air transportation on a carrier, offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain such a ticket;

(2) With respect to obtaining air transportation, or other services or accommodations required by this Part,

(i) Buys or otherwise validly obtains, or makes a good faith effort to obtain, a ticket for air transportation on a carrier and presents himself or herself at the airport for the purpose of traveling on the flight to which the ticket pertains; and

(ii) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers; or

(b) Who, with respect to accompanying or meeting a traveler, using ground transportation, using terminal facilities, or obtaining information about schedules, fares, reservations, or policies, takes those actions necessary to use facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier.

<sup>3</sup> 14 CFR 382.19 (c).

<sup>4</sup> See 49 U.S.C. § 44701.

<sup>5</sup> 14 CFR 91.11, 121.580, and 135.120.

The Americans with Disabilities Act (ADA), which was enacted in 1990, does not cover discrimination against a person with a disability in air transportation but prohibits discrimination against individuals with disabilities in most other areas of public life, including employment, State and local government activities, public transportation services, and public accommodations such as restaurants and retail stores. The ADA requires that the Department of Justice (DOJ) issue regulations for implementing Title II, which applies to State and local government entities, and Title III, which applies to public accommodations and commercial facilities. DOJ first issued such regulations in 1991 and published revised regulations in 2010, which took effect in March 2011. In those regulations, DOJ defines a service animal as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or mental disability.<sup>6</sup> DOJ's ADA definition of a service animal differs from DOT's current ACAA definition of a service animal as DOJ does not recognize emotional support animals as service animals because they are not individually trained

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<sup>6</sup> According to DOJ's ADA definition of a service animal in 28 CFR 35.104 and 28 CFR 36.104, a service animal means

[A]ny dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

to do work or perform tasks for the benefit of an individual with a disability.<sup>7</sup> and DOJ's ADA regulations limit service animals to dogs.<sup>8</sup>

The current rulemaking presents questions about how the ACAA is reasonably interpreted and applied to require airlines to accommodate the needs of individual passengers whose physical or mental disability necessitates the assistance of a service animal in air transportation. In approaching these questions, the Department recognizes that the ACAA's nondiscrimination mandate is not absolute. The statute requires airlines to provide accommodations that are reasonable in light of the realities and limitations of air service and the onboard environment of commercial airplanes. DOJ, in interpreting the ADA, similarly allows public accommodations to consider the characteristics of miniature horses, including the implications of their presence on the safe operation of a given facility, when determining whether they may be accommodated within a facility.<sup>9</sup> The cabins of most aircraft are highly

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<sup>7</sup> See Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 FR 56236, 56269 (Sept. 15, 2010).

In the final rule, the Department [of Justice] has retained its position on the exclusion of emotional support animals from the definition of 'service animal.' The definition states that '[t]he provision of emotional support, well-being, comfort, or companionship \* \* \* do[es] not constitute work or tasks for the purposes of this definition.

<sup>8</sup> DOJ, while not recognizing miniature horses as service animals, requires entities covered by the ADA to make reasonable modifications in their policies, practices, or procedures to permit an individual with a disability to use a miniature horse that has been individually trained to do work or perform tasks for the benefit of the individual with a disability. See 28 CFR 35.136(i); 28 CFR 36.302(c)(9).

<sup>9</sup> See 28 CFR 36.302(c)(9),

(9) Miniature horses.

(i) A public accommodation shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

(ii) *Assessment factors.* In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public accommodation shall consider—

(A) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;

(B) Whether the handler has sufficient control of the miniature horse;

(C) Whether the miniature horse is housebroken; and

(D) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

confined spaces, with many passengers seated in close quarters and very limited opportunities to separate passengers from nearby disturbances. Animals on aircraft may pose a risk to the safety, health, and well-being of passengers and crew and may disturb the safe and efficient operation of the aircraft. Any requirement for the accommodation of passengers traveling with service animals onboard aircraft necessarily must be balanced against the health, safety, and mental and physical well-being of the other passengers and crew and must not interfere with the safe and efficient operation of the aircraft.

## **2. NEED FOR A RULEMAKING**

The Department has identified the following compelling factors that justify the issuance of a revision to the Department's regulations on traveling by air with service animals in 14 CFR Part 382:

### Service Animal Complaints

Service animal-related complaints are increasingly a more significant portion of the disability-related complaints that the Department's Aviation Consumer Protection Division and airlines receive. Given the year-over-year increase in the number of service animal complaints received by the Department against airlines, it is clear that the provision of assistance to passengers traveling with service animals is an area of increasing concern for passengers with disabilities. The Department received 115 service animal complaints against airlines in 2018, 70 complaints in 2017, 110 complaints in 2016, and 100 complaints in 2015, compared with 48 such in 2014 and 45 complaints in 2013.

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(iii) *Other requirements.* Sections 36.302(c)(3) through (c)(8), which apply to service animals, shall also apply to miniature horses.  
See also 28 CFR 35.136.

The increase in the number of service animal complaints is also representative of the complaints airlines received directly from passengers. U.S. and foreign airlines reported receiving 3,065 service animal complaints directly from passengers in 2018, 2,473 complaints in 2017, 2,433 in 2016, and 1,629 in 2015, compared with 1,010 such complaints in 2014 and 719 in 2013.

#### Inconsistent Federal Definition of Service Animal

At the same time, concerns have been raised by airlines, airports, and disability advocates about inconsistencies between the definition of a service animal under our rules for U.S. and foreign air carrier services versus in the airport context. As explained above, DOJ's ADA regulations, which apply to public and commercial airports and airport facilities operated by businesses like restaurants and stores, define a service animal as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or mental disability.<sup>10</sup> DOJ does not recognize emotional support animals as service animals because they are not individually trained to do work or perform tasks for the benefit of an individual with a disability.<sup>11</sup> While DOJ's ADA regulations limit service animals to dogs, entities covered by the ADA are required to assess whether they must permit individuals with disabilities to be accompanied by miniature horses as a reasonable modification.<sup>12</sup> DOT's current ACAA regulations, which apply to airlines and their

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<sup>10</sup> See 28 CFR 35.104 and 28 CFR 36.104.

<sup>11</sup> See Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 FR 56236, 56269 (Sept. 15, 2010).

In the final rule, the Department [of Justice] has retained its position on the exclusion of emotional support animals from the definition of 'service animal.' The definition states that '[t]he provision of emotional support, well-being, comfort, or companionship \* \* \* do[es] not constitute work or tasks for the purposes of this definition.

<sup>12</sup> See 28 CFR 35.136(i); 28 CFR 36.302(c)(9). DOJ, while not recognizing miniature horses as service animals, requires entities covered by the ADA to make reasonable modifications in their policies, practices, or procedures to permit an individual with a disability to use a miniature horse that has been individually trained to do work or

facilities and services, require airlines to recognize service animals regardless of species with exceptions for certain unusual species of service animals such as snakes, other reptiles, ferrets, rodents, and spiders. DOT's current ACAA regulations also require airlines to recognize emotional support animals as service animals.<sup>13</sup> Consequently, a restaurant in an airport could, without violating DOJ rules, deny entry to an emotional support animal that an airline, under the ACAA, would have to accept. These inconsistencies between DOT's ACAA and DOJ's ADA definition of a service animal present practical challenges for airlines and airports, and are a source of confusion for individuals with disabilities and the traveling public.

#### Unusual Species of Animals

Passengers have attempted to fly with many different unusual species of animals, such as a peacock, ducks, turkeys, pigs, iguanas, and various other types of animals as emotional support or service animals, causing confusion for airline employees and additional scrutiny for service animal users. Disability advocates have voiced concerns that the use of these unusual service animals on aircraft erodes the public's trust and confidence in service animals. Airlines, meanwhile, have expressed concern about the heightened attention these animals have received and the resources airlines expend each time an unusual or untrained animal is presented for transport on an aircraft.

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perform tasks for the benefit of the individual with a disability, based on an assessment of factors, including the type, size, and weight of the miniature horse and whether the facility can accommodate these features; whether the handler has sufficient control of the miniature horse; whether the miniature horse is housebroken; and whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

<sup>13</sup> See 14 CFR 382.117 and Guidance Concerning Service Animals, 73 FR 27614, 27659 (May 13, 2008).

## Pets on Aircraft

Passengers wishing to travel with their pets may be falsely claiming that their pets are service animals so they can take their pet in the aircraft cabin or avoid paying pet fees charged by most airlines since airlines cannot charge service animal users a fee to transport service animals. Airlines have reported increases in the number of service animals on aircraft and expressed concern that the significant increase in the number of service animals traveling on aircraft may be the result of an increase in emotional support animals and/or passengers falsely claiming that their pets are emotional support animals.<sup>14</sup> Furthermore, according to airlines, passengers are increasingly bringing untrained service animals onboard aircraft and putting the safety of crewmembers, other passengers, and other service animals at risk.

There have also been reports of some online entities that may, for a fee, provide individuals with pets a letter stating that the individual is a person with a mental or emotional disability and that the animal is an emotional support animal or psychiatric service animal, when in fact it is not. While the Department's current service animal regulation permits airlines to require documentation from a licensed mental health professional for the carriage of emotional

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<sup>14</sup> See Comment of Delta Air Lines, Inc., <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4141>, In 2017, Delta Air Lines carried nearly 250,000 service and support animals, or almost 700 per day. The volume of service and support animals transported increased about 50 percent from 2016 to 2017 (along with an additional 240,000 pets), but the growth was not uniform over all categories of animals. ESAs led this growth with an increase of approximately 63 percent, while other service animal transport grew by only approximately 30 percent.

And

Comment from Airlines for America, Regional Airline Association, and International Air Transport Association, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4288>.

From 2016 to 2017, the number of service animals (excluding ESAs) that U.S. airlines accommodated in cabin rose by nearly 24% – a rate of increase that far exceeds that of the number of passengers U.S. airlines transported over the same period. This rate of increase is modest, however, when compared to an explosion in the number of passengers seeking to travel with ESAs, which increased by 56% in just one year (from 2016 to 2017). As DOT noted, one U.S. airline experienced a 75% increase from 2016 to 2017. One [Airlines for America] member airline has experienced a more than eightfold increase in the number of ESAs since 2012. In 2017, we estimate that U.S. airlines accommodated more than 750,000 ESAs in cabin, which constituted 73% of all estimated service animals transported.

support animals, the advent of online entities that may be guaranteeing the required documentation for a fee has made it difficult for airlines to determine whether passengers traveling with animals are traveling with their pets or with legitimate emotional support animals.

#### Misbehavior by Service Animals

The Department's service animal guidance provides that all service animals should be trained to behave properly in public to be treated as a service animal.<sup>15</sup> Despite this guidance, some believe that emotional support animals pose a greater safety risk because they have not been trained to mitigate a disability and, therefore, are less likely to have received adequate behavioral training.<sup>16</sup> Airlines have reported increases in the number of behavior-related service animal incidents on aircraft, including urinating, defecating, and biting. In 2018 and 2019, some airlines issued new service animal policies that require passengers traveling with a service animal to provide behavior/training attestations and animal health information as a condition of transportation.<sup>17</sup> These policies are mostly applicable to emotional support and psychiatric service animals and were created to address perceived or actual increased incidents of animal misbehavior on aircraft. In response, disability rights advocates expressed concern about the increased burdens that these policies have placed on legitimate service animal users. Disability advocates are also concerned about the increased stigma and negative perception of all service animals traveling on aircraft.

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<sup>15</sup> Guidance Concerning Service Animals, 73 FR 27614, 27659 (May 13, 2008).

<sup>16</sup> See Comment of Assistance Dogs International, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4409>:: "Because ESAs are not required to have any training, any documentation of a passenger's need for an ESA fails to address the issue that causes problems in air travel, the ESA's training and behavior."

<sup>17</sup> See discussion on airline service animal policies the Department's Final Statement of Enforcement Priorities Regarding Service Animals, 84 FR 43480 (August 21, 2019).

## Request for Rulemaking

The Department has heard from the transportation industry, as well as individuals with disabilities, that the current ACAA regulation could be improved to ensure nondiscriminatory access for individuals with disabilities, while simultaneously preventing instances of fraud and ensuring consistency with other Federal regulations. The Psychiatric Service Dog Society (PSDS), an advocacy group representing users of psychiatric service dogs, petitioned the Department in 2009 to eliminate a provision in the Department's ACAA regulations permitting airlines to require documentation and 48 hours' advance notice for users of psychiatric service animals. PSDS asserted that the Department's current regulation treats individuals with mental and emotional disabilities unfairly because individuals traveling with psychiatric service animals, animals which are trained to do work or perform a task to assist individuals with disabilities, are subject to more burdensome requirements than passengers traveling with other trained service animals.<sup>18</sup>

The Department also received comments from airlines and airline associations regarding the need to revise the Department's ACAA service animal regulations after the Department published a Notice of Regulatory Review in the Federal Register on October 2, 2017, inviting public comment on existing rules and other actions that are good candidates for repeal, replacement, suspension, or modification.<sup>19</sup> Airlines generally asked that DOT harmonize its ACAA definition of a service animal with the service animal definition in DOJ's ADA regulations.<sup>20</sup> Further, in 2018, ten disability advocacy organizations urged the Department to

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<sup>18</sup> See *Psychiatric Service Dog Society*, DOT-OST-2009-0093-0001, 1-2, at <https://www.regulations.gov/document?D=DOT-OST-2009-0093-0001> (April 21, 2009).

<sup>19</sup> 82 FR 45750 (Oct. 2, 2017).

<sup>20</sup> See, e.g., Comment from Airlines for America at <https://www.regulations.gov/document?D=DOT-OST-2017-0069-2751> (December 4, 2017); Comment from International Air Transport Association at

stop the proliferation of a patchwork of service animal access requirements in airlines' service animal policies.<sup>21</sup>

### Congressional Mandate

The FAA Extension, Safety, and Security Act of 2016 requires that the Department issue a supplemental notice of proposed rulemaking on various access issues referenced in the Secretary's June 15, 2015, Report on Significant Rulemakings, including traveling by air with service animals.<sup>22</sup> Further, the FAA Reauthorization Act of 2018 (The FAA Act) requires the Department to conduct a rulemaking proceeding on the definition of the term service animal and to develop minimum standards for what is required for service and emotional support animals.<sup>23</sup> Congress also required the Department to consider whether it should align DOT's ACAA definition of a service animal with the service animal definition established by DOJ in its rule implementing the ADA.<sup>24</sup>

In addition, Congress directed the Department to consider the following measures to ensure that pets are not claimed as service animals: (1) photo identification for service animals, (2) training documentation, (3) medical documentation indicating the tasks the animal performs to assist its user, and (4) whether more than one service animal should be permitted to accompany a passenger.<sup>25</sup> Moreover, the FAA Act requires the Department to consider the

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<https://www.regulations.gov/document?D=DOT-OST-2017-0069-269> (December 1, 2017); Comment from Kuwait Airways at <https://www.regulations.gov/document?D=DOT-OST-2017-0069-2679> (December 1, 2017); and Comment from National Air Carrier Association at <https://www.regulations.gov/document?D=DOT-OST-2017-0069-2771> (December 4, 2017).

<sup>21</sup> Letter to Secretary Chao from American Association of People with Disabilities, Bazelon Center for Mental Health Law, Christopher and Dana Reeve Foundation, Disability Rights Education and Defense Fund, National Association of the Deaf, National Disability Rights Network, Paralyzed Veterans of America, The Arc of the United States, The National Council on Independent Living, and United Spinal Association (February 6, 2018) at <https://www.regulations.gov/document?D=DOT-OST-2015-0246-0315>.

<sup>22</sup> The FAA Extension, Safety, and Security Act of 2016, Pub. L. No. 114-190, Sec. 2108 (July 15, 2016).

<sup>23</sup> The FAA Reauthorization Act of 2018, Pub. L. No. 115-254, Sec. 437 (October 5, 2018).

