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: Final rule.

SUMMARY: The U.S. Department of Transportation (Department or DOT) is issuing a final rule to amend the Department's Air Carrier Access Act (ACAA) regulation on the transport of service animals by air. This final rule is intended to ensure that our air transportation system is safe for the traveling public and accessible to individuals with disabilities.

DATES: This rule is effective January 11, 2021.

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SUPPLEMENTARY INFORMATION:

Executive Summary

This final rule defines a service animal as a dog, regardless of breed or type, 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.[1] It allows airlines to recognize emotional support animals as pets, rather than service animals, and permits airlines to limit the number of service animals that one passenger can bring onboard an aircraft to two service animals.

The final rule also allows airlines to require passengers with a disability traveling with a service animal to complete and submit to the airline a form, developed by DOT, attesting to the animal's training and good behavior, and certifying the animal's good health. For flight segments of eight hours or more, the rule allows airlines to require passengers to complete and submit a DOT form 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 final rule allows airlines to require a service animal user to provide these forms up to 48 hours in advance of the date of travel if the passenger's reservation was made prior to that time. As an alternative, airlines may require a passenger with a disability seeking to travel with a service animal in the cabin to provide the forms at the passenger's departure gate on the date of travel. However, the final rule prohibits airlines from requiring that a passenger physically check-in at the airport solely on the basis that the individual is traveling with a service animal, thus ensuring that service animal users are not prevented from enjoying the same convenience-related benefits provided to other passengers, such as online and curbside check-in. Service animal users may use the online check-in process available to the general public.

This final rule also better ensures the safety of passengers and crewmembers by allowing carriers to require that service animals are harnessed, leashed, or otherwise tethered onboard an aircraft and includes requirements that would address the safe transport of large service animals in the aircraft cabin. Further, it specifies the circumstances under which the user of a service animal may be charged for damage caused by the service animal and addresses the responsibilities of code-share partners.

1. Statutory Authority

The Air Carrier Access Act (ACAA), 49 U.S.C. 41705, prohibits discrimination in airline service based on 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, while prohibiting discrimination by U.S. and foreign air carriers in air transportation against qualified individuals with disabilities, does not specify how 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 current rulemaking has presented 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 given the realities and limitations of air service and the onboard environment of commercial airplanes. 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. Purpose of Regulatory Action

The purpose of this final rule is to revise the Department's Air Carrier Access Act (ACAA) regulation on traveling by air with service animals (formerly 14 CFR 382.117) in 14 CFR part 382.[2] This final rule is prompted by a number of compelling needs to revise these regulations: (1) The increasing number of service animal complaints received from, and on behalf of, passengers with disabilities by the Department and by airlines; (2) the

[1] The Department's ACAA definition of a service animal in this final rule 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. Although DOT has chosen to closely align its ACAA service animal definition with DOJ's service animal definition under the ADA, the substantive requirements in this final rule differ from DOJ's requirements for service animals under the ADA in various areas, *e.g.,* allowing airlines to require service animal documentation and prohibiting the use of voice control over a service animal.

[2] In 2008, the Department amended 14 CFR 382 by adding 14 CFR 382.117, a provision dedicated to the transport of service animals on aircraft. The Department's 2008 amendment codified prior DOT guidance, which allowed airlines to require emotional support animal and psychiatric service animal users to provide a letter from a licensed mental health professional of the passenger's need for the animal, and permitted airlines to require 48 hours' advance notice of a passenger's wish to travel with an emotional support or psychiatric service animal to give airlines sufficient time to assess the passenger's documentation. This final rule removes 14 CFR 382.117 and adds a new subpart, Subpart EE, on service animals.

inconsistent definitions among Federal agencies of what constitutes a ''service animal;'' (3) the disruptions caused by requests to transport unusual species of animals onboard aircraft, which has eroded the public trust in legitimate service animals; (4) the increasing frequency of incidents of travelers fraudulently representing their pets as service animals; and (5) the reported increase in the incidents of misbehavior by emotional support animals. In addition, DOT has received multiple requests for the Department to regulate in this area.[3] Each of these purposes underlying this rulemaking, as well as the requests for rulemaking, were discussed in depth in the Department's notice of proposed rulemaking (NPRM) issued on February 5, 2020.[4] Please refer to that discussion for additional background.

This final rule also responds to a congressional mandate. 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.[5] 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 the U.S. Department of Justice (DOJ) in its rule implementing the Americans with Disabilities Act (ADA).[6] In response, and as described in more detail below, the Department has chosen to revise its service animal definition under the ACAA to be more closely aligned with DOJ's service animal definition under the ADA, although the substantive requirements in DOT's ACAA service animals rule differ from DOJ's requirements for service animals under the ADA in a number of respects. This final rule is responsive to, and fulfills the requirements found in, the FAA Act.

3. Recent Rulemaking Activities

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.'' [7] In the ANPRM, the Department sought comment on how to amend the Department's ACAA regulations to address concerns raised by individuals with disabilities, airlines, flight attendants, airports and other aviation stakeholders regarding service animals on aircraft. On February 5, 2020, a Notice of Proposed Rulemaking (NPRM) on Traveling by Air with Service Animals was published in the **Federal Register**.[8] The Department sought in the NPRM to propose a rule that would ensure passengers with disabilities can continue traveling with service animals in air transportation while also reducing the likelihood that there would be safety or health issues at the airport or onboard aircraft.

The Department received approximately 15,000 comments on the NPRM.[9] While most of the comments received in response to the NPRM were from individual commenters, the Department also received many comments from disability rights advocacy organizations, airlines, airports, transportation worker associations, animal health and training organizations, and a number of other special-interest organizations. The Department has carefully reviewed and considered all of the comments received and is issuing this final rule to ensure access to individuals whose physical or mental disability necessitates the assistance of a service animal in air transportation, while also considering the realities, risks, and limitations associated with transporting animals on aircraft.

4. Summary of the Major Provisions

Subject	Final rule
Definition of Service Animal	A service animal is as a dog, regardless of breed or type, 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 are not required to recognize emotional support animals as service animals and may treat them as pets.
Treatment of Psychiatric Service Animals.	Psychiatric service animals are 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 are permitted to limit service animals to dogs.
Health, Behavior and Training Form	Carriers are permitted to require passengers to remit a completed hardcopy or electronic version of the Department's ''U.S. Department of Transportation Service Animal Air Transportation Form'' as a condition of transportation.
Relief Attestation	Carriers are permitted to require individuals traveling with a service animal on flights eight hours or longer to remit a completed hardcopy or electronic version the Department's ''U.S. Department of Transportation Service Animal Relief Attestation'' as a condition of transportation.
Number of Service Animals per Passenger.	Carriers are permitted to limit the number of service animals traveling with a single passenger with a disability to two service animals.
Large Service Animals	Carriers are permitted to require a service animal to fit on their handler's lap or within its handler's foot space on the aircraft.
Control of Service Animals	Carriers are permitted to require a service animal to be harnessed, leashed, or otherwise tethered in areas of the airport that they own, lease, or control, and on the aircraft.
Service Animal Breed or Type	Carriers are 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.

[3] *See, e.g.,* Psychiatric Service Dog Society, DOT–OST–2009–0093–0001, 1–2, at *https://www.regulations.gov/document?D=DOT-OST-2009-0093-0001* (Apr. 21, 2009); Comment from Airlines for America at *https://www.regulations.gov/document?D=DOT-OST-2017-0069-2751* (Dec. 4, 2017); Comment from International Air Transport Association at *https://www.regulations.gov/document?D=DOT-OST-2017-0069-269* (Dec. 1, 2017); Comment from Kuwait Airways at *https://www.regulations.gov/document?D=DOT-OST-2017-0069-2679* (Dec. 1, 2017); and Comment from National Air Carrier Association at *https://www.regulations.gov/document?D=DOT-OST-2017-0069-2771* (Dec. 4, 2017).

[4] *See* U.S. Department of Transportation, Notice of Proposed Rulemaking, ''Traveling by Air with Service Animals,'' 85 FR 6448 (Feb. 5, 2020).

[5] The FAA Reauthorization Act of 2018, Public Law 115–254, Sec. 437 (Oct. 5, 2018).

[6] *See* DOJ's ADA definition of a service animal in 28 CFR 35.104 and 28 CFR 36.104.

[7] Traveling by Air with Service Animals, Advance Notice of Proposed Rulemaking, 83 FR 23832 (May 23, 2018).

[8] Traveling by Air with Service Animals, Notice of Proposed Rulemaking, 85 FR 6448 (Feb. 5, 2020).

[9] *See https://www.regulations.gov/docket?D=DOT-OST-2018-0068.*

Subject	Final rule
Check-In Requirements	Carriers are not permitted to require a passenger with a disability to physically check-in at the airport, rather than using the online check-in process, on the basis that the individual is traveling with a service animal. Airlines may require a passenger with a disability seeking to travel with a service animal to provide the service animal form(s) at the passenger's departure gate on the date of travel.
Advance Notice Requirements	Carriers may require individuals traveling with a service animal to provide a U.S. Department of Transportation Service Animal Air Transportation Form and, if applicable, a U.S. Department of Transportation Service Animal Relief Attestation up to 48 hours in advance of the date of travel if the passenger's reservation was made prior to that time.

5. Summary of the Economic Analysis

The Department has prepared a regulatory evaluation in support of the final rule to amend the ACAA service animal regulations. Under this final rule, a service animal is limited to a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability. It allows airlines, for the first time, to recognize emotional support animals (ESAs) as pets rather than service animals. Because airlines charge passengers for transporting pets, and are prohibited from charging passengers traveling with service animals, passengers previously had an incentive to claim their pets were ESAs. Airlines and other passengers have also reported increased incidence of misbehavior by ESAs on aircraft and in the airport. The misbehavior has included animals' urinating, defecating, and in some instances, harming people and other animals at the airport or on the aircraft. The primary economic impact of this rule is that it will eliminate a market inefficiency. Treating ESAs as service animals amounts to a price restriction that sets the price of accommodating passengers who travel with ESAs at zero dollars, despite the fact that airlines face non-zero resource costs to accommodate those passengers.

Table ES–1 summarizes the results of the regulatory evaluation. The final rule creates a potential burden on passengers who travel with service animals as it allows airlines to require such passengers to submit two U.S. DOT forms. We estimate that the forms could create as much as 74,000 burden hours and $1.1 million in costs per year in 2018 dollars.

Evaluating other impacts was more difficult due to data limitations. To gauge the potential magnitude of these impacts, we combined the limited data with reasonable assumptions about ESA transport that could occur under the final rule and a demand elasticity from a surrogate market. The analysis indicates that the final rule could be expected to generate annual cost savings to airlines between $15.6 million and $21.6 million and annual net benefits of $3.9 to $12.7 million.

TABLE ES–1—SUMMARY OF ECONOMIC IMPACTS DUE TO FINAL RULE

[2018 Dollars, millions]

Impact	Annual value
Costs:	
Paperwork burden for passengers traveling with service animals	$1.1.
Cost savings to airlines associated with providing ESA travel	−$21.6 to −$15.6.
Benefits:	
Lost benefits to individuals who no longer travel with ESAs	−$10.6 to −$7.8.
Reduction in negative externalities caused by ESAs	Not quantified.
Transfers:	
Increased fees paid by passengers travelling with ESAs to airlines	$54.0 to $59.6.
Net benefits (benefits minus costs)	$3.9 to $12.7.

Discussion

1. Definition of a Service Animal

In developing the definition of a service animal, the Department carefully considered whether emotional support animals should be treated as service animals, whether psychiatric service animals should be treated the same as other service animals, whether to limit service animals to certain species of animals, whether certain breeds or generalized physical types of animals should not be considered service animals, and whether the Department's definition of a service animal under the ACAA should be similar to the DOJ definition of a service animal under the ADA. Each of these issues is discussed in turn below.

A. Emotional Support Animals

The NPRM

In the NPRM, the Department explained that the ACAA regulations currently recognize two types of service animal: (1) Any animal that is individually trained or able to provide assistance to a qualified person with a disability; and (2) emotional support animals, defined as ''any animal shown by documentation to be necessary for the emotional well-being of a passenger.'' Emotional support animals are intended to mitigate a passenger's disability by their presence, and are expected to be trained to behave in public, but are not individually trained to do work or perform tasks for the benefit of a passenger with a disability.

In the NPRM, the Department proposed to allow airlines to treat emotional support animals as pets, rather than service animals. The Department proposed to do so by redefining a ''service animal'' as a dog that is individually trained to do work or perform a task for the benefit of a qualified individual with a disability. Under the Department's proposed definition, airlines would not be required to recognize comfort animals, companionship animals, or any other non-task-trained animals as service animals. The Department indicated that the proposal was intended to align the definition of a service animal under the ACAA with the DOJ's definition of a

service animal under the ADA.[10] One purpose of this alignment was to reduce confusion for individuals with disabilities, airline personnel, and airports (which are generally subject to the ADA rather than the ACAA).

In the NPRM, the Department sought comment on how its proposed service animal definition would impact individuals with disabilities who rely on emotional support animals when traveling on aircraft. Furthermore, although airlines could choose to continue to recognize emotional support animals and transport them for free pursuant to an airline's established policy, the Department specifically sought 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 were no longer permitted to travel with their emotional support animals. In addition, since the Department proposed that airlines would be permitted to treat emotional support animals as pets, the Department sought comment 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 the limits on the number of pets an airline would allow per flight could impact their transport.

The Department also requested comment in the NPRM on whether emotional support animal users could train their animals to do work or perform tasks to assist them with their disability, thereby transforming the animal from an emotional support animal to a psychiatric service animal.

Although the Department proposed not to treat emotional support animals as service animals, the Department also sought comment on whether it should recognize emotional support animals as a separate and distinct accommodation for passengers with disabilities. Specifically, the Department sought comment on whether to allow airlines to mandate stricter medical documentation requirements for individuals traveling with emotional support animals; 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 limiting emotional support animals to one per passenger would mitigate a passenger's disability sufficiently on a flight or at the passenger's destination. The Department did so as part of the mandate in the FAA Act, which required 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.[11]

Comments Received

Of the approximately 15,000 comments in response to the NPRM, more than 10,000 of those comments concerned the transport of emotional support animals. More than 3,000 individuals submitted comments in support of DOT's proposal to exclude emotional support animals from the ACAA definition of a service animal and to allow airlines to treat emotional support animals as pets. Furthermore, a large majority of airline industry stakeholder organizations that submitted comments on this issue (*i.e.,* airlines and airline organizations, airports, flight attendants, and other transportation worker organizations), expressed their support for DOT's proposal to allow airlines to treat emotional support animals as pets. Furthermore, approximately half of the disability rights advocacy organizations that submitted comments on this issue (mainly those organizations that represent individuals with allergies and individuals with visual impairment who use guide dogs) also supported DOT's proposal to allow airlines to treat emotional support animals as pets.

Supporters of DOT's proposal to exclude emotional support animals from the service animal definition primarily expressed safety concerns. They described incidents of misbehavior by emotional support animals, including acting aggressively toward people and other service animals by biting, growling, and lunging; and urinating, defecating, and otherwise failing to be under the control of their handler. Commenters expressed general safety concerns for travelers and airline crew given these disturbances. Some commenters expressed the view that many emotional support animal users may not actually be individuals with disabilities, but instead are individuals who are misrepresenting their pets as service animals to avoid paying airline pet fees.

Airlines for America (A4A), the Regional Airline Association, and the National Air Carrier Association jointly commented [12] that numerous incidents on aircraft have demonstrated that emotional support animals are substantially more likely to misbehave during a flight due to the stressful and challenging aircraft environment.[13] These organizations emphasized that emotional support animal misbehavior poses a substantial risk to flight safety, and that aircraft cannot reasonably carry untrained animals in the cabin that are uncontained. Similarly, the Association of Professional Flight Attendants (APFA) commented that ''emotional support animals have been known to bite passengers and Flight Attendants, urinate, defecate, cause allergic reactions and encroach on the space and comfort zone of other passengers who have purchased tickets,'' and that an untrained emotional support animal can put passengers at risk during an emergency evacuation.[14] The California Chapter of the American Council of the Blind (ACB California) also commented that emotional support animals pose a risk to people and other service animals as its members have reported that their guide dogs have been barked at and growled at on many occasions.[15] Similarly, the American Veterinary Medical Association (AVMA) commented that untrained emotional support animals ''are often not acclimated to various stressful situations in the same manner that service animals are trained,'' which ''puts the safety and well-being of both the animal and those sharing the animal's space at risk.'' [16]

The second concern most frequently expressed by commenters in support of DOT's proposal related to those individuals who misrepresent their pets as service animals, and the growing number of online mental health professionals willing to provide pet owners with emotional support animal and psychiatric service animal documentation for a fee. American Airlines commented that the ''increase in the availability of fraudulent ESA credentials has enabled people who are not truly in need of animal assistance to abuse the rules and evade airline policies regarding animals in the

[10] *See* DOJ's ADA definition of a service animal at 28 CFR 35.104 and 28 CFR 36.104.

[11] FAA Reauthorization Act of 2018, Public Law 115–254, Sec. 437 (Oct. 5, 2018).

[12] For ease of reference we will refer to these organizations collectively as ''A4A.''

[13] Comment from Airlines for America (A4A), the Regional Airline Association, (RAA), and the National Air Carrier Association (NACA) (collectively referred to as A4A) at *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[14] Comment from Association of Professional Flight Attendants (APFA), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19238.*

[15] Comment from California Chapter of the American Council of the Blind (ACB California), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19145.*

[16] Comment from American Veterinary Medical Association (AVMA), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19283.*

cabin.'' [17] Similarly, Open Doors Organization commented that airlines can show evidence of letters written by certain mental health professionals on the web that result from fee-based online evaluations or consultations with minimal therapeutic interaction between the health professional and the traveler.[18] Likewise, the Association of Late Deafened Adults commented that people who falsely claim their pets are service animals can purchase a fake service animal vest for their pet online without the pet going through any period of training.[19]

Some commenters also support DOT's proposed service animal definition, limiting service animals to task-trained animals, because they believe that only service animals trained to do work or perform tasks for the benefit of a person with a disability can effectively function as service animals. The American Association of Airport Executives (AAAE) commented that disability mitigation training, which enables an animal to know how to guide individuals with vision impairments, retrieve items for individuals with mobility impairments, and perform other tasks and functions for individuals with disabilities, is critical to mitigating potential risks and to ensure safety of passengers in the terminal.[20] An individual commenter remarked that ''a critical part of a service animal's training includes a systematic socialization process that gradually and humanely exposes the dog to a variety of public places and settings . . . [which] ensures that service animals can both reliably perform their essential duties in all types of settings, and that venues like busy airport and crowded aircraft cabins will not trigger behaviors that are unsafe for the disabled handler, or for others to be around.'' [21]

The Department also received a significant number of comments from individuals suffering from allergies, or individuals and organizations commenting on behalf of allergy sufferers, in support of the proposal to allow airlines to treat emotional support animals as pets. These commenters describe how the recent increases in the number of service animals on aircraft, ostensibly emotional support animals, has created an untenable environment for allergy sufferers in the aircraft cabin. Furthermore, these commenters believe that DOT's proposed rule would result in an overall decrease in the number of service animals on aircraft, which would improve the level of unwanted fur-related allergens on aircraft. The Asthma and Allergy Network commented that a training requirement for service animals would help mitigate the number of animals on aircraft.[22] The Asthma Allergy Foundation of America also commented that it supports DOT's proposal, which permits airlines the flexibility to treat emotional support animals as pets, because it will ''reduce the risk of animals triggering asthma attacks or severe allergic reactions.'' [23]

On the other hand, more than 6,000 commenters either supported the Department's continued recognition of emotional support animals as service animals, or supported a rule allowing emotional support animals to be recognized as a separate accommodation for individuals with disabilities. The individual commenters who support the Department's continued recognition of emotional support animals as service animals include individuals who suffer from autism, debilitating depression, anxiety, post-traumatic stress disorder, and a range of other mental and emotional disabilities. One individual commenter indicated that she believed that DOT's proposal is discriminatory toward veterans with disabilities and those with mental health problems, stating: ''ESAs like mine are prescribed by [a] healthcare professional in order to ease stress, anxiety, depression and PTSD. I have PTSD and anxiety and I will testify to the benefit of my ESA. It is far better than dangerous and harmful drugs that I would otherwise need to take.'' [24]

Other individual commenters described their disabilities and how they are able to travel and, in some cases, complete everyday functions because of the presence of their emotional support animals. Some of these commenters described how certain individuals with disabilities would no longer be able to fly if the Department passed its proposed definition of a service animal, since many individuals suffering from mental and emotional disabilities have low incomes and can barely afford the cost of their own ticket for air transportation. For example, a joint comment from Paralyzed Veterans for America (PVA) and other advocacy organizations noted that even if a passenger's emotional support animal is able to travel as a pet, these fees can cost upwards of $175 each way, and that ''people with disabilities are disproportionately low income and these fees would likely make it very difficult for emotional support animals users to travel[.]'' [25] Several individual commenters also described the inconceivability of leaving their emotional support animals behind, as many are either unable to fly without their emotional support animal, or unable to function without their emotional support animal at their destination for long periods of time.

