Federal Register

Proposed Rules

Vol. 85, No. 24

Wednesday, February 5, 2020

This section of the FEDERAL REGISTER

contains notices to the public of the proposed

issuance of rules and regulations. The

purpose of these notices is to give interested

persons an opportunity to participate in the

rule making prior to the adoption of the final

rules.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT–OST–2018–0068]

RIN No. 2105–AE63

Traveling by Air With Service Animals

AGENCY: Office of the Secretary (OST),

U.S. Department of Transportation

(DOT).

ACTION: Notice of proposed rulemaking

(NPRM).

SUMMARY: The U.S. Department of

Transportation (Department or DOT) is

seeking comment in this Notice of

Proposed Rulemaking (NPRM) on

proposed amendments to the

Department’s Air Carrier Access Act

(ACAA) regulation on the transportation

of service animals by air. The proposed

amendments are intended to ensure that

our air transportation system is safe for

the traveling public and accessible to

individuals with disabilities.

DATES: Comments should be filed by

April 6, 2020. Late-filed comments will

be considered to the extent practicable.

ADDRESSES: You may file comments

identified by the docket number DOT–

OST–2018–0068 by any of the following

methods:

• Federal eRulemaking Portal: Go to

http://www.regulations.gov and follow

the online instructions for submitting

comments.

• Mail: Docket Management Facility,

U.S. Department of Transportation, 1200

New Jersey Ave. SE, West Building

Ground Floor, Room W12–140,

Washington, DC 20590–0001.

• Hand Delivery or Courier: West

Building Ground Floor, Room W12–140,

1200 New Jersey Ave. SE, between 9:00

a.m. and 5:00 p.m. ET, Monday through

Friday, except Federal holidays.

• Fax: (202) 493–2251.

Instructions: You must include the

agency name and docket number DOT–

OST–2018–0068 or the Regulatory

Identification Number (RIN) for the

rulemaking at the beginning of your

comment. All comments received will

be posted without change to http://

www.regulations.gov, including any

personal information provided.

Privacy Act: Anyone can search the

electronic form of all comments

received in any of our dockets by the

name of the individual submitting the

comment (or signing the comment, if

submitted on behalf of an association,

business, labor union, etc.). You may

review DOT’s complete Privacy Act

statement in the Federal Register

published on April 11, 2000 (65 FR

19477–78), or you may visit https://

www.transportation.gov/privacy.

Docket: For access to the docket to

read background documents or

comments received, go to http://

www.regulations.gov or to the street

address listed above. Follow the online

instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT:

Maegan Johnson, Senior Trial Attorney,

Office of Aviation Enforcement and

Proceedings, U.S. Department of

Transportation, 1200 New Jersey Ave.

SE, Washington, DC 20590, 202–366–

9342, 202–366–7152 (fax),

maegan.johnson@dot.gov (email). You

may also contact Blane Workie,

Assistant General Counsel, Office of

Aviation Enforcement and Proceedings,

Department of Transportation, 1200

New Jersey Ave. SE, Washington, DC

20590, 202–366–9342, 202–366–7152

(fax), blane.workie@dot.gov.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Department proposes to define a

service animal, under its ACAA

regulations in 14 CFR part 382, as a dog

that is individually trained to do work

or perform tasks for the benefit of a

qualified individual with a disability,

including a physical, sensory,

psychiatric, intellectual, or other mental

disability.1 Furthermore, this NPRM

proposes to allow airlines to recognize

emotional support animals as pets

rather than service animals. The NPRM

also proposes to allow airlines to require

1 The Department’s proposed definition of a

service animal in this rulemaking is similar to the

definition of a service animal in the Department of

Justice (DOJ) regulations implementing the

Americans with Disabilities Act (ADA), 28 CFR

35.104 and 28 CFR 36.104. However, the

Department proposes a number of service animal

provisions in this proposed rulemaking that differ

from DOJ’s ADA service animal requirements.

all passengers with a disability traveling

with a service animal to complete and

submit to the airline forms developed by

DOT attesting to the animal’s training

and good behavior, certifying the

animal’s good health, and attesting that

the animal has the ability either not to

relieve itself on a long flight or to relieve

itself in a sanitary manner. In addition,

this NPRM would clarify existing

prohibitions on airlines’ imposing breed

restrictions on service animals and

would allow airlines to set policies to

limit the number of service animals that

one passenger can bring onboard an

aircraft. This NPRM would also

generally require service to be

harnessed, leashed, or otherwise

tethered. This NPRM also proposes

requirements that would address the

safe transport of large service animals in

the aircraft cabin and would clarify

when the user of a service animal may

be charged for damage caused by the

service animal. Finally, this NPRM

addresses the responsibilities of code-

share partners, among other provisions.

1. Statutory Authority

The Air Carrier Access Act (ACAA),

49 U.S.C. 1705, prohibits discrimination

in airline service on the basis of

disability. When enacted in 1986, the

ACAA applied only to U.S. air carriers.

On April 5, 2000, the Wendell H. Ford

Aviation Investment and Reform Act for

the 21st Century (AIR–21) amended the

ACAA to include foreign carriers.