<sup>24</sup> Id.

<sup>25</sup> Id.

following to ensure the health and safety of passengers onboard aircraft: (1) whether to require health and vaccination records for service animals, (2) whether to require third-party proof of behavior training for service animals. Finally, DOT must consider the impact of additional requirements on passengers with disabilities traveling with service animals and ways to eliminate or mitigate those impacts. The Department is considering each of these measures as part of the present rulemaking. The FAA Act directs the Department to issue a final rule on service animals no later than March 22, 2020.

#### ACCESS Advisory Committee

In April 2016, the Department established an Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee) to negotiate and develop a proposed rule concerning accommodations for individuals with disabilities traveling by air with service animals.<sup>26</sup> The Committee members and other interested parties discussed the following issues: (1) distinguishing between emotional support animals and other service animals; (2) limiting the species of service animals that airlines are required to transport; (3) limiting the number of service animals that a single individual should be permitted to transport; and (4) requiring attestation from all service animal users that their animal has been trained to behave in a public setting. However, despite good faith efforts, the ACCESS Advisory Committee was not able to reach consensus on how the service animals regulations should be revised. Nevertheless, the Department gathered useful information during this process from disability rights advocates, the airline industry, an association representing flight attendants, and other interested parties.

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<sup>26</sup> 81 FR 20265 (Apr. 7, 2016).

### 3. THE ANPRM

On May 23, 2018, the Department published in the Federal Register an Advance Notice of Proposed Rulemaking (ANPRM) titled “Traveling by Air with Service Animals.”<sup>27</sup> In the ANPRM, the Department sought comment on how to amend the Department’s ACAA regulations to address the problems that exist with the rule, while also ensuring nondiscriminatory access for individuals with disabilities in air transportation.

In the ANPRM, the Department sought comment on the following: (1) whether psychiatric service animals should be treated similarly to other service animals; (2) whether there should be a distinction between emotional support animals and other service animals; (3) whether emotional support animals, if allowed onboard a flight, should be required to travel in pet carriers for the duration of the flight; (4) whether the species of service animals and emotional support animals that carriers are required to transport should be limited (for example, limited to dogs only); (5) whether the number of service animals/emotional support animals should be limited per passenger; (6) whether an attestation should be required from all service animal and emotional support animal users that their animals have been trained to behave in a public setting; (7) whether service animals and emotional support animals should be harnessed, leashed, or otherwise tethered; (8) whether there are safety concerns with transporting large service animals and if so, how to address them; (9) whether airlines should be prohibited from requiring a veterinary health form or immunization record from service animal users without an individualized assessment that the animal would pose a direct threat to the health or safety of others or would cause a significant disruption in the aircraft cabin; and (10) whether U.S. airlines should continue to be held responsible if a passenger traveling under the U.S. carrier’s code faces

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<sup>27</sup> Traveling by Air with Service Animals, Advance Notice of Proposed Rulemaking, 83 FR 23832 (May 23, 2018).

additional restrictions on travel with a service animal on a flight operated by the U.S. carrier's foreign codeshare partner.<sup>28</sup>

The Department received approximately 4,500 comments over the 45-day comment period from disability advocacy organizations, airlines, human and animal health organizations, consumer groups, and other interested parties; the vast majority of these comments were from individual members of the public.<sup>29</sup> The Department has carefully reviewed and considered the comments received and is proposing a rulemaking that is designed to ensure that airlines provide nondiscriminatory access to passengers with disabilities who require the assistance of service animals while incorporating modifications to these requirements reasonably designed to ensure that airlines remain able to provide for the safety and well-being of all passengers and crewmember and the safe and efficient operation of the aircraft. The Department's responses to the comments are set forth below, immediately following a summary of regulatory provisions and a summary of the regulatory impact analysis.

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<sup>28</sup> Id.

<sup>29</sup> See Traveling by Air with Service Animals, Advance Notice of Proposed Rulemaking, <https://www.regulations.gov/docket?D=DOT-OST-2018-0068>.

#### 4. SUMMARY OF PROPOSED REGULATORY AND DEREGULATORY PROVISIONS

Subject	Proposal
Definition of Service Animal	A service animal would be defined as a dog that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.
Emotional Support Animals	Carriers would not be required to recognize emotional support animals as service animals and may treat them as pets.
Treatment of Psychiatric Service Animals	Psychiatric service animals would be treated the same as other service animals that are individually trained to do work or perform a task for the benefit of a qualified individual with a disability.
Species	Carriers would be permitted to limit service animals to dogs.
Health Form	Carriers would be permitted to require passengers to remit a completed U.S. Department of Transportation Service Animal Air Transportation Health Form as a condition of transportation.
Behavior and Training Attestation	Carriers would be permitted to require passengers to remit a completed U.S. Department of Transportation Service Animal Air Transportation Behavior and Training Attestation Form as a condition of transportation.
Relief Attestation	Carriers would be permitted to require individuals traveling with a service animal on flights eight hours or longer to complete a U.S. Department of Transportation Service Animal Relief Attestation as a condition of transportation.
Number of Service Animals per Passenger	Carriers would be permitted to limit the number of service animals traveling with a single passenger with a disability to two service animals, and would be permitted to require that both service animals fit on their handler's lap and/or within their handler's foot space on the aircraft.
Large Service Animals	Carriers would be permitted to require a service animal to fit within its handler's foot space on the aircraft.
Control of Service Animals	Carriers would be permitted to require that a service animal be harnessed, leashed, tethered, or otherwise under the control of its handler.
Service Animal Breed or Type	Carriers would be prohibited from refusing to transport a service animal based solely on breed or generalized physical type, as distinct from an individualized assessment of the animal's behavior and health.
Check-In Requirements	Carriers that require a passenger with a disability to check-in at the airport prior to the travel time required for the general public would be required to make an employee available promptly to assist the passenger with the check-in process.

## 5. SUMMARY OF REGULATORY IMPACT ANALYSIS

The Department has prepared a preliminary regulatory evaluation in support of the NPRM to amend the ACAA service animal regulations. DOT proposes to define a service animal as a dog that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. DOT's proposed service animal definition also explains that emotional support animals, comfort animals, companionship animals, and service animals in training are not service animals for purposes of this rule. In addition, DOT proposes to treat psychiatric service animals (animals that assist individuals with mental health related disabilities) like other service animals. Under the proposed rule, airlines would be allowed to require passengers traveling with a service animal to complete forms attesting that the passenger's service animal has been individually trained to do work or perform tasks for the benefit of the passenger with a disability, the animal has been trained to behave in public, the animal is in good health, and the animal has the ability either not to relieve itself on a long flight or to relieve itself in a sanitary manner.

Under the proposed rulemaking, carriers would no longer be required to recognize emotional support animals as service animals. Passengers currently have an incentive to claim pets as emotional support animals as existing regulations require carriers to transport all emotional support animals at no cost to the passenger.

The primary economic impact of this proposed rulemaking is that it eliminates a market inefficiency. The current policy amounts to a price restriction, which requires carriers to forgo a potential revenue source. In addition, the current policy, which effectively sets the price at zero, requires carriers to use resources to provide an accommodation for emotional support animals.

There is one quantified cost element: a potential burden on passengers traveling with service animals who may be required to submit up to three DOT forms to carriers. For Paperwork Reduction Act (PRA) purposes, we estimate that the forms could create 144,000 burden hours and \$3.0 million in costs per year. In some cases, however, carriers already ask passengers to complete equivalent non-governmental forms. Thus, the PRA numbers likely overestimate the burden that would result from this rulemaking.

**Table ES-1: Summary of Impacts Due to Proposed Rulemaking (Millions of 2018 Dollars)**

<b>Impact</b>	<b>Annual Value</b>
Paperwork burden for passengers traveling with service animals	-\$3.0
Discomfort to passengers who no longer will travel with ESAs	Not quantified
Eliminated deadweight loss; transfer of surplus from consumers to producers (increased fees paid by passengers travelling with ESAs)	\$75.1 (total)
Reduction in negative externalities caused by ESAs	Not quantified
Secondary market impacts due to reduced demand for ESA documentation Service	Not quantified

Public or non-use values or negative externalities in ESA travel could affect the efficiency consequences of this proposed rule. The preliminary regulatory evaluation describes the potential impacts of non-use values and negative externalities in detail but does not quantify them due to a lack of data. The Department requests information and data to quantify and evaluate the extent of these impacts.

## **1. SERVICE ANIMAL SPECIES**

### Current Requirements:

The Department’s current service animal rule does not include a species restriction with the exception of certain unusual species, such as snakes, other reptiles, ferrets, rodents, and spiders.

## The ANPRM

In the ANPRM, the Department sought comment on what, if any, species limitations should be placed on service animals.<sup>30</sup> In light of suggestions made by certain disability advocacy organizations, the Department also sought specific comment on whether capuchin monkeys should be recognized as service animals.<sup>31</sup> Finally, the Department requested comment on whether it should recognize miniature horses under its definition of a service animal, as some individuals with disabilities prefer miniature horses instead of dogs as service animals for religious reasons, because of their long life spans, and/or because of allergies.<sup>32</sup>

## Comments Received

Individual commenters, disability advocates, airlines, and other commenters all support dogs as service animals. This result is not surprising as the Department has been consistently informed that the clear majority, approximately 90 percent or more, of service animals that travel on aircraft are dogs. Some commenters note that dogs are the preferred species for service animals because they can be more easily trained to mitigate a passenger's disability than other animals. In a joint comment filed by Airlines for America (A4A), the Regional Airline Association (RAA), and International Air Transport Association (IATA), these associations commented that dogs in particular can hold their elimination functions for extended amounts of time, have the correct temperament to serve as service animals, and can be trained to behave appropriately in public and around large groups of people.<sup>33</sup> Assistance Dogs International

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<sup>30</sup> Traveling by Air with Service Animals, Advance Notice of Proposed Rulemaking, 83 FR 23832, 23839.

<sup>31</sup> Id. at 23840.

<sup>32</sup> Id.

<sup>33</sup> Comment of Airlines for America, Regional Airline Association, and International Air Transport Association, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4288>.

(ADI) notes specifically that dogs have been assisting individuals with disabilities for over 100 years.<sup>34</sup>

A smaller majority of disability advocate organizations and airports support both dogs and miniature horses as service animals. Disability advocates argue that miniature horses should be recognized subject to aircraft space restraints for those individuals with disabilities who rely on these animals, while airports argue for their inclusion to promote greater predictably for passengers with disabilities and airport operators. Although miniature horses do not fall under DOJ's definition of a service animal, DOJ requires covered entities such as airports to permit individuals with disabilities to use miniature horses, where reasonable, if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.<sup>35</sup>

Some disability organizations, however, argue against miniature horses as service animals, reasoning that horses are not commonly used as service animals and that excluding them from the rule will not impact many individuals with disabilities. Some airline commenters acknowledged that they receive very few requests to accommodate miniature horses each year and further oppose the inclusion of miniature horses as service animals because they are too large and inflexible to be safely accommodated on an aircraft and to fit within a passenger's foot space.

A small number of disability advocacy organizations support capuchin monkeys as service animals because of their ability to assist individuals with limited mobility with in-home services; however, these groups recognize that capuchin monkeys must be contained in a carrier

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<sup>34</sup> Comment of Assistance Dogs International, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4409>.

<sup>35</sup> See 28 CFR 36.302(c)(9) and 28 CFR 35.136.

in the airport and on the aircraft because of the potential danger they pose. Other disability advocacy organizations, airlines, and animal health associations strongly oppose recognizing capuchin monkeys as service animals. These groups argue that capuchin monkeys, while trained to do work or perform tasks for individuals with disabilities, are not domesticated animals and can be prone to increased aggression. Other groups oppose capuchin monkeys and other non-human primates as service animals, citing DOJ's position that these animals have the potential for disease transmission and that they exhibit unpredictable aggressive behavior.<sup>25</sup>

While Paralyzed Veterans of America (PVA) supports some limitations on the type of species that may be used as service animals or emotional support animals, the organization argues that access should be provided for all species and sizes of dogs, cats, rabbits, miniature horses, capuchin monkeys and other species that can be trained to behave appropriately and be safely brought on airplanes.<sup>36</sup> Finally, while the Association of Flight Attendants (AFA) commented that service animals and ESAs should be limited by species, it recognized that it was not in a position to make specific recommendations about the type of species airlines should be required to transport.<sup>37</sup> However, AFA recognized that it is appropriate for the Department under the ACAA to consider the characteristics of the animal that may be carried in the cabin, the size of the animal, and the aircraft's ability to accommodate the animal.

### DOT Response

DOT proposes to define a service animal as a dog that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical,

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<sup>36</sup> Comment of Paralyzed Veterans of America, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4187>.

<sup>37</sup> Comment of the Association of Flight Attendants, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4207>.

sensory, psychiatric, intellectual, or other mental disability. DOT's proposed service animal definition also explains that emotional support animals, comfort animals, companionship animals, and service animals in training are not service animals. Consistent with this definition, the Department proposes to limit the species of service animals to dogs. Under the Department's proposal, airlines could choose to transport other species of animals that assist individuals with disabilities in the cabin for free pursuant to an established airline policy, but would only be required under Federal law to recognize dogs as service animals. The Department considered the fact that dogs are the most common animal species used by individuals to mitigate disabilities both on and off aircraft as noted by many commenters. Dogs also have both the temperament and ability to do work and perform tasks while behaving appropriately in a public setting and while being surrounded by a large group of people.

The Department considered, but decided against, a proposal that would include other species as service animals, including capuchin monkeys and miniature horses. Although trained capuchin monkeys can assist persons with limited mobility with their daily tasks, we are not proposing to recognize capuchin monkeys as service animals because they may present a safety risk to other passengers as they have the potential to transmit diseases and may exhibit "unpredictable aggressive behavior."<sup>38</sup> Further, according to information the Department received from Helping Hands: Monkey Helpers,<sup>39</sup> it is often, if not always, qualified trainers rather than individuals with disabilities, who travel by air with capuchin monkeys, as the trainer delivers the monkeys. However, neither the existing regulation nor the proposed rule would

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<sup>38</sup> Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 FR 56164, 56194 (Sept. 5, 2010).

<sup>39</sup> Helping Hands monkeys are New World monkeys, native to Central and South America. New World monkeys do not carry the zoonotic diseases often associated with Old World monkeys (from Africa) such as Herpes B, Monkey Pox, or Simian Immunodeficiency Virus (SIV). However, according to the CDC, New World monkeys do carry and potentially transmit tuberculosis, measles, enteric diseases (salmonella, shigella, cryptosporidium, and giardia).

require airlines to transport service animals when they are not accompanied by the service animal user. Because individuals with disabilities may have significantly more difficulty obtaining the assistance of capuchin monkeys if they are not allowed to travel by air with their trainer, the Department seeks comment on whether to require airlines to allow the transport of closed-colony capuchin monkeys<sup>40</sup> in a carrier (capuchin monkeys weigh approximately 6-10 lbs.) and when traveling with a qualified trainer.<sup>41</sup>

In addition, the Department did not propose to include miniature horses in its definition of a service animal given size limitations on aircraft. The Department seeks comment on its proposal to limit service animals to dogs.

## **2. BREED OR TYPE RESTRICTIONS**

### Current Requirements

While the Department's disability regulations allow airlines to deny transportation to an animal if, among other things, it poses a direct threat to the health or safety of others, the Department has taken the position that restrictions on specific dog breeds or types are inconsistent with its current service animal regulation.<sup>42</sup>

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<sup>40</sup> According to Helping Hands: Monkey Helpers, its capuchin monkeys were bred from an existing colony first obtained within the United States in 1979 and continue to be housed in a closed colony, which means that the organization knows exactly where the monkeys come from, including their parentage, and have complete medical histories on every monkey in the program. However, according to CDC, most of the zoonotic diseases associated with New World NHPs can be acquired from humans. A "closed colony" does not ensure that these animals are or will remain free of zoonotic diseases of concern. TB, in particular, is always acquired from humans. The comment does not mention routine, regular TB testing, which is a necessary component of a "closed colony." More information is available at <https://www.monkeyhelpers.org>.