The Department also received comments from licensed mental health professionals and other health care workers who describe the harmful impact that DOT's rule would have on individuals who suffer from mental and emotional disabilities. These commenters describe their patients, many of whom were prescribed an emotional support animal to help accommodate a serious mental or emotional disability, and how the Department's proposed rule appears to have a disproportionately negative impact on individuals with mental disabilities, in comparison to those with physical disabilities.

Half of disability rights advocacy organizations that commented on the NPRM opposed the Department's proposal to treat emotional support animals as pets. They argue primarily that emotional support animals provide a vital accommodation for many individuals suffering from a wide range of serious mental and emotional disabilities. The Autistic Self Advocacy Network commented that emotional support animals ''can assist with sensory regulation, anxiety, and provide focus for social communication'' and without the calming effect of an emotional support animal, individuals with autism or other mental disabilities

[17] Comment from American Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19138.*

[18] Comment from Open Doors Organization, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19305. https://beta.regulations.gov/comment/DOT-OST-2018-0068-19305.*

[19] Comment from Association of Late Deafened Adults, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17669.*

[20] Comment from American Association of Airport Executives, (AAAE), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19196.*

[21] Comment from Ginger G.B. Kutsch, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19306.*

[22] Comment from the Allergy and Asthma Network, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17955.*

[23] Comment from the Asthma and Allergy Foundation of America, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18498.*

[24] Comment from Gabrielle Ruiz, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19304.*

[25] Joint Comment from PVA, Access Living of Metropolitan Chicago, American Association of People with Disabilities, Bazelon Center for Mental Health Law, Christopher and Dana Reeve Foundation, the National Council on Independent Living, National Disability Rights Network, and the National Multiple Sclerosis Society, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19429.* For ease of reference we will refer to these organizations collectively as ''PVA.''

may be unable to function without the assistance of an ESA for several days or weeks, which may result in their inability to travel.[26] The Disability Rights Education Defense Fund (DREDF) similarly commented that the ''use of an emotional support animal may be the only option for effective mitigation of their mental health symptoms'' because for some individuals with psychiatric disabilities, ''medications are ineffective and few or no other clinical mental health interventions are available or successful for them.'' [27] The DREDF further commented that ''[f]requently, an emotional support animal is the primary intervention that enables a person with a psychiatric disability to succeed with daily activities—and sometimes to stay alive.'' [28]

Many of the disability rights advocates that supported DOT's continued recognition of emotional support animals either (1) expressed support for stricter requirements on the transport of emotional support animals, or (2) supported DOT recognition of emotional support animals not as service animals, but as a separate accommodation for individuals with disabilities with its own distinct set of regulations. Commenters that favored stricter requirements for service animal users, such as Disability Rights of Florida and PVA, submitted comments in support of a rule that would allow carriers to require behavior attestations from emotional support animal users, although these organizations rejected measures such as the mandatory containment of emotional support animals in pet carriers.[29] Similarly, the Oklahoma Disability Law Center commented that it would also support a rule that allowed carriers to require behavior attestations, as well as a rule that would allow airlines to require emotional support animal users to produce documentation from a licensed mental health professional following an in-person visit.[30]

Organizations that supported a DOT ACAA rule treating emotional support animals as a separate accommodation from service animals, such as PVA, commented that the ''Department should recognize emotional support animals as an accommodation because emotional support animals are different from service animals in that they are not trained to perform work or tasks to mitigate a disability.'' [31] The Humane Society of the United States commented that DOT should adopt a rule that would allow emotional support animals as a separate accommodation known as an ''assistance animal,'' [32] regulated separately from service animals, similar to the Fair Housing Act rule of the Department of Housing and Urban Development (HUD).[33] Opening Doors, PLLC, another interested stakeholder that commented in support of DOT's treating emotional support animals as a separate accommodation, stated that a ''benefit of aligning the definition of 'emotional support animal' with 'assistance animal' is that [the Fair Housing Act (FHA)] already has a framework in place for evaluating reasonable accommodation requests.'' [34]

In response to the Department's request for comment on the feasibility of turning an emotional support animal into a psychiatric service animal, U.S. Support Animals commented that ''requiring a person with an emotional disability to train their emotional support animal to be a psychiatric service dog would be incredibly burdensome on most disabled people and often an impossible standard to meet.'' [35] U.S. Support Animals further commented that ''emotional support animals should not be trained to perform a specific task'' because the benefit of an emotional support animal is the animal's presence; ''there is often no task that can even be defined for the animal to perform that would help alleviate the symptoms that the passenger exhibits.'' [36] In addition, PVA, using rabbits as an example, commented that it ''does not believe that it is possible to convert all emotional support animals into service animals.'' [37]

DOT Response

The Department recognizes that whether to require airlines to recognize emotional support animals as service animals is a contentious question, with strongly held views on all sides, and with no perfect solution likely to satisfy all stakeholders. After careful review of the comments in this area, the Department has determined that the most appropriate course is to adopt a definition of service animal that covers only dogs, regardless of breed or type, that are individually trained to do work or perform tasks for the benefit of a qualified individual with a disability. This definition excludes all non-task-trained animals, such as emotional support animals, comfort animals, and service animals in training.

The Department recognizes several benefits to adopting this definition. First, the rule is expected to reduce confusion among airlines, passengers, airports, and other stakeholders by more closely aligning the Department's definition of a service animal with DOJ's definition of a service animal under the ADA, which applies to a broad array of entities, including airports, and which covers only dogs that are individually trained to do work or perform tasks for the benefit of an individual with a disability. The Department has long recognized that under its prior rule, air transportation was the only mode of transportation on which emotional support animals must be accommodated.[38] Indeed, under the ADA, emotional support animals are not required to be accommodated in public spaces such as restaurants, hotels, theaters, or airports. This mismatch between the Department's ACAA regulation and the DOJ's ADA regulation was particularly striking

[26] Comment from the Autistic Self Advocacy Network, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19232.*

[27] Comment from the Disability Rights Education Defense Fund (DREDF), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19264.*

[28] *Id.*

[29] Comments from Disability Rights Florida, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19336,* and PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19429.*

[30] Comment from the Oklahoma Disability Law Center, *https://www.regulations.gov/document?D=DOT-OST-2018-0068-19237.*

[31] Comment from PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19429.*

[32] The U.S. Department of Housing and Urban Development (HUD), which enforces the Fair Housing Act regulations, recognizes two types of assistance animals: (1) Service animals, and (2) other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (''support animal''). See Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, FHEO Notice: FHEO–2020–01, *https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf* (Jan. 28, 2020), and *https://www.hud.gov/sites/dfiles/PA/documents/AsstAnimalsGuidFS1-24-20.pdf.*

[33] Comment from the Humane Society of the United States (Humane Society), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19184.*

[34] Comment from Opening Doors, PLLC, *https://www.regulations.gov/document?D=DOT-OST-2018-0068-7322.*

[35] Comment from U.S. Support Animals, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19248.*

[36] *Id.*

[37] Comment from PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19429.*

[38] We acknowledge that emotional support animals are permitted as a reasonable accommodation for a person with a disability under the Fair Housing Act. However, we note that the large space available to the animal and the limited number of other individuals in close proximity to the animal differs significantly when compared to the confined space on an aircraft cabin and the many other passengers in close proximity to the animal on aircraft.

given that passengers in air transportation are confined with service animals in the narrow space of an aircraft cabin for the duration of the flight.

Second, after reviewing the comments submitted during both the ANPRM and NPRM, we find persuasive the view of advocates who commented that task-trained service animals are also generally provided enhanced training in how to behave in public, while emotional support animals may not have received this degree of training. We also find persuasive the information provided by airlines and other stakeholders indicating that emotional support animals, or animals being presented to the airline as emotional support animals, are responsible for a significant percentage of the incidents of animal misbehavior onboard aircraft. Finally, it is reasonable to predict that the Department's definition will result in an overall reduction in the number of uncrated animals onboard aircraft, thereby reducing the overall number of animal misbehavior incidents (and the overall number of potential allergic reactions) onboard aircraft.

For many of these same reasons, we have declined to adopt a process to accommodate emotional support animals onboard, not as service animals, but as a separate accommodation for individuals with disabilities with its own distinct set of requirements, such as stricter documentation standards, containment in a pet carrier, etc. In our view, allowing emotional support animals with a stricter set of requirements would perpetuate tiered systems that give rise to confusion and the continued opportunity for abuse and increased safety risk. As such, the final rule allows airlines to treat emotional support animals as pets. We note, however, that airlines may choose to continue to transport emotional support animals without charge at their discretion. Furthermore, even if airlines decide after the effective date of this rule to charge pet fees for emotional support animals, this change would not impact the ability of individuals with psychiatric or mental health disabilities to continue to travel with their psychiatric service animals onboard aircraft without being charged a pet fee. This rule requires airlines to recognize animals that are individually trained to do work or perform tasks for the benefit of individuals with mental health disabilities as service animals, including psychiatric service animals.

We solicited comment on the specific question whether and at what cost emotional support animals could be task-trained, and could therefore qualify as psychiatric service animals. We received few comments on this issue. PVA, for example, commented that an emotional support rabbit could not be individually trained to perform a task or function, but does provide emotional support for the individual by its presence.[39] U.S. Support Animals stated that ''requiring a person with an emotional disability to train their emotional support animal to be a psychiatric service dog would be incredibly burdensome on most disabled people and often an impossible standard to meet.'' [40] While we understand PVA's concern that there are currently emotional support animals such as rabbits that cannot be trained, the Department's final rule recognizes only dogs as service animals, and it is our understanding that the vast majority of emotional support animals are dogs, and dogs can be task-trained to perform many different tasks and functions. We also note that the rule does not require service animal users to incur the cost of training by third party schools or organizations; service animal users are free to train their own dogs to perform a task or function for them.

B. Psychiatric Service Animals

The NPRM

In the NPRM, the Department proposed to change its service animal requirements to ensure that psychiatric service animals would be treated the same as other service animals. Psychiatric service animals are individually trained to do work or perform tasks for an individual with a psychiatric, intellectual, or other mental disability. In the NPRM, the Department proposed to remove requirements for psychiatric service animal users that allowed airlines (1) to require psychiatric service animal users to provide a letter from a licensed mental health professional of the passenger's need for the animal,[41] (2) to require 48 hours' advance notice of a passenger's intent to travel with a psychiatric service animal to give airlines sufficient time to assess the passenger's documentation, [42] and (3) to require check in one hour before the check-in time for other passengers. The Department's proposed definition of a service animal sought to ensure that individuals with mental and psychiatric disabilities who rely on psychiatric service animals would be treated the same as individuals with physical disabilities who rely on task-trained service animals. The Department's proposal was based on the fact that there is no valid basis for allowing airlines to treat certain tasked-trained service animals differently from other task-trained animals.

In the NPRM, the Department indicated that it was aware of concerns about passengers who falsely claim to have a mental health condition that may require the use of a service animal. We recognized that it was this specific concern that originally led the Department to adopt heightened documentation and check-in requirements for users of both emotional support animals and psychiatric service animals. We noted in the NPRM, however, that ''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.'' [43] In other words, the concerns that led the Department to adopt heightened documentation and check-in requirements for users of psychiatric service animals is not unique to psychiatric service animals. For these reasons, the proposed final rule did not draw distinctions between psychiatric service animals and other types of service animals.

In the NPRM, we indicated that if the rule were adopted as proposed, the Department would monitor the experience of airlines in accommodating the use of psychiatric service animals, particularly given the concern that unscrupulous passengers may attempt to pass off their pets as psychiatric service animals. We indicated that 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.'' [44]

Comments Received

Most individuals, disability rights organizations, airlines, and other stakeholders who commented on these topics supported the elimination of regulatory distinctions between psychiatric service animals and other service animals. Commenters generally observed that the Department's prior

[39] Comment from PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19429.*

[40] Comment from, U.S. Support Animals at *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19248.*

[41] 14 CFR 382.117(e).

[42] 14 CFR 382.27(c)(8).

[43] Traveling by Air with Service Animals, Notice of Proposed Rulemaking, 85 FR 6448 (Feb. 5, 2020).

[44] Traveling by Air with Service Animals, Notice of Proposed Rulemaking, 85 FR 6448 (Feb. 5, 2020).

approach unfairly discriminated against individuals with particular types of disabilities. Some commenters also noted that the proposed rule harmonizes DOT's approach with that of other Federal agencies in this respect. In contrast, four airlines (Air Canada, Allegiant Airlines, Asiana Airlines, and Spirit Airlines) and one advocacy organization [45] (the Michigan Developmental Disabilities Council) recommended that the Department retain heightened documentation requirements for psychiatric service animal users because of concerns that individuals who wish to travel with their pets in the cabin for free may start misrepresenting their pets as psychiatric service animals.

With respect to monitoring potential falsification of pets as psychiatric service animals, we received a range of responses. A4A expressed concern that ''the fraud will migrate to the PSA category,'' and urged the Department to explain how it would collect data to monitor the issue.[46] All Nippon Airways (ANA) expressed a similar view.[47] American Kennel Club urged the Department to monitor fraud with respect to psychiatric service animals.[48]

PVA expressed concerns about the Department's stated intent to monitor potential fraud by individuals who attempt to pass off their pets as psychiatric service animals. PVA indicated that ''the Department provides no information about why suspicion should be cast on psychiatric service animal users versus animals that assist passengers with other non-apparent disabilities.'' [49] PVA also noted that without a clear sense of how that monitoring would take place, the public would not know whether any conclusions are based on accurate data.

DOT Response

The Department agrees with commenters who expressed the view that it is inappropriate to allow airlines to impose greater burdens on psychiatric service animal users than on individuals who utilize service animals that are trained to do work or perform tasks for the benefit of individuals with physical or other types of disabilities. Accordingly, the Department will no longer draw a distinction between psychiatric service animal users when traveling in air transportation and other service animal users. This means that psychiatric service animals will be subject to the same regulations as other service animals. Most notably, psychiatric service animal users will no longer be required to provide a letter from a licensed mental health professional detailing the passenger's need for the animal, nor will they be required to check in one hour before the check-in time for other passengers.

The Department will, however, monitor whether unscrupulous individuals are attempting to pass off their pets as service animals for non-apparent disabilities, including (but not limited to) psychiatric disabilities. This process is not intended to single out or unduly burden psychiatric service animal users. Indeed, in the NPRM, the Department noted the possibility that individuals could also attempt to pass off their pets as service animals for non-apparent physical disabilities, such as diabetes. The Office of Aviation Consumer Protection welcomes the input and assistance of airlines, disability advocacy organizations, and other stakeholders on how best to conduct the monitoring to ensure accurate data.

C. Species

The NPRM

In the NPRM, the Department proposed to limit the species of animals that airlines would be required to recognize as service animals to dogs. Under the Department's proposal, while 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, they would only be required under Federal law to recognize dogs as service animals. The Department's proposal considered the fact that dogs are the most common animal species used to assist individuals with their disabilities, both on and off aircraft, and that dogs 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 decided against adopting a proposal that would include other species as service animals, including miniature horses and capuchin monkeys. However, the Department requested specific comment on whether it should recognize those animals under its definition of a service animal.