The ACAA, while representing a

watershed mandate of

nondiscrimination in air transportation

for passengers with disabilities, does not

specify how U.S. and foreign air carriers

must act to avoid such discrimination.

The statute similarly does not specify

how the Department should regulate

with respect to these issues. In addition

to the ACAA, the Department’s

authority to regulate nondiscrimination

in airline service on the basis of

disability is based in the Department’s

rulemaking authority under 49 U.S.C.

40113, which states that the Department

may take action that it considers

necessary to carry out this part,

including prescribing regulations.

The Department issued its first ACAA

regulation in 1990 following a lengthy

rulemaking process that included a

regulatory negotiation involving

representatives of the airline industry

and representatives from disability

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communities. Since then, the

Department’s disability regulations have

been amended approximately 15 times

to enhance access. The ACAA

regulations define the rights of qualified

individuals with disabilities 2 and the

obligations of airlines. The regulations

also specify that airlines may refuse to

provide transportation to any passenger

on the basis of safety or to any passenger

whose carriage would violate Federal

Aviation Administration (FAA) or

Transportation Security Administration

requirements or applicable requirements

of a foreign government.3 For example,

the FAA, which is charged with

promoting safe flight of aircraft,4 has

long prohibited conduct aboard flights

that interferes with crewmember duties.

FAA regulations state that ‘‘no person

may assault, threaten, intimidate, or

interfere with a crewmember in the

performance of the crewmember’s

duties aboard an aircraft being

operated.’’ 5 The ACAA regulations are

intended to help ensure that individuals

with disabilities enjoy equal access to

the air transportation system.

The Americans with Disabilities Act

(ADA), which was enacted in 1990, does

not cover discrimination against a

person with a disability in air

transportation but prohibits

discrimination against individuals with

disabilities in most other areas of public

life, including employment, State and

local government activities, public

transportation services, and public

accommodations such as restaurants

and retail stores. The ADA requires that

the Department of Justice (DOJ) issue

regulations for implementing Title II,

which applies to State and local

government entities, and Title III, which

applies to public accommodations and

commercial facilities. DOJ first issued

such regulations in 1991 and published

revised regulations in 2010, which took

effect in March 2011. In those

regulations, DOJ defines a service

animal as any dog that is individually

trained to do work or perform tasks for

the benefit of an individual with a

disability, including a physical, sensory,

psychiatric, intellectual, or mental

disability.6 DOJ’s ADA definition of a

service animal differs from DOT’s

current ACAA definition of a service

animal as DOJ does not recognize

emotional support animals as service

animals because they are not

2 DOT defines the term Qualified individual with

a disability in 14 CFR 382.3.

3 14 CFR 382.19(c).

4 See 49 U.S.C. 44701.

5 14 CFR 91.11, 121.580, and 135.120.

6 See DOJ’s ADA definition of a service animal in

28 CFR 35.104 and 28 CFR 36.104.

individually trained to do work or

perform tasks for the benefit of an

individual with a disability 7 and DOJ’s

ADA regulations limit service animals

to dogs.8

The current rulemaking presents

questions about how the ACAA is

reasonably interpreted and applied to

require airlines to accommodate the

needs of individual passengers whose

physical or mental disability

necessitates the assistance of a service

animal in air transportation. In

approaching these questions, the

Department recognizes that the ACAA’s

nondiscrimination mandate is not

absolute. The statute requires airlines to

provide accommodations that are

reasonable in light of the realities and

limitations of air service and the

onboard environment of commercial

airplanes. DOJ, in interpreting the ADA,

similarly allows public accommodations

to consider the characteristics of

miniature horses, including the

implications of their presence on the

safe operation of a given facility, when

determining whether they may be

accommodated within a facility.9 The

cabins of most aircraft are highly

confined spaces, with many passengers

seated in close quarters and very limited

opportunities to separate passengers

from nearby disturbances. Animals on

aircraft may pose a risk to the safety,

health, and well-being of passengers and

crew and may disturb the safe and

efficient operation of the aircraft. Any

requirement for the accommodation of

passengers traveling with service

animals onboard aircraft necessarily

must be balanced against the health,

safety, and mental and physical well-

being of the other passengers and crew

and must not interfere with the safe and

efficient operation of the aircraft.

2. Need for a Rulemaking

The Department has identified the

following compelling factors that justify

the issuance of a revision to the

Department’s regulations on traveling by

7 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).

8 DOJ, while not recognizing miniature horses as

service animals, requires entities covered by the

ADA to make reasonable modifications in their

policies, practices, or procedures to permit an

individual with a disability to use a miniature horse

that has been individually trained to do work or

perform tasks for the benefit of the individual with

a disability. See 28 CFR 35.136(i); 28 CFR

36.302(c)(9).

9 See 28 CFR 36.302(c)(9) and see also 28 CFR

35.136.

air with service animals in 14 CFR part

382:

Service Animal Complaints

Service animal-related complaints are

increasingly a more significant portion

of the disability-related complaints that

the Department’s Aviation Consumer

Protection Division and airlines receive.