<sup>41</sup> The Department notes that under 42 CFR 71.53, the importation of any non-human primate into the United States is prohibited unless the importer is registered with the CDC and the purpose of the import is limited to science, education, or exhibition.

<sup>42</sup> See Final Statement of Enforcement Priorities Regarding Service Animals, 84 FR 43480 (August 21, 2019).

## ANPRM

Although the Department did not specifically seek comment on whether airlines should be permitted to refuse transportation to certain breeds or types of service dogs, the Department received a number of comments on airline breed restrictions.

## Comments Received

The Department received hundreds of comments from individual commenters on whether airlines should be permitted to restrict service dogs based on breed or type. Delta Air Lines, Inc. (Delta Air Lines) commented that carriers should be permitted to impose such restrictions to ensure the safety of passengers on aircraft if the Department does not establish a clear means to demonstrate that an animal can behave properly.<sup>43</sup> No other airline and no disability rights organization addressed this issue as the ANPRM did not specifically call for comment on this subject.

Most individual commenters did not support allowing airlines to impose breed restrictions on service animals. These commenters stated that pit-bull bans are discriminatory and that their pit-bull-type dogs, like other dogs, can be trained to perform tasks to mitigate a user's disabilities and can be well behaved. These commenters also questioned an airline's ability to determine whether a dog is a "pit bull" simply by looking at the animal's features. Conversely, approximately 22 percent of commenters supported a breed or type restriction on dogs such as pit bulls (typically taken to include American pit bull terriers, Staffordshire bull terriers, and American Staffordshire bull terriers), as well as other types of dogs that commenters believe are commonly known to be aggressive.

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<sup>43</sup> Comment of Delta Air Lines, Inc., <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4141>.

## DOT Response

The Department is proposing that airlines should continue to be prohibited from restricting service animals based solely on the breed or generalized type of dog. The Department's policy has been to require airlines to conduct individualized assessments of particular service animals based on the animal's evident behavior or health, rather than applying generalized assumptions about how a breed or type of dog would be expected to behave. Under this policy, the Department allows airlines to refuse transportation to dogs that exhibit aggressive behavior and that pose a direct threat to the health or safety of others regardless of breed, and we propose to retain that policy in our new service animal rule. We note that DOJ also rejects an outright ban on service animals because of their breed in implementing its regulations under the ADA. DOJ has advised municipalities that prohibit specific breeds of dogs that they must make an exception for a service animal of a prohibited breed, unless the dog poses a direct threat to the health or safety of others, a determination that must be made on a case-by-case basis.<sup>44</sup>

However, the Department understands the concerns raised about pit bulls and certain other breeds or types of dogs that have a reputation of attacking people and inflicting severe and

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<sup>44</sup> See Frequently Asked Questions about Service Animals and the ADA, Questions 22-24, available at [https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html) (July 20, 2015):

[I]f an individual uses a breed of dog that is perceived to be aggressive because of breed reputation, stereotype, or the history or experience the observer may have with other dogs, but the dog is under the control of the individual with a disability and does not exhibit aggressive behavior, the public accommodation cannot exclude the individual or the animal from the place of public accommodation. The animal can only be removed if it engages in the behaviors mentioned in § 36.302(c) (as revised in the final rule) or if the presence of the animal constitutes a fundamental alteration to the nature of the goods, services, facilities, and activities of the place of public accommodation.

See also 75 FR 56236, 52266-56267 (September 15, 2010):

[I]f an individual uses a breed of dog that is perceived to be aggressive because of breed reputation, stereotype, or the history or experience the observer may have with other dogs, but the dog is under the control of the individual with a disability and does not exhibit aggressive behavior, the public accommodation cannot exclude the individual or the animal from the place of public accommodation. The animal can only be removed if it engages in the behaviors mentioned in § 36.302(c) (as revised in the final rule) or if the presence of the animal constitutes a fundamental alteration to the nature of the goods, services, facilities, and activities of the place of public accommodation.

sometimes fatal injuries. The Department also understands that there may be concerns that certain dogs may be dangerous because of their muscular bodies, large and powerful jaws and neck muscles, and ferocity when provoked to attack. The Department seeks comment on whether these concerns are valid. In particular, the Department seeks comment on whether, notwithstanding the DOJ rules under the ADA, the unique environment of a crowded airplane cabin in flight justifies permitting airlines to prohibit pit bulls and any other particular breeds or types of dogs from traveling on their flights under the ACAA even when those dogs have been individually trained to perform as service animals to assist a passenger with a disability. The Department will consider this question in light of the full rulemaking record when finalizing this rule. The Department also seeks comment on whether its proposal to allow airlines to conduct an individualized assessment of a service animal's behavior to determine whether the service animal poses a direct threat to the health or safety of others is an adequate measure to ensure that aggressive animals are not transported on aircraft, rather than banning an entire breed or type of service animal.

### **3. EMOTIONAL SUPPORT ANIMALS**

#### Current Requirements

For purposes of air transportation, under our existing rules, DOT considers a service animal to be any animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well-being of a passenger.<sup>45</sup> However, while the Department currently requires airlines to recognize emotional support animals as service animals, it allows airlines to require that emotional support animal users provide a letter from a licensed mental health professional of

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<sup>45</sup> See 14 CFR 382.117; Guidance Concerning Service Animals, 73 FR 27614, 27663 (May 13, 2008).

the passenger's need for the animal. Currently, the Department's ACAA rules allow airlines to require emotional support animal users to provide current documentation (no older than one year from the date of the passenger's scheduled initial flight) on the letterhead of a licensed mental health professional stating the following:

- (1) The passenger has a mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders--Fourth Edition (DSM IV);
- (2) The passenger needs the emotional support or psychiatric service animal as an accommodation for air travel and/or for activity at the passenger's destination;
- (3) The individual providing the assessment is a licensed mental health professional, and the passenger is under his or her professional care; and
- (4) The date and type of the mental health professional's license and the state or other jurisdiction in which it was issued.<sup>46</sup>

Furthermore, to enable airlines sufficient time to assess the passenger's documentation, DOT permits airlines to require 48 hours' advance notice of a passenger's wish to travel with an emotional support animal so that airlines can verify the documentation. Airlines are also permitted to require that passengers traveling with emotional support animals check-in one hour before the check-in time for the general public.<sup>47</sup>

### The ANPRM

In the ANPRM, the Department described the concerns raised by airlines, disability advocates, flight attendants, and the traveling public that emotional support animals may pose a safety risk to other service animals, passengers, and airline personnel and could create a

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<sup>46</sup> 14 CFR 382.117(c)(1)-(4).

<sup>47</sup> 14 CFR 382.27(c)(8).

disturbance or disruption that would interfere with the safe and efficient operation of the aircraft. The Department sought comment on whether it should continue to include emotional support animals in the definition of a service animal in its ACAA regulation, or adopt a definition of service animal similar to the definition in DOJ's ADA regulation where emotional support animals are not recognized as service animals.<sup>48</sup>

In the event that the Department decided to continue to recognize emotional support animals as service animals, the Department sought comment on whether it should continue to allow airlines to require emotional support animal users to provide documentation.<sup>49</sup> The Department also sought comment on alternative approaches to documentation that can be used to verify an emotional support animal's status.<sup>50</sup> Further, the Department sought comment on whether emotional support animals should be regulated separately and distinctly from service animals, and if airlines are required to transport emotional support animals, whether airlines should be allowed to require that emotional support animals be contained.<sup>51</sup>

### Comments Received

#### **Should the Department continue to include emotional support animals in the Department's ACAA definition of a service animal?**

Most organization commenters urged the Department to align its definition of a service animal with DOJ's definition of a service animal, which does not recognize emotional support animals and limits service animals to dogs individually trained to do work or perform a task for an individual with a disability. As part of this NPRM, the Department seeks comment on reasons the regulation of service animals on aircraft should or should not differ from DOJ's

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<sup>48</sup> Traveling by Air with Service Animals, Advance Notice of Proposed Rulemaking, 83 FR 23832, 23838.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id.

regulation of service animals under its rules implementing the ADA. Airline organizations commented that the Department should follow DOJ's lead and exclude emotional support animals from the definition of a service animal in the air transportation context because DOJ's definition is "better suited to the particular challenges associated with accommodating animals in the aircraft cabin environment, which involves allowing animals to travel in a confined, noisy, moving space at high altitude ... and in close proximity to crew, passenger, and other animals and no opportunity to remove the animal during flight."<sup>52</sup> Similarly, disability advocates have commented that the Department's current rule, which classifies emotional support animals as service animals, causes significant confusion in the disability community.

However, while disability advocates, airlines, and the majority of commenters agree that emotional support animals should be removed from the definition of a service animal, they disagree on whether the Department should recognize emotional support animals as an accommodation for individuals with disabilities that would be regulated separately and distinctly from service animals. Most advocacy organizations support a definition of service animal focused on animals trained to do work or perform tasks for the benefit of individuals with disabilities, similar to DOJ's definition. Those advocacy organizations, however, support the Department's continued recognition of emotional support animals, so long as emotional support animals are regulated separately and distinctly from service animals.

The National Federation of the Blind (NFB)<sup>53</sup> commented that emotional support animals, which are untrained to mitigate a disability, should be permitted as an accommodation

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<sup>52</sup> Comment of Airlines for America, Regional Airline Association, and International Air Transport Association, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4288>.

<sup>53</sup> Comment of the National Federation of the Blind, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-3261>.

subject to “specific and more restrictive conditions” of carriage. In addition, Psychiatric Service Dog Partners (PSDP)<sup>54</sup> commented that regulating emotional support animals differently from other service animals is warranted given that emotional support animals have not been trained to perform a specific task for a passenger with a disability, and emotional support animal users are likely not aware of DOT’s behavior expectations or the required public access training protocols.

Similarly, in a joint comment filed by A4A, RAA, and IATA, these associations commented that should the Department continue to recognize emotional support animals, a decision opposed by the associations, emotional support animals should be regulated separately and distinctly from service animals and subject to more stringent requirements than service animals, such as documentation from a licensed mental health professional who has examined and diagnosed the emotional support animal user in person.<sup>55</sup>

The majority of individual commenters provided general statements of support for the Department’s continued recognition of emotional support animals, and did not opine on whether emotional support animals should be regulated separately from service animals. Generally, these individuals, along with those disability advocates in support of the continued recognition of emotional support animals, argue that the Department should continue to recognize the vital role that emotional support animals play in mitigating mental and emotional disabilities during air transportation and at a passenger’s destination. Specifically, PVA insists that passengers with disabilities have access to their emotional support animals as the mere presence of these animals accommodates a person’s disability and may be crucial to allowing a person with a disability to

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<sup>54</sup> Comment of Psychiatric Service Dog Partners, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-3117>.

<sup>55</sup> Comment of Airlines for America, Regional Airline Association, and International Air Transport Association, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4288>.

travel by air.<sup>56</sup> Similarly, the American Council of the Blind (ACB) recognizes that emotional support animals can perform a vital role for individuals who are incapable of moving freely through society.<sup>57</sup>

Autism Speaks commented that the Department should afford individuals with disabilities who rely on emotional support and psychiatric service animals “with the same legal protections as people who use other service animals.”<sup>58</sup> Autism Speaks acknowledges that “people may not see the services psychiatric service animals and emotional support animals provide because sometimes these services may not be obvious; autism itself may be an invisible disability,” but “the needs of many people with autism for emotional support, however, are very real.”

Airlines have indicated that fraud and safety are the primary reasons they oppose the Department’s continued recognition of emotional support animals. In a joint comment filed by A4A, RAA, and IATA, these associations commented that “incidents involving animals that allegedly are [emotional support animals] [have] become an unacceptable threat to the health and safety of airline staff and the traveling public, including qualified individuals with a disability who travel with a trained service animal and those trained service animals themselves.”<sup>59</sup>

With respect to fraud, airlines commented that individuals traveling with purported emotional support animals may not actually be individuals with disabilities, and the surge in the transport of emotional support animals on aircraft is fueled by “cheap and easy availability of

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<sup>56</sup> Comment of Paralyzed Veterans of America, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4187>.

<sup>57</sup> Comment of American Council of the Blind, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4133>.

<sup>58</sup> Comment of Autism Speaks, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4268>.

<sup>59</sup> Comment of Airlines for America, Regional Airline Association, and International Air Transport Association, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4288>.

fraudulent credentials.” American Airlines, Inc. (American Airlines) commented that it experienced a 48-percent increase in the number of emotional support animals carried in 2017 compared to 2016 (105,155 in 2016 and 155,790 in 2017).<sup>60</sup> American Airlines also commented that it experienced a 17-percent decline in the number of requests to transport pets for a fee in 2017 in comparison to 2016. Spirit Airlines, Inc. (Spirit Airlines) commented on the loss of millions of dollars in pet carriage fees from passengers fraudulently claiming their “house pets are service or support animals” and on instances of emotional support animal misbehavior as justification for why the Department should not recognize emotional support animals.<sup>61</sup> Delta Air Lines recognizes that some passengers with disabilities “have a legitimate need” for emotional support animals; however, the carrier opposes the Department’s continued recognition of emotional support animals and urged the Department to adopt the DOJ definition of a trained service animal. Delta believes that passengers who currently have a legitimate need for an emotional support animal could still be accommodated on aircraft under the DOJ definition of a service animal, if these passengers trained their animals to become psychiatric service animals, which are recognized as service animals by DOJ.<sup>62</sup> However, Spirit Airlines contends that the Department should eliminate the category of emotional support animals in its regulations because emotional support animals generally receive “*absolutely no training*, neither obedience nor specific to their owner’s disability” (emphasis in original).<sup>63</sup> Most U.S. carriers believe that most of the fraud and safety issues on which the Department sought comment in the ANPRM

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<sup>60</sup> Comment of American Airlines, Comment of American Airlines, Inc. <https://www.regulations.gov/document?D=DOT-OST-2018-0068-3507>.

<sup>61</sup> Comment of Spirit Airlines, Inc., <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4226>.

<sup>62</sup> Comment of Delta Air Lines, Inc., <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4141>.

<sup>63</sup> Comment of Spirit Airlines, Inc., <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4226>.

would be mitigated if DOT adopted a definition of service animal that excluded emotional support animals.

While U.S. airlines oppose the Department's continued recognition of emotional support animals, foreign carriers are split on this issue. Those foreign carriers in support of emotional support animals urge the Department to define emotional support animals separately from service animals and subject them to a more stringent regulatory standard. Health and safety concerns continue to be the primary justification provided by foreign carriers in support of eliminating emotional support animals or subjecting them to stricter regulation.