Comments Received

The Department received approximately 1,100 comments on this topic from individuals with disabilities. Commenters generally support dogs as service animals, which is unsurprising as dogs have been, and continue to be, the most common species of service animal relied upon by individuals with disabilities.[50] The AAAE commented that dogs represent approximately 90 percent or more of animals traveling on aircraft, and supported recognizing dogs exclusively as service animals because they are easily trained, and can hold their elimination function for extended periods of time.[51] Assistance Dogs International, North America (ADI–NA) noted that dogs have both the temperament and the capability to assist individuals with disabilities by mitigating their disabilities through the performance of tasks.[52] American Airlines also noted that limiting the species of service animals to dogs provides greater predictability and access for most people with disabilities.[53] The International Air Transport Association (IATA) and individual foreign airline commenters also support including dogs exclusively as service animals. These commenters argued that requiring all carriers, both domestic and foreign, to recognize only dogs, would bring the regulations for the domestic carriage of service animals in alignment with those for international carriage, since foreign carriers have only been required under DOT's ACAA regulation to transport dogs as service

[45] *See* Comments from Air Canada Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19328;* Allegiant Air, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19164;* Asiana Airlines *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19340, https://beta.regulations.gov/comment/DOT-OST-2018-0068-19340;* Spirit Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19221;* and the Michigan Developmental Disabilities Council, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19191.*

[46] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[47] Comment from All Nippon Airways (ANA), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19025.*

[48] Comment from American Kennel Club, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19163.*

[49] Comment from PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19429.*

[50] In response to the ANPRM, Assistance Dogs International (ADI) noted specifically that dogs have been assisting individuals with disabilities for over 100 years. Comment from Assistance Dogs International, *https://www.regulations.gov/document?D=DOT-OST-2018-0068-4409.*

[51] Comment from AAAE, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19196.*

[52] Comment from Assistance Dogs International, North America (ADI–NA), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17915.*

[53] Comment from American Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19138.*

animals.[54] Air Canada also commented that no country other than the United States has required the acceptance of service animals other than dogs.[55]

More than 400 individual commenters, however, supported also including miniature horses in the Department's definition of a service animal. These commenters noted that some individuals with disabilities may not be able to use dogs to accommodate their disability because of allergies or religious and/or cultural reasons. Furthermore, these commenters note that excluding miniature horses runs counter to DOT's mission of promoting consistency among Federal regulations, as DOJ requires regulated entities, in certain circumstances, to recognize miniature horses as a reasonable accommodation under the ADA.[56] The DREDF commented that DOT's proposal to ''eliminate access for miniature horses is particularly concerning because these animals have access to public accommodations as a reasonable accommodation under the Department of Justice's Americans with Disabilities Act.'' [57] Similarly, the Autistic Self Advocacy Network commented that DOT's proposal to limit service animals to dogs is arbitrary and inconsistent with DOT's stated goal of harmonizing Federal regulatory requirements, and that DOT's proposal to exclude miniature horses is more restrictive than DOJ's regulations implementing Title III of the ADA, which allow people with disabilities to use miniature horses on an individualized basis.[58] Finally, The Disability Coalition (New Mexico) commented that by diverging from the ADA, DOT would be promoting confusion rather than reducing it.[59]

Disability rights advocates that commented in support of including miniature horses in DOT's ACAA definition of a service animal commented that space on the aircraft should not be a concern when considering whether a miniature horse can be accommodated in an aircraft cabin. The commenters argued that the Department's ACAA rule has always required airlines to allow miniature horses to accompany an individual with a disability on aircraft, subject to aircraft size limitations and FAA safety regulations. Psychiatric Service Dog Partners commented that many miniature horses are comparable in size to a St. Bernard, and that many can fold their legs and lie down more easily than their larger equine counterparts.[60] Similarly, Starfleet Service Dogs commented that the height of a miniature service horse, from its withers, should generally be 34 inches or shorter, and that in most cases a Great Dane will be larger and take up more room than a miniature horse.[61]

Airlines and other industry stakeholders who oppose the inclusion of miniature horses argue that miniature horses are too big to be accommodated in the cabin of an aircraft, and that potential safety concerns could arise from transporting miniature horses in the aircraft cabin. A4A asserted that a miniature horse's size, weight, and inability to curl up in a passenger's allotted foot space poses a substantial risk to flight safety, including the safety of passengers and crew, and that the presence of miniature horses in an aircraft cabin would pose a serious risk of injury to passengers and crew during moderate to severe turbulence or an emergency situation due to these animals' weight and size.[62] American Airlines likewise commented that miniature horses are classified as livestock, have hooves, are not as flexible as dogs, are unable to manage their elimination functions the way a trained service dog can, and that a miniature horse's hooves could puncture an aircraft evacuation slide in the event of an evacuation, potentially disabling it.[63]

A smaller number of disability advocacy organizations support the inclusion of cats and other animal species as service animals. Ethiopian Airlines commented that only dogs and cats should be permitted as service and emotional support animals.[64] Similarly, the Transport Workers Union of America recognizes that while dogs are the most common service animals, other types of animals may also be trained to provide needed assistance to individuals with disabilities.[65] The Autistic Self Advocacy Network commented that cats can be trained to perform tasks, such as detecting seizures.[66] Conversely, A4A commented that cats have neither the temperament nor ability to be trained to do work or tasks to assist an individual with a disability or to behave appropriately in an aircraft cabin.[67]

The Department also specifically sought comment on whether it should recognize capuchin monkeys in its revised service animal definition. Several advocacy organization commenters argued that capuchin monkeys deserve special treatment under DOT's ACAA rule and that DOT should require airlines to transport these animals, so long as they remain in a carrier, because of the invaluable accommodations these animals provide to individuals with disabilities. Helping Hands: Monkey Helpers for the Disabled commented that its capuchin monkeys are transported in pet carriers, often undetected, and wear diapers so that the possibility of bodily fluids escaping the carrier are de minimis, and the possibility of disease transmission is prevented.[68]

Airlines and other organizations such as AVMA continue to believe that other animal species, and capuchin monkeys in particular, should not be included in DOT's definition of a service animal because of animal welfare concerns, the

[54] Comment from International Air Transport Association (IATA), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19041.*

[55] Comment from Air Canada, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19328.*

[56] 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. DOJ sets forth four assessment factors to assist entities in determining whether reasonable modifications can be made to allow a miniature horse into a specific facility—(1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will compromise legitimate safety requirements necessary for safe operation of the facility. See 28 CFR 35.136(i); 28 CFR 36.302(c)(9).

[57] Comment from DREDF, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19264.*

[58] Comment from Autistic Self Advocacy Network, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19232.*

[59] Comment from The Disability Coalition (New Mexico), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19219.*

[60] Comment from Psychiatric Service Dog Partners, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17092.*

[61] Comment from Starfleet Service Dogs, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18551.*

[62] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[63] Comment from American Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19138.https://beta.regulations.gov/comment/DOT-OST-2018-0068-19138.*

[64] Comment from Ethiopian Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-10984.*

[65] Comment from Transport Workers Union, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19183.*

[66] Comment from the Autistic Self Advocacy Network, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19232.*

[67] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[68] Comment from Helping Hands: Monkey Helpers for the Disabled, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18160.*

potential for serious injury, and zoonotic risks.[69] ADI–NA commented that capuchin monkeys are not domesticated animals and subjecting these animals to stress in the air travel environment increases the chance of their behaving aggressively or at least disruptively during air travel.[70] Finally, A4A commented that capuchin monkeys would likely accompany a qualified trainer on an aircraft, for the purposes of transporting the animal for delivery to an individual with a disability, instead of accompanying an individual with a disability, which ultimately brings the transport of capuchin monkeys beyond the scope of DOT's existing ACAA rule.[71]

DOT Response

The Department has considered the comments received and has decided to adopt, as proposed, a rule limiting the species of service animals to dogs only. This decision considers that dogs are the most common animal species used by individuals to mitigate disabilities both on and off aircraft. A rule requiring airlines to accept trained service dogs will permit the vast majority of service animal users to travel with their service animals while also minimizing confusion and safety concerns for airlines, airports, and individuals with disabilities. Overall, dogs have the temperament and ability to be trained to do work and perform tasks while behaving appropriately in a public setting, and while being surrounded by a large group of people in the close confines of an aircraft cabin. Although airlines may choose to transport other species of animals, such as cats, miniature horses, and capuchin monkeys, that assist individuals with disabilities in the cabin for free pursuant to an established airline policy, they would only be required under Federal law to recognize trained dogs as service animals.

Although some service animal users would prefer to, and in fact do, use miniature horses instead of dogs as service animals, the number of individuals that use trained miniatures horses as service animals is quite small compared to that of service animal dog users.[72] The number of miniature horses transported in the cabin by airlines annually is also exceptionally small, and airlines are free to accommodate the transport of miniature horses for passengers if they choose to do so. There are also practical concerns related to the carriage of miniature horses that may make it difficult for airlines to accommodate these animals on small aircraft safely. While one commenter noted that miniature horses are more flexible than large horses, as a practical matter they are far less flexible than dogs and are unable to curl up at the feet of the handler and fit into the space directly in front of the service animal user's seat, like most dogs. In certain instances, miniature horses may need to occupy the space in front of more than one seat to be accommodated on an aircraft, and in some instances, they may need to occupy the space in front of an entire row of seats to be accommodated in the aircraft.

The Department was also unpersuaded that airlines should be required to carry capuchin monkeys. As the Department stated in its proposal, although trained capuchin monkeys can assist persons with limited mobility with their daily tasks, capuchin monkeys may present a safety risk to other passengers as they have the potential to transmit diseases and may exhibit ''unpredictable aggressive behavior.'' Further, capuchin monkeys fall outside of the regulatory framework because qualified trainers, rather than individuals with disabilities, typically travel by air to deliver the monkeys to an individual with a disability, and would not be accompanied by the service animal user.

D. Breed or Type of Dog

The NPRM

The Department proposed to continue to prohibit carriers from refusing to transport a trained dog as a service animal based solely on breed or generalized physical type. Under the Department's proposal, airlines would continue to assess each animal individually to determine whether a specific animal poses a direct threat to the health or safety of others, instead of determining whether to transport a service animal based on stereotypes or generalized assumptions about how a breed or type of dog may or may not behave. The Department also specifically sought comment on whether the unique environment of a crowded airplane cabin in flight justifies permitting airlines to prohibit pit bull-type dogs, or any other particular breed or type of dog, from traveling on aircraft under the ACAA, even when those dogs have been individually trained to perform as service animals to assist a passenger with a disability.

Comments Received

The Department received nearly 700 comments on whether airlines should be permitted to restrict service dogs based on breed or type. Most commenters supported the Department's proposal, opposing a departmental regulation that would categorically exclude any specific dog breed or type. These commenters noted that individuals with disabilities use a wide range of dog breeds as service animals to accommodate a variety of disabilities, and airlines should not be permitted to refuse transportation to certain breeds or types of dogs as long as the dogs do not pose a direct threat and are individually trained to do work or perform tasks for the benefit of an individual with a disability. Most, if not all, disability advocates supported the Department's proposal to prohibit dog breed or type restrictions, arguing that the determination of whether a particular service animal poses a direct threat should be based on an individualized, observed, and objective assessment by the airline, and should not be based on generalized assumptions or stereotypes about the dog's type or breed. Disability advocates also expressed support for DOT's proposal because it is consistent with DOJ's ADA regulations, with respect to prohibiting regulated entities from limiting a service animal to a specific breed. Various commenters also cited studies that have concluded that environmental factors, rather than a dog's breed, determine a dog's propensity to harm a person or animal.

Regarding a specific breed, the Department received the most feedback in the comments about pit bulls. According to Wisdom Panel, a pit bull DNA testing organization, the term ''pit bull'' does not refer to a single recognized breed of dog, but rather to a genetically diverse group of breeds that are associated by similar physical

[69] Comment from AVMA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19283.*

[70] Comment from ADI–NA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17915.*

[71] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[72] AAAE commented that dogs represent approximately 90 percent or more of animals traveling on aircraft and according to Psychiatric Service Dog Partners, miniature horses are substantially less common.

Miniature horses are not at all common as pets, nor is there reason to think they would become so. Generally, a person is unable to and does not acquire a miniature horse without deliberate planning. Further, if someone is to travel with a large animal with needs like that of a mini-horse, the training and planning that travel requires carries with it greater assurances of handler responsibility than do the tag-along possibilities of many pets. There is no good reason to believe that allowing access with service miniature horses would translate to any increase in the public trying to bring an assortment of pets with them as service animals.

See comment from Psychiatric Service Dog Partners, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17092.*

traits.[73] Wisdom Panel explains that pit bull-type dogs have historically been bred by combining guard-type breeds with terriers for certain desired characteristics, and, as such, they may retain many genetic similarities to their original breeds and other closely related breeds.[74] According to the Humane Society, 46 percent of dogs in the United States were of mixed breed as of 2012.[75] The American Temperament Test Society found that more than 85 percent of pit bull-type dogs have tested with above average temperaments (85.6 percent of Golden Retrievers and 85 percent of German Shepherds tested the same).[76] According to the Humane Society, an AVMA study found that physical breed standards/visual identification as a way of identifying a dog's breed, which is the method used by airlines to identify dog breed, is seriously flawed. [77] Furthermore, the Humane Society states that an American Journal of Sociological Research study found that animal professionals, veterinarians, and animal control officers were unable to identify correctly dog breeds visually when compared with DNA evidence, and that dogs with blocky heads and thick necks were commonly misidentified as pit bulls because there is no clear definition or set of characteristics that define a ''pit bull'' type.[78] Commenters also cited a growing body of evidence suggesting that pit bulls do not have a stronger bite strength than similar-sized dogs. According to a study cited by the Humane Society, which looked at 150 scientific papers from 1969 to 2009, and two legal cases, many claims about the jaw strength of pit bull-type dogs are based on misinterpretations with no reliable data or sources.[79] Commenters also noted that numerous municipalities across the country are rescinding their pit bull bans, realizing that the bans are misguided. Furthermore, commenters argued that if DOT ultimately requires that all service animals be trained, there would be no need to ban pit bulls for fear of their behavior.

The Department also received many comments in support of allowing airlines to ban specific breeds of service animals. Airlines and airline organizations expressed concerns that not allowing airlines to restrict service animals based on breed could result in an unsafe flying environment and argued that airlines should have the discretion to choose whether to transport dogs that are capable of inflicting serious harm. A4A argued that not allowing airlines to restrict transport of service animals based on breed or generalized type of dog would increase the risk of animal misbehavior, which could result in serious injury to other passengers, crew, and service animals.[80] They argued that certain breeds of dog, which account for a small minority of the total dog population, are not suited to function as trained service animals. They also noted that certain breeds raise legitimate fears from other passengers and animals, including other service dogs and handlers. American Airlines asserted that airplanes are a unique environment—''they are crowded spaces with no opportunity for egress—which could be triggering, and triggering an animal with large and powerful jaws and neck muscles that can be ferocious if 'provoked,' is a direct threat to the health and safety of our crews, passengers, and other service animals.'' [81] American Airlines further argued that there is precedent for adopting a more stringent approach in the airline environment because air travel differs from other places of public accommodation. Some airlines argued that individualized assessments are not enough.[82] For example, Spirit Airline and Air Canada argued that some animals are more prone to aggression and may not exhibit such behavior until they are onboard an aircraft.[83] Thus, even with the ability to refuse transportation to dogs that exhibit aggressive behavior, it may, in some instances, be too late by the time an animal that eventually exhibits aggressive behavior has boarded an aircraft.

Foreign airlines and commenters raised concerns about jurisdictions outside of the United States that impose entry restrictions on certain dog breeds. Deutsche Lufthansa Airlines (Lufthansa) urged DOT to consider allowing airlines to restrict service animals of specific breeds because, with respect to international travel from the United States, there are other additional foreign regulations to comply with concerning the transport of animals.[84] Specifically, Lufthansa noted that France and Germany, for example, have implemented strict entry bans for specific breeds of dogs, such as Staffordshire Bull Terriers, American Pitbull Terriers, Mastiff type dogs, and Tosa Inu (France); and Pit Bull Terriers, American Staffordshire Terriers, Staffordshire Bull Terriers, and Bull Terrier (Germany), and that requiring airlines to transport all breeds may present a conflict of laws that would cause severe disruption, not only to the airline but also to passengers.[85]

Many individual commenters also opposed recognizing pit bulls as service animals. According to *dogbites.org*, which obtains data on canine-related injuries and fatalities from news reports, photographs, police reports, coroner reports, and court filings, canines killed 512 individuals in the United States between 2005 and 2019.[86] Of the 512 individuals killed by dogs, *dogbites.org* reports that pit bulls were involved in 346 of these deaths (66 percent of the deaths) despite only comprising about 7 percent of the total U.S. dog population.[87] Similarly, media reports and news accounts tracked by ANIMALS 24–7 since 1982 indicate that approximately one pit bull in 100 will kill or disfigure a human, or kill another pet or livestock animal, each year.[88] According to ANIMALS 24–7, two recent studies published in prominent scientific journals point toward anatomical differences in dog brain structure among various breeds, which in dogs bred for centuries to fight, appear to be linked to reactivity and aggression.[89]

[73] *https://help.wisdompanel.com/s/article/Does-Wisdom-Panel-test-for-Pit-bull.*

[74] *Id.*

[75] Comment from the Humane Society of the United States and the Humane Society Legislative Fund, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19184.*

[76] *https://atts.org/breed-statistics/statistics-page1/.*

[77] Comment from the Humane Society of the United States and the Humane Society Legislative Fund, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19184.*

[78] Comment from the Humane Society of the United States and the Humane Society Legislative Fund, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19184.*

[79] *Id.*

[80] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[81] Comment from American Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19138.*

[82] *Id.*

[83] *See* Comments from Air Canada Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19328,* and Spirit Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19221.*

[84] Comment from Deutsche Lufthansa Airlines (Lufthansa), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19351.*

[85] Comment from Lufthansa Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19351.*

[86] Comment from *DogsBite.org, https://beta.regulations.gov/comment/DOT-OST-2018-0068-18935.*

[87] *Id.*

[88] Comment from ANIMALS 24–7, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-12212. https://beta.regulations.gov/comment/DOT-OST-2018-0068-12212.*

[89] *Id.*

DOT Response

The Department is declining in this final rule to adopt a categorical exclusion for particular breeds or types of dogs as service animals and will continue at this time to prohibit airlines from refusing to accommodate a dog that is individually trained to do work or perform tasks for the benefit of a qualified person with a disability and that otherwise satisfies the requirements of a service animal based solely on the dog's breed or generalized type. However, the final rule specifies that airlines are permitted to make an individualized assessment based on reasonable judgement and objective evidence to determine if a service animal poses a direct threat to the health or safety of others. The Department believes that this standard, which is based on objective evidence of the dog's behavior, rather than generalized assumptions about how a breed or type of dog would be expected to behave, provides airlines with the best means of determining whether the particular animal poses a direct threat to the health and safety of others.

Furthermore, prohibiting airlines from banning particular breeds of dogs, including pit bull-type dogs, on aircraft is consistent with DOJ guidance under the ADA. 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.[90] Commenters suggesting that airlines are not able accurately to distinguish a pit bull-type dog from a non-pit bull-type dog that may have similar features unless DNA testing has been conducted further supports the Department's position that categorically excluding particular breeds is not appropriate.

The Department also recognizes the concerns raised by IATA and foreign airlines that certain foreign jurisdictions may have laws prohibiting passengers from bringing certain breeds of dogs into these jurisdictions. To address this concern, the Department has included language, in section 382.79(a)(3), that makes clear that an airline may deny transport to a service animal if the animal's carriage would violate applicable health or safety requirements of a foreign government.

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 sometimes fatal injuries. The Department also understands that there may be concerns that certain dogs may be dangerous, particularly dogs that have been bred to fight, which may be linked to a heightened degree of reactivity and aggression. The Department will continue to monitor published studies or accounts of dog behavior by breed or type and reports of incidents involving service dogs, and if there are compelling studies or data indicating that there are particular dog types or breeds that are established to pose a heightened threat to the health and safety of people in close proximity, we will revisit this issue. At this time, however, the Department finds that the airlines' ability 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 permitting airlines to ban an entire breed or type of dog.

E. Considerations on Alignment With DOJ Definition

The NPRM

In the NPRM, the Department proposed 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 definition of a service animal, which is more closely aligned with DOJ's definition of a service animal under the ADA, is intended to address concerns raised by airlines, airports, and disability advocates about challenges associated with inconsistencies between the definition of a service animal in the airport environment and on aircraft. DOT's existing service animal regulations require airlines to recognize emotional support animals, and all species of service animals, with limited exceptions. Meanwhile, DOJ's ADA regulations, which apply to public and commercial airports and airport facilities operated by businesses like restaurants and stores, limit service animals to dogs, and do not recognize emotional support animals as service animals.[91] The significant inconsistencies between DOT's former ACAA definition of a service animal, and DOJ's ADA definition of a service animal have presented practical challenges for airlines and airports and the traveling public. The Department, through its NPRM proposal, sought to promote greater consistency among Federal regulatory requirements, to decrease confusion for individuals traveling with service animals, to recognize the distinct characteristics of an aircraft cabin as compared to other indoor environments, and to streamline the treatment of service animals in the context of air travel.

Comments Received

The Department received more than 7,200 comments on the proposed definition of a service animal, with a nearly even split between individual commenters who supported or opposed the Department's proposed definition.

Most disability rights advocates and all of the airlines and airline organizations that commented on the NPRM expressed support for the Department's proposed definition of a service animal. The American Council of the Blind supported the proposal, stating that limiting service animals to trained animals will make the requirements for airlines and their

[90] *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.