Given the year-over-year increase in the

number of service animal complaints

received by the Department against

airlines, it is clear that the provision of

assistance to passengers traveling with

service animals is an area of increasing

concern for passengers with disabilities.

The Department received 115 service

animal complaints against airlines in

2018, 70 complaints in 2017, 110

complaints in 2016, and 100 complaints

in 2015, compared with 48 such in 2014

and 45 complaints in 2013.

The increase in the number of service

animal complaints is also representative

of the complaints airlines received

directly from passengers. U.S. and

foreign airlines reported receiving 3,065

service animal complaints directly from

passengers in 2018, 2,473 complaints in

2017, 2,433 in 2016, and 1,629 in 2015,

compared with 1,010 such complaints

in 2014 and 719 in 2013.

Inconsistent Federal Definition of

Service Animal

At the same time, concerns have been

raised by airlines, airports, and

disability advocates about

inconsistencies between the definition

of a service animal under our rules for

U.S. and foreign air carrier services

versus in the airport context. As

explained above, DOJ’s ADA

regulations, which apply to public and

commercial airports and airport

facilities operated by businesses like

restaurants and stores, define a service

animal as any dog that is individually

trained to do work or perform tasks for

the benefit of an individual with a

disability, including a physical, sensory,

psychiatric, intellectual, or mental

disability.10 DOJ does not recognize

emotional support animals as service

animals because they are not

individually trained to do work or

perform tasks for the benefit of an

individual with a disability.11 While

DOJ’s ADA regulations limit service

animals to dogs, entities covered by the

ADA are required to assess whether they

must permit individuals with

disabilities to be accompanied by

miniature horses as a reasonable

10 See 28 CFR 35.104 and 28 CFR 36.104.

11 See Nondiscrimination on the Basis of

Disability by Public Accommodations and in

Commercial Facilities, 75 FR 56236, 56269 (Sept.

15, 2010).

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modification.12 DOT’s current ACAA

regulations, which apply to airlines and

their facilities and services, require

airlines to recognize service animals

regardless of species with exceptions for

certain unusual species of service

animals such as snakes, other reptiles,

ferrets, rodents, and spiders. DOT’s

current ACAA regulations also require

airlines to recognize emotional support

animals as service animals.13

Consequently, a restaurant in an airport

could, without violating DOJ rules, deny

entry to an emotional support animal

that an airline, under the ACAA, would

have to accept. These inconsistencies

between DOT’s ACAA and DOJ’s ADA

definition of a service animal present

practical challenges for airlines and

airports, and are a source of confusion

for individuals with disabilities and the

traveling public.

Unusual Species of Animals

Passengers have attempted to fly with

many different unusual species of

animals, such as a peacock, ducks,

turkeys, pigs, iguanas, and various other

types of animals as emotional support or

service animals, causing confusion for

airline employees and additional

scrutiny for service animal users.

Disability advocates have voiced

concerns that the use of these unusual

service animals on aircraft erodes the

public’s trust and confidence in service

animals. Airlines, meanwhile, have

expressed concern about the heightened

attention these animals have received

and the resources airlines expend each

time an unusual or untrained animal is

presented for transport on an aircraft.

Pets on Aircraft

Passengers wishing to travel with

their pets may be falsely claiming that

their pets are service animals so they

can take their pet in the aircraft cabin

or avoid paying pet fees charged by

most airlines since airlines cannot

charge service animal users a fee to

transport service animals. Airlines have

12 See 28 CFR 35.136(i); 28 CFR 36.302(c)(9). DOJ,

while not recognizing miniature horses as service

animals, requires entities covered by the ADA to

make reasonable modifications in their policies,

practices, or procedures to permit an individual

with a disability to use a miniature horse that has

been individually trained to do work or perform

tasks for the benefit of the individual with a

disability, based on an assessment of factors,

including the type, size, and weight of the

miniature horse and whether the facility can

accommodate these features; whether the handler

has sufficient control of the miniature horse;

whether the miniature horse is housebroken; and

whether the miniature horse’s presence in a specific

facility compromises legitimate safety requirements

that are necessary for safe operation.

13 See 14 CFR 382.117 and Guidance Concerning

Service Animals, 73 FR 27614, 27659 (May 13,

2008).

reported increases in the number of

service animals on aircraft and

expressed concern that the significant

increase in the number of service

animals traveling on aircraft may be the

result of an increase in emotional

support animals and/or passengers

falsely claiming that their pets are

emotional support animals.14

Furthermore, according to airlines,

passengers are increasingly bringing

untrained service animals onboard

aircraft and putting the safety of

crewmembers, other passengers, and

other service animals at risk.

There have also been reports of some

online entities that may, for a fee,

provide individuals with pets a letter

stating that the individual is a person

with a mental or emotional disability

and that the animal is an emotional

support animal or psychiatric service

animal, when in fact it is not. While the

Department’s current service animal

regulation permits airlines to require

documentation from a licensed mental

health professional for the carriage of

emotional support animals, the advent

of online entities that may be

guaranteeing the required

documentation for a fee has made it

difficult for airlines to determine

whether passengers traveling with

animals are traveling with their pets or

with legitimate emotional support

animals.