**Should the Department continue to allow airlines to require emotional support animal users to provide medical documentation and advance notice?**

While most disability advocates oppose allowing airlines to require documentation from service animal users, including emotional support animal users, some advocacy organizations are in favor of documentation exclusively for emotional support animals. Some advocacy organizations support documentation for all service animal users in the form of a decision-tree, which is a series of questions designed to educate the public on traveling with service animals and reduce the instances of individuals fraudulently representing their pets as service animals. Some advocates and airlines expressed support for behavior attestations, another form of documentation first suggested during a 2016 negotiated rulemaking as a potential measure to be proposed by the Department in a future rulemaking.<sup>64</sup> Since the negotiated rulemaking, several carriers have created their own behavioral attestations as one of many service animal policy changes that carriers put into place in 2018 and 2019. Finally, some disability advocacy

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<sup>64</sup> Service Animal-Vote Tally Sheet-3<sup>rd</sup> Party Documentation, Mandatory Attestation (Oct. 26, 2016), <https://www.regulations.gov/document?D=DOT-OST-2015-0246-0281>.

organizations that oppose documentation for service animals, including emotional support animals, commented that the Department should only permit airlines to make the same inquiries that DOJ permits under its regulation implementing the ADA: (1) Is the animal required because of a disability? and (2) What work or task has the animal been trained to perform?<sup>65</sup>

While all commenting U.S. airline opposed the Department's continued recognition of emotional support animals, airlines have commented that if the Department continues to require airlines to transport emotional support animals as an accommodation for individuals with disabilities, airlines should be permitted to require those passengers to provide documentation from a medical professional that confirms the passenger's need for the animal. Airlines also commented that airlines should be able to impose more restrictive requirements—for example, that the passenger's diagnosis be based on an in-person visit and that the documentation state that the passenger has a mental impairment as defined in the Department's ACAA regulations, as opposed to stating only that the passenger has a disorder recognized under the Diagnostic and Statistical Manual of Mental Disorders.

Both U.S. and foreign carriers believe that allowing airlines to require documentation to prove the passenger's need for an emotional support animal is essential if the Department continues to recognize emotional support animals. Airlines commented that there is a significant problem with fraud under the Department's current requirements and that fraud would only become more prevalent should the Department dispense with a documentation requirement for emotional support animal users. The Association of Flight Attendants (AFA) also favors a

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<sup>65</sup> See 28 CFR 35.136(f); 28 CFR 36.302(c)(6). DOJ's ADA regulations do not generally permit a covered entity to make these two inquiries when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability, (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

documentation requirement for emotional support animal users and noted that while some emotional support animal users may be discouraged from flying if required to produce documentation, the correlation between a documentation requirement and fraud reduction justifies the requirement. That association also noted that while a documentation requirement may not eliminate fraud entirely, fraud reduction, to any degree, benefits the traveling public, individuals with disabilities, and airlines.

**Should the Department allow airlines to require emotional support animals to be contained in pet carriers?**

Disability advocates are largely split on the issue of whether emotional support animals should be contained in pet carriers. Some advocates support requiring the containment of emotional support animals but comment that they should be allowed to be removed from the carrier to mitigate a disability. Other disability advocates only support the containment of emotional support animals when the animal is behaving badly. Some disability advocates oppose a containment requirement altogether fearing that large emotional support animals that do not fit in pet carriers would not be permitted access on airplanes. Finally, some advocates recommend that emotional support animals merely be leashed, harnessed, or tethered, rather than contained.

The majority of airlines commented that if the Department chooses to recognize emotional support animals, emotional support animals should be contained for the duration of the flight. If the animal is too large to fit in a container, one airline suggests that the airline be permitted to treat the animal as a pet and offer the passenger the option for the animal to fly in the cargo compartment. Conversely Delta Air Lines, which generally opposes the Department's recognition of emotional support animals, does not support containing emotional support animals

for the duration of the flight.<sup>66</sup> That carrier explained that if the Department were to decide to continue to recognize emotional support animals, emotional support animals would be unable to mitigate a passenger's disability if contained in a carrier. The carrier further stated that a containment requirement for emotional support animals, if allowed, would be inconsistent with the spirit of the ADA and the ACAA. The carrier does, however, support that airlines be granted the authority to restrain emotional support animals by harness, leash, or other restraint mechanisms.

Airport commenters support a requirement that emotional support animals be contained if they continue to be recognized, especially while traversing through the airport. Airports argue that airport operators have the right to require any animal that is not a service animal under the ADA to be contained and a containment requirement promotes consistency between the ADA and ACAA regulations.

### **What species should be accepted as emotional support animals?**

Disability advocacy organizations and the public are generally split on what species of emotional support animals the Department should recognize if it continues to recognize emotional support animals. Some public commenters and disability advocacy organizations favor the Department's current species requirement for emotional support animals, which does not limit species except with respect to unusual species such as snakes, other reptiles, fatters, rodents, and spiders.<sup>67</sup> Conversely, other individual commenters and disability advocates urge the Department to recognize only dogs and miniature horses as emotional support animals.

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<sup>66</sup> Comment of Delta Air Lines, Inc., <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4141>.

<sup>67</sup> 14 CFR 382.117(f).

The majority of disability advocacy organizations and public commenters, however, are split between favoring a requirement that dogs and cats be recognized as emotional support animals and favoring a requirement that dogs, cats, and rabbits be recognized as emotional support animals because, as noted by these organizations, dogs, cats and rabbits are the most commonly used species of emotional support animal. A small contingent of disability advocacy organizations encourage the Department to allow airlines to limit emotional support animals to animals that have been trained to behave properly in public, rather than specifying a species in the rule. Finally, one advocacy organization argues that all trained or domesticated emotional support animals should be permitted to be recognized as a service animal under DOT's ACAA rule.

Most airlines commented that they should only be required to carry dogs as emotional support animals if the Department continues to recognize emotional support animals, although some also support permitting miniature horses, subject to airline pre-approval. One airline suggests that cats be allowed as emotional support animals if the Department continues to recognize emotional support animals.

#### DOT Response

##### **Definition of a service animal**

The Department proposes in this NPRM to define a service animal as a dog that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability. This definition is similar to DOJ's definition of a service animal under Title II and Title III of the ADA.<sup>68</sup> DOJ's Title II rules for State and local governments govern airports

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<sup>68</sup> See 28 CFR 35.104 and 28 CFR 36.104

owned by a public entity and DOJ's Title III rules for public accommodations and commercial facilities govern privately owned airports and airport facilities. Under DOT's proposed service animal definition, like DOJ's service animal definition in its ADA rules, emotional support animals would not be recognized as service animals as they are not trained to do work or perform a task for the benefit of an individual with a disability. The Department's proposal is intended to align DOT's ACAA definition of a service animal with the service animal definition established by DOJ in its rules implementing the ADA and thereby decrease confusion for individuals with disabilities, airline personnel, and airports. While the Department proposes to allow airlines to treat emotional support animals as pets rather than service animals, airlines could choose to continue to recognize emotional support animals and transport them for free pursuant to an airline's established policy. The Department seeks comment on its proposed service animal definition, which does not recognize emotional support animals and limits the species that qualify as service animals to dogs.

Although the NPRM proposes not to treat emotional support animals as service animals, the Department seeks further comment on whether the Department should recognize emotional support animals as an accommodation for individuals with disabilities that would be regulated separately and distinctly from service animals. The Department recognizes that we have already received considerable feedback on this topic during the comment period to the ANPRM; individuals and organizations need not re-submit those same comments during the comment period to this NPRM. The NPRM solicits comment on whether, and to what extent, the proposal not to recognize emotional support animals would impact the ability of individuals with disabilities who rely on emotional support animals to travel via aircraft. The Department seeks comment on whether individuals with disabilities who use emotional support animals to mitigate

their disabilities would be less likely to travel by air if they are no longer permitted to travel with their emotional support animal. Furthermore, since airlines would be permitted to treat emotional support animals as pets, the Department requests information from airlines on whether individuals would be able to transport emotional support cats or other small animals as pets in the cabin for a fee and whether there are limits on the number of pets an airline would allow per flight which could impact their transport.

Some commenters have noted that emotional support animal users who have a mental health disability may train their dogs to do work or perform a task to assist them with their disability, thereby transforming the animal from an emotional support animal to a psychiatric service animal. The Department requests comment as to whether the Department should recognize this option and, if so, whether the availability of this option would mitigate any negative impact of this proposal on users of emotional support dogs.

Alternatively, if the Department decides not to adopt the definition of service animal as proposed (and instead adopts a final rule that continues to recognize emotional support animals), the Department requests comment on whether emotional support animals are more likely to misbehave in comparison to traditional service animals because they have not been trained to mitigate a disability. While one solution suggested by commenters is to permit airlines to require stricter documentation for emotional support animal users (e.g., forms completed and signed by a medical practitioner such as a doctor or nurse practitioner, verification of in-person treatment by a medical practitioner, and verification that the patient has or will receive ongoing treatment from the medical practitioner), others expressed concern that these stricter measures may impose unnecessary burdens on passengers with disabilities. The Department requests comment on whether stricter documentation for emotional support animal users would be effective in

decreasing the likelihood of fraud by businesses seeking to profit by guaranteeing emotional support animal documentation to individuals traveling with pets.

The Department also seeks comment on how limiting emotional support animals to dogs and cats might impact individuals with disabilities who rely on other species of animals to accommodate their disability. It is the Department's understanding that dogs currently represent the majority (approximately 90 percent) of service animals transported on aircraft (including emotional support animals) and cats are the second largest species used as emotional support animals. As such, the Department seeks comment on how individuals who rely on emotional support cats would be impacted should the Department decide not to recognize emotional support animals or only recognize emotional support dogs.

Finally, if the Department decides not to adopt the definition of service animal as proposed (and instead adopts a final rule that continues to recognize emotional support animals), the Department seeks comment on whether airlines should be allowed to require that emotional support animals be contained in an FAA-approved in-cabin pet carrier in the airport and on the aircraft and whether providing passengers the ability to open the carrier and touch the animal is sufficient disability mitigation, even if the animal is required to remain in its carrier for the duration of a flight. The Department also seeks comment on whether to allow airlines to accept only those emotional support animals that fit in in-cabin pet carriers that are consistent with applicable FAA regulations and, if so, the impact of limiting the size of emotional support animals. Finally, the Department seeks comment on whether limiting emotional support animals to one per passenger would sufficiently mitigate a passenger's disability on a flight or at the passenger's destination.

#### 4. PSYCHIATRIC SERVICE ANIMALS

##### Current Requirements

The Department's current ACAA regulation allows airlines to treat psychiatric service animals and emotional support animals differently from other animals that assist individuals with disabilities.<sup>69</sup> Similar to emotional support animals, airlines are permitted to require psychiatric service animal users to provide medical documentation to prove the passenger's need for the psychiatric service animal, to provide 48--hours advance notice prior to travel, and check-in one hour before the check-in time for the general public.<sup>70</sup>

##### The ANPRM:

In the ANPRM, the Department solicited comment on whether it should amend its service animal regulation to ensure individuals traveling with psychiatric service animals are not subject to more burdensome requirements than passengers traveling with other service animals that do work or perform a task to mitigate a disability. More specifically, the Department sought comment in the ANPRM on whether it should amend its service animal regulations no longer to permit airlines to require medical documentation, 48--hours advance notice of travel, or check-in in one hour before the general public for psychiatric service animal users.<sup>71</sup>

The Department also requested comment on whether there may be a valid basis for allowing airlines to treat individuals traveling with psychiatric service animals differently from individuals traveling with traditional service animals.<sup>72</sup> The Department inquired about the practical implications of no longer permitting airlines to require medical documentation from

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<sup>69</sup> See 14 CFR 382.117(e).

<sup>70</sup> 14 CFR 382.27(c)(8).

<sup>71</sup> Traveling by Air with Service Animals, Advance Notice of Proposed Rulemaking, 83 FR 23832, 23838).

<sup>72</sup> Id.

psychiatric service animal users if the ACAA rule were to treat psychiatric service animals like other service animals.<sup>73</sup> The Department sought comment in the ANPRM on whether airline personnel would be able to distinguish between a psychiatric service animal and an emotional support animal should the Department amend its regulation to treat psychiatric service animals like other service animals that do work or perform tasks.<sup>74</sup> Further, to gauge whether the problem of individuals' falsely claiming to have a mental-health-related condition is greater than the problem of individuals' falsely claiming other hidden disabilities, such as a seizure disorder, to avoid paying airline pet fees, the Department sought comment on what, if any, experience airlines have had with passengers' claiming to have a seizure disorder, diabetes, or non-mental-health-related condition, and fraudulently attempting to travel with their pets as service animals.<sup>75</sup> In addition, the Department sought feedback on alternatives to a medical documentation requirement that would prove the passenger's need for a psychiatric service animal.<sup>76</sup>

### Comments Received

Most commenters support an ACAA definition of a service animal that treats psychiatric service animals the same as other service animals that do work or perform a task. The National Disability Rights Network commented that treating psychiatric service animals the same as other tasked-trained service animals is fair because treating them differently perpetuates the myth that psychiatric service animals are inferior to service animals used to mitigate other types of

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<sup>73</sup> Id.

<sup>74</sup> Id.

<sup>75</sup> Id.

<sup>76</sup> Id.

disabilities.<sup>77</sup> Similarly, American Airlines commented that psychiatric service animals should be treated the same as other service animals trained to do work or perform a task because psychiatric service animals are professional working dogs.<sup>78</sup> American Airlines also commented that treating psychiatric service animals the same as other task-trained service animals would provide consistency between the DOT's ACAA regulation and DOJ's ADA regulations.

A4A urged the Department to treat psychiatric service animals the same as other task-trained service animals and no longer to recognize emotional support animals.<sup>79</sup> But A4A encourages the Department to dispense with the medical documentation and advance notice allowance for psychiatric service animal users for only a one-year review period. A4A reasoned that removing the documentation and advance notice allowance for psychiatric service animals may encourage pet owners, who once claimed that their pets were emotional support animals, to pivot to claiming that their pets are psychiatric service animals to avoid airline pet fees and to travel with their pets in the cabin. A4A suggests allowing airlines to collect data during the one-year review period and if enough evidence exists to suggest that some pet owners are falsely representing their pets as psychiatric service animals after the one-year period, airlines should be allowed to request medical documentation, and proof of training and/or vaccination from psychiatric service animal users.

Some U.S. carriers disagree with treating psychiatric service animals the same as traditional service animals and encourage the Department to continue to allow airlines to require documentation and advance notice from psychiatric service animal users. United Airlines states

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<sup>77</sup> Comment of National Disability Rights Network, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4307>.

<sup>78</sup> Comment of American Airlines, Inc. <https://www.regulations.gov/document?D=DOT-OST-2018-0068-3507>.

<sup>79</sup> Comment of Airlines for America, Regional Airline Association, and International Air Transport Association, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4288>.

that the Department should “retain (and consider strengthening) documentation provisions for [psychiatric service animals] in the event that it becomes apparent that individuals without disabilities are attempting to assert that their untrained pets are [psychiatric service animals].”<sup>80</sup> Spirit Airlines commented that psychiatric service animals do not receive the same level of training as “true” service animals, which are subjected to training to attend to their ‘handlers’ needs, specifically in the area of obedience training.<sup>81</sup> Spirit Airlines also expressed concerns that dispensing with the documentation requirement for psychiatric service animals would result in more animals being transported for free as airlines would only be able to rely on a passenger’s verbal assurances that the animal was a service animal and not a pet.

#### DOT Response

As discussed above, the Department proposes to define a service animal as a dog that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability. Because psychiatric service animals are trained to do work or perform tasks for an individual with a disability, the Department proposes to treat psychiatric service animals the same as other service animals trained to do work or perform tasks. The Department proposes this change not only to harmonize DOT’s ACAA service animal definition with DOJ’s ADA service animal definition, which, as noted above, defines a service animal as one that is individually trained to do work or perform tasks for the benefit of an individual with a disability, but also because the rationale for having a different regulatory requirement for users of psychiatric service animals is weak. The current medical documentation, 48 hours’ advance notice, and check-in requirements for psychiatric service animal users were adopted in the

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<sup>80</sup> Comment of United Airlines, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4283>.

<sup>81</sup> Comment of Spirit Airlines, Inc., <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4226>.

Department's 2008 amendment to the ACAA rule to address concerns raised about passengers falsely claiming to have a mental health condition in order to pass off their pets as service animals. While the Department is aware of concerns about passengers who falsely claim to have a mental health condition that may require the use of a service animal, unscrupulous passengers may also falsely claim to have other hidden disabilities such as seizure disorder or diabetes to pass off their pets as service animals and avoid paying airline pet fees. Thus, we believe that the justification for treating service animal users with mental or emotional disabilities different from service animal users with other hidden disabilities is currently lacking.