[91] DOJ explains that it did not classify emotional support animals as service animals because the provision of emotional support, well-being, comfort and companionship does not constitute work or tasks. *See* Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 FR 56236, 56269 (Sept. 15, 2010).

employees less complicated and more succinct; [92] while other groups supported the definition because it is more consistent with DOJ's ADA definition of a service animal. These commenters argued that a more consistent definition would benefit travelers with disabilities.

The majority of airlines and airline organizations likewise supported the Department's proposal, in the interest of greater regulatory consistency. IATA [93] commented that a service animal definition that is more consistent between the ACAA and the ADA will provide greater clarity for airlines, airports, individuals with disabilities, and the traveling public. Likewise, A4A commented that DOT's proposal to more closely align its definition with DOJ's rules implementing the ADA would not only decrease confusion for individuals with a disability, airline personnel, and airports, but would also establish a clear distinction between a legitimate service animal that is trained to do work or perform a task for the benefit of a person with a disability and a pet.[94]

Several disability advocates opposed the Department's proposed definition of a service animal. U.S. Support Animals urged the Department to focus on the language of the ACAA, which prohibits airlines from discriminating against individuals with disabilities, and discouraged DOT from seeking to align its definition of a service animal with DOJ's ADA rule, when the ADA was enacted four years after the ACAA [95] U.S. Support Animals further commented that if Congress intended for the ACAA to be ''subordinate'' to the ADA, it could have easily repealed the ACAA and included its provision in the ADA.[96] Both U.S. Support Animals and the Autistic Self Advocacy Network commented that it would be improper for the Department to align its ACAA definition of a service animal with DOJ's ADA definition because unlike the ADA, which is broadly applicable to a number of contexts, the ACAA applies only to air transportation, and its regulations should pertain to the specific circumstances of air travel.[97] These commenters believe that it would be more appropriate for DOT to align its regulations with HUD, which enforces FHA regulations,[98] because discrimination in housing is more analogous to air travel as travelers who depend on service animals for assistance will likely be at their destination for longer periods of time and the loss of their service animal would be more acute. Specifically, the Autistic Self Advocacy Network notes that while an individual with a disability may be impacted somewhat by being separated from their service animal for a few hours while at establishments covered by the ADA, *e.g.,* stores, restaurants, movie theaters, etc., the impact of being separated from a service animal is more significant in the housing and transportation context as the separation would be for a much longer duration.

DOT Response

The Department has considered the comments it received and Congress's mandate in the FAA Act that the Department consider whether it should align its ACAA definition of a service animal with the service animal definition established by the DOJ in its rule implementing the ADA. In this final rule, the Department is revising its definition of a service animal under the ACAA as a dog, regardless of breed or type, 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. Species of animals other than dogs, emotional support animals, comfort animals, companionship animals, and service animals in training are not service animals under this definition. This revised definition does not preclude airlines from allowing passengers to travel with animals that are not included within the revised service animal definition; however, airlines are not required by Federal law to treat those animals as service animals. This revised definition is more in line with DOJ's definition of a service animal and takes into consideration, as commenters raised, the challenges associated with the inconsistencies between the definition of a service animal in the airport environment and on aircraft that stakeholders have identified.[99]

2. Definition of Service Animal Handler

The NPRM

The Department proposed 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 [100] who accompanies an individual with a disability traveling with a service animal(s). The Department proposed that the service animal handler would be 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's proposed definition of a service animal handler differed 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.[101] The Department proposed to limit the definition of service animal handlers to the individual with a disability who is being helped by the animal and a safety assistant, meaning another individual who is required to travel with the person with a disability to assist that person in an evacuation from the aircraft, in order to make clear that service animal trainers and other

[92] Comment from American Council of the Blind, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18365.*

[93] Comment from International Air Transport Association, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19041.*

[94] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[95] Comment from U.S. Support Animals, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19248.*

[96] *Id.*

[97] Comments from U.S. Support Animals, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19248* and Autism Self Advocacy Network, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19232.*

[98] HUD, which enforces Fair Housing Act regulations, recognizes two types of assistance animals: (1) Service animals, and (2) other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (''support animal''). See Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, FHEO Notice: FHEO–2020–01 at *https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf* (Jan. 28, 2020), and *https://www.hud.gov/sites/dfiles/PA/documents/AsstAnimalsGuidFS1-24-20.pdf.*

[99] Although the Department, in this final rule, has closely aligned its service animal definition under the ACAA with DOJ's service animal definition under the ADA, the substantive requirements in this rule differ from DOJ's requirements for service animals under the ADA in numerous respects. For instance, in this final rule, the Department allows carriers to require passengers traveling with service animals to submit a DOT health and behavior attestation form and for long flights, a DOT service animal relief attestation form. Conversely, DOJ regulations prohibit covered entities from requiring documentation from a service animal user, such as proof that the animal has been certified, trained, or licensed as a service animal. *See* 28 CFR 35.136(f), 28 CFR 36.302(c)(6).

[100] The term ''safety assistant'' is used in the Department's disability regulation. See 14 CFR 382.29(b).

[101] *See* Frequently Asked Questions about Service Animals and the ADA, Questions 27, available at *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.*

passengers traveling with an individual with a disability on aircraft who are not safety assistants would not be considered service animal handlers under the ACAA rules. The Department sought comment generally on its decision to define the term ''service animal handler'' and sought comments on its proposed definition. The Department also sought comment on what impact, if any, its exclusion of third parties as service animal handlers might have on individuals with disabilities who are traveling on aircraft with a service animal.

Comments Received

Disability advocates, such as PVA and DREDF, opposed DOT's proposed definition of a service animal handler, arguing that the Department should make its definition of a service animal handler consistent with DOJ's ADA guidance on service animal handlers, which includes third parties.[102] Disability Rights Florida also commented that it ''urges DOT to use the DOJ ADA formulation to allow a third party, such as a parent, caretaker or aide, to also be a service animal handler for a young child or other individuals with a disability.'' [103]

Some disability advocates also opposed DOT's proposal to define safety assistants as service animal handlers, arguing that safety assistants are not service animal handlers, as their purpose is to ensure safe disembarkation from the aircraft, not to handle a passenger's service animal. Open Doors Organization commented that a ''safety assistant's sole purpose is to assist a traveler with a disability in the event of an emergency, not to provide personal care assistance or any other non-safety-related help to a traveler.'' [104] Similarly, Psychiatric Service Dog Partners commented that a ''member of the disabled service animal user's party should not need to meet the 'safety assistant' description in 14 CFR 382.29 in order to provide handling assistance.'' [105] Conversely, with respect to airlines, the Association of Asian Pacific Airlines (AAPA) s and A4A both expressed support for DOT's proposal to include safety assistant in its definition of a service animal handler.[106]

DOT Response

The Department has decided to define the term ''service animal handler'' in its disability regulation differently from proposed.[107] The Department is persuaded by the comments supporting the recognition of third-party service animal handlers consistent with DOJ's ADA guidance and is revising its proposed definition of a service animal handler in this final rule to more closely align with DOJ's treatment of a service animal handler. The revised definition includes third parties in the DOT definition of a service animal handler. It also excludes safety assistants because, as commenters noted, safety assistants do not necessarily serve the same role as service animal handlers. The revised definition also provides for the situation where a child with a disability, who may not be able to control a service animal physically, is accompanied by a parent or other third party who physically handles and controls the service animal on the child's behalf.

3. Service Animal Documentation

In the NPRM, the Department proposed to allow airlines to require individuals traveling with a service animal to submit three DOT-created forms: (1) A certification of a service animal's good behavior and training; (2) a certification of good health; and (3) for flight segments of eight hours or more, a certification that the animal would not need to relieve itself or could relieve itself in a way that does not create a health or sanitation risk. The Department proposed that each form include a warning to service animal users that it would be a Federal crime, in violation of 18 U.S.C. 1001, to make false statements or representations on these forms to secure disability accommodations. The Department also proposed to allow airlines to require passengers to submit completed versions of these forms as a condition of travel. The Department sought comment on its proposal to standardize the service animal documentation process by allowing airlines to require DOT forms, and its proposal that the DOT forms be the only documentation that an airline could require from a passenger traveling with a service animal. The Department recognized that the DOJ does not allow these types of forms for public accommodation under the ADA. The Department reasoned, however, that air transportation is unique because it involves transporting a large number of individuals in a confined space thousands of feet in the air with no means of egress; accordingly, it stated that it would be appropriate for airlines to require these forms to ensure that the animal does not pose a health or safety risk to other passengers or service animals before boarding the cabin of the aircraft.

DOT received nearly 500 comments on its proposal to allow airlines to require service animal handlers to submit the various forms to airlines. We will discuss each form and its elements in greater detail below.

A. Behavior and Training Form

The NPRM

First, the Department proposed to allow airlines to require a U.S. Department of Transportation Air Transportation Service Animal Behavior and Training Attestation Form (Behavior and Training Form), to be completed by the service animal handler, which often is the same person as the individual with a disability who receives assistance from the service animal. The proposed Behavior and Training Form would have required the handler to certify that: (1) The animal has been individually trained to do work or perform tasks for the benefit of the passenger with a disability; (2) the animal has been trained to behave properly in public; (3) the handler is aware that the service animal must be under the handler's control at all times; (4) the handler is aware that if the animal misbehaves in a way that

[102] Comments from PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19429*, and DREDF, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19264*.

[103] Comment from Disability Rights Florida, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19336*.

[104] Comment from Open Doors Organization, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19305*.

[105] Comment from Psychiatric Service Dog Partners, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17092*.

[106] *See* Comment from Association of Asian Pacific Airlines (AAPA), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19323,* ''[w]e also support DOT's proposal to limit the definition of a service animal handler to a qualified individual with a disability or a safety assistant travelling with them, who will be responsible for keeping the animal under control at all times, and caring for and supervising the service animal, including toileting and feeding.'' Also, see comment from A4A at Service animal handler, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240,* ''[w]e support DOT's proposed definition of ''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), who accompanies an individual with a disability traveling with a service animal(s).''

[107] The definition of service animal handler in 14 CFR part 382 is solely for the purpose of determining the individuals who would be responsible for the care and control of an animal that does work or performs tasks that are directly related to an individual's disability. It does not mean that these individuals would be considered service animal handlers under 14 CFR part 121. Specifically, they are not considered ''persons necessary for the safe handling of animals'' in section 14 CFR 121.583(a)(4)(ii), which provides that a person necessary for the safe handling of animals is excluded from the passenger-carrying requirements of part 121. *See* 14 CFR 121.583(a)(4)(ii).

indicates it has not been properly trained, then the airline may treat the animal as a pet; and (5) the handler is aware that the handler may be liable for damage caused by the service animal's misbehavior, so long as the airline charges passengers without disabilities for similar kinds of damage.

The Department proposed to allow airlines to require this form as a condition of transport for individuals traveling with service animals because the form would allow airlines to receive direct assurances from service animal users of their animal's good behavior and training. The form would have also served as an instrument to educate passengers traveling with service animals on how service animals in air transportation are expected to behave, and that the airline could charge passengers for damage caused by a service animal, so long as the airline had a policy of charging other passengers for similar kinds of damage. The Department also reasoned that the form itself would have the potential to 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 and thus risk the potential for criminal prosecution.

The Department sought comment on its proposal to allow airlines to require the DOT Behavior and Training Form, the general content of the form, and whether the form would help ensure that service animals are properly trained. DOT also sought comment on whether the form would serve as an effective fraud deterrent for passengers who might try to misrepresent their pets as service animals, and the impact this form would potentially impose on those individuals traveling with traditional service animals who were not previously required to provide documentation to airlines.[108]

Comments Received

The proposed Behavior and Training Form was opposed by nearly sixty percent of individuals, and the great majority of the disability rights advocacy organizations, who commented on the issue. Those commenters who opposed this form, such as the National Council on Disability, the American Council for the Blind, and DREDF, argued that it would be unduly burdensome for passengers with disabilities, especially to those who had never been required to submit any type of documentation to travel with their service animal in the past. PVA commented that ''[d]ecades of access without documentation have been provided for the vast majority of service animal users,'' and that requiring all passengers with disabilities who use service animals to attest to their animal's behavior and training, and provide a health form to gain access ''burdens an individual's civil rights without any justification that such burden is needed.'' [109] Other opponents argued that the forms were unnecessary and inconsistent with other Federal civil rights laws.

The proposed Behavior and Training Form was supported by about forty percent of individuals, all of the airline and industry organizations, and a minority of advocacy organizations that commented on the issue. Supporters of the form, such as A4A, argued that it would provide a uniform method of ensuring that animals have been properly trained to perform a task or function and trained to behave in public, and the consistency of a DOT form would facilitate a smoother travel experience for persons with disabilities.[110] Spirit Airlines commented that the DOT forms would ''lessen the opportunity for confusion and promote uniformity across domestic air travel.'' [111] Psychiatric Service Dog Partners also commented that if DOT permitted airlines to require a form, it is important that the forms be uniform, transferable among airlines, and available to individuals with disabilities in an accessible format to reduce burdens on individuals traveling with service animals.[112]

While a number of organizations (such as ADI–NA, America's VetDogs, and the Open Doors Organization) strongly oppose documentation requirements for individuals with disabilities traveling with trained service animals, these organizations commented that if the Department were to allow airlines to require behavior and training attestations, it would be less burdensome on individuals with disabilities if these attestations could be made through a check-box system available on each airline's website during the reservation process.[113] A4A and IATA indicated that the only effective way to reduce fraud is to require passengers to obtain a certification from an accredited service dog training organization such as Assistance Dogs International or the International Guide Dog Federation that the animal has been properly trained (either by the organization itself or by the dog's handler).[114]

DOT Response

The Department is of the view that allowing airlines to require individuals with disabilities to attest to their animal's good behavior and training serves the important purpose of ensuring that passengers are aware of how their animals are expected to behave on aircraft. Furthermore, the Department believes that allowing airlines to require an attestation completed by the service animal users, rather than a veterinarian or other third party, as a means of verifying the service animal's good behavior, training and good heath, will impose minimal burdens on service animal users. The Department also believes that a behavior and training attestation will assure airline personnel and the traveling public that an animal, which is being presented as a service animal for uncrated transport in the aircraft cabin, has been both trained to perform a task or function for the passenger with a disability, and has been trained to behave in public. As such, this final rule allows airlines to require passengers

[108] The Department was aware of airline policies requiring or recommending that passengers with disabilities traveling with service animals carry vaccination, training, or behavior documentation with them. However, these airline policies often were applied only to ESAs or PSAs. In 2019, the Department's Office of Aviation Consumer Protections stated that ''[w]hile section 382.117 clearly sets forth the type of medical documentation that airlines may request from ESA and PSA 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.'' *See* Guidance on Nondiscrimination on the Basis of Disability in Air Travel, Final Statement of Enforcement Priorities Regarding Service Animals, 84 FR 43480, 43484 (Aug. 21, 2019).

[109] *See* Comments from PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19429 and DREDF, https://beta.regulations.gov/comment/DOT-OST-2018-0068-19264.* PVA and Disability Rights Florida did argue that such forms could be required of emotional support animal users; however, this issue is now moot in light of the Department's decision to allow airlines not to recognize emotional support animals as service animals.

[110] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[111] Comment from Spirit Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19221.*

[112] Comment from Psychiatric Service Dog Partners, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17092.*

[113] Comments from ADI–NA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17915;* America's VetDogs, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18138;* and Open Doors Organization, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19305.*

[114] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240 and IATA, https://beta.regulations.gov/comment/DOT-OST-2018-0068-19041.*

traveling with a service animal to submit a completed U.S. Department of Transportation Service Animal Air Transportation Form (Air Transportation Form), as described more fully below, which includes an attestation from the service animal handler of a service animal's good behavior and training.

The Department is adopting its proposal that the only forms that airlines may require of passengers with service animals are the forms developed by the Department. In 2019, the Department's Office of Aviation Consumer Protections had stated that it does not ''intend to take action against an airline for asking service animal users to present documentation related to a service animal's vaccination, training, or behavior, so long as it is reasonable to believe that the documentation would assist the airline in determining whether an animal poses a direct threat to the health or safety of others.'' [115] This final rule makes it clear that airlines are not permitted to require any other documentation as a condition of transport, beyond the ones described in the rule. As such, service animal users will no longer have to navigate different forms propounded by different airlines.

With regard to the content of the DOT form, we decline the suggestion of A4A that the form require service animal handlers to certify that the animal was either trained or evaluated by an accredited organization as a means of validating the animal's training. While DOT provides space on its form for a service animal handler to state the organization or individual that trained the service animal to do work or perform tasks to assist the handler, DOT does not require that individuals with disabilities have their animal trained or evaluated by an accredited organization as a condition of transport. The Department similarly rejects the suggestion from IATA that every service animal user must obtain a certification of training from a specific organization, as this requirement could impose an undue burden on service animal users.[116]

[115] Guidance on Nondiscrimination on the Basis of Disability in Air Travel, Final Statement of Enforcement Priorities Regarding Service Animals, 84 FR 43480, 43484 (August 21, 2019).

[116] Other commenters suggested additional modifications to the content of the form. Allegiant Air and ANA suggested that the form make clear that all boxes must be checked for the animal to be accepted for transport. We are of the view that this aspect of the form is already sufficiently clear. Psychiatric Service Dog Partners suggested that the form should contain both a ''YES'' box and a ''NO'' box, so that individuals take greater time to assess the questions and understand the answers. We decline this suggestion as an unnecessary.

B. Health Form

The NPRM

DOT proposed to allow airlines to require a U.S. Department of Transportation Air Transportation Service Animal Health Form (Health Form), to be completed by the service animal's veterinarian. The Centers for Disease Control and Prevention (CDC), a major operating component of the U.S. Department of Health and Human Services, requires that all dogs imported into the United States, including service dogs, be vaccinated for rabies if coming from a high-risk rabies country.[117] The proposed Health Form was modeled after a number of State certificate of veterinary inspection (CVI) forms and the United States Department of Agriculture (USDA) APHIS 7001 form.[118] DOT proposed that the passenger's veterinarian would describe the animal, indicate whether the service animal's rabies vaccinations were up to date, state whether the animal had any known diseases or infestations, and state whether the veterinarian is aware of any aggressive behavior by the animal. The Department reasoned that such a form would help to ensure that the animal does not pose a direct threat to the health or safety of others. The Department indicated that it had consulted with airlines and the AVMA in drafting the content of the form.

The Department sought comment on its proposal to permit airlines to require the proposed Health Form as a condition of travel, the general content of the Health Form, and whether airlines should be able to refuse transportation to a service animal based on the information contained in the form. The Department asked whether the proposed Health Form would ensure effectively that a service animal does not pose a direct threat to the health or safety of others by ensuring that travelers do not contract rabies from a service animal if bitten. The Department asked whether veterinarians should indicate on the form whether, to the veterinarian's knowledge, the animal has ever exhibited aggressive behavior. The Department sought comment on whether it would be burdensome for individuals traveling with service animals to allow airlines to require the Department's Health Form. Finally, the Department asked whether it should allow airlines to require passengers traveling with service animals to provide photo identification of the service animal as an additional measure to verify a service animal's identity.

[117] 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).