Misbehavior by Service Animals

The Department’s service animal

guidance provides that all service

animals should be trained to behave

14 See Comment of Delta Air Lines, Inc., https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-4141. In 2017, Delta Air Lines carried nearly

250,000 service and support animals, or almost 700

per day. The volume of service and support animals

transported increased about 50 percent from 2016

to 2017 (along with an additional 240,000 pets), but

the growth was not uniform over all categories of

animals. ESAs led this growth with an increase of

approximately 63 percent, while other service

animal transport grew by only approximately 30

percent.

And comment from Airlines for America,

Regional Airline Association, and International Air

Transport Association, https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-4288.

From 2016 to 2017, the number of service animals

(excluding ESAs) that U.S. airlines accommodated

in cabin rose by nearly 24%—a rate of increase that

far exceeds that of the number of passengers U.S.

airlines transported over the same period. This rate

of increase is modest, however, when compared to

an explosion in the number of passengers seeking

to travel with ESAs, which increased by 56% in just

one year (from 2016 to 2017). As DOT noted, one

U.S. airline experienced a 75% increase from 2016

to 2017. One [Airlines for America] member airline

has experienced a more than eightfold increase in

the number of ESAs since 2012. In 2017, we

estimate that U.S. airlines accommodated more than

750,000 ESAs in cabin, which constituted 73% of

all estimated service animals transported.

properly in public to be treated as a

service animal.15 Despite this guidance,

some believe that emotional support

animals pose a greater safety risk

because they have not been trained to

mitigate a disability and, therefore, are

less likely to have received adequate

behavioral training.16 Airlines have

reported increases in the number of

behavior-related service animal

incidents on aircraft, including

urinating, defecating, and biting. In

2018 and 2019, some airlines issued

new service animal policies that require

passengers traveling with a service

animal to provide behavior/training

attestations and animal health

information as a condition of

transportation.17 These policies are

mostly applicable to emotional support

and psychiatric service animals and

were created to address perceived or

actual increased incidents of animal

misbehavior on aircraft. In response,

disability rights advocates expressed

concern about the increased burdens

that these polices have placed on

legitimate service animal users.

Disability advocates are also concerned

about the increased stigma and negative

perception of all service animals

traveling on aircraft.

Request for Rulemaking

The Department has heard from the

transportation industry, as well as

individuals with disabilities, that the

current ACAA regulation could be

improved to ensure nondiscriminatory

access for individuals with disabilities,

while simultaneously preventing

instances of fraud and ensuring

consistency with other Federal

regulations. The Psychiatric Service Dog

Society (PSDS), an advocacy group

representing users of psychiatric service

dogs, petitioned the Department in 2009

to eliminate a provision in the

Department’s ACAA regulations

permitting airlines to require

documentation and 48 hours’ advance

notice for users of psychiatric service

animals. PSDS asserted that the

Department’s current regulation treats

individuals with mental and emotional

disabilities unfairly because individuals

traveling with psychiatric service

15 Guidance Concerning Service Animals, 73 FR

27614, 27659 (May 13, 2008).

16 See Comment of Assistance Dogs International,

https://www.regulations.gov/document?D=DOT-

OST-2018-0068-4409; ‘‘Because ESAs are not

required to have any training, any documentation

of a passenger’s need for an ESA fails to address the

issue that causes problems in air travel, the ESA’s

training and behavior.’’

17 See discussion on airline service animal

policies the Department’s Final Statement of

Enforcement Priorities Regarding Service Animals,

84 FR 43480 (August 21, 2019).

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animals, animals which are trained to

do work or perform a task to assist

individuals with disabilities, are subject

to more burdensome requirements than

passengers traveling with other trained

service animals.18

The Department also received

comments from airlines and airline

associations regarding the need to revise

the Department’s ACAA service animal

regulations after the Department

published a Notice of Regulatory

Review in the Federal Register on

October 2, 2017, inviting public

comment on existing rules and other

actions that are good candidates for

repeal, replacement, suspension, or

modification.19 Airlines generally asked

that DOT harmonize its ACAA

definition of a service animal with the

service animal definition in DOJ’s ADA

regulations.20 Further, in 2018, ten

disability advocacy organizations urged

the Department to stop the proliferation

of a patchwork of service animal access

requirements in airlines’ service animal

policies.21

Congressional Mandate

The FAA Extension, Safety, and

Security Act of 2016 requires that the

Department issue a supplemental notice

of proposed rulemaking on various

access issues referenced in the

Secretary’s June 15, 2015, Report on

Significant Rulemakings, including

traveling by air with service animals.22

Further, the FAA Reauthorization Act of

2018 (The FAA Act) requires the

Department to conduct a rulemaking

proceeding on the definition of the term

service animal and to develop minimum

18 See Psychiatric Service Dog Society, DOT–

OST–2009–0093–0001, 1–2, at https://

www.regulations.gov/document?D=DOT-OST-2009-

0093-0001 (April 21, 2009).

19 82 FR 45750 (Oct. 2, 2017).