If the rule is adopted as proposed, the Department would monitor the experience of airlines in accommodating the use of service animals for those passengers with mental-health needs who depend upon such service animals. We would consider revisiting whether it is reasonable and appropriate to allow additional requirements for the use of such animals if there is a demonstrated need—for example, if there is a notable increase in instances of passengers falsely representing pets as mental-health-related service animals.

## **5. LARGE SERVICE ANIMALS**

### Current Requirements

The Department's current regulation allows airlines to determine whether factors preclude a given service animal from being transported in the cabin, including whether the animal is too large or too heavy to be accommodated in the cabin. Under this rule, an animal may be excluded from the cabin if it is too large or too heavy to be accommodated in the specific aircraft at issue.

However, the Department's guidance on the issue of a service animal's encroaching on the foot space of a passenger is not clear. DOT has previously stated that service animals may be

“placed at the feet of a person with a disability at any bulkhead seat or in any other seat as long as when the animal is seated/placed/curled up on the floor, no part of the animal extends into the main aisle(s) of the aircraft, the service animal is not at an emergency exit seat, and the service animal does not extend into the foot space of another passenger seated nearby who does not wish to share foot space with the service animal.”<sup>82</sup> DOT has also stated that a service animal may need to use a reasonable portion of an adjacent seat’s foot space that does not deny another passenger effective use of the space for his or her feet by taking all or most of the passenger’s foot space.<sup>83</sup> The Department advised airlines to seek out and seat the individual with a disability next to a passenger willing to share foot space with the animal. The Department also advised airlines to reseat passengers traveling with a service animal in a location on the aircraft where the service animal can be accommodated—e.g., next to an empty seat. Finally, DOT advised airlines that if there are no alternatives available to enable the passenger to travel with the service animal in the cabin on that flight, the carrier should offer the passenger the option of either transporting the service animal in the cargo hold or on a later flight with more room.<sup>84</sup>

### The ANPRM

In the ANPRM, the Department sought comment on whether to allow airlines to limit the size of service animals that travel in the cabin, and the implications of such a decision.<sup>85</sup>

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<sup>82</sup> See FAA Order 8900.1, Vol. 3, Ch. 33, Section 6 at ¶ 3-3576 (March 5, 2019), [http://fsims.faa.gov/wdocs/8900.1/v03%20tech%20admin/chapter%2033/s\\_03\\_033\\_006.pdf](http://fsims.faa.gov/wdocs/8900.1/v03%20tech%20admin/chapter%2033/s_03_033_006.pdf) and FAA Guidance, What Airline Employees, Airline Contractors, and Air Travelers with Disabilities Need to Know About Access to Air Travel for Persons with Disabilities, A Guide to the Air Carrier Access Act (ACAA) and its implementing regulations, 14 CFR Part 382 (Part 382), [https://www.transportation.gov/sites/dot.gov/files/docs/TAM-07-15-05\\_0.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/TAM-07-15-05_0.pdf).

<sup>83</sup> See 73 FR 27614, 27634, “The fact that a service animal may need to use a reasonable portion of an adjacent seat’s foot space--that does not deny another passenger effective use of the space for his or her feet--is not, however, an adequate reason for the carrier to refuse to permit the animal to accompany its user at his or her seat.”

<sup>84</sup> See 73 FR 27614, 27661.

<sup>85</sup> Traveling by Air with Service Animals, Advance Notice of Proposed Rulemaking, 83 FR 23832, 23841.

Airlines had previously indicated to the Department that some passengers have felt coerced when asked by the airline, in front of other passengers on aircraft, to share their space with a service animal and they may have agreed to share space even if they did not wish to so. As such, the Department sought comment on whether passengers find it burdensome to share foot space on the aircraft with service animals.

### Comments Received

The comments received by disability advocates uniformly discourage the Department from adopting a rule that would allow airlines to limit the size of service animals on an aircraft. Disability advocates argue that aircraft seat sizes have shrunk, and continue to shrink, and that the Department should adopt a rule that prohibits airlines from decreasing seat size rather than allowing airlines to limit the size of service animals. Furthermore, disability advocates argue that there is little evidence to show that large service animals pose a greater safety risk than small service animals on aircraft and that limiting the size of service animals would be disproportionately unfair to individuals with mobility impairments who use larger animals to mitigate their disability.

Airlines, however, argue that it is unfair to paying passengers to be forced to share their limited space on the aircraft with a large service animal. Airlines also believe that limiting the size of service animals would decrease burdens on flight attendants, as flight attendants must spend time rearranging passengers to accommodate large animals and flight crew frequently suffer the ire of passengers unhappy with having to move or being asked to share their foot space with an animal.

Airlines also argue that the carriage of large animals in the cabin violates FAA safety requirements, which require that aisles and other passageways be free of obstructions to allow all

passengers egress in the case of an emergency. A4A, RAA, and IATA commented that allowing large untrained emotional support animals in the cabin threatens the safety and health of other passengers on aircraft.<sup>86</sup> Finally, AFA commented that airlines should be allowed to limit the size of service animals on aircraft, but the limitation should be based on the aircraft type and the available space in the cabin.<sup>87</sup>

### DOT Response

The Department proposes to allow airlines to place size limitations on service animals to the extent that the animal must fit within the passenger's foot space on the aircraft or can be placed on the passenger's lap. While the Department is sensitive to the fact that many large service animals, such as German Shepherds, Golden Retrievers, and Labrador Retrievers, tend to accompany individuals with disabilities, particularly individuals with mobility impairments, these animals are often trained to fit into small spaces. The Department seeks comment on its proposal to limit the size of service animals based on whether the animal can fit into the foot space afforded to the passenger on that particular aircraft type, or on whether the service animal is no larger than a lap-held child and can be placed on the passenger's lap.

In instances where an animal is too large to fit in the passenger's foot space or be placed on the passenger's lap, the Department proposes to require airlines to seat the passenger traveling with a service animal next to an empty seat within the same class of service where the animal can be accommodated, if such a seat is available. If there are no empty seats available to allow a passenger to travel with the service animal in the cabin on the passenger's scheduled flight, the Department proposes to require airlines to provide passengers the option to transport the animal

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<sup>86</sup> Comment of Airlines for America, Regional Airline Association, and International Air Transport Association, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4288>.

<sup>87</sup> Comment of the Association of Flight Attendants, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4207>.

in the cargo hold for free, or to transport the passenger on a later flight with more room if available. The Department seeks comment on these proposals.

## **6. NUMBER OF SERVICE ANIMALS PER PASSENGER**

### Current Requirements

Under the Department's current service animal regulation, it is not clear how many service animals may accompany a single passenger on an aircraft. Section 382.117(a) states that an airline "must permit a service animal to accompany a passenger with a disability" (emphases added). While this language could be read as suggesting that an airline is only required to transport one service animal per passenger, section 382.117(i) references guidance concerning carriage of service animals, which does not have independent mandatory effect, but rather describes how the Department understands the requirements of section 382.117. That guidance states, "A single passenger legitimately may have two or more service animals." See 73 FR 27614, 27661 (May 13, 2008). In its Final Statement of Enforcement Priorities Regarding Service Animals, the Department's Enforcement Office stated that it would focus its enforcement efforts on ensuring that airlines are not restricting a single passenger from traveling with a total of three service animals if needed.<sup>88</sup> While the Department's disability regulation does not specify how many service animals may travel with a passenger with a disability, it does not allow airlines to deny transport to a service animal accompanying a passenger with a disability because of a limit on the total number of service animals that can be on a flight.<sup>89</sup>

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<sup>88</sup> Final Statement of Enforcement Priorities Regarding Service Animals, 84 FR 43480 (August 21, 2019).

<sup>89</sup> For example, if Ms. Smith needs to travel with a service dog, an airline cannot deny transport to that service dog because the airline believes that there are already too many service dogs on the aircraft. Section 382.117(a) requires airlines to permit a service animal to accompany a passenger with a disability. Section 382.17 prohibits airlines from limiting the number of passengers with a disability on a flight.

## The ANPRM

In the ANPRM, the Department sought comment on whether to limit the number of service animals that a single passenger with a disability may carry onboard a flight and how many service animals should be permitted to accompany a single passenger with a disability. DOT also sought comment on whether airlines should allow passengers to justify the need for more than a single animal, and what the parameters of such a justification should be.<sup>90</sup>

## Comments Received

Most disability advocates commented that airlines should be required to allow at least two service animals to travel with a single passenger if needed. Advocates reason that some individuals have multiple disabilities and that while some animals have been trained to perform multiple tasks, some individuals with disabilities may need animals that are focused on mitigating a specific disability for the mitigation to be effective. Airlines, however, commented that they should be permitted to limit the number of service animals traveling with a passenger to one service animal. Airlines argue that allowing one service animal per passenger helps support safety and would help to avoid disruptions in the cabin. Airlines also argue that given the space afforded to individual passengers on aircraft, transporting more than one service animal could be problematic.

## DOT Response

The Department proposes to limit the number of service animals traveling with a single passenger with a disability to no more than two service animals. The Department acknowledges comments from disability rights advocates that certain individuals with disabilities require more

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<sup>90</sup> Traveling by Air with Service Animals, Advance Notice of Proposed Rulemaking, 83 FR 23832, 23840.

than one service animal, and while a single service animal may be trained to perform more than one mitigating function, more than one service animal may be needed to assist an individual on the aircraft or at the passenger's destination if the passenger uses the animals for lengthy periods of time (e.g., if one animal may need a break from work). Furthermore, disability advocate commenters noted that while a service animal may be trained to assist an individual with multiple disabilities, a passenger's animal may need to focus on mitigating one disability at a time for the mitigation to be effective so multiple animals may be needed at once. For those passengers who seek accommodation for two service animals, the airline would be permitted to require the passenger to complete two separate attestation forms, one for each animal, to verify that each qualifies for appropriate accommodation as a service animal to accompany the passenger on the flight.

In response to the carriers' argument regarding the lack of space in the cabin to accommodate a passenger traveling with two service animals, the Department notes that this NPRM does not propose that an airline be required to provide an individual with two service animals with additional space but would require the airline to allow the individual to use all his or her allotted space without encroaching into the space of another passenger. Airlines may refuse transportation to the animals in the cabin if the animals would not safely fit in the passenger's lap or foot space. The Department seeks comment on its proposal to limit the number of service animals traveling with a single individual with a disability to two animals, specifically including whether there are compelling safety-related reasons to limit each qualifying passenger to no more than one service animal.

## 7. SERVICE ANIMAL RESTRAINTS

### Current Requirements

The Department's current rule does not clearly specify whether or how airlines may restrict the movement of service animals in the cabin. However, the Department has issued guidance that service animal users are expected under the Department's current ACAA service animal rule to maintain control of their animals both in the airport and on aircraft. In the Final Statement of Enforcement Priorities Regarding Service Animals, the Department's Enforcement Office also noted that, in general, tethering and similar means of controlling an animal that are permitted in the ADA context would appear to be reasonable in the context of controlling service animals in the aircraft cabin.

### The ANPRM

Because of the potential safety risks associated with transporting unrestrained animals, including both the risks to the well-being of other passengers and crew as well as the risks of interfering with the safe and efficient operation of the aircraft, DOT sought comment on whether its service animal rule should explicitly state that service animals must be harnessed, leashed, tethered, or otherwise under the control of its handler or whether it is reasonable for airlines to make this requirement a condition of providing air transportation.<sup>91</sup> DOT also sought comment on whether a leash, tether, harness or other restraint device would increase safety on aircraft.<sup>92</sup> Finally, the Department sought general feedback on the advantages and disadvantages of adopting such a requirement.<sup>93</sup>

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<sup>91</sup> Traveling by Air with Service Animals, Advance Notice of Proposed Rulemaking, 83 FR 23832, 23840.

<sup>92</sup> Id.

<sup>93</sup> Id.

## Comments Received

Airlines, disability advocates, organizations, and individual commenters were unified in their support that the Department adopt a requirement that requires service animals to be harnessed, leashed, tethered, or otherwise under the control of the service animal user. A4A, RAA, and IATA, commented that if harnessing, leashing, and tethering is appropriate for trained animals under the ADA, a similar requirement is appropriate for service animals on aircraft.<sup>94</sup> A number of commenters also recognized that a control requirement is especially crucial in the airport/aircraft environment given the high-stakes nature of air transportation.

Some airlines recommended muzzling as a form of control, although some advocates discouraged muzzling as an acceptable restraint measure because it may limit a service animal's ability to breathe properly. But even those advocacy groups that opposed muzzling supported a requirement that service animals be under the control of an individual with a disability at all times. Some disability advocates also recommend that DOT, similar to DOJ, should permit service animal handlers to exercise voice command over service animals as a means of control if a service animal needs to be free from a restraint device to mitigate a passenger's disability.

## DOT Response

The Department proposes to allow airlines to require service animals to be harnessed, leashed, or tethered unless the device interferes with the service animal's work or the passenger's disability prevents use of these devices. In that case, the carrier must permit the passenger to use voice, signal, or other effective means to maintain control of the service animal. This proposal is

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<sup>94</sup> Comment of Airlines for America, Regional Airline Association, and International Air Transport Association, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4288>.

similar to the requirement in DOJ’s rule implementing the ADA, which requires service animals to be harnessed, leashed or tethered while in public places unless the device interferes with the animal’s work.<sup>95</sup>

While the Department always anticipated that a service animal would be under the constant control of its handler during air transportation, the Department was persuaded to propose that the rule include a provision on service animal restraints given the increased concern of animal misbehavior on aircraft. Specifically, the Department is proposing to allow airlines to determine that an animal is not a service animal if it is not under the control of its handler. The Department’s proposal to allow airlines to determine that an animal is not a service animal if it is not under the control of its handler differs from DOJ’s approach. DOJ’s regulations do not allow covered entities to determine that such animal is “not a service animal.” DOJ’s ADA regulations do, however, allow covered entities to exclude a service animal if the animal is out of control and the animal’s handler does not take effective action to control it.<sup>96</sup>

In addition, the DOT Air Transportation Service Animal Behavior and Attestation Form, which airlines may require of passengers with disabilities seeking to travel with a service animal on aircraft, includes a statement that the passenger understands that the animal must be harnessed, leashed, or tethered, unless the passenger is unable because of a disability to use a harness, leash or other tether, or the use of a harness, leash, or other tether would interfere with

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<sup>95</sup> See 28 CFR 35.136(d); 28 CFR 36.302(c)(4):

Animal under handler's control. A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

<sup>96</sup> See 28 CFR 35.136(b)(1); 28 CFR 36.302(c)(2)(i).

the service animal's safe, effective performance of work or tasks. In such cases, the animal must otherwise be under the handler's control through voice, signals, or other effective means.

The Department proposes to define a service animal handler as a qualified individual with a disability who receives assistance from a service animal(s) that does work or performs tasks that are directly related to the individual's disability, or a safety assistant, as described in section 382.29(b),<sup>97</sup> who accompanies an individual with a disability traveling with a service animal(s). The service animal handler is responsible for keeping the service animal under control at all times, and caring for and supervising the service animal, which includes toileting and feeding. The DOT proposed definition of a service animal handler differs from DOJ's technical assistance, which states that a service animal handler can be either an individual with a disability or a third party who accompanies the individual with a disability.<sup>98</sup> The Department proposes to limit service animal handlers to individuals with disabilities and their safety

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<sup>97</sup> See 14 CFR 382.29(b),

(b) You may require a passenger with a disability in one of the following categories to travel with a safety assistant as a condition of being provided air transportation, if you determine that a safety assistant is essential for safety:

(1) A passenger traveling in a stretcher or incubator. The safety assistant for such a person must be capable of attending to the passenger's in-flight medical needs;

(2) A passenger who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from carrier personnel, including the safety briefing required by [14 CFR 121.571\(a\)\(3\)](#) and (a)(4) or [14 CFR 135.117\(b\)](#) or the safety regulations of a foreign carrier's government, as applicable;

(3) A passenger with a mobility impairment so severe that the person is unable to physically assist in his or her own evacuation of the aircraft;

(4) A passenger who has both severe hearing and severe vision impairments, if the passenger cannot establish some means of communication with carrier personnel that is adequate both to permit transmission of the safety briefing required by 14 CFR 121.57(a)(3) and (a)(4), 14 CFR 135,117(b) or the safety regulations of a foreign carrier's government, as applicable, and to enable the passenger to assist in his or her own evacuation of the aircraft in the event of an emergency. You may require a passenger with severe hearing and vision impairment who wishes to travel without a safety assistant to notify you at least 48 hours in advance to provide this explanation. If the passenger fails to meet this notice requirement, however, you must still accommodate him or her to the extent practicable.