[118] *https://www.aphis.usda.gov/library/forms/pdf/APHIS7001.pdf.*

Comments Received

The proposed Health Form was opposed by most individuals and nearly all of the disability rights advocacy organizations who commented on the issue. Opponents raised many of the same arguments that they raised with regard to the proposed Behavior and Training Form, but added that the Health Form would have a financial impact on passengers with disabilities because it would require them to make an extra visit to a veterinarian and potentially to incur veterinarian fees.[119] Opponents noted that requiring a form from a veterinarian could also significantly limit an individual's ability to travel on short notice. Advocates also argued that veterinarians may be uncomfortable attesting to the behavior of the animal, even if the attestation is limited to information within the personal knowledge of the veterinarian. Other advocates argued that because the overall incidence of rabies in the United States is exceedingly low, the form would not be an effective means to determine if an animal poses a direct threat. More generally, advocates including PVA and DREDF argued that the data on the proposed Health Form would not provide a meaningful basis from which to conclude that an animal poses a direct threat.[120]

Proponents of the proposed Health Form included about forty-five percent of individual commenters and all industry commenters. Proponents generally argued that a DOT form would provide a uniform means of determining whether an animal poses a direct threat. AVMA agreed that a form with rabies information should be required, stating that ''rabies vaccination for dogs is necessary to protect both animal and public health, and, accordingly, it is reasonable and prudent to require proof of vaccination against this disease.'' [121]

[119] Comment from Psychiatric Service Dog Partners, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17092,* Psychiatric Service Dog Partners estimated the total cost of service animal users being required to fill out veterinary forms at almost $60 million.

[120] See comments from PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19429, and DREDF, https://beta.regulations.gov/comment/DOT-OST-2018-0068-19264,* ''[T]he issue is the level of training of the animal, not its health, that poses the threat.'' *See also* Comment from ADI, NA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17915.*

[121] Comment from AVMA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19283.*

On the other hand, AVMA argued that creating a DOT-specific form was unnecessary because veterinarians could fill out a CVI for the user.[122] AVMA pointed out that CVIs are ''existing official forms that are required by most states for interstate transport and international travel under existing laws.'' [123] AVMA also urged the Department not to adopt a form that would require a veterinarian to attest to the behavior of the animal. AVMA urged that this aspect of any form be filled out by the service animal user.

A4A and certain individual airlines suggested that to reduce burdens on service animal users, the proposed Health Form should be signed by the passenger instead of a veterinarian, and should be combined with the Behavior and Training Form into a single document.[124] Some of these commenters also suggested that the Department should allow airlines to require passengers to travel with copies of their service animal's veterinary records. Open Doors Organization took the position that if DOT allowed airlines to require service animal users to provide animal health documentation, airlines should be able to require passengers to travel with veterinary forms, but not to fill out the Health Form.[125] Finally, certain commenters suggested that the essential information from the veterinary form could be provided during each airline's reservation process, rather than through submission of an official DOT form.

DOT Response

The Department believes that it is important and appropriate to allow airlines to require passengers to affirm that their service animal is in good health as a condition of transport. We agree with AVMA and others who indicate that it is ''reasonable and prudent'' to require proof of rabies vaccinations.[126] We also believe that it is prudent to require information relating to whether the animal is free of diseases that may endanger the health of humans or other animals.

However, the Department recognizes the difficulties that would arise from a requirement that the Health Form be filled out by a veterinarian, such as the expense that would be incurred by service animal users and the potential reluctance of veterinarians to attest to the animal's behavior. To alleviate the burden and difficulties, the Department has modified the form in the final rule such that the passenger, rather than a veterinarian, will be required to provide information about the health and behavior of the animal. The Department has also decided to combine the proposed Health Form with the proposed Behavior and Training Form to create a single one-page document called the ''Service Animal Air Transportation Form'' (Air Transportation Form) to reduce burdens further on both service animal users and airlines. This one-page Air Transportation Form will also include space for the service animal handler to provide a physical description of the service animal. Because the Air Transportation Form will contain information on the animal's physical description and health, the Department does not view it as necessary to permit airlines to require the passenger to carry the animal's veterinary records or provide a photo of the animal as a condition of transport.

The Department expects that these adjustments will allow airlines to obtain and process important health and safety information in an efficient and uniform fashion while minimizing burdens on the service animal user.[127] The Department recognizes that despite these adjustments, the combined Air Transportation Form could impose a new burden on certain service animal users. Prior to this final rule, the regulation did not explicitly permit or prohibit the use of additional documentation related to a service animal's vaccination, training, or behavior. Beginning in 2018, some airlines began adopting policies requiring behavior, training, and health forms for certain service animals. In August 2019, the Department's Office of Aviation Consumer Protection stated that it does not ''intend to take action against an airline for asking service animal users to present documentation related to a service animal's vaccination, training, or behavior, so long as it is reasonable to believe that the documentation would assist the airline in determining whether an animal poses a direct threat to the health or safety of others.'' [128] The Department regards allowing airlines to require a DOT-issued Air Transportation Form to be less burdensome and a better option for individuals traveling with service animals than allowing airlines to develop their own individual forms to assist them in determining whether a service animal poses a direct threat to the health or safety of others.

The Air Transportation Form serves the vital purpose of assuring airlines and the traveling public that the user's service animal is vaccinated from rabies, has not been exposed to rabies, and to the user's knowledge is free of pests and diseases that would endanger people or other animals or would endanger public health. The form also requires service animal users to attest that their animals are both trained to perform a specific task or function and trained to behave in public. It educates the user that the animal must be harnessed, leashed, or otherwise tethered; that the animal may be treated as a pet if it engages in disruptive behavior; and that the user may be responsible for any damage caused by the service animal. The Air Transportation Form also provides airlines with a means of contacting the service animal user and the animal's veterinarian in the event of an incident that endangers other passengers or service animals. Finally, the Federal nature of the form serves to impress upon individuals the importance of filling it out properly.[129] The Department continues to hold the view that a different approach from the ADA with respect to documentation is appropriate given the unique realities of air transportation, which place the service animal in close proximity with many humans and potentially with other animals for hours in a tightly confined cabin with no means of egress from the aircraft.

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[122] *Id.*

[123] *Id.*

[124] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[125] Comment from Open Doors Organization, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19305.*

[126] We recognize that instances of rabies in the United States are rare, and that dogs are generally required to be vaccinated for rabies.

[127] PVA and DREDF commented that they opposed the use of documentation; however, if the Department were to continue to allow it, then uniform Federal documentation was preferable to individual airline forms. See comments from PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19429, and DREDF, https://beta.regulations.gov/comment/DOT-OST-2018-0068-19264.*

[128] *See* Guidance on Nondiscrimination on the Basis of Disability in Air Travel, Final Statement of Enforcement Priorities Regarding Service Animals, 84 FR 43480, 43484 (Aug. 21, 2019).

[129] The Federal crime notification is discussed in greater detail in the next section below.

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).

U.S. Department of Transportation Service Animal Air Transportation Form

Service Animal Handler's Name: _____ Phone: _____

Service Animal User's Name (if different from Handler): _____ Phone: _____

Service Animal Handler's Email: _____ Animal's Name_____

Description of the Animal (including weight): _____

Animal Health

☐ _____ is vaccinated for rabies. Date of last vaccination: _____ Date vaccination expires in the dog: _____
[Insert Animal's Name]

☐ To my knowledge, _____ does not have fleas or ticks or a disease that would endanger people or other animals.
[Insert Animal's Name]

Veterinarian's Name (signature not required): _____ Phone: _____

Animal Training and Behavior

☐ _____ has been trained to do work or perform tasks to assist me with my disability.
[Insert Animal's Name]

Name of Animal Trainer or Training Organization: _____ Phone: _____

☐ _____ has been trained to behave in a public setting.
[Insert Animal's Name]

☐ I understand that a properly trained dog remains under the control of its handler. I understand that a properly trained dog does not act aggressively by biting, barking, jumping, lunging, or injuring people or other animals. It also does not urinate or defecate on the aircraft or in the gate area.

☐ I understand that if _____shows that it has not been properly trained to behave in public, then the airline may treat
[Insert Animal's Name]

_____ as a pet by charging a pet fee and requiring _____to be transported in an FAA-approved pet carrier.
[Insert Animal's Name] [Insert Animal's Name]

☐ To the best of my knowledge, _____ has not behaved aggressively or caused serious injury to another person/dog.
[Insert Animal's Name]

If you cannot check the box above, please explain: _____

Other Assurance

☐ I understand that _____ must be harnessed, leashed, or tethered at all times in the airport and on the aircraft.
[Insert Animal's Name]

☐ I understand that if _____ causes damage, then the airline may charge me for the cost to repair it, as long as the airline
[Insert Animal's Name]
would also charge passengers without disabilities to repair the similar kinds of damage.

☐ I am signing an official document of the U.S. Department of Transportation. My answers are true to the best of my knowledge. I understand that if I knowingly make false statements on this document, I can be subject to fines and other penalties.

Signature of the Service Animal Handler: _____ Date: _____

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C. Relief Form

The NPRM

The third and final form that DOT proposed to allow airlines to require is a U.S. Department of Transportation Service Animal Relief Attestation Form (Relief Form). The Department noted that its current ACAA regulations permit airlines to require individuals traveling with service animals on a flight segment that is longer than eight 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 noted that the current rule did not set a uniform method for such documentation or assurances. The Department proposed to amend this requirement by allowing airlines to require passengers traveling on flights eight hours or longer to submit to airlines a standardized DOT document. The Relief Form would require the service animal user to check a box attesting that either: (1) The animal will not need to relieve itself on the flight; or (2) the animal can relieve itself on the flight in a way that does not pose a health or sanitation issue (with a description of that method). The form also requires the service animal user to attest to an understanding that the airline may charge passengers with disabilities traveling with a service animal for the cost to repair damage caused by the passenger's service animal, so long as the airline charges passengers without disabilities for similar kinds of damage. The Department sought comment on the general content of the Relief Form, and whether the form would serve as adequate proof to verify that a passenger's animal would not need to relieve itself on flight segments of eight or more hours, or could relieve itself in a way that does not create a health or sanitation issue.

Comments Received

The Relief Form was opposed by almost half of individual commenters, all disability advocacy organizations, and certain airline organizations. Advocates who opposed the Relief Form raised many of the same arguments that they raised with respect to the other forms the Department proposed in the NPRM. Certain advocates also argued that the form was unnecessary because there are only a few domestic flight segments longer than eight hours.

A4A argued that the Relief Form should not be required for flight segments over eight hours.[130] A4A took the view that it is impossible for an animal to relieve itself in a sanitary manner onboard a flight; therefore, passengers should not be given the option of making this attestation. According to A4A, ''airlines would instead rely on training and communication with those passengers to facilitate elimination when needed,'' for example, by encouraging passengers to take shorter flight segments.[131] American Airlines urged the Department to forgo the Relief Form because doing so would reduce burdens on passengers.[132] Similarly, Air Canada also commented that the Relief Form should not be an option because it does not believe that animals can relieve themselves without creating a health or sanitation issue in a confined space such as an aircraft.[133]

Proponents of the Relief Form included a majority of individual commenters, and a number of industry commenters, including Spirit Airlines, Allegiant Air, and AAPA.[134] Proponents argued the benefits of having a uniform means of assurance that the animal would not relieve itself onboard the aircraft, or could do so in a sanitary manner, rather than a process that allows service animal users to submit various types of documentation to explain their animal's relief functions.

DOT Response

The Department has decided to retain the Relief Form largely as proposed. The Relief Form will remain a separate document, in recognition of the fact that it will be used only for those rare flight segments that are scheduled for longer than eight hours. The Department is of the view that the Relief Form does not impose significantly greater burdens on passengers with disabilities than the prior service animal rule. The prior rule also allowed airlines to require passengers to provide documentation for flights longer than eight hours that a service animal would 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. However, the prior rule did not specify what type of documentation was permissible. This final rule effectively standardizes the Relief Form documentation. The content of the Relief Form has been modified slightly in this final rule in the following ways: (1) Data fields have been added for the animal's name, the date of the flight, and the estimated length of the flight; (2) the language has been simplified for ease of comprehension; and (3) fraud warnings appear in a format that matches the fraud warnings of the new combined Air Transportation Form.

In response to A4A's comment that the Relief Form ''should not be required'' for flights over eight hours, we observe that the Department allows airlines to require passengers traveling on flights eight hours or more to produce this form—airlines are free to accept a service animal for transport on a flight segment over eight hours without providing the Relief Form. However, if an airline chooses not to require the form, the airline is not free to deny transport to a service animal on flight segments longer than eight hours based on concerns about the animal's elimination functions. In such situations, the airline may require the passenger to fill out the Relief Form as a condition of travel for flight segments longer than eight hours.

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[130] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[131] *Id.*

[132] Comment from American Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19138.*

[133] Comment from Air Canada, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19328.*

[134] Comments from Spirit Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19221, Allegiant* Air, https://beta.regulations.gov/comment/DOT-OST-2018-0068-19164, and AAPA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19323.*

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 Service Animal Relief Attestation Form

Service Animal Handler's Name_____ Phone: _____

Service Animal User's Name (if different Handler): _____ Phone: _____

Email: _____

Animal's Name: _____ Estimated Flight Length: _____

Flight Date: _____ Departure Airport:_____ Arrival Airport: _____

Check one or both boxes:

☐ _____will not need to relieve itself while on the aircraft.
[Insert Animal's Name]

☐ _____can relieve itself on the aircraft without creating a health/sanitation issue.
[Insert Animal's Name]

Describe how _____ will refrain from relieving itself, or relieve itself without posing a health/sanitation issue (e.g., the use of a dog diaper):
[Insert Animal's Name]

_____

_____

☐ I understand that if _____causes damage, then the airline may charge me for the cost to repair it, as long as the airline would also charge passengers without disabilities to repair the same kind of damage.
[Insert Animal's Name]

☐ I am signing an official document of the U.S. Department of Transportation. My answers are true to the best of my knowledge. I understand that if I knowingly make false statements on this document, I can be subject to fines and other penalties.

Signature of the handler: _____Date: _____

BILLING CODE 4910–9X–C

D. Federal Crime Notification

The NPRM

In the NPRM, the Department provided samples of all three proposed forms. Each form contained the following statement, in small print at or near the top of the form: ''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).'' In addition to that standard notice, the Department's proposed Behavior and Training Form would have also required the service animal user to check a box stating: ''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.'' The proposed Health Form (which was proposed to be filled out by the veterinarian) and the Relief Form did not have similar check-boxes indicating an awareness of the consequences of falsification. The Department sought comment on whether the forms adequately educate passengers on the seriousness of falsifying the forms.

Comments Received

The Department received a range of responses to the Federal crime notification. Airlines and airline organizations generally supported the use of DOT forms with Federal crime notifications on the ground that users may be less likely to falsify a Federal form. Various industry commenters urged the Department to add stronger and more detailed warning language. A4A and IATA also urged the Department to establish specific and clear procedures for how airlines can report incidents of fraud with respect to service animal documentation.[135] According to A4A, airlines do not have the ability to combat documentation fraud.[136] A4A and Asiana argued that the deterrent effect of the warning would be stronger if DOT specified the penalties for the violations.[137] Allegiant argued that the crime warning itself should be made more prominent on each form.[138]

Certain advocacy organizations, such as ADI–NA and Service Dogs of Virginia, also commented that DOT should specify the penalty for lying on the Behavior and Training Form;[139] similarly, ACB-California commented that ''there must be a significant penalty for deception,'' such as a fine or placing the individual on a no-fly list.[140]

ANA argued that the Department has the statutory authority to impose civil penalties of up to $1,466 on individuals who breach certain regulations governing passenger conduct.[141] ANA urged the Department to cite this authority on the forms, and to establish procedures by which airlines may report issues of documentation fraud to the DOT or the DOJ.[142] Similarly, Asiana Airlines commented that ''appropriate civil penalties administered by DOT may be a more effective and efficient deterrent to false statements,'' because actual imposition of criminal penalties is unlikely.[143]

The National Multiple Sclerosis Society and the Autistic Self Advocacy Network urged the Department to revise the forms so that they are more easily understood by individuals with cognitive or developmental disabilities.[144] Both organizations specifically urged the Department to reword the final entry on the Behavior and Training Form, relating to fraud.[145]

DOT Response

The Department agrees that the warning relating to penalties under 18 U.S.C. 1001 should be made more prominent; thus, we have increased the font size of the warning on both the Air Transportation Form and the Relief Form. We also agree that the final check-box on the finalized Air Transportation Form should reflect the warning in plain language so that passengers are able to comprehend the risk of falsifying information on the form. The final entry now reads: ''I am signing an official document of the U.S. Department of Transportation. My answers are true to the best of my knowledge. I understand that if I knowingly make false statements on this document, I can be subject to fines and other penalties.'' We have added this entry to the Relief Form as well. In general, we have strived to ensure that all the entries on the revised forms are easy to understand and to answer, especially because of the risk of Federal fines and penalties.

If an airline suspects instances of documentation fraud, the airline may notify the Office of Aviation Consumer Protection at *safalsestatementreports@dot.gov* to report such incidents and provide evidence supporting the airline's belief. The Office plans to refer these reports to the Department's Office of the Inspector General, as appropriate, for investigation and prosecution. The Department's Office of Aviation Consumer Protection does not have the authority to assess fines or other penalties on passengers who make false statements based on the Air Carrier Access Act or a regulation prescribed under that Act.[146]

The Department finds it unnecessary to describe this process on the form itself because it is more relevant to the airline than to the user filling out the form. We also do not, at this point,

[135] Comments from and A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240,* and IATA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19041.*

[136] Comments from and A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[137] Comment from Asiana Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19340.*

[138] Comment from Allegiant Air, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19164.*

[139] Comments from ADI–NA, https://beta.regulations.gov/comment/DOT-OST-2018-0068-17915, *and Service Dogs of Virginia, https://beta.regulations.gov/document/DOT-OST-2018-0068-32397/.*

[140] Comment from the California Chapter of the American Council of the Blind (ACB California) at *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19145.*

[141] Comment from ANA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19025,* citing 49 U.S.C. 46301 and *In re Wallesa,* FAA Order 2013–2 (May 14, 2013), available at *https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication/civil_penalty/CaseFile/view/2013/2013-2.pdf.* Section 46301(a)(1)(A)(i) and (ii) authorize civil penalties of up to $1,466 on individuals who violate the ACAA (49 U.S.C. 41705) or a regulation prescribed or order issued under the ACAA.

[142] Comment from ANA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19025.*

[143] Comment from Asiana Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19340.*

[144] Comments from the National Multiple Sclerosis Society, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19168,* and the Autistic Self Advocacy Network, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19232.*

[145] Comments from the National Multiple Sclerosis Society, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19168,* and the Autistic Self Advocacy Network, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19232.* Both organizations point out that as written, the proposed form appears to ask the individual with a disability to admit that the individual is committing fraud. The form stated: ''*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.'' (emphasis added).

[146] 49 U.S.C. 46301 permits the Department to impose civil penalties against those entities that violate certain statutory provisions or regulations prescribed under those statutory provisions. The Air Carrier Access Act, upon which final rule is based, requires U.S. and foreign air carriers to provide nondiscriminatory service and does not impose obligations on passengers. A passenger's submission of false information to an airline could therefore not support a civil penalty by the Department under 49 U.S.C. 46301.

believe that it is necessary to add greater detail to the forms about the types of fines or penalties that may arise from potential violations of 18 U.S.C. 1001. In our view, it is sufficient to impress upon users that they are filling out a Federal form and that they may be subject to fines or penalties if they knowingly falsify the forms.