20 See, e.g., Comment from Airlines for America

at https://www.regulations.gov/document?D=DOT-

OST-2017-0069-2751 (December 4, 2017); Comment

from International Air Transport Association at

https://www.regulations.gov/document?D=DOT-

OST-2017-0069-269 (December 1, 2017); Comment

from Kuwait Airways at https://

www.regulations.gov/document?D=DOT-OST-2017-

0069-2679 (December 1, 2017); and Comment from

National Air Carrier Association at https://

www.regulations.gov/document?D=DOT-OST-2017-

0069-2771 (December 4, 2017).

21 Letter to Secretary Chao from American

Association of People with Disabilities, Bazelon

Center for Mental Health Law, Christopher and

Dana Reeve Foundation, Disability Rights

Education and Defense Fund, National Association

of the Deaf, National Disability Rights Network,

Paralyzed Veterans of America, The Arc of the

United States, The National Council on

Independent Living, and United Spinal Association

(February 6, 2018) at https://www.regulations.gov/

document?D=DOT-OST-2015-0246-0315.

22 The FAA Extension, Safety, and Security Act

of 2016, Public Law 114–190, Sec. 2108 (July 15,

2016).

standards for what is required for

service and emotional support

animals.23 Congress also required the

Department to consider whether it

should align DOT’s ACAA definition of

a service animal with the service animal

definition established by DOJ in its rule

implementing the ADA.24

In addition, Congress directed the

Department to consider the following

measures to ensure that pets are not

claimed as service animals: (1) Photo

identification for service animals, (2)

training documentation, (3) medical

documentation indicating the tasks the

animal performs to assist its user, and

(4) whether more than one service

animal should be permitted to

accompany a passenger.25 Moreover, the

FAA Act requires the Department to

consider the following to ensure the

health and safety of passengers onboard

aircraft: (1) Whether to require health

and vaccination records for service

animals, (2) whether to require third-

party proof of behavior training for

service animals. Finally, DOT must

consider the impact of additional

requirements on passengers with

disabilities traveling with service

animals and ways to eliminate or

mitigate those impacts. The Department

is considering each of these measures as

part of the present rulemaking. The FAA

Act directs the Department to issue a

final rule on service animals no later

than March 22, 2020.

ACCESS Advisory Committee

In April 2016, the Department

established an Advisory Committee on

Accessible Air Transportation (ACCESS

Advisory Committee) to negotiate and

develop a proposed rule concerning

accommodations for individuals with

disabilities traveling by air with service

animals.26 The Committee members and

other interested parties discussed the

following issues: (1) Distinguishing

between emotional support animals and

other service animals; (2) limiting the

species of service animals that airlines

are required to transport; (3) limiting the

number of service animals that a single

individual should be permitted to

transport; and (4) requiring attestation

from all service animal users that their

animal has been trained to behave in a

public setting. However, despite good

faith efforts, the ACCESS Advisory

Committee was not able to reach

consensus on how the service animals

regulations should be revised.

23 The FAA Reauthorization Act of 2018, Public

Law 115–254, Sec. 437 (October 5, 2018).

24 Id.

25 Id.

26 81 FR 20265 (Apr. 7, 2016).

Nevertheless, the Department gathered

useful information during this process

from disability rights advocates, the

airline industry, an association

representing flight attendants, and other

interested parties.

3. The ANPRM

On May 23, 2018, the Department

published in the Federal Register an

Advance Notice of Proposed

Rulemaking (ANPRM) titled ‘‘Traveling

by Air with Service Animals.’’ 27 In the

ANPRM, the Department sought

comment on how to amend the

Department’s ACAA regulations to

address the problems that exist with the

rule, while also ensuring

nondiscriminatory access for

individuals with disabilities in air

transportation.

In the ANPRM, the Department

sought comment on the following: (1)

Whether psychiatric service animals

should be treated similarly to other

service animals; (2) whether there

should be a distinction between

emotional support animals and other

service animals; (3) whether emotional

support animals, if allowed onboard a

flight, should be required to travel in pet

carriers for the duration of the flight; (4)

whether the species of service animals

and emotional support animals that

carriers are required to transport should

be limited (for example, limited to dogs

only); (5) whether the number of service

animals/emotional support animals

should be limited per passenger; (6)

whether an attestation should be

required from all service animal and

emotional support animal users that

their animals have been trained to

behave in a public setting; (7) whether

service animals and emotional support

animals should be harnessed, leashed,

or otherwise tethered; (8) whether there

are safety concerns with transporting

large service animals and if so, how to

address them; (9) whether airlines

should be prohibited from requiring a

veterinary health form or immunization

record from service animal users

without an individualized assessment

that the animal would pose a direct

threat to the health or safety of others or

would cause a significant disruption in

the aircraft cabin; and (10) whether U.S.

airlines should continue to be held

responsible if a passenger traveling

under the U.S. carrier’s code faces

additional restrictions on travel with a

service animal on a flight operated by

27 Traveling by Air with Service Animals,

Advance Notice of Proposed Rulemaking, 83 FR

23832 (May 23, 2018).