<sup>98</sup> See Frequently Asked Questions about Service Animals and the ADA, Questions 27, available at [https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html), (July 20, 2015), "The ADA requires that service animals be under the control of the handler at all times. In most instances, the handler will be the individual with a disability or a third party who accompanies the individual with a disability." [https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html)

assistants, which are required to travel with those individuals with a disability who are unable to assist in their own evacuation from the aircraft, in order to make clear that service animal trainers traveling with trained service animals not serving as a safety assistant for a passenger with a disability, and other passengers traveling with an individual with a disability on aircraft, would not be considered service animal handlers under the ACAA rules. The Department recognizes that there may be occasions where an individual with a disability who does not require a safety assistant must rely on a third party to control their service animal during air travel, e.g., a small child who uses a service animal or a passenger with a disability capable of assisting with their own evacuation, but incapable of controlling or caring for their service animal. The Department seeks comment generally on its decision to define the term “service animal handler” and seeks comments on its proposed definition. The Department also seeks comment on what impact, if any, its exclusion of third parties as service animal handlers might have on individuals with disabilities traveling on aircraft with a service animal.

The Department seeks comment on its proposal to allow airlines to require that service animals be under the service animal user’s constant control, via restraint devices or, if the restraint device interferes with the animal’s work or the handler is unable because of a disability to use the restraint device, by voice command, signals, or other effective means. The Department also seeks comment on whether in-cabin pet carriers that are consistent with applicable FAA regulations should be included in the rule as an optional service-animal restraint device if the final rule recognizes emotional support animals.

## 8. SERVICE ANIMAL DOCUMENTATION

### Current Requirements

While the Department's current rule sets forth the type of medical documentation that airlines may request from emotional support and psychiatric service animal users to reduce likelihood of abuse by passengers wishing to travel with their pets, the regulation does not explicitly permit or prohibit the use of additional documentation related to a service animal's vaccination, training, or behavior. Moreover, while Part 382 permits airlines to determine, in advance of flight, whether any service animal poses a direct threat, the rule does not clearly indicate how airlines must make that assessment—for example, behavioral assessments or information from a service animal user's veterinarian.

### The ANPRM

Airlines have asserted that the risk to passenger safety is increasing. In the ANPRM, the Department sought data on the number of service animal-related incidents of misbehavior on aircraft and what amount of increase in animal misbehavior was sufficient to warrant a requirement for animal health records and behavior forms.<sup>99</sup> The Department also sought comment on whether it should amend its service animal regulation to allow airlines to require that service animal users attest that their animal can behave properly in a public setting, whether airlines should be permitted to require the attestation in advance, the impacts that a behavior attestation requirement would have on individuals with disabilities, and alternatives to a behavioral attestation that would allow airlines to assess an animal's behavior.<sup>100</sup>

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<sup>99</sup> Traveling by Air with Service Animals, Advance Notice of Proposed Rulemaking, 83 FR 23832, 23840.

<sup>100</sup> Id.

The Department was interested in knowing whether a behavior attestation would reduce the safety risk for passengers, crewmember, and other service animals on aircraft. Furthermore, recognizing that DOJ's ADA regulation prohibits covered entities from requiring service animal users to provide documentation, the Department sought comment on whether DOT should have a different standard from the ADA given the unique nature of air transportation.<sup>101</sup>

With respect to animal health records, the Department sought comment on what burdens, if any, would exist should the Department allow airlines to require individuals with disabilities to submit veterinary forms and related animal health documentation.<sup>102</sup> The Department also sought comment on whether an airline should be permitted to require animal health forms as a condition of travel, or whether the airline should be required to conduct an individualized assessment of the animal's behavior based solely on its observations to assess whether the animal poses a direct threat to humans, before requiring these forms.<sup>103</sup> Finally, the Department sought comment on whether airlines should be able to require passengers to obtain signed statements from veterinarians about an animal's behavior.

### Comments Received

#### **Behavior/Training Attestations**

The majority of public commenters and disability advocacy organizations that commented on this issue oppose the use of behavior/training attestations as a measure of ensuring that a service animal has been trained to, or will, behave appropriately in public and on the aircraft. These groups argue that attestation documents are ineffective and do not provide realistic assurances that an animal will behave appropriately as passengers can easily lie that

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<sup>101</sup> Id.

<sup>102</sup> Id. at 23841.

<sup>103</sup> Id.

their animal has been trained to behave properly in public. Others who oppose this form argue that filling out behavior/training attestations is burdensome as each airline has its own unique form, and it is difficult to follow each airline’s individual policy. Furthermore, some groups note that some airline websites make it difficult to submit these forms to the airline prior to travel. These groups also oppose behavior/training attestations on the basis that these practices are inconsistent with the ADA and that service animal users do not have to provide attestations to travel by train or other modes of transportation.

Some disability advocates are in favor of behavior/training attestations, but only for emotional support animals arguing that emotional support animals, which are not trained to do work or perform a task, have likely received less, if any, public-access training. Further, a few disability advocates oppose the behavior/training attestations that some airlines currently have in place, but they support a “decision tree” approach, which is a sequence of questions that service animal users would be prompted to complete as a condition of travel. As explained in a comment filed by PSDP, the decision-tree approach is designed to confirm that service animals have been trained to behave properly on aircraft and to ensure that users are educated on the requirements for traveling with service animals on aircraft.<sup>104</sup> Finally, Autism Speaks is in favor of behavior/training attestations for all service animal users but urges the Department to develop unified attestation requirements to decrease confusion for service animal users.<sup>105</sup>

Some airlines broadly support behavior and training attestations for service animal users, or support attestations for only emotional support and psychiatric service animal users. These airlines argue that behavior/training attestations eliminate the need for airline personnel to

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<sup>104</sup> Comment of Psychiatric Service Dog Partners, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-3117>.

<sup>105</sup> Comment of Autism Speaks, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4268>.

observe and evaluate a service animal's behavior in the airport, a task that airline personnel are often not qualified to perform and that is burdensome given their primary responsibilities. Furthermore, these airlines argue that the Department's service animal guidance currently requires that service animals be trained to behave appropriately in public, and behavior/training attestations are a means of ensuring that service animal users are aware of this requirement and aware that if their animal is not trained, the animal may be removed from the aircraft or treated like a pet. Some airlines, however, only support behavior/training attestations in the event that the Department continues to recognize emotional support animals.

### **Animal Health Records**

The majority of disability advocates who commented oppose a requirement that allows airlines to require service animal users to produce animal health information as a condition of transportation. These groups argue that requiring service animal users to produce animal health information, which must be completed by a third party, is costly and would pose unnecessary burdens on individuals with disabilities, especially on those service animal users who are not currently required to produce any documentation when traveling on aircraft. Furthermore, these groups argue that animal health information is not helpful in determining if an animal poses a direct threat. Finally, these groups argue that requiring animal health information is excessive, as airlines have provided no evidence that passengers on aircraft have contracted rabies or other diseases from service animals or that service animal users have refused to provide animal health information in cases where a service animal has bitten or injured someone on an aircraft.

Some disability rights advocates are also concerned that if service animal users are required to provide airlines with animal health records, users will be unable to check-in for travel online or travel seamlessly through the airport to their gate. While there are a few advocacy

organizations that support an animal health form requirement for service animal users, this support is limited to information regarding the animal's rabies vaccinations.

Conversely, many airlines, an animal health organization, a flight attendant association and most individual commenters who commented on this issue support a requirement that would allow airlines to require animal health information from service animal users. Similar to the rationale used by airlines in support of behavior/training attestations, airlines argue that animal health information is a reasonable means to determine if an animal presents a direct threat to the health and safety of individuals on aircraft. Airlines also argue that in the event a service animal bites an individual on an aircraft, proof of up-to-date vaccinations will prevent the need for the injured passenger to undergo unnecessary and painful treatments for certain diseases, e.g., rabies, although according to the Center for Disease Control and Prevention (CDC), any dog that bites an individual should be assessed and monitored by a local or state health department over a 10-day period irrespective of whether there is proof that the animal has been vaccinated. Airlines also argue that providing animal health information is not burdensome as most, if not all, States and localities already require that animals be vaccinated.

In a joint comment filed by Avianca, Avianca Costa Rica, Aviateca, TACA, and TACA Peru, these carriers note that many “foreign carriers, currently have a general requirement for veterinary certification as a condition of transport.” These carriers further state that “[m]any foreign countries require veterinary certification for all animals entering the country, including all service animals” and that “DOT should clarify in any rulemaking that carriers may require veterinary certification for all service animals as a condition for entry into all countries that require such certification.”<sup>106</sup>

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<sup>106</sup> Comment of Avianca Carriers, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4289>.

One animal health organization supports allowing airlines to require proof of rabies vaccinations arguing that these vaccinations are necessary to protect both animal and public health.<sup>107</sup> Furthermore, certain airline organizations support an animal health record allowance if the Department decides to recognize emotional support animals. These organizations reason that emotional support animal users should provide information on their animal's health as a matter of public safety and public health as these untrained animals are in close proximity to passengers, airline crewmember, other staff, and, sometimes, other animals. While the American Association of Airport Executives (AAAE) is in favor of allowing airlines to verify that an animal has been vaccinated, this organization believes that if the Department chose not to recognize emotional support animals, allowing airlines to require proof may not be necessary as the risk to passengers would automatically decrease.<sup>108</sup>

#### DOT Response

After carefully reviewing the comments received, the Department is proposing to allow airlines to require individuals traveling with a service animal to provide to the airlines standardized documentation of the service animal's behavior, training, and health. Also, if the service animal would be on a flight segment that is longer than 8 hours, the Department is proposing to allow a standard form attesting that the animal will not need to relieve itself or can relieve itself in a way that does not create a health or sanitation risk. The Department proposes that these forms be the only forms of documentation that an airline can require of a passenger traveling with a service animal. In other words, under this proposed rule, an airline would not be required to ask a passenger traveling with a service animal for any documentation but, if they

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<sup>107</sup> Comment of American Veterinarian Medical Association, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4276>.

<sup>108</sup> Comment of the American Association of Airport Executives, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4138>.

choose to do so, the airline must use the forms established by the Department. The Department seeks comment on whether airlines should be allowed to create their own forms or if uniformity would be more helpful. Are there other existing forms that could be utilized such that the establishment of departmental forms would be unnecessarily duplicative?

First, the Department proposes to allow airlines to require passengers seeking to travel with service animals to submit to the airline, as a condition of accepting the animal as a service animal for travel, a DOT Air Transportation Service Animal Behavior and Training Attestation Form, which is a form to be completed by the passenger. This form would provide assurance that the service animal traveling on the aircraft has been individually trained to do work or perform tasks for the benefit of the passenger with a disability and has been trained to behave properly in public, and that the user is aware that the service animal must be under his or her control at all times. The Department agrees with comments from airlines that airline personnel are often unable to observe service animals sufficiently prior to a flight in the fast-paced airport environment to determine whether the service animal would be a direct threat to the health or safety of others. Further, the Department believes that the form would serve as a deterrent for individuals who might otherwise seek to claim falsely that their pets are service animals, as those individuals may be less likely to falsify a Federal form. The Department seeks comment on its proposal to allow airlines to require all service animal users to provide this form to airlines and on whether this form would be effective in ensuring that service animals have been properly trained and in deterring individuals from misrepresenting their pets as service animals on aircraft.

The Department understands that this form would impose a burden on those individuals traveling with traditional service animals who are not currently required to provide documentation. The Department seeks comment from the public on ways to reduce the burden

that the Department's behavior and training form would have on passengers with disabilities. Should airlines be allowed to require the form each time a service animal user travels, even for round-trip flights? What medium should airlines use, e.g., hardcopy, electronic, email, to provide and collect this form from passengers with disabilities? Also, are there privacy concerns that airlines should consider? Furthermore, the Department seeks comment on whether the questions in this form would help an airline determine whether an animal has been adequately and properly trained, and whether the form adequately educates passengers on how a service animal is expected to behave, the consequences of a misbehaving service animal, and the seriousness of falsifying the DOT form. The Department seeks comment on whether it should allow airlines to require only emotional support animal users to complete such an attestation form, in the event the Department were to continue to require airlines to transport emotional support animals. Finally, the Department seeks comment on the general content and layout of the form, which is provided below.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The OMB control number for this information collection is \_\_\_\_\_.

**Warning:** It is a Federal crime to make materially false, fictitious, or fraudulent statements, entries or representations knowingly and willfully on this form to secure disability accommodations provided under regulations of the United States Department of Transportation (18 U.S.C. § 1001).

## United States Department of Transportation Air Transportation Service Animal Behavior and Training Attestation Form

Service Animal Handler's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

Animal's Name: \_\_\_\_\_ Has your animal flown before? Circle YES or NO

Check the following boxes to certify:

I certify that my animal has been individually trained to do work or perform tasks to assist me with my disability and has been trained to behave well in a public setting without aggression toward humans or other animals.\*\*

I understand that my animal must be harnessed, leashed, or tethered, unless I am unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks. In such cases, I understand that my animal must otherwise be under my control at all times through voice, signals or other effective means.

I understand that if my service animal engages in disruptive behavior that shows that it has not been successfully trained to behave properly in a public setting, airlines are permitted to treat my animal as a pet.

I understand that airlines may charge passengers with disabilities traveling with service animals for the cost to repair any damage caused by a passenger's service animal so long as the airline charges passengers without disabilities for the same kind of damage.

I understand that I am committing fraud by knowingly making false statements to secure disability accommodations provided under regulations of the U.S. Department of Transportation.

Signature of the Animal Handler

Date

\_\_\_\_\_  
\_\_\_\_\_  
\*\* A service animal that is trained to behave in a public setting will remain under the control of its handler. It does not run freely around an aircraft or an airport gate area, bark or growl repeatedly at other persons on the aircraft, bite, jump on, or cause injury to people, or urinate or defecate in the cabin or gate area. An animal that engages in such disruptive behavior shows that it has not been successfully trained to behave properly in a public setting, and airlines are not required to treat it as a service animal, even if the animal performs an assistive function for a passenger with a disability.

Second, the Department proposes to allow airlines to require passengers to submit to the airline a DOT Service Animal Health Form, which is a form to be completed by the passenger's veterinarian.<sup>109</sup> In completing the form, the veterinarian would describe the animal, indicate whether the service animal's rabies vaccinations are up to date and whether the animal has any known diseases or infestations, and state whether the veterinarian is aware of any aggressive behavior by the animal. The Department proposes that the form be valid for 1 year from the date of issuance. The Department seeks comment on whether 1 year is too long or too short for the vaccination form to be valid, and the reasons for this belief.