E. Documentation Procedures

The NPRM

In the NPRM, the Department proposed various procedures relating to submitting and processing service animal documentation. Regarding timing, the Department proposed to allow airlines to require that the Health Form be ''current,'' *i.e.,* signed within one year of the date of the passenger's scheduled initial flight. The Department sought comment on whether one year is too long or too short for the form to be considered valid. The Department did not specify a timeframe for the proposed Behavior and Training Form or the Relief Form.

Also, the Department's proposal would have expressly prohibited airlines from requiring additional documentation from service animal users beyond the three DOT forms identified in the proposed rule. It proposed that copies of these three forms be kept at each airport that a U.S. carrier serves and at each airport a foreign air carrier serves a flight that begins or ends at a U.S. airport. It also proposed to require that airlines with a website make blank forms available on its website in an accessible format and to mail blank copies of the forms to passengers upon request.

Recognizing that the forms may impose a burden on those individuals traveling with traditional service animals who currently do not provide documentation, the Department sought comment from the public on ways to reduce the burden that the Department's service animal forms would have on passengers with disabilities. The Department solicited comment on whether to allow airlines to require the form each time a service animal user travels, and what medium airlines should be allowed to use to provide and collect the forms (*e.g.,* hardcopy, electronic).

Comments Received

The Department received a variety of comments from both advocates and airlines on its proposal that the service animal forms be kept at each airport that a U.S. carrier serves, at each airport a foreign air carrier serves a flight that begins or ends at a U.S. airport, and on airlines' websites. [147] Allegiant Air commented that it does not object to making DOT forms available on its website and at each airport served.[148] However, A4A and Air Canada commented that DOTs regulations should allow airlines to accept DOT forms electronically, rather than requiring airlines to accept paper forms received at the airport or printouts from an airline's website.[149] Some disability advocates such as ADI–NA, the Guide Dog Foundation, and Service Dogs of Virginia recommended that if DOT were to allow airlines to require passengers to submit DOT forms, passengers with disabilities should be permitted to provide the requested information using a check-box format during the reservation process to decrease the burden on passengers with disabilities traveling with service animals.[150] PVA and Psychiatric Service Dog Partners also commented that the burden on individuals with disabilities could be further reduced if airlines had the ability to attach a passenger's attestation to the passenger's frequent flyer or other appropriate travel record so that service animal users would not have to fill out DOT forms each time they travel.[151] ANA also commented that some information provided by the passenger to the airline on the DOT forms could be linked to the passenger's frequent flyer account.[152] Psychiatric Service Dog Partners also commented that the Department should amend the proposed regulatory text to clarify that carriers do not have to require DOT's forms, but should they require the forms, they should follow the procedural guidelines set forth in the rule, such as making the forms available at each airport an airline serves.[153]

Regarding the issue of whether airlines should be permitted to reject service animal documents that are stale (*e.g.,* dated more than one year before the date of travel), the comments that we received on this issue tended to center on the Health Form, because, as proposed, a veterinarian would have been required to fill out the form. The American Kennel Club and Hope Service Dogs agreed with the Department's proposal that its DOT Health Forms should be valid for a period of one year because the forms can be readily completed during the service animal's annual physical.[154] Similarly, A4A commented that if the Department finalizes its proposed Health Form, it supports ''DOT's proposal that the form be deemed valid for one year from the date of issuance, but no longer than the date of expiration of the animal's rabies vaccine.'' [155] ADI–NA, however, commented that DOT's proposal that its Health Form be valid for one year is too short given that ''[s]tatistically, more dogs are vaccinated for rabies with a three-year vaccine and requirements vary in each state.'' [156] ADI–NA also noted that if airlines were permitted to use a ''check box in the reservation process attesting that the service animal is current on its rabies vaccination,'' the issue of the duration of the form, one-year vs. three-years, goes away.[157]

As for the Department's proposal that airlines may only require the DOT service animal forms as a condition of travel, IATA, AAPA, and individual foreign airlines pointed out that foreign governments may impose their own service animal requirements (including additional forms and breed restrictions). IATA commented that ''all forms should make it clear that it is the sole

[147] PRM proposes that the service animal health form and the service animal behavior and training attestation form commonly used by carriers (as well as the service animal relief attestation form, where applicable) be DOT-designed documents that carriers would be required to accept; carrier-designed forms would be prohibited. Carriers would be required to make the DOT forms available on their websites and at each airport served. Allegiant does not object in principle to these proposals but submits that the forms are in need of improvement to deter fraud and abuse by unscrupulous passengers.

[148] Comment from Allegiant Air, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19164.*

[149] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240, and Air Canada, https://beta.regulations.gov/comment/DOT-OST-2018-0068-19328.*

[150] Comments from ADI–NA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17915,* the Guide Dog Foundation, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18141,* and Service Dogs of Virginia, *https://beta.regulations.gov/document/DOT-OST-2018-0068-32397/.*

[151] Comments from PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19348,* and Psychiatric Service Dog Partners, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17092.*

[152] Comment from ANA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19025.*

[153] Comment from Psychiatric Service Dog Partners, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17092.*

[154] Comments from American Kennel Club, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19163,* and Hope Service Dogs, Comment from Hope Service Dogs, Inc., *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18702.*

[155] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[156] Comment from ADI–NA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17915.*

[157] Comment from ADI–NA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-17915.*

responsibility of the passenger to comply with any and all applicable foreign laws, regulations, and paperwork requirements when traveling with their dog internationally.'' [158]

DOT Response

This final rule permits airlines to require that the DOT Air Transportation Form (*i.e.,* combined one-page health, behavior and training form) be completed for each trip but not each time a service animal user travels.[159] This means that a service animal user cannot be required to complete the form more than once if he or she purchased a round-trip ticket, as that would be considered one trip. The final rule also allows carriers to require that the service animal forms be current, which it defines as forms completed by the passenger on or after the date that the passenger purchased his or her ticket.

DOT recognizes that some commenters indicated their preference for attaching a record of the passenger's service animal attestation to the passenger's frequent flyer or other travel profile to eliminate the burden of a service animal user's having to fill out these forms each time the passenger travels. However, the Department believes that its decision to allow airlines to request and review up-to-date health and behavior information from a service animal user on each trip strikes the right balance as airlines can ensure that a service animal has not behaved aggressively or caused injury toward others, and that the animal has current vaccinations, each time the animal travels on an aircraft. The Department is also concerned with the potential privacy implications of airlines' permanently storing and maintaining a record of the passenger's service animal attestation to the passenger's frequent flyer or other travel profile without the passenger's consent.

Furthermore, the Department understands that foreign airlines are concerned with the proposed prohibition against airlines' requiring passengers to provide additional service animal documentation, beyond those specified by the Department, as a condition of travel. These commenters emphasized that foreign governments may impose additional restrictions and requirements on transport of service animals. This final rule permits airlines to refuse transportation to a service animal if its transport would violate the health or safety laws or regulations of a foreign government.[160] Elsewhere, the rule also states that airlines may impose additional restrictions on the transport of service animals if required by a foreign carrier's government.[161] Nevertheless, we are persuaded that it is also appropriate to add language explicitly stating that carriers may require additional service animal documentation to the extent it is required by foreign governments or domestic territories.[162]

Regarding the medium by which airlines are permitted to provide and accept the DOT service animal forms, the Department is requiring airlines that mandate completion of these forms by service animal users to provide the forms at each airport that a U.S. carrier serves, at each airport a foreign air carrier serves a flight that begins or ends at a U.S. airport, on airlines' websites, and by mail upon request. Airlines must provide passengers the option of submitting the completed form(s) electronically or by hardcopy if submitted in advance of the passenger's travel date. Several commenters indicated their preference for DOT to allow airlines to request the attestation in DOT's Air Transportation Form via a check-box system during the reservation process to decrease the burden on individuals with disabilities. DOT rejected this format because allowing passengers to attest to their animal's good behavior, training, and good health on an airline's website, rather than on an official Federal form, diminishes the use of the form as a potential fraud deterrent as airlines would not be permitted to include language warning service animal users that it would be a Federal crime, in violation of 18 U.S.C. 1001, to make false statements or representations to secure disability accommodations.

4. Number of Service Animals per Passenger

The NPRM

In the NPRM, the Department proposed to allow carriers to limit the number of service animals traveling with a single passenger with a disability to no more than two service animals. The Department also sought comment on whether there were any safety-related risks that could arise from allowing a passenger to transport two service animals as opposed to just one service animal.

Comments Received

Most disability rights advocates commented that airlines should be required to allow at least two service animals to travel with a single passenger if needed. Advocates reasoned 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. Advocates also noted that a passenger with a severe disability that requires around-the-clock assistance may require two service animals as the animals would take turns providing the individual assistance. Some advocates encouraged the Department to consider requiring airlines to transport more than two service animals. These advocates noted that passengers may have a legitimate reason for needing more than two service animals, and they should be permitted to carry more than two provided that they can explain why more than two service animals are needed.

The majority of airlines, however, commented that they should be permitted to limit the number of service animals traveling with a passenger to one service animal. These airlines argued that allowing just one service animal per passenger helps support safety and would help to avoid disruptions in the cabin. Airlines also argued that given the space afforded to individual passengers on aircraft, transporting more than one service animal could be problematic. Airlines also noted that one service animal could be trained to perform multiple tasks.

DOT Response

The Department finalizes, as proposed, a provision that allows carriers 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 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

[158] Comment from IATA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19041*.

[159] Airlines may require that the Relief Form be completed for each flight segment scheduled to take 8 hours or more.

[160] 14 CFR 382.79(a)(3); see also 14 CFR 382.7(g).

[161] 14 CFR 382.80.

[162] 14 CFR 382.75.

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. Although the Department understands that there may be instances where multiple service animals may be needed to accommodate an individual's disability given space constraints on the aircraft, the Department has concluded that it is appropriate to allow airlines to limit the number of service animals to two per passenger with a disability, although airlines are certainly free to allow a passenger to travel with more than two service animals if the airline wishes to do so. 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 final rule allows airlines to limit the space that a passenger's service animal or animals may occupy to the passenger's lap and foot space. While they are not required to do so, airlines may wish to provide an individual with two service animals with additional space, but airlines would also be free to require that both service animals fit into the individual's allotted space without encroaching into the space of another passenger. Under this final rule, 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. Requiring airlines to accommodate up to two service animals per passenger ensures that individuals with a disability who rely on more than one service animal are properly accommodated. And because both service animals would be trained to do work or perform tasks, the service animal handler should have no difficulty controlling both service animals onboard the aircraft.

5. Advance Notice or In-Person Check-In

The NPRM

In the NPRM, the Department stated that it would prohibit airlines from requiring individuals traveling with a service animal to provide the DOT-issued forms in advance of the passenger's flight because of concerns that it would prevent travel by passengers with disabilities wishing to make last minute travel plans that may be necessary for work or family emergencies.[163] Instead of advance notice, the Department proposed to allow airlines to require passengers to check in physically at the airport in advance of the check-in time for the general public. More specifically, the Department proposed to allow airlines to require service animal users to check in at the airport one hour before the check-in time for the general public to observe the service animal and process service animal documentation, so long as the airline similarly requires advance check-in for passengers traveling with their pets in the cabin. The NPRM proposed to permit airlines to require that the check-in take place at any designated airport location, including the terminal lobby.

To address the concern that service animal users may be potentially inconvenienced with long waits when physically checking in at the airport because they would not have the benefit of checking in electronically before arriving at the airport like other passengers, DOT also proposed to require airlines to make an employee trained to handle disability-related matters available in person at the airline's designated airport location where the service animal could be observed and the service animal documentation review and passenger check-in could occur promptly. The Department also proposed 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.

The Department sought comment on each of these proposals and specifically whether one hour before the general public check-in would provide sufficient time for airline personnel to process service animal documentation.

Comments Received

The Department received approximately 400 comments on this proposal. The disability rights advocates, including ACB, AFB, America's Vet Dogs, ADI–NA, Canine Companions for Independence, the DREDF, Guide Dog Users of Canada, the Empire State and Florida, PVA, and individual commenters, all of which make up the majority of the disability advocacy comments received on this issue, generally opposed DOT's proposal. These organizations argued that permitting airlines to require advance check-in would be unduly burdensome and discriminatory, would separate individuals with disabilities from their loved ones and travel companions, and would single out passengers with disabilities at the airport. They also argued that this process would prevent such passengers from utilizing curbside, online, or mobile check-in, or from bypassing the airport check-in lobby and going straight to the security check point if not checking a bag, as passengers who are not traveling with service animals are able to do.

Commenters argued that guide dogs have a long record of safe travel, and that a lengthier check-in process for persons with disabilities who use service animals would preclude blind guide dog users from making emergency or impromptu trips. They also stated that the proposed requirements could significantly hinder blind business travelers from carrying out the necessary duties of their employment. ACB commented that because air travelers are already required to arrive at the airport far before the take-off of their flight, requiring a person with a disability with a service dog to come even earlier is discriminatory.[164] ACB further commented that this requirement would single service animal users out and cause undue anxiety.[165] America's VetDogs agreed this proposal would cause an unjust burden on individuals with disabilities that use service dogs that the general public does not have to endure, and stated further that such a requirement could cause individuals traveling with service animals to be separated from their travel party.[166] Other commenters argued that permitting airlines to require early check in could pose particular challenges for individuals with psychiatric illnesses, such as Post-Traumatic Stress Disorder, because those individuals are already uncomfortable in crowds and asking them to come to the airport earlier and remain in a crowd places an undue burden on them. PVA commented that

[163] Part 382 generally prohibits airlines from requiring advance notice as a condition of providing disability accommodations, unless the rule specifically permits advance notice. *See* 14 CFR 382.27(a). The existing service animal rule did specifically permit airlines to require passengers to provide 48 hours' advance notice for transportation of an emotional support or psychiatric service animal in the cabin, and for transportation of a service animal on a flight segment scheduled to take 8 hours or more. *See* 14 CFR 382.27(c)(8) and (c)(9).

[164] Comment from American Council for the Blind, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18365.*

[165] *Id.*

[166] Comment from America's VetDogs, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18138.*

it opposes a rule that would permit airlines to require advance airport check-in.[167] In PVA's view, if the training and behavior attestation and health forms are required, then the only processing that should be required is a quick review to ensure that the forms are completed properly; additional time should not be needed to observe the animal.[168] One individual commenter also noted that a one-hour advance check-in requirement would have an adverse effect on the service animals themselves. The commenter stated that a requirement that a passenger with a service animal check in earlier will prevent service animal users from utilizing benefits such as curbside and online/mobile check-in that other travelers enjoy, increase the time that the service animal will be unable to relieve itself, and will cause additional anxiety for the service animal handler to ensure the comfort of the animal and to locate a service animal relief area.[169]

Most disability advocacy organizations that opposed both DOT's proposed early check-in and DOT's documentation proposal, including the New York State Bar Association Disability Rights Committee and PVA, commented that if DOT permits airlines to require documentation against its wishes, it would be in favor of DOT's proposal to require airlines to make an employee trained in disability-related matters available to process service animal documentation promptly.[170]

Airlines were split in their support for the one-hour check-in proposal, given the cost associated with ensuring that a dedicated airline employee would have space at the airport and would be available to assist the passengers with the check-in process. Most, if not all, airlines expressed their preference for allowing airlines to collect service animal documentation up to 48 hours in advance. These airlines reasoned that allowing airlines to require passengers to provide the forms in advance, rather than check in at the airport one hour early, would be less burdensome for passengers, and would give airlines ample opportunity to review the documentation and, if needed, provide the passenger time to correct the documentation before the passenger's flight.

The AAPA stated that it supports the Department's advance check-in proposal, but suggested that airlines should be allowed to designate service contractors, such as trained ground handling agents, to process service animal documentation.[171] AAPA also commented that advance notice would allow airlines to assist passengers to plan in advance for the transport of a service animal, which is particularly important on long international journeys involving multiple airports.[172] Both A4A and IATA indicated that they support the one-hour check-in requirement, but urged the Department to consider adopting a requirement that would allow them to require the DOT forms 48 hours in advance of the date of the flight.[173] Those organizations indicated that some airlines would like to avoid or minimize the need for early in-person check-in for service animal users, if at all possible, because some airlines may have difficulty making the requisite personnel available promptly or reserving a check-in location at an airport due to space constraints. A4A commented that a 48-hour advance notice requirement was appropriate ''so that airlines will be better able to validate that a passenger's dog is trained to do work or perform a task, and will behave appropriately during air travel since airlines anticipate that the fraud will migrate to the PSA category.'' [174]

A number of airlines expressed support for a requirement that would allow airlines to require DOT forms 48 hours in advance, rather than requiring service animal users to check in at the airport one hour in advance. American Airlines and Air Canada indicated that they opposed the one-hour advance check-in requirement in favor of a requirement that airlines be allowed to require DOT forms in advance of travel.[175] Similarly, Spirit Airlines and Allegiant Air commented that a 48-hour advance notice requirement would benefit both airlines and passengers because this timeframe allows forms to be reviewed and corrected if necessary without passengers' suffering the inconvenience of waiting in line early at the airport.[176] Furthermore, ANA urged the Department to allow airlines to mandate that passengers furnish any applicable international travel documentation 48 hours in advance.[177] With respect to DOT's concern that advance notice would preclude passengers with disabilities from traveling on short notice, ANA commented that special provisions could be made for those cases, such as allowing the forms to be presented at the check-in counter.[178] Open Doors commented that it ''does not support any advance notice or submission requirements,'' with respect to service animal documentation.[179] Similarly, PVA commented that it supports ''prohibiting carriers from requiring that the forms be provided prior to the date of travel to minimize additional burdens on passengers with disabilities who use service animals.'' [180]

DOT Response

The Department has considered the merits of the arguments for and against the proposed provision to permit airlines to require individuals with disabilities who use service animals to check in one hour before the check-in time at the airport for the general public, and we are persuaded that the Department should not adopt such a rule. We are aware that many airlines allow passengers to check in electronically before arriving at the airport, and among the benefits of electronic check-in is the ability to skip the airport lobby check-in area and proceed directly through security to the gate. It is the Department's view that a one-hour advance check-in requirement would impose significant inconvenience on passengers with disabilities while not providing airlines with an efficient or effective method for reviewing the documentation. Accordingly, the Department has revised the final rule to prohibit airlines from requiring that passengers traveling with service animals physically check in at the

[167] Comment from PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19348.*

[168] *Id.*

[169] Comment from Ginger G.B. Kutsch, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19306.*

[170] Comments from New York State Bara Association Disability Rights Committee, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-20160,* and PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19348.*

[171] Comment from the AAPA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19323.*

[172] *Id.*

[173] Comments from and A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240,* and IATA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19041.*

[174] Comment from and A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[175] Comments from American Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19138;* and Air Canada, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19328.*

[176] Comments from Spirit Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19221,* and Allegiant Air, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19164.*

[177] Comment from ANA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19025.*

[178] *Id.*

[179] Comment from Open Doors Organization, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19305.*

[180] Comment from PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19348.*

airport lobby solely on the basis that the passenger is traveling with a service animal. This change will ensure that service animal users are not prevented from enjoying the same convenience-related benefits provided to other passengers, such as online and curbside check-in.