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the U.S. carrier’s foreign codeshare

partner.28

The Department received

approximately 4,500 comments over the

45-day comment period from disability

advocacy organizations, airlines, human

and animal health organizations,

consumer groups, and other interested

parties; the vast majority of these

comments were from individual

members of the public.29 The

Department has carefully reviewed and

considered the comments received and

is proposing a rulemaking that is

designed to ensure that airlines provide

nondiscriminatory access to passengers

with disabilities who require the

assistance of service animals while

incorporating modifications to these

requirements reasonably designed to

ensure that airlines remain able to

provide for the safety and well-being of

all passengers and crewmember and the

safe and efficient operation of the

aircraft. The Department’s responses to

the comments are set forth below,

immediately following a summary of

regulatory provisions and a summary of

the regulatory impact analysis.

4. Summary of Proposed Regulatory

and Deregulatory Provisions

Subject Proposal

Definition of Service Animal ............

Emotional Support Animals ............

Treatment of Psychiatric Service

Animals.

Species ...........................................

Health Form ....................................

Behavior and Training Attestation ..

A service animal would be defined as a dog that is individually trained to do work or perform tasks for the

benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or

other mental disability.

Carriers would not be required to recognize emotional support animals as service animals and may treat

them as pets.

Psychiatric service animals would be treated the same as other service animals that are individually

trained to do work or perform a task for the benefit of a qualified individual with a disability.

Carriers would be permitted to limit service animals to dogs.

Carriers would be permitted to require passengers to remit a completed U.S. Department of Transportation

Service Animal Air Transportation Health Form as a condition of transportation.

Carriers would be permitted to require passengers to remit a completed U.S. Department of Transportation

Service Animal Air Transportation Behavior and Training Attestation Form as a condition of transportation.

Relief Attestation .............................

Number of Service Animals per

Passenger.

Large Service Animals ....................

Control of Service Animals .............

Carriers would be permitted to require individuals traveling with a service animal on flights eight hours or

longer to complete a U.S. Department of Transportation Service Animal Relief Attestation as a condition

of transportation.

Carriers would be permitted to limit the number of service animals traveling with a single passenger with a

disability to two service animals, and would be permitted to require that both service animals fit on their

handler’s lap and/or within their handler’s foot space on the aircraft.

Carriers would be permitted to require a service animal to fit within its handler’s foot space on the aircraft.

Carriers would be permitted to require that a service animal be harnessed, leashed, tethered, or otherwise

under the control of its handler.

Service Animal Breed or Type ........

Check-In Requirements ..................

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.

Carriers that require a passenger with a disability to check-in at the airport prior to the travel time required

for the general public would be required to make an employee available promptly to assist the passenger

with the check-in process.

5. Summary of Regulatory Impact

Analysis

The Department has prepared a

preliminary regulatory evaluation in

support of the NPRM to amend the

ACAA service animal regulations. DOT

proposes to define a service animal as

a dog that is individually trained to do

work or perform tasks for the benefit of

a qualified individual with a disability,

including a physical, sensory,

psychiatric, intellectual, or other mental

disability. DOT’s proposed service

animal definition also explains that

emotional support animals, comfort

animals, companionship animals, and

service animals in training are not

service animals for purposes of this rule.

In addition, DOT proposes to treat

psychiatric service animals (animals

that assist individuals with mental

health related disabilities) like other

service animals. Under the proposed

rule, airlines would be allowed to

require passengers traveling with a

service animal to complete forms

attesting that the passenger’s service

animal has been individually trained to

do work or perform tasks for the benefit

of the passenger with a disability, the

animal has been trained to behave in

public, the animal is in good health, and

the animal has the ability either not to

relieve itself on a long flight or to relieve

itself in a sanitary manner.

Under the proposed rulemaking,

carriers would no longer be required to

recognize emotional support animals as

service animals. Passengers currently

have an incentive to claim pets as

emotional support animals as existing

regulations require carriers to transport

all emotional support animals at no cost

to the passenger.

The primary economic impact of this

proposed rulemaking is that it

eliminates a market inefficiency. The

current policy amounts to a price

restriction, which requires carriers to

forgo a potential revenue source. In

addition, the current policy, which

effectively sets the price at zero,

requires carriers to use resources to

provide an accommodation for

emotional support animals.

There is one quantified cost element:

A potential burden on passengers

traveling with service animals who may

be required to submit up to three DOT

forms to carriers. For Paperwork

Reduction Act (PRA) purposes, we

estimate that the forms could create

144,000 burden hours and $3.0 million

in costs per year. In some cases,

however, carriers already ask passengers

to complete equivalent non-

governmental forms. Thus, the PRA

numbers likely overestimate the burden

that would result from this rulemaking.

28 Id. 29 See Traveling by Air with Service Animals, www.regulations.gov/docket?D=DOT-OST-2018-

Advance Notice of Proposed Rulemaking, https:// 0068.

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TABLE ES–1—SUMMARY OF IMPACTS DUE TO PROPOSED RULEMAKING

[Millions of 2018 dollars]

Impact Annual value

Paperwork burden for passengers traveling with service animals ............................................................................................. ¥$3.0.

Discomfort to passengers who no longer will travel with ESAs ................................................................................................. Not quantified.