The Department modeled its DOT Service Animal Health Form after a number of State certificate of veterinary inspection (CVI) forms and the United States Department of Agriculture's (USDA) APHIS 7001 form.<sup>110</sup> The Department's decision to use the content of State CVI forms and the USDA APHIS 7001 form was based on a recommendation from the American Veterinary Medical Association (AVMA). The AVMA, some airlines, and other commenters have requested that the Department require all service animals to produce proof of vaccinations because of the potential threat to health and public safety that might result from the transport of unvaccinated animals on aircraft.<sup>111</sup> The Department agrees that requiring proof of rabies vaccinations should be permitted to help ensure that the animal does not pose a direct threat to the health and safety of others.

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<sup>109</sup> We note that the CDC requires that all dogs imported into the United States, including service dogs, be vaccinated for rabies if coming from a high-risk rabies country. A current list of high risk rabies countries may be found at: <https://www.cdc.gov/importation/bringing-an-animal-into-the-united-states/rabies-vaccine.html>. See 42 CFR 71.51(e).

<sup>110</sup> <https://www.aphis.usda.gov/library/forms/pdf/APHIS7001.pdf>.

<sup>111</sup> Comment of American Veterinarian Medical Association, <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4276>.

Airlines have expressed concerns that their inability to verify, pre-incident, that an animal has received the proper vaccinations has caused individuals bitten by service animals to undergo painful and expensive rabies treatment. The Department, along with a number of U.S. airlines, attended a meeting at the AVMA's headquarters on October 29, 2018, to discuss the potential for the airlines to create a standard form document to use to verify service animal vaccinations. The Department used information learned at this meeting, such as what vaccinations should be required to ensure the health and safety of the traveling public, the duration for which the form should be valid, and whether animals should be inspected for pests, as guidance for the content of this form. The Department seeks comment from the public on its proposal to allow airlines to require that passengers provide this vaccination form as evidence that a service animal has received the rabies vaccine and that the animal has not exhibited aggressive behavior, known to the veterinarian. The Department seeks comment on its proposal to permit airlines, as a condition of travel, to require this form and whether airlines should be able to refuse transportation to a service animal based on the information contained in the form (e.g., the veterinarian discloses on the form that the animal has a history of aggressive behavior or has caused serious injury to a person or animal). The Department also seeks comment on whether the form would be effective in ensuring that the traveling public would not contract rabies from service animals should they be bitten.<sup>112</sup> Furthermore, the Department seeks comment on the burden on individuals traveling with service animals of allowing airlines to require the Department's service animal health form as it is the Department's understanding that USDA's APHIS 7001 form already includes the type of information contained on the proposed DOT form. Could passengers traveling with a service animals have their veterinarians complete the Department's Service Animal Air Transportation

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<sup>112</sup> See the Rabies Compendium available at: [www.nspvh.org/documents/NASPHVrabiescompendium](http://www.nspvh.org/documents/NASPHVrabiescompendium).

Health Form at the animal's annual physical? Should the requirement for an animal health form be limited to emotional support animal users, in the event the Department were to continue to require airlines to transport emotional support animals?

The Department's air transportation animal health form requires veterinarians to provide a physical description of the service animal. Should the Department consider allowing airlines to require passengers traveling with a service animals to provide photo identification of the service animal as an additional measure to verify a service animal's identity? Finally, the Department seeks comment on the general content and layout of the form, which is provided below, and whether airlines that require the form should accept the form in both a paper and electronic format.

## United States Department of Transportation Air Transportation Service Animal Health Form

**1. HANDLER'S NAME, ADDRESS, TELEPHONE NUMBER & EMAIL**



It is a Federal crime to make materially false, fictitious, or fraudulent statements, entries or representations knowingly and willfully on this form to secure disability accommodations provided under regulations of the United States Department of Transportation (18 U.S.C. § 1001).

**2. ANIMAL IDENTIFICATION INFORMATION**

NAME AND/OR NUMBER OR OTHER IDENTIFICATION	BREED-COMMON OR SCIENTIFIC NAME	AGE OF DOG	SEX (M, F, MN, FS)	COLOR, DISTINCTIVE MARKS OR MICROCHIP	RABIES VACCINATION TYPE (e.g. live or inactive), BRAND NAME, SERIAL NUMBER, AND MANUFACTURER, DATE OF EXPIRATION	VACCINATION DATE	VACCINATION EXPIRATION DATE (date the vaccine expires in the dog)
(1)							
(2)							

**3. REMARKS OR ADDITIONAL CERTIFICATION COMMENTS**

**4. VETERINARY CERTIFICATION:**

- To my knowledge this animal described above has not exhibited aggressive behavior or caused serious injury to other persons or animals (if you are unable to check this box, please provide an explanation in section 3 of this document).
- I certify that I have inspected the animal (s) described above on this date and the animal appears to be free of any pests, e.g. fleas and ticks, and is/are not showing signs of infectious, contagious and/or communicable diseases, which would endanger people or other animals or would endanger public health.
- To my knowledge, the animal (s) described above has/have not been exposed to rabies.

NAME, ADDRESS, AND TELEPHONE NUMBER OF ISSUING VETERINARIAN

LICENSE NUMBER AND STATE

SIGNATURE OF ANIMAL HANDLER

DATE

SIGNATURE OF VETERINARIAN

DATE

Third, while airlines are currently permitted to require individuals traveling with service animals on a flight segment that is longer than 8 hours to provide documentation that the animal will not need to relieve itself or can relieve itself in a way that does not create a health or sanitation risk, the Department proposes to amend this rule to allow airlines to require only a DOT Service Animal Relief Attestation Form be completed by the service animal user to attest that the animal will not create a health or sanitation risk on long flights.

The Department seeks comment on whether the DOT Service Animal Relief Attestation Form serves as adequate proof to verify that a passenger's animal will not need to relieve itself on flight segments of eight or more hours, or can relieve itself in a way that does not create a health or sanitation issue. The Department also seeks comment on the content and layout of the form, which is provided below.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The OMB control number for this information collection is \_\_\_\_\_.

It is a Federal crime to make materially false, fictitious, or fraudulent statements, entries or representations knowingly and willfully on this form to secure disability accommodations provided under regulations of the United States Department of Transportation (18 U.S.C. § 1001).



## United States Department of Transportation Service Animal Relief Attestation Form Flight Segments Eight Hours or Longer

Service Animal Handler's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Flight Departure Location: \_\_\_\_\_

Flight Destination Location: \_\_\_\_\_

Check the following boxes to certify:

- I certify that my animal will not need to relieve itself on the flight, or
- I certify that my animal can relieve itself in a way that does not create a health or sanitation issue on the flight.

Describe how the animal will refrain from relieving itself, or will relieve itself without posing a health or sanitation problem (e.g., the use of a dog diaper)

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- I understand that airlines may charge passengers with disabilities traveling with a service animals for the cost to repair any damage caused by a passenger's service animal so long as the airline charges passengers without disabilities for similar kinds of damage.

Signature of the Animal Handler

Date

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The Department also asks for comment on its proposal to prohibit airlines from requiring passengers to provide the proposed DOT health, behavior and training, and relief forms prior to the passenger's date of travel, although an airline would not be prohibited from requesting the forms so long as it was clear that passengers were not obligated to remit the forms to the airline in advance of their travel date.

At the beginning of 2018, several airlines started requiring individuals traveling with service animals to provide service animal health forms and attestations that a passenger's service animal had been trained to behave appropriately in public. In a Final Statement of Enforcement Priorities, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) indicated that it did not intend to take action against an airline for asking users of any type of service animal to present documentation related to the service animal's vaccination, training, or behavior, so long as it is reasonable to believe that the documentation would assist the airline in making a determination as to whether an animal poses a direct threat to the health or safety of others. The Enforcement Office explained that the existing rule permits airlines to determine, in advance of flight, whether any service animal poses a direct threat, but the rule does not clearly indicate how airlines must make that assessment. While the Department recognized that airlines may have a valid basis for requesting certain health and behavior information from individuals traveling with service animals, commenters stated that it has become burdensome and confusing for individuals with disabilities to comply with these documentation requirements because many of the airlines require different information from passengers traveling with service animals and have adopted their own unique forms and data collection methods.

The Department is proposing to require standard departmental forms to establish a uniform process for collecting data about a service dog's health as well as behavior and training from passengers traveling with a service dog. The Department is also proposing to allow airlines to require passengers with a disability to complete a DOT Service Animal Relief Attestation Form Service Animal Relief Attestation Form for flight segments of 8 hours or longer. The Department seeks comment on whether using standardized U.S. Department of Transportation forms is the best way for airlines to collect data from passengers traveling with a service dog.

The Department recognizes that these forms go beyond what DOJ allows in its ADA service animal regulations, but the Department believes that air transportation, which involves transporting a large number of people in a very confined space thousands of feet above the ground, is unique in comparison to airports, libraries, and other locations covered by Title II or Title III of the ADA. For this reason, the Department believes that a proposal allowing airlines to require all service dog users to provide these forms to assist airlines in determining whether a service dog poses a direct threat to the health or safety of others is appropriate.

Under this NPRM, the Department would prohibit airlines from requiring individuals traveling with a service animals to provide the DOT-issued forms even a day in advance of the passenger's flight because advance notice may present significant challenges to passengers with disabilities wishing to make last minute travel plans that may be necessary for work or family emergencies. However, the Department is proposing to allow airlines to require users of a service animals to check-in at the airport one hour before the check-in time at the airport for the general public to process service animal documentation so long as the airline similarly requires advance check-in for passengers traveling with their pets in the cabin. This rulemaking would also permit airlines to require that the check-in take place at any designated airport location

including the terminal lobby. One concern is that service animal users would not be able to check-in electronically before arriving at the airport like other passengers and would be unable to avoid the inconvenience of long waits when checking in. To address this concern, the Department is proposing to require airlines to make an employee trained to handle disability-related matters available in-person at the airline's designated airport location to process service animal documentation promptly. The Department solicits comment on whether one hour before the general public check-in is sufficient time for airline personnel to process service animal documentation. The Department also seeks comment on its proposal to require airlines to try to accommodate passengers who fail to meet the one-hour check-in requirement so long as the airline can do so by making reasonable efforts without delaying the flight. Finally, the Department would like commenters to identify potential benefits that service animal users may forgo by not being permitted to check-in electronically, and steps that can be taken to ensure that these benefits are provided to them.

## **9. CODESHARE FLIGHTS**

### Current Requirements

Under the Department's current ACAA rule, U.S. carriers that participate in a code-sharing arrangement with a foreign carrier are responsible for ensuring that the foreign carrier complies with the service animal provisions of the rule with respect to passengers traveling under the U.S. carrier's code on the foreign carrier's aircraft on flights between two foreign points.<sup>113</sup> While the Department's current rule requires foreign carriers to transport only dogs, the Department could, based on the language in the current rule, hold a foreign carrier's U.S.

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<sup>113</sup> 14 CFR 382.7(c).

codeshare partner responsible for that foreign carrier's refusal to transport other service animal species when the passenger is traveling under a U.S. carrier's code.<sup>114</sup>

### The ANPRM

The Department sought comment in the ANPRM on whether DOT's service animal rule should explicitly state that a U.S. carrier would not be held responsible for its foreign codeshare partner's refusal to transport service animals other than dogs.<sup>115</sup>

### Comments Received

Few individual commenters and disability advocates commented on whether the Department should explicitly state in its service animal regulation that U.S. airlines should not be held responsible if a foreign airline only transports dogs as service animals, but one advocacy organization states that making this clarification in the rule would clear up ambiguity caused by the provision in DOT's rules implementing the ACAA, 14 CFR Part 382.

Airlines also agree that the Department's rule should explicitly state that U.S. carriers would not be held responsible if a foreign carrier only transports dogs as service animals. These carriers believe that the Enforcement Office's decision not to pursue action against U.S. carriers is reasonable and appropriate as it would be fundamentally unfair to hold a U.S. carrier accountable for the flight operations and procedures of its foreign codeshare partners, over which it has no control. Furthermore, these carriers argue that an express statement of the Department's enforcement position in the rule would alleviate any confusion that may arise from otherwise ambiguous provisions in Part 382. One foreign airline also commented that while the Department has chosen not to take legal action against U.S. carriers as a matter of enforcement

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<sup>114</sup> The Department's Aviation Enforcement Office does not enforce section 382.7(c) in this way.

<sup>115</sup> Traveling by Air with Service Animals, Advance Notice of Proposed Rulemaking, 83 FR 23832, 23842.

discretion, it would be better for the Department specifically to state its position in a regulation so that carriers have concrete legal certainty of the Department's position.

### DOT Response

The Department's proposed service animal regulation would recognize only dogs as service animals. If the rule were finalized as proposed, the species requirements for both U.S. carriers and foreign carriers would be the same, thereby eliminating situations whereby a U.S. carrier could be held responsible for a foreign carrier's failure to transport service animals other than dogs but a foreign carrier could not. However, if the DOT final rule differs from the proposal and recognizes other species of service animals and/or emotional support animals, the Department would consider including language in the rule to make it clear that U.S. airlines are not responsible for their foreign carrier codeshare partners' failure to transport animals other than dogs. The Department seeks comment on this proposed action.

### **Regulatory Analyses and Notices**

- A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

This proposed rulemaking has been determined to be significant under Executive Order 12866 (Regulatory Planning and Review) and the Department of Transportation's Regulatory Policies and Procedures because of its considerable interest to the disability community and the aviation industry. It does not, however, meet the criteria under Executive Order 12866 for an economically significant rule. It has been reviewed by the Office of Management and Budget under that Order.

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") require agencies to regulate in the "most cost-effective

manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” DOT proposes to define a service animal as a dog that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability. In addition, DOT proposes to treat psychiatric service animals like other service animals and to allow airlines to require passengers traveling with a service animal to attest to the animal’s good behavior and good health. DOT also proposes that airlines no longer be required to recognize emotional support animals as service animals.

The primary economic impact of this proposed rulemaking is that it eliminates a market inefficiency. The current policy amounts to a price restriction which requires that airlines forgo a potential revenue source, as airlines are currently prohibited from charging a pet fee for transporting emotional support animals. A4A estimates that airline carriers transported 751,000 emotional support animals in 2017, a 56.1 percent increase from 2016. This number nearly equals the 784,000 pets transported in 2017. Airlines charge as much as \$175 to transport pets on a one-way trip, giving passengers an incentive to claim their pets as emotional support animals. The proposed rulemaking will eliminate a pricing restriction currently imposed by government on airlines by allowing them to set a price on the transport of emotional support animals other than zero.

Removing the current requirement that carriers must transport emotional support animals free of charge would allow market forces (i.e., carriers as producers and passengers as consumers) to set the price for air transportation of emotional support animals. This provision would allow carriers to charge passengers traveling with emotional support animals (dogs and other accepted species on board of an aircraft) with pet transportation fees. This represents a

transfer of surplus from passengers to airlines, and does not have implications for the net benefits calculation.

The proposed rulemaking would also allow airlines to require passengers traveling with service animals to produce three forms of documentation developed by DOT. This cost element places a potential burden on passengers traveling with service animals who would need to submit three DOT forms to airlines. We estimate that, by Paperwork Reduction Act (PRA) accounting standards, the forms create 144,000 burden hours and \$3.0 million in costs per year. In some cases, however, carriers already ask passengers to complete equivalent nongovernmental forms. Thus, the PRA accounting overestimates the net burden created by this rulemaking.

Furthermore, Executive Orders 12866 and 13563 require agencies to provide a meaningful opportunity for public participation. Accordingly, we have asked commenters to provide feedback on the proposed change to the regulation.

#### B. 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. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (i.e., aircraft with up to 60 seats/18,000-pound payload capacity).<sup>116</sup> Relative to typical airlines' operating costs and revenues, the impact is expected to be nonsignificant. Accordingly, the Department does not believe that the NPRM would have a significant impact

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<sup>116</sup> See 14 CFR 399.73.

on a substantial number of small entities. However, we invite comment on the potential impact of this rulemaking on small entities.