Rather than allowing airlines to require advance check-in, the Department is permitting airlines to require that individuals traveling with a service animal provide documentation up to 48 hours in advance of the time of departure, depending on when the passenger's reservation was made. The Department is now of the view that a 48-hour advance notice provision is appropriate. We are persuaded that this provision would benefit both airlines and consumers by allowing the forms to be processed more efficiently, without requiring passengers to wait in line at the airport one hour in advance. The provision also provides airlines a greater opportunity to assist passengers with service animals, and more time to reach out to the passenger if the documentation is incomplete or deficient (*e.g.,* if the service animal's rabies vaccination expires before the flight date).

In the NPRM, we expressed concern that a 48-hour advance notice provision would pose a significant burden on passengers with service animals who wish to travel on short notice. Accordingly, the final rule now has an exception for reservations that are made less than 48 hours in advance of travel. In those situations, airlines may not require the documentation in advance and must allow the forms to be presented at the passenger's departure gate on the date of travel. The final rule also includes a grace provision, explaining that if a passenger fails to meet the airline's advance notice requirements, then the airline must still make the accommodation if it may do so by making reasonable efforts, without delaying the flight. This grace provision is already set forth in the Department's ACAA regulations relating to advance notice generally,[181] but will be repeated in the service animal subpart as well.

6. Service Animal Identification

The NPRM

In the NPRM, the Department described three means by which airline personnel may determine that an animal is a service animal at the airport. First, we proposed that airlines may ask whether the animal is required to accompany the passenger because of a disability and what work or task the animal has been trained to perform. The proposed rule added that airlines may not ask about the nature and extent of the person's disability, or ask that the service animal demonstrate its work or task. Next, the Department proposed that airline personnel may observe the behavior of the animal in the cabin or the gate area. The proposed rule explained that if an animal engages in disruptive behavior (such as running freely, barking or growling repeatedly, biting, jumping on people or animals, injuring people or animals, urinating, or defecating), then it has shown that it has not been properly trained to behave in public, as is expected of a service animal. Third, the Department proposed that carriers may look to ''physical indicators'' to determine whether the animal is a service animal. Specifically, we proposed that airline personnel may look for the presence of a harness, vest, or other indicator that the animal is a service animal.

Comments Received

Disability Advocates mainly responded to the Department's proposals regarding the ways in which an airline can identify a service animal's status. Guide Dog Users of Canada and Service Dogs of Virginia expressed their support for DOT's proposal to allow airlines to ask passengers if (1) a service animal is required because of a disability, and (2) what work or task has the animal been trained to perform.[182] Similarly, ACB commented in support of DOT's proposal to allow airlines to ask the same two questions that DOJ permits regulated entities to ask service animal users in order to confirm the animal's status. ACB commented that dog users would be able to answer the two necessary questions easily and appropriately to identify their dogs as service animals, which will ease the enforcement burden for airlines and their employees.[183]

With respect to relying on the animal's behavior as an indicator of the animal's status, many disability rights advocates expressed strong opposition to the notion that an airline could determine that an animal is not a service animal if the animal misbehaves. The Oklahoma Law Center commented that it ''strongly opposes DOT's proposal that if a service animal is out of control, [it] would allow 'airlines to determine that the animal is not a service animal.' '' [184] The Oklahoma Disability Law Center further states that ''[s]ervice animals are always service animals . . . [but] if a service animal cannot control its elimination functions because the service animal is ill or the service animal is uncontrollably barking or otherwise misbehaving because it was provoked by something or someone, the airlines are permitted to bar travel on a particular flight until the service animal is under control.'' [185] Similarly, Service Dogs of Virginia also commented that ''[i]f a service animal behaves inappropriately (*e.g.,* barking excessively, growling, snapping, toileting indoors, stealing food from tables, other passengers or the floor), the airport and airline personnel may ask the service animal user to remove the dog regardless of its status as a service animal.'' [186]

One disability advocacy organization, however, disagrees with the Department's proposal that airlines should also consider physical indicators, such as vests, harnesses, etc., when trying to decide an animal's status. Hope Service Dogs, Inc. commented that DOT's regulation should never permit airlines to look at vests, harnesses, certificates, and identification badges as proof that a dog is a trained service dog because a service dog only requires a plain collar or a harness and a regular leash.[187]

DOT Response

The Department has carefully considered all of the comments and decided to allow carriers to determine if an animal is a service animal that must be accepted for transport by: (1) Asking whether the animal is required to accompany the passenger because of a disability and what work or task the animal has been trained to perform; [188]

[181] See 14 CFR 382.27(g).

[182] Comments from Guide Dog users of Canada, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18917,* and Service Dogs of Virginia, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-32397.*

[183] Comment from American Council for the Blind, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18365.*

[184] Comment from the Oklahoma Disability Law Center, *https://www.regulations.gov/document?D=DOT-OST-2018-0068-19237.*

[185] Comment from the Oklahoma Disability Law Center, *https://www.regulations.gov/document?D=DOT-OST-2018-0068-19237.*

[186] Comment from Service Dogs of Virginia, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-32397.*

[187] Comment from Hope Service Dogs, Inc., *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18702.*

[188] This approach differs from DOJ's ADA regulations, which prohibit asking these questions if it is ''readily apparent that the animal is trained to do work or perform tasks for the 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).'' *See* 28 CFR 35.136(f); 28 CFR 36.302(c)(6).

(2) observing the behavior of the animal; and (3) looking at physical indicators such as harnesses and vests. In addition, the final rule specifies that carriers may use one or more of these factors to determine whether to accept an animal for transport as a service animal. However, as noted by commenters, the Department recognizes that unscrupulous individuals may purchase service animal paraphernalia such as vests or tags to make it appear that their pets are service animals. As such, carriers are free to view such paraphernalia as evidence that an animal is a service animal; conversely, they are also free to give the presence or lack of presence of such paraphernalia little weight.

7. Service Animal Restraints

The NPRM

The Department proposed 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. Under the proposal, in those circumstances, the carrier would permit the passenger to use voice, signal, or other effective means to maintain control of the service animal. This proposal is 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, in which case the service animal must be otherwise under the handler's control (*e.g.,* voice control, signals, or other effective means).

Comments Received

Airlines, disability advocates, organizations, and individual commenters were unified in their support that the Department adopt a regulation allowing airlines to require service animals to be harnessed, leashed, tethered, or otherwise under the control of the service animal handler. Commenters generally recognized that a control requirement is especially crucial in the airport/aircraft environment given the often crowded, confined, and high-pressure nature of air transportation. Commenters emphasized that unrestrained service animals are dangerous and present a safety hazard by jeopardizing the safe transport of passengers, crew, and other animals.

Airlines 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. However, although recognizing that DOT's proposal to permit the passenger to use voice, signal, or other effective means to maintain control of the service animal under certain limited circumstances properly aligned the ACAA regulations with DOJ's ADA rule, airline commenters questioned the use of voice commands in lieu of restraints. They argued that voice commands may not be an effective way to control a service animal, and supported restraints being used at all times while on the aircraft to ensure safety. These commenters argued that non-restraint methods are not effective measures of control in a noisy, confined aircraft environment, and reiterated that an uncontrolled animal in an aircraft cabin remains a threat for passengers, crew, and other animals. One disability advocate, Service Dogs of Virginia, agreed that voice commands are not sufficient in an airplane setting and argued that, even if the person with the disability is not able physically to hold a leash, tether, or harness, the service animal should still be under control by, for example, tethering it to the person's wheelchair.[189] Service Dogs of Virginia further commented that on an airplane, when the wheelchair is absent, the service animal can be tethered to the arm of the passenger's seat or remain lying down at the passenger's feet under the passenger's control, and such a requirement would minimize the likelihood of unwelcome or injurious behavior by a service animal to other passengers or airline staff.[190]

DOT Response

The final rule allows airlines to require service animals to be harnessed, leashed, or tethered at all times, even in instances where the device interferes with the service animal's work or the passenger's disability prevents use of these devices. The Department was persuaded by commenters who explained that non-physical means of control over the service animal, such as voice commands or signals, could implicate safety on an aircraft. The Department understands that this would be a departure from 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, in which case the service animal must be otherwise under the handler's control (*e.g.,* voice control, signals, or other effective means); however, the Department believes that a deviation from DOJ's ADA rule is appropriate given that when the animal is traveling onboard an aircraft it will be in a tightly confined cabin space with numerous people in close proximity who are unable to leave the aircraft during flight. Under this final rule, if a passenger with a disability is unable to keep physical control over the service animal, even if the reason is related to the person's disability, the airline may deny transport of the animal in the cabin. A service animal user who is unable to keep physical control of the animal may choose to travel with a service animal handler, who would be responsible for maintaining control over the animal.

8. Denying Transportation to a Service Animal

The NPRM

In the NPRM, the Department proposed that a carrier may deny transport to an animal if it poses a direct threat to the health or safety of others. The proposed rule made explicit reference to the existing definition of ''direct threat'', which is defined as ''a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.'' [191] The proposed rule also clarified that in making this determination, the carrier 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 procedures will mitigate the risk. The proposed rule also clarified that the carrier must not deny transportation to the service animal if there are means short of refusal that would mitigate the problem.

The Department also indicated that it would propose that ''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.'' [192] We stated that ''[t]he 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,

[189] Comment from Service Dogs of Virginia, *https://beta.regulations.gov/document/DOT-OST-2018-0068-32397.*

[190] *Id.*

[191] *See* 14 CFR 382.3.

[192] 85 FR 6452; see also Final Statement at 20–21 (carriers may not refuse transportation to a dog based solely on its breed).

rather than applying generalized assumptions about how a breed or type of dog would be expected to behave.'' [193] While we indicated that we would retain that policy in the proposed rule, the principle was inadvertently not reflected in the proposed regulatory text itself.

Next, the Department proposed that a carrier may deny transport to a service animal if it causes a significant disruption in the cabin or at an airport gate area, or if the animal's behavior indicates that it has not been trained to behave properly in public.[194] The Department proposed that if a carrier seeks to deny transport for these reasons, the carrier must engage in an individualized assessment as set forth in the rulemaking. As with considerations of direct threat, the carrier must not deny transportation to the service animal if there are means short of refusal that will mitigate the problem.

Third, the Department proposed that a carrier may deny transport to a service animal if the animal's carriage would violate FAA safety requirements or the safety requirements of a U.S. Territory or foreign government. In making this determination, a carrier would not be required to undertake the same individualized analysis that is necessary for direct threat or misbehavior (*i.e.,* with an assessment of the specific facts and circumstances relating to the animal, the risks involved, and means of mitigating the risk). Instead, it would be sufficient for the carrier to determine that transport of the animal would violate the safety requirements of a U.S. territory or foreign government.

Fourth, the Department proposed to allow airlines to require passengers to submit completed service animal forms as a condition of travel. However, the NPRM did not include the lack of such documentation in the proposed rule text listing the reasons a carrier may refuse to transport a service animal.

Finally, the Department proposed that if a carrier refused to transport an animal as a service animal based on any provision in Part 382, then the carrier must provide a written statement to the passenger setting forth the reasons for the refusal. This statement must be provided either at the airport itself, or within 10 days of the refusal of transportation.[195]

Comments Received

Commenters who addressed denying transport to service animals based on the animal's behavior, or after assessing the animal to determine whether the animal posed a direct threat, were largely in favor of the Department's proposal to require carriers to conduct an individualized assessment of the animal before deciding whether the animal should be denied transport. The AAAE commented that its members believe that requiring airlines to make decisions about an animal's behavior and health on a case-by-case basis before denying the animal transportation is an appropriate approach, rather than denying the animal transport on the basis of the animal's breed.[196] With respect to observed animal behavior, Spirit Airlines commented that airlines ''should be able to deny boarding to a service animal if an employee observes it misbehaving or showing aggression in an airport regardless of whether documentation requirements have been met.'' [197] Regarding the proposal to allow airlines to require DOT-issued service animal forms as a condition of travel, industry commenters, some individuals, and a few disability organizations were supportive while most disability organizations and individuals opposed the proposal as they believe that it would be unduly burdensome for passengers with disabilities, especially to those who had never been required to submit any type of documentation to travel with their service animal in the past.

DOT Response

The Department is adopting the proposal with a few revisions. The final rule retains the two reasons provided in the proposal to deny transport to a service animal with no change: (1) The animal poses a direct threat to the health or safety of others; and (2) the animal causes a significant disruption in the aircraft or at the airport. Regarding the third reason to deny transport to an animal, the final rule allows airlines to preclude transport of a service animal if doing so would violate applicable safety, health, or other regulations of a U.S. Federal agency, a U.S. territory, or a foreign government. The proposed rule mentioned safety regulations, but not health or other regulations. Further, the final rule has added a fourth reason to deny transport to a service animal, which is that the airline required the passenger to complete an Air Transportation Form or a Relief Form and the passenger failed to do so. The completion of the Air Transportation Form assists the airline in making an individualized assessment on whether the animal poses a direct threat to the health or safety of others, and the completion of a Relief Form provides assurances to the airline that the service animal would not urinate or defecate in the cabin.

In addition, the final rule clarifies that the individualized assessment analysis must be made independent of the animal's breed or type. For example, if the carrier determines that the animal is a pit bull, that fact, standing alone, would not be considered a proper basis on which to make an ''individualized assessment'' of any threat that the animal poses. Instead, the carrier would be required to base its assessment on observable, objective factors such as its behavior and health. This amendment reflects the intended scope of the rule as proposed and serves as a complement to the revised definition of a service animal, which indicates that a service animal is a dog, ''regardless of breed or type.''

9. Large Service Animals on Aircraft

The NPRM

In the NPRM, the Department proposed to allow carriers to require a service animal to fit within its handler's lap or foot space on the aircraft. If the service animal could not fit, the airline would be required to offer the passenger the opportunity to move to another location in the same class of service, if available, where the service animal could be accommodated.

Comments Received

The comments received by airlines almost uniformly supported the Department's proposal to adopt a rule that would allow carriers to require a service animal to fit within its handler's lap or foot space. Commenters who supported the Department's proposal argued that it ensures that other passengers seated near a service animal will not be discomforted by an animal's encroaching on their foot space and would provide a simple and clear standard for flight attendants to enforce. A4A supported the Department's adopting a performance-based standard that would allow airlines to devise the best, operationally feasible alternative, including but not limited to seating the passenger traveling with a service animal next to an empty seat within the

[193] *Id.* at 6454.

[194] This principle also appears in section 382.74, relating to the ways in which a carrier may identify that an animal is a service animal.

[195] The prior service animal rule had a nearly identical provision. See 14 CFR 382.117(g).

[196] Comment from AAAE, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19196.*

[197] Comment from Spirit Airlines, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19221.*

same class of service, if such a seat is available; providing the passenger with the option to transport the animal in the cargo hold, if possible; or offering to transport the passenger on a later flight with more room, if available.[198] Airlines mentioned that all passengers should enjoy a comfortable flight and should not be burdened with objecting if they feel uncomfortable sharing their foot space with a large service animal.

The comments received by disability advocates and the majority of individual commenters uniformly opposed the Department's proposal. These commenters argued that the Department's proposal is discriminatory because it denies access to those passengers traveling with large service animals and will dramatically impact those who use large service animals for mobility impairments. Disability advocates noted a potential financial hardship with the Department's proposal that an airline may require a passenger with a disability to purchase an upgrade, an additional seat, or switch to a later flight. Commenters argued that large service animals have been used for years, and are now only an issue since airlines have decreased space in economy seating. Disability advocates, such as PVA, argued that instead of limiting the size of service animals, the Department should amend its seating accommodation regulations to ensure improved access to seats with additional leg room for those individuals who use these animals.[199] Disability advocates argued that many large service animals, such as Great Danes and Mastiffs, are used to support passengers with challenges in balance (*e.g.,* Parkinson's Disease) or to pull a manual wheelchair, possess sufficient training to behave in the airport and airline setting, and should be accepted by airlines for travel inside the cabin regardless of their size. Further, the Disability Rights Education Fund and the Oklahoma Disability Law Center disagreed with airline assertions that passengers feel ''put upon'' by having to share space with service animals, arguing that these assertions are unfounded.[200]

DOT Response

After carefully reviewing the comments, the Department has decided to allow airlines to require that a service animal fit within the passenger's foot space on the aircraft or be placed on the passenger's lap. Passengers, including passengers with disabilities traveling with large service animals, are not entitled to more space than they purchased. While the Department is sensitive to the fact that many large service animals, such as German Shepherds, Golden Retrievers, and Labrador Retrievers, are commonly used to assist individuals with disabilities, particularly individuals with mobility impairments, these animals are often trained to fit into small spaces.[201] The Department further emphasizes that larger service animals are not automatically prohibited from an aircraft if they do not fit in their handler's foot space. The final rule continues to require carriers to accommodate such animals by moving them to another seat location within the same class of service where the animal can be accommodated, if available, such as a seat next to an empty seat on the aircraft, if available. If there are no alternatives available to enable the passenger to travel with the service animal in the cabin of the scheduled flight, airlines are also required to offer passengers 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.

Passengers traveling with a large service animal also have the option to purchase an additional seat in advance to ensure that their large service animal is accommodated on the aircraft.

10. Damage Caused by Service Animals

The NPRM

In the NPRM, the Department proposed to permit airlines to adopt a policy in which the airline may charge a passenger with a disability for damage caused by his or her service animal, so long as the airline normally charges individuals without disabilities for similar kinds of damage caused by an animal traveling with a passenger.

Comments Received

Disability advocates expressed concern that, in practice, individuals with disabilities may be charged for damage caused by their service animals, while other passengers, who inflict similar types of damage, may not be charged. The National Disability Rights Network, Disability Rights Florida, Disability Rights New Jersey, and Oklahoma Disability Law Center, commented that DOT's damage provision is not justified ''unless airlines currently actually charge passengers without disabilities if they vomit on a seat or floor or break a tray table or cause any other damage to aircraft.'' [202] Similarly, the Disability Coalition (New Mexico) commented that if DOT should mandate such a provision, it should make it clear that ''damages may be charged only when the airline charges for similar damage caused by humans, such as a child urinating in an airline seat.'' [203]

Airlines, however, support DOT's proposal to allow airlines to charge passengers for damage caused by their service animals. Air Canada commented that carriers should be allowed to require service animal users to ''agree to indemnify and hold harmless the airline and other passengers for any damage their animal may cause.'' In addition, A4A suggested the inclusion of a statement in the DOT-issued service animal form that airlines may charge service animal users for damage caused by their service animal.[204]

DOT Response

The Department has decided to finalize, as proposed, a provision allowing airlines to charge passengers traveling with service animals for any damage to the aircraft caused by the passenger's service animal so long as the airline charges passengers without disabilities for similar repairs or damage. The Service Animal Air Transportation Form and the Relief Form provide notice to service animal users that they may be responsible for damage caused by their service animals. The Department acknowledges the concerns of disability advocates that service animal users may, in practice, be disproportionally charged for damage

[198] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

[199] Comment from PVA, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19429.*

[200] Comments from DREDF, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19264,* and the Oklahoma Disability Law Center, *https://www.regulations.gov/document?D=DOT-OST-2018-0068-19237.*

[201] While the Guide Dog Foundation and America's VetDogs do not agree with the Department's decision to allow airlines to require that a service animal fit into its user's footspace or lap, this organization noted that ''[m]ost service dogs are able to curl up under their partner's feet on an airplane.'' See comments from the Guide Dog Foundation, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18141, and* America's VetDogs, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-18138.*

[202] Comments from the National Disability Rights Network, *https://www.regulations.gov/document?D=DOT-OST-2018-0068-19210,* Disability Rights New Jersey, *https://www.regulations.gov/document?D=DOT-OST-2018-0068-19091,* Disability Rights Florida, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19336,* and Oklahoma Disability Law Center, *https://www.regulations.gov/document?D=DOT-OST-2018-0068-19237.*

[203] Comment from The Disability Coalition (New Mexico), *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19219.*

[204] Comment from A4A, *https://beta.regulations.gov/comment/DOT-OST-2018-0068-19240.*

caused by their service animals when compared to others who inflict similar damage. The Department emphasizes that such action by airlines would violate the Department's explicit regulatory mandate that service animal users may only be charged for damage caused by their service animals if other passengers are charged for similar types of damage. The Department's Office of Aviation Consumer Protection will take action as appropriate if it finds inequities between the treatment of service animal users and non-service animal users.