Eliminated deadweight loss; transfer of surplus from consumers to producers (increased fees paid by passengers travelling $75.1 (total).

with ESAs).

Reduction in negative externalities caused by ESAs ................................................................................................................. Not quantified.

Secondary market impacts due to reduced demand for ESA documentation Service .............................................................. Not quantified.

Public or non-use values or negative

externalities in ESA travel could affect

the efficiency consequences of this

proposed rule. The preliminary

regulatory evaluation describes the

potential impacts of non-use values and

negative externalities in detail but does

not quantify them due to a lack of data.

The Department requests information

and data to quantify and evaluate the

extent of these impacts.

1. Service Animal Species

Current Requirements

The Department’s current service

animal rule does not include a species

restriction with the exception of certain

unusual species, such as snakes, other

reptiles, ferrets, rodents, and spiders.

The ANPRM

In the ANPRM, the Department

sought comment on what, if any, species

limitations should be placed on service

animals.30 In light of suggestions made

by certain disability advocacy

organizations, the Department also

sought specific comment on whether

capuchin monkeys should be

recognized as service animals.31 Finally,

the Department requested comment on

whether it should recognize miniature

horses under its definition of a service

animal, as some individuals with

disabilities prefer miniature horses

instead of dogs as service animals for

religious reasons, because of their long

life spans, and/or because of allergies.32

Comments Received

Individual commenters, disability

advocates, airlines, and other

commenters all support dogs as service

animals. This result is not surprising as

the Department has been consistently

informed that the clear majority,

approximately 90 percent or more, of

service animals that travel on aircraft

are dogs. Some commenters note that

dogs are the preferred species for service

30 Traveling by Air with Service Animals,

Advance Notice of Proposed Rulemaking, 83 FR

23832, 23839.

31 Id. at 23840.

32 Id.

animals because they can be more easily

trained to mitigate a passenger’s

disability than other animals. In a joint

comment filed by Airlines for America

(A4A), the Regional Airline Association

(RAA), and International Air Transport

Association (IATA), these associations

commented that dogs in particular can

hold their elimination functions for

extended amounts of time, have the

correct temperament to serve as service

animals, and can be trained to behave

appropriately in public and around

large groups of people.33 Assistance

Dogs International (ADI) notes

specifically that dogs have been

assisting individuals with disabilities

for over 100 years.34

A smaller majority of disability

advocate organizations and airports

support both dogs and miniature horses

as service animals. Disability advocates

argue that miniature horses should be

recognized subject to aircraft space

restraints for those individuals with

disabilities who rely on these animals,

while airports argue for their inclusion

to promote greater predictably for

passengers with disabilities and airport

operators. Although miniature horses do

not fall under DOJ’s definition of a

service animal, DOJ requires covered

entities such as airports to permit

individuals with disabilities to use

miniature horses, where reasonable, if

the miniature horse has been

individually trained to do work or

perform tasks for the benefit of the

individual with a disability.35

Some disability organizations,

however, argue against miniature horses

as service animals, reasoning that horses

are not commonly used as service

animals and that excluding them from

the rule will not impact many

individuals with disabilities. Some

airline commenters acknowledged that

they receive very few requests to

33 Comment of Airlines for America, Regional

Airline Association, and International Air Transport

Association, https://www.regulations.gov/

document?D=DOT-OST-2018-0068-4288.

34 Comment of Assistance Dogs International,

https://www.regulations.gov/document?D=DOT-

OST-2018-0068-4409.

35 See 28 CFR 36.302(c)(9) and 28 CFR 35.136.

accommodate miniature horses each

year and further oppose the inclusion of

miniature horses as service animals

because they are too large and inflexible

to be safely accommodated on an

aircraft and to fit within a passenger’s

foot space.

A small number of disability

advocacy organizations support

capuchin monkeys as service animals

because of their ability to assist

individuals with limited mobility with

in-home services; however, these groups

recognize that capuchin monkeys must

be contained in a carrier in the airport

and on the aircraft because of the

potential danger they pose. Other

disability advocacy organizations,

airlines, and animal health associations

strongly oppose recognizing capuchin

monkeys as service animals. These

groups argue that capuchin monkeys,

while trained to do work or perform

tasks for individuals with disabilities,

are not domesticated animals and can be

prone to increased aggression. Other

groups oppose capuchin monkeys and

other non-human primates as service

animals, citing DOJ’s position that these

animals have the potential for disease

transmission and that they exhibit

unpredictable aggressive behavior.25

While Paralyzed Veterans of America

(PVA) supports some limitations on the

type of species that may be used as

service animals or emotional support

animals, the organization argues that

access should be provided for all

species and sizes of dogs, cats, rabbits,

miniature horses, capuchin monkeys

and other species that can be trained to

behave appropriately and be safely

brought on airplanes.36 Finally, while

the Association of Flight Attendants

(AFA) commented that service animals

and ESAs should be limited by species,

it recognized that it was not in a

position to make specific

recommendations about the type of

species airlines should be required to

36 Comment of Paralyzed Veterans of America,

https://www.regulations.gov/document?D=DOT-

OST-2018-0068-4187.