C. Executive Order 13132 (Federalism)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This NPRM does not include any provision 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. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13084

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

E. Paperwork Reduction Act

This NPRM proposes three new collections of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 49 U.S.C. 3501 et seq.). Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the Federal Register providing notice of the proposed information collection and a

60-day comment period, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information.

The proposed rulemaking would allow airlines to require passengers traveling with service animals to provide carriers with the following three forms of documentation developed by the Department:

1. **DOT Air Transportation Service Animal Health Form (“Health Form”):**

This form would be completed by a veterinarian who would certify that the service dog has obtained the required vaccinations, is not showing signs of infectious or communicable diseases, and, to the veterinarian’s knowledge, has not exhibited aggressive behavior or caused injury to another.

2. **DOT Air Transportation Service Animal Behavior and Training Attestation Form (“Behavior Attestation Form”):**

This form would be completed by the passenger with a service animal. This passenger would certify his/her service animal has been trained to behave properly in public, is aware of the handler’s responsibility to maintain the animal under control at all times, and understands the consequences of service animal misbehavior.

3. **DOT Service Animal Relief Attestation Form (“Relief Attestation Form”):**

This form would be completed by passengers traveling with a service animal on flight segments scheduled to take 8 hours or more. It would require the passenger to affirm that the service animal will not need to relieve itself on the flight or that the service animal can relieve itself in a way that does not create a health or sanitation issue.

For each of these information collections, the title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

**1. Requirement to prepare and submit to airlines the DOT Air Transportation Service Animal Health Form.**

**Respondents:** Passengers with disabilities traveling on aircraft with service animals.

**Number of Respondents:** Using A4A’s estimate of 281,000<sup>117</sup> service animals transported in 2017, and assuming one passenger with a disability travels with a service animal, 281,000 respondents would have to provide a health form signed by a veterinarian and the passenger.

**Estimated Annual Burden on Respondents:** We estimate that completing the form would require 15 minutes (.25 hours) per response, per year, including the time it takes to retrieve an electronic or paper version of the form from the carrier’s or DOT’s website, reviewing the instructions, and completing the questions. Passengers and veterinary assistants would spend a total of 70,250 hours (0.25 hours x 281,000 passengers) to retrieve an accessible version of the form and provide it to the veterinarian for completion. To calculate the hourly value of time spent on the forms, we used median wage data from the Bureau of Labor Statistics.<sup>118</sup> For the health form, which veterinary assistants perform on the job, we assume a fully loaded median wage rate of \$26.48/hour (\$13.24/hour × 2). A “fully loaded” wage includes benefits and indirect costs.

**2. Requirement to prepare and submit to airlines the DOT Air Transportation Service Animal Behavior and Attestation Form.**

**Respondents:** Passengers with disabilities traveling on aircraft with service animals.

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<sup>117</sup> A4A used data from five U.S. airlines to extrapolate the number of all service animals transported on U.S. airlines.

<sup>118</sup> Bureau of Labor Statistics (2019). “May 2018 National Occupational Employment and Wage Estimates: United States.” [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm)

**Number of Respondents:** Using A4A’s estimate of 281,000 service animals transported in 2017, and assuming one passenger with a disability travels with a service animal, 281,000 respondents would have to provide a behavior form signed by the passenger.

**Estimated Annual Burden on Respondents:** We estimate that completing the form will require 15 minutes (.25 hours) per response, per year, including the time it takes to retrieve an electronic or paper version of the form from the carrier’s or DOT’s website, reviewing the instructions, and completing the questions. Passengers would spend a total of 70,250 hours (0.25 hours x 281,000 passengers) to retrieve an accessible version of the form and complete the form. To calculate the hourly value of time spent on the forms, we use median wage data from the Bureau of Labor Statistics.<sup>119</sup> For the behavior attestation, which passengers fill out on their own time without pay, we use a post-tax wage estimate of \$15.42 (\$18.58 median for all occupations minus a 17% percent estimated tax rate).

### **3. Requirement to prepare and submit to airlines the DOT Service Animal Relief Attestation Form.**

**Respondents:** Passengers with disabilities traveling on aircraft with service animals on flight segments scheduled to take 8 hours or more.

**Number of Respondents:** To estimate the paperwork costs associated with the new forms, we used A4A’s estimate of 281,000 service animals transported in 2017.<sup>120</sup> We estimate that 5 percent of those passengers (14,050) would be on flight segments scheduled to take 8 hours or more and would also have to complete the Relief Attestation Form.

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<sup>119</sup> Bureau of Labor Statistics (2019). “May 2018 National Occupational Employment and Wage Estimates: United States.” [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm)

<sup>120</sup> A4A used data from five U.S. airlines to extrapolate the number of all service animals transported on U.S. airlines.

**Estimated Annual Burden on Respondents:** We estimate that completing the form will require 15 minutes (.25 hours) per response, per year, including the time it takes to retrieve an electronic or paper version of the form from the carrier’s or DOT’s website, reviewing the instructions, and completing the questions. Passengers would spend a total of 3,512.5 hours (0.25 hours x 14,050 passengers) to retrieve an accessible version of the form and complete the form. To calculate the hourly value of time spent on the forms, we use median wage data from the Bureau of Labor Statistics.<sup>121</sup> For the relief form, which passengers fill out on their own time without pay, we use a post-tax wage estimate of \$15.42 (\$18.58 median for all occupations minus a 17% percent estimated tax rate).

Table 1: Paperwork cost estimates for DOT service animal forms

<b>Form</b>	<b>Passengers</b>	<b>Hours</b>	<b>Total Hours</b>	<b>Hourly Time Value</b>	<b>Subtotal</b>
Health	281,000	0.25	70,250	\$26.48	\$1,860,220
Behavior attestation	281,000	0.25	70,250	\$15.42	\$1,083,255
Relief	14,050	0.25	3,512.5	\$15.42	\$54,163
<b>Total</b>			<b>144,012.5</b>		<b>\$2,997,638</b>

The estimated burden and costs of these three new DOT forms are primarily for Paperwork Reduction Act (PRA) accounting purposes. In some cases, carriers already require passengers traveling with service animals to complete equivalent forms. Allegiant Air and Delta Air Lines ask passengers to carry health forms, for example, while American Airlines and Hawaiian Airlines ask passengers to fill out relief attestation forms. Thus, the cost estimates above are likely to overestimate any new burden created by this rulemaking.

<sup>121</sup> Bureau of Labor Statistics (2019). “May 2018 National Occupational Employment and Wage Estimates: United States.” [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm)

The Department invites interested persons to submit comments on any aspect of each of these three information collections, including the following: (1) The necessity and utility of the information collection, (2) the accuracy of the estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of collection without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized or included, or both, in the request for OMB approval of these information collections.

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.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) ([42 U.S.C. § 4321](#) *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts ([44 FR 56420](#), Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).<sup>122</sup> In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes “[a]ctions relating to consumer protection, including

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<sup>122</sup> See [40 CFR 1508.4](#).

regulations.” Because this rulemaking relates to ensuring both the nondiscriminatory access to air transportation for consumers with disabilities, as well as the safe transport of the traveling public, this rulemaking is a consumer protection rulemaking. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

## **List of Subjects**

### *14 CFR Part 382*

Air Carriers, Civil rights, Consumer protection, Individuals with Disabilities, Reporting and recordkeeping requirements

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 14 CFR part 382 to read as follows:

## **PART 382 – NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL**

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

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

2. Section 382.3 is amended by adding a definition of a service animal in alphabetical order:

### **§ 382.3 What do the terms in this rule mean?**

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Service animal means a dog that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Emotional support animals, comfort animals, companionship animals, and service animals in training are not service animals for the purposes of this Part.

A Service Animal Handler is a qualified individual with a disability who receives assistance from a service animal(s) that does work or performs tasks that are directly related to the individual's disability, or a safety assistant, as described in section 382.29(b), who accompanies an individual with a disability traveling with a service animal(s). The service animal handler is responsible for keeping the animal under control at all times, and caring for and supervising the service animal, which includes toileting and feeding.

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3. Section 382.28 is added to read as follows:

**§ 382.28 What assistance must carriers provide to passengers with a disability required to check-in before the check-in time for the general public?**

If you require a passenger with a disability to check-in in advance of the check-in time for the general public, you must make personnel or other employees trained to proficiency on the requirements of this Part available promptly to assist the passenger at a designated location in the airport.

4. Section 382.27 is amended to remove (c)(8) and remove (c)(9).

5. Subpart EE is added to read as follows:

**Subpart EE—Service Animals**

**§ 382.72 Must carriers allow a service animal to accompany a passenger with a disability?**

You must allow a service animal to accompany a passenger with a disability. You must not deny transportation to a service animal on the basis that its carriage may offend or annoy carrier personnel or persons traveling on the aircraft.

**§ 382.73 How many service animals must a carrier transport in the cabin of aircraft?**

You are not required to accept more than two service animals for a single passenger with a disability.

**§ 382.74 How do carriers determine if an animal is a service animal?**

(a) You may make two inquiries to determine whether an animal qualifies as a service animal.

You may ask if the animal is required to accompany the passenger because of a disability and what work or task the animal has been trained to perform. You must not ask about the nature or extent of a person's disability or ask that the service animal demonstrate its work or task.

(b) You may observe the behavior of an animal. A trained service animal will remain under the control of its handler. It does not run freely around an aircraft or an airport gate area, bark or growl repeatedly at other persons or other animals on the aircraft or in the airport gate area, bite, jump on, or cause injury to people, or urinate or defecate in the cabin or gate area. An animal that engages in such disruptive behavior demonstrates that it has not been successfully trained to behave properly in a public setting and carriers are not required to treat it as a service animal, even if the animal performs an assistive function for a passenger with a disability.

(c) You may look for physical indicators on the animal to determine if the animal is a service animal. A service animal must be under the control of its owner. A service animal must have a harness, leash, or other tether unless the owner is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

**§ 382.75 May a carrier require documentation from passengers with disabilities seeking to travel with a service animal?**

(a) If a passenger seeks to travel with a service animal, you may require the passenger with a disability to provide you, as a condition of permitting the service animal to travel in the cabin:

(1) A current (i.e., no older than one year from the date of the passenger's scheduled initial flight) completed copy of the U.S. Department of Transportation Air Transportation Service Animal Health Form; and

(2) A completed copy of the U.S. Department of Transportation Air Transportation Service Animal Behavior and Training Attestation Form.

(b) On a flight segment scheduled to take 8 hours or more, you may, as a condition of permitting a service animal to travel in the cabin, require the passenger with a disability traveling with the service animal to confirm that the animal will not need to relieve itself on the flight or that the animal can relieve itself in a way that does not create a health or sanitation issue on the flight by providing a DOT Service Animal Relief Attestation Form.

(c) You are not permitted to require documentation of passengers with disabilities traveling with service animals beyond completion of the forms identified in paragraphs (a) and (b) of this section.

(d) You must keep copies of the forms identified in paragraphs (a) and (b) at each airport you serve. As a foreign carrier, you must keep copies of the forms at each airport serving a flight you operate that begins or ends at a U.S. airport.

(e) If you have a website, you must make the blank forms identified in paragraphs (a) and (b) available to passengers on your website in an accessible format.

(f) You must mail copies of the blank forms identified in paragraphs (a) and (b) to passengers upon request.

**§ 382.76 May a carrier require a service animal user to check-in at the airport one hour before the check-in time at the airport for the general public as a condition of travel to allow time to process the service animal documentation?**

(a) You may require a passenger with a disability to check-in at the airport one hour before the check-in time at the airport for the general public as a condition of travel with a service animal to allow time to process the service animal documentation and observe the animal so long as:

(1) You designate a specific location at the airport where the passenger could be promptly checked-in, the passenger's service animal would be observed, and the passenger's service animal documentation would be promptly reviewed by personnel trained to proficiency on the service animal requirements of this Part; and

(2) You have a similar or more stringent check-in requirement for passengers traveling with their pets in the cabin.

(b) If a passenger does not meet the check-in requirements you establish consistent with this section, you must still provide the accommodation if you can do so by making reasonable efforts, without delaying the flight.

**§ 382.77 May carriers restrict the location and placement of service animals on aircraft?**

(a) You must permit a service animal to accompany a passenger with a disability on the passenger's lap or in the foot space immediately in front of the passenger's seat, unless this location and placement would be (1) inconsistent with safety requirements set by the FAA or the foreign carrier's government; or (2) encroaches into another passenger's space.

(b) If a service animal cannot be accommodated on the passenger's lap or in the foot space immediately in front of the passenger's seat without encroaching into another passenger's space,

you must offer the passenger the opportunity to move with the animal to another seat location within the same class of service, if available on the aircraft, where the animal can be accommodated. You are not required to reseat other passengers to accommodate a service animal except as required by Subpart F.

(c) If there are no alternatives available to enable the passenger to travel with the service animal in the cabin of the scheduled flight, you must offer the passenger the opportunity to transport the service animal in the cargo hold free of charge or travel on a later flight to the extent there is space available on a later flight and the transport is consistent with the safety requirements set by the FAA or a foreign carrier's government.

**§ 382.78 May carriers charge individuals with disabilities for the damage their service animal causes?**

While you cannot charge an individual with a disability for transporting service animals, or for providing other services that this rule requires, you may charge a passenger with a disability for damage caused by his or her service animal so long as you normally charge individuals without disabilities for similar kinds of damage.

**§ 382.79 Under what other circumstances may carriers refuse to provide transportation to a service animal traveling with a passenger with a disability?**

(a) You may deny transport to a service animal under the following circumstances:

(1) The animal poses a direct threat to the health or safety of others (see definition in § 382.3);

(2) The animal causes a significant disruption in the cabin or at an airport gate area, or its behavior on the aircraft or at an airport gate area indicates that it has not been trained to behave properly in public (e.g., running freely, barking or growling repeatedly at other

persons on the aircraft, biting or jumping on people, or urinating or defecating in the cabin or gate area); or

- (3) The animal's carriage would violate FAA safety requirements or applicable safety requirements of a U.S. territory or foreign government (e.g., the animal is too large or heavy to be accommodated in the cabin).

(b) In determining whether to deny transport to a service animal on the basis that the animal poses a direct threat under paragraph (a)(1), you must make an individualized assessment based on reasonable judgment that relies on the best available objective evidence to ascertain the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedure will mitigate the risk.

(c) In determining whether to deny transport to a service animal on the basis that the animal has misbehaved and/or has caused a significant disruption in the cabin under paragraph (a)(2), you must make an individualized assessment based on reasonable judgment that relies on the best available objective evidence to ascertain the probability that the misbehavior and/or disruption will continue to occur; and whether reasonable modifications of policies, practices, or procedure will mitigate the misbehavior and/or the disruption.

(d) In conducting the analysis required under paragraph (a)(1) and (a)(2), you must not deny transportation to the service animal if there are means available short of refusal that would mitigate the problem (e.g., muzzling a barking service dog or taking other steps to comply with animal health regulations needed to permit entry of the service animal into a domestic territory or a foreign country).

(e) If you refuse to provide transportation to a service animal based on any provision in this Part, you must provide the individual with a disability accompanied by the service animal a written statement of the reason for the refusal. This statement must include the specific basis for the carrier's opinion that the refusal meets the standards of paragraphs (a) through (c) of this section or is otherwise specifically permitted by this Part. You must provide this written statement to the individual with a disability accompanied by the service animal either at the airport, or within 10 calendar days of the refusal of transportation.

**§ 382.80 May carriers impose additional restrictions on the transport of service animals?**

Carriers are not permitted to establish additional restrictions on the transport of service animals outside of those specifically permitted by the provisions in this Part, unless required by applicable FAA, TSA, or other Federal requirements or a foreign carrier's government.

6. Section 382.117 is removed.

Issued this 22<sup>nd</sup> day of January, 2020, in Washington, D.C.

/Original signed/

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Elaine L. Chao,

Secretary.