11. Codeshare Flights

Under the Department's existing 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 a passenger traveling under the U.S. carrier's code on the foreign carrier's aircraft on flights between two foreign points. Although foreign airlines are only required to carry dogs, based on the language in the existing ACAA rule, the rule held a foreign carrier's U.S. codeshare partner responsible if the foreign carrier refused to transport service animal species other than dogs for passengers traveling under the U.S. carrier's code. Because the Department was considering recognizing animals other than just dogs as service animals in the NPRM, we sought comment on whether we should include language in the rule to make it clear that U.S. airlines are not responsible for their foreign carrier codeshare partner's failure to carry animal species other than dogs as service animals. However, because this final rule requires only that U.S. and foreign air carriers recognize dogs as service animals, a conflict no longer exists between the species of service animals that U.S. carriers and foreign carriers are required to carry. As such, this issue is moot, and a substantive change in the rule text is unnecessary.

As a technical amendment, however, the Department will make clear that U.S. carriers continue to be responsible for compliance with ACAA service animal regulations (now found at 14 CFR 382 Subpart EE), if the U.S. carrier participates in a code-sharing arrangement with a foreign carrier with respect to flights between two foreign points.[205] This amendment is non-substantive.

Effective Date of Final Rule

This final rule will become effective January 11, 2021 to provide airlines time to analyze and train personnel on the new service animal requirements, particularly given the COVID–19 public health emergency's impact on the airline industry.

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 (49 CFR part 5)

This final rule has been determined to be significant under Executive Order 12866 (''Regulatory Planning and Review'') and the Department of Transportation's Regulatory Policies and Procedures (found at 49 CFR part 5, subpart B) 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 Executive Order.

Executive Orders 12866 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.'' The rule defines a service animal as a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability; treats psychiatric service animals like other service animals; and allows airlines to require passengers traveling with a service animal to attest to the animal's good behavior and good health. Airlines will no longer be required to recognize emotional support animals (ESAs) as service animals.

The primary economic impact of this final rule 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. 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. 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. The final rule 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 dollars.

Removing the current requirement that carriers must transport emotional support animals free of charge will allow market forces (*i.e.,* carriers as producers and passengers as consumers) to set the price for air transportation of emotional support animals as pets. This provision will 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 of the final rule.

The final rule will also allow airlines to require passengers traveling with service animals to produce two forms of documentation developed by DOT. This cost element places a potential burden on passengers traveling with service animals who would need to submit two DOT forms to airlines. We estimate that the forms could create as much as 84,000 burden hours and $1.3 million in costs per year. In some cases, however, carriers already ask passengers to complete equivalent nongovernmental forms; thus, the analysis overestimates the net burden created by this rulemaking.

Evaluating other economic impacts was more difficult due to data limitations. To gauge the potential magnitude of these impacts, we combined the limited data with reasonable assumptions about ESA transport that could occur under the final rule and a demand elasticity from a surrogate market. The regulatory impact analysis, summarized in Table 1 and available in the docket, indicates that the final rule could be expected to generate annual cost savings to airlines between $15.6 million and $21.6 million and annual net benefits of $3.7 to $12.5 million. Public nonuse values potentially complicate the analysis, but there is little evidence that these values exist or would be large enough to offset externality costs completely.

[205] 14 CFR 382.7(c).

TABLE 1—SUMMARY OF ECONOMIC IMPACTS DUE TO FINAL RULE

[2018 Dollars, millions]

Impact	Annual value
Costs:	
Paperwork burden for passengers traveling with service animals	$1.3.
Cost savings to airlines associated with providing ESA travel	−$21.6 to −$15.6.
Benefits:	
Lost benefits to individuals who no longer travel with ESAs	−$10.6 to −$7.8.
Reduction in negative externalities caused by ESAs	Not quantified.
Transfers:	
Increased fees paid by passengers travelling with ESAs to airlines	$54.0 to $59.6.
Net benefits (benefits minus costs)	$3.7 to $12.5.

B. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this final rule are discussed in the rule's RIA, which has been uploaded to the docket.

C. 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).[206] Relative to typical airlines' operating costs and revenues, the impact is expected to be nonsignificant. We received no comment on the preliminary finding of nonsignificance or, more generally, the potential impact of this rulemaking on small entities. Therefore, the Department certifies that this final rule will not have a significant impact on a substantial number of small entities.

D. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not 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.

E. 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.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. As required by the PRA, the Department has submitted the Information Collection Request (ICR) abstracted below to OMB. Before OMB decides whether to approve those proposed collections of information that are part of this final rule and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to: Department of Transportation, Office of Aviation Consumer Protection, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Department may not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. The 60-day notice for this information collection was previously published in the **Federal Register** as part of the NPRM on February 5, 2020 volume 85, page 6474. The Department invited interested parties to comment on the information collection requirements contained in the NPRM and the Department received one comment on the regulatory analysis that was referenced in the NPRM. This comment, and the Department's responses, are discussed in the Traveling by Air with Service Animals Regulatory Impact Analysis.

This final rule adds two new collections of information that allows airlines to require passengers traveling with service animals to provide carriers with the following two forms of documentation developed by the Department:

1. U.S. Department of Transportation Service Animal Air Transportation Form (''Behavior and Health Attestation Form''): This form would be completed by passengers traveling with service animals to inform airlines of the service animal's health, training, and behavior and educate passengers on how service animals in air transportation are expected to behave, and of the consequences of service animal misbehavior.

2. U.S. Department of Transportation Service Animal Relief Attestation Form (''Relief Attestation Form''): This form would be completed by passengers traveling with service animals on flight segments scheduled to take 8 hours or more to provide assurances to airlines that the service animal will not need to relieve itself on the flight or that the animal can relieve itself in a way that

[206] See 14 CFR 399.73.

does not create a health or sanitation issue, and to educate passengers of the consequences should an animal relieve itself on aircraft in an unsanitary way.

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 Behavior and Health Attestation Form

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

Number of Respondents: The Department estimates that 319,000 service animals are transported annually by U.S. carriers on flights to, within, and from the United States and by foreign air carriers on flights to and from the United States.[207] Assuming that one passenger with a disability travels with a service animal, 319,000 respondents would have to complete the form.

Estimated Annual Burden on Respondents: We estimate that completing the form would require 15 minutes (.25 hours) per response, 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 79,750 hours annually (0.25 hours x 319,295 passengers) to retrieve and complete an accessible version of the form. Passengers would fill out the forms on their own time without pay. To estimate the value of this uncompensated activity, we use median wage data from the Bureau of Labor Statistics.[208] We use a post-tax wage estimate of $15.42 ($18.58 median for all occupations minus a 17 percent estimated tax rate).[209] The estimated annual value of this time is $1,229,857.

2. 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: The Department estimates that 5 percent of service animal users would be on flight segments scheduled to take 8 hours or more and would also have to complete the Relief Attestation Form, for a total of 15,950 respondents.

Estimated Annual Burden on Respondents: We estimate that completing the form will require 15 minutes (.25 hours) per response, 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 3,987.5 hours annually (0.25 hours x 15,950 passengers) to retrieve an accessible version of the form and complete the form. Passengers would fill out the forms on their own time without pay, as they would with the Animal Behavior and Health Attestation Form. The estimated annual value of this time is $61,493.

Table 2 summarizes the estimated burden and costs of the two new DOT forms 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 estimates are likely to overestimate any new burden created by this rulemaking.

TABLE 1—PAPERWORK COST ESTIMATES FOR U.S. DOT SERVICE ANIMAL FORMS

Form	Passengers	Hours	Total hours	Hourly time value	Subtotal
Behavior & health	319,000	0.25	79,750	$15.42	$1,229,857
Relief	15,950	0.25	3,987.5	$15.42	61,493
Total			83,737.5		1,291,349

G. 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.

H. National Environmental Policy Act

The Department has analyzed the environmental impacts of this 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).[210] 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.[211] Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes ''[a]ctions relating to consumer protection, including 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 in 14 CFR Part 382

Air Carriers, Civil rights, Consumer protection, Individuals with Disabilities,

[207] Comment from A4A, *https://www.regulations.gov/document?D=DOT-OST-2018-0068-4288.* A4A estimates that 281,000 service animals were transported on U.S. airlines in 2017. DOT estimates that 38,000 service animals were transported by foreign airlines on flights to and from the U.S. in 2017 based on air carrier passenger data from the Bureau of Transportation Statistics, available at *https://www.bts.gov/newsroom/2017-traffic-data-us-airlines-and-foreign-airlines-us-flights.*

[208] For a discussion of estimating the value of uncompensated activities, see ''Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices'' from the Department of Health and Human Services, available at *https://aspe.hhs.gov/system/files/pdf/257746/VOT.pdf.*

[209] Bureau of Labor Statistics (2019). ''May 2018 National Occupational Employment and Wage Estimates: United States.'' *https://www.bls.gov/oes/current/oes_nat.htm.*

[210] *See* 40 CFR 1508.4.

[211] *Id.*

Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Transportation amends 14 CFR part 382 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. 41705.

■ 2. Amend § 382.3 by adding in alphabetical order the definitions of service animal and service animal handler to read as follows:

§ 382.3 What do the terms in this rule mean?

* * * * *

Service animal means a dog, regardless of breed or type, 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. Animal species other than dogs, 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 passenger in air transportation who 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 third party who accompanies the individual with a disability traveling with a service animal such as a parent of a minor child or a caretaker. 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.

* * * * *

■ 3. In § 382.7, revise paragraph (c) to read as follows:

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

* * * * *

(c) As a foreign carrier, you are not subject to the requirements of this part with respect to flights between two foreign points, even with respect to flights involving code-sharing arrangements with U.S. carriers. As a U.S. carrier that participates in a code-sharing arrangement with a foreign carrier with respect to flights between two foreign points, you (as distinct from the foreign carrier) are responsible for ensuring compliance with the service provisions of subparts A through C, E through H, and K of this part, with respect to passengers traveling under your code on such a flight.

* * * * *

■ 4. Section 382.27 is revised to read as follows:

§ 382.27 May a carrier require a passenger with a disability to provide advance notice in order to obtain certain specific services in connection with a flight?

(a) Except as provided in paragraphs (b) and (c) of this section and §§ 382.75 and 382.133(e)(4), (5), (f)(5) and (6), as a carrier you must not require a passenger with a disability to provide advance notice in order to obtain services or accommodations required by this part.

(b)(1) You may require a passenger with a disability to provide up to 72 hours' advance notice and check in one hour before the check-in time for the general public to receive carrier-supplied in-flight medical oxygen on international flights, and 48 hours' advance notice and check-in one hour before the check-in time for the general public to receive carrier-supplied in-flight medical oxygen on domestic flights. This service is optional; you are not required to provide carrier-supplied in-flight medical oxygen, but you may choose to do so.

(2) You may require a passenger with a disability to provide 48 hours' advance notice and check-in one hour before the check-in time for the general public to use his/her ventilator, respirator, CPAP machine or POC.

(3) You may require a passenger with a disability seeking to travel with a service animal in the cabin of the aircraft to provide up to 48 hours' advance notice through submission of the forms identified in § 382.75 (a) and (b) as a condition of permitting the service animal to travel in the cabin if the reservation is made more than 48 hours prior to a flight's departure. In the alternative, you may require a passenger with a disability seeking to travel with a service animal in the cabin of the aircraft to provide the forms identified in § 382.75 (a) and (b) at the passenger's departure gate on the date of travel as a condition of permitting the service animal to travel in the cabin.

(c) You may require a passenger with a disability to provide up to 48 hours' advance notice and check in one hour before the check-in time for the general public to receive the following services and accommodations. The services listed in paragraphs (c)(1) through (c)(3) of this section are optional; you are not required to provide them, but you may choose to do so.

(1) Carriage of an incubator;

(2) Hook-up for a respirator, ventilator, CPAP machine or POC to the aircraft electrical power supply;

(3) Accommodation for a passenger who must travel in a stretcher;

(4) Transportation for an electric wheelchair on an aircraft with fewer than 60 seats;

(5) Provision of hazardous materials packaging for batteries or other assistive devices that are required to have such packaging;

(6) Accommodation for a group of ten or more qualified individuals with a disability, who make reservations and travel as a group; and

(7) Provision of an on-board wheelchair on an aircraft with more than 60 seats that does not have an accessible lavatory.

(8) Accommodation of a passenger who has both severe vision and hearing impairments (see § 382.29(b)(4)).

(d) If the passenger with a disability provides the advance notice you require, consistent with this section, for a service that you must provide (see paragraphs (b)(2) through (3) and (c)(4) through (8) of this section) or choose to provide (see paragraphs (b)(1) and (c)(1) through (c)(3) of this section), you must provide the requested service or accommodation except to comply with any applicable safety regulations.

(e) Your reservation and other administrative systems must ensure that when passengers provide the advance notice that you require, consistent with this section, for services and accommodations, the notice is communicated, clearly and on time, to the people responsible for providing the requested service or accommodation.

(f) If a passenger with a disability provides the advance notice you require, consistent with this section, and the passenger is forced to change to another flight (*e.g.,* because of a flight cancellation), you must, to the maximum extent feasible, provide the accommodation on the new flight. If the new flight is another carrier's flight, you must provide the maximum feasible assistance to the other carrier in providing the accommodation the passenger requested from you.

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

■ 5. Revise the heading of subpart E and add §§ 382.72 through 382.80 to subpart E to read as follows:

Subpart E—Accessibility of Aircraft and Service Animals on Aircraft

Sec.

* * * * *

§ 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 based on the animal's breed or type or on the basis that its carriage may offend or annoy carrier personnel or persons traveling on the aircraft.

§ 382.73 How do carriers determine if an animal is a service animal that must be accepted for transport? May a carrier require that a service animal be under the control of the service animal user or handler?

(a) You may rely on one or more of the factors set forth in paragraphs (a)(1) through)(3) of this section to determine if an animal is a service animal that must be accepted for transport.

(1) 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.

(2) 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 without a carrier in the cabin, even if the animal performs an assistive function for a passenger with a disability.

(3) You may look for physical indicators, such as a harness or vest on the animal, to determine if the animal is a service animal.

(b) You may require that a service animal be harnessed, leashed, or otherwise tethered at all times by the service animal user or service animal handler while in areas of the airport that you own, lease or control, or on an aircraft.

§ 382.74 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.

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

(a) If a passenger with a disability seeks to travel with a service animal, you may require the passenger to provide you, as a condition of permitting the service animal to travel in the cabin, a current completed U.S. Department of Transportation Service Animal Air Transportation Form. Current means the form was completed on or after the date the passenger purchased his or her airline ticket.

(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 current DOT Service Animal Relief Attestation Form. Current means the form was completed on or after the date the passenger purchased his or her airline ticket.

(c) You are not permitted to require documentation from passengers with disabilities traveling with service animals beyond the completion of the forms identified in paragraphs (a) and (b) of this section except to comply with requirements on transport of animals by a Federal agency, a U.S. territory or a foreign jurisdiction.

(d) As a U.S. air carrier, if you require service animal users to submit the forms identified in paragraphs (a) and (b) of this section, you must have copies of these forms available for passengers at each airport you serve. As a foreign air carrier, if you require service animal users to submit the forms identified in paragraphs (a) and (b) of this section, you must have copies of the forms available for passengers 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 have the forms identified in paragraphs (a) and (b) available to passengers in an accessible format. You must mail copies of the forms identified in paragraphs (a) and (b) to passengers upon request.

(f) If you require a passenger with a disability traveling with a service animal to submit the forms identified in paragraphs (a) and (b) of this section in advance of the passenger's date of travel, you must provide the passenger the option of submitting the completed form(s) to you electronically or by hardcopy.

(g)(1) If a passenger's reservation was made more than 48 hours in advance of the first originally scheduled departure time on the passenger's itinerary, you may require that passenger provide up to 48 hours advance notice by submitting the form identified in paragraph (a) of this section.

(2) If a passenger's reservation was made more than 48 hours in advance of the first originally scheduled departure time on the passenger's itinerary and a flight segment on the passenger's itinerary is scheduled to take 8 hours or more, you may require that the passenger provide up to 48 hours advance notice by submitting the form identified in paragraph (b) of this section.

(3) If a passenger's reservation was made less than 48 hours in advance of the first originally scheduled departure time on the passenger's itinerary, you may not require that passenger provide advance notice of his or her intent to travel with a service animal. You may require that the passenger complete the forms identified in paragraphs (a) and (b) of this section and submit a copy of the form to you at the passenger's departure gate on the date of travel.

(h) If the passenger does not meet the advance notice 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.

§ 382.76 May a carrier require a service animal user to check-in physically at the airport?

You may not require a passenger with a disability to check-in physically at the airport, rather than using the online check-in available to the general public, on the basis that the passenger is traveling with a service animal.

§ 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 passenger's foot space, unless this location and placement would:

(1) Be inconsistent with safety requirements set by the FAA or the foreign carrier's government; or

(2) Encroach into another passenger's space.

(b) Before refusing to transport a large service animal that cannot be accommodated on the passenger's lap or in the passenger's foot space 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 for designated priority seats in 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 generally cannot charge an individual with a disability for transporting service animals, or for providing other services that this part 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);

(3) The animal's carriage would violate applicable safety or health requirements of any U.S. federal agency, U.S. territory or foreign government; or

(4) The passenger with a disability seeking to travel with a service animal in the cabin of the aircraft does not provide completed current forms as set forth in § 382.75 (a) and (b) to the carrier when requested to do so.

(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) of this section, you must make an individualized assessment, independent of the dog's breed or type, 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. A current completed U.S. Department of Transportation Service Animal Air Transportation Form may be used in making this determination.

(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) of this section, you must make an individualized assessment, independent of the dog's breed or type, 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. A current completed U.S. Department of Transportation Service Animal Air Transportation Form and a current completed U.S. Department of Transportation Service Animal Relief Attestation Form may be used in making this determination.

(d) In conducting the analysis required under paragraphs (a)(1) and (2) of this section, 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.

§ 382.117 [Removed]

■ 6. Remove § 382.117.

Issued in Washington, DC.

Elaine L. Chao,

Secretary.

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