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transport.37 However, AFA recognized

that it is appropriate for the Department

under the ACAA to consider the

characteristics of the animal that may be

carried in the cabin, the size of the

animal, and the aircraft’s ability to

accommodate the animal.

DOT Response

DOT proposes to define a service

animal as a dog that is individually

trained to do work or perform tasks for

the benefit of a qualified individual

with a disability, including a physical,

sensory, psychiatric, intellectual, or

other mental disability. DOT’s proposed

service animal definition also explains

that emotional support animals, comfort

animals, companionship animals, and

service animals in training are not

service animals. Consistent with this

definition, the Department proposes to

limit the species of service animals to

dogs. Under the Department’s proposal,

airlines could choose to transport other

species of animals that assist

individuals with disabilities in the

cabin for free pursuant to an established

airline policy, but would only be

required under Federal law to recognize

dogs as service animals. The

Department considered the fact that

dogs are the most common animal

species used by individuals to mitigate

disabilities both on and off aircraft as

noted by many commenters. Dogs also

have both the temperament and ability

to do work and perform tasks while

behaving appropriately in a public

setting and while being surrounded by

a large group of people.

The Department considered, but

decided against, a proposal that would

include other species as service animals,

including capuchin monkeys and

miniature horses. Although trained

capuchin monkeys can assist persons

with limited mobility with their daily

tasks, we are not proposing to recognize

capuchin monkeys as service animals

because they may present a safety risk

to other passengers as they have the

potential to transmit diseases and may

exhibit ‘‘unpredictable aggressive

behavior.’’ 38 Further, according to

information the Department received

from Helping Hands: Monkey Helpers,39

37 Comment of the Association of Flight

Attendants, https://www.regulations.gov/document?

D=DOT-OST-2018-0068-4207.

38 Nondiscrimination on the Basis of Disability in

State and Local Government Services, 75 FR 56164,

56194 (Sept. 5, 2010).

39 Helping Hands monkeys are New World

monkeys, native to Central and South America.

New World monkeys do not carry the zoonotic

diseases often associated with Old World monkeys

(from Africa) such as Herpes B, Monkey Pox, or

Simian Immunodeficiency Virus (SIV). However,

according to the CDC, New World monkeys do carry

it is often, if not always, qualified

trainers rather than individuals with

disabilities, who travel by air with

capuchin monkeys, as the trainer

delivers the monkeys. However, neither

the existing regulation nor the proposed

rule would require airlines to transport

service animals when they are not

accompanied by the service animal user.

Because individuals with disabilities

may have significantly more difficulty

obtaining the assistance of capuchin

monkeys if they are not allowed to

travel by air with their trainer, the

Department seeks comment on whether

to require airlines to allow the transport

of closed-colony capuchin monkeys 40

in a carrier (capuchin monkeys weigh

approximately 6–10 lbs.) and when

traveling with a qualified trainer.41

In addition, the Department did not

propose to include miniature horses in

its definition of a service animal given

size limitations on aircraft. The

Department seeks comment on its

proposal to limit service animals to

dogs.

2. Breed or Type Restrictions

Current Requirements

While the Department’s disability

regulations allow airlines to deny

transportation to an animal if, among

other things, it poses a direct threat to

the health or safety of others, the

Department has taken the position that

restrictions on specific dog breeds or

types are inconsistent with its current

service animal regulation.42

ANPRM

Although the Department did not

specifically seek comment on whether

and potentially transmit tuberculosis, measles,

enteric diseases (salmonella, shigella,

cryptosporidium, and giardia).

40 According to Helping Hands: Monkey Helpers,

its capuchin monkeys were bred from an existing

colony first obtained within the United States in

1979 and continue to be housed in a closed colony,

which means that the organization knows exactly

where the monkeys come from, including their

parentage, and have complete medical histories on

every monkey in the program. However, according

to CDC, most of the zoonotic diseases associated

with New World NHPs can be acquired from

humans. A ‘‘closed colony’’ does not ensure that

these animals are or will remain free of zoonotic

diseases of concern. TB, in particular, is always

acquired from humans. The comment does not

mention routine, regular TB testing, which is a

necessary component of a ‘‘closed colony.’’ More

information is available at https://

www.monkeyhelpers.org.

41 The Department notes that under 42 CFR 71.53,

the importation of any non-human primate into the

United States is prohibited unless the importer is

registered with the CDC and the purpose of the

import is limited to science, education, or

exhibition.

42 See Final Statement of Enforcement Priorities

Regarding Service Animals, 84 FR 43480 (August

21, 2019).).

airlines should be permitted to refuse

transportation to certain breeds or types

of service dogs, the Department received

a number of comments on airline breed

restrictions.

Comments Received

The Department received hundreds of

comments from individual commenters

on whether airlines should be permitted

to restrict service dogs based on breed

or type. Delta Air Lines, Inc. (Delta Air

Lines) commented that carriers should

be permitted to impose such restrictions

to ensure the safety of passengers on

aircraft if the Department does not

establish a clear means to demonstrate

that an animal can behave properly.43

No other airline and no disability rights

organization addressed this issue as the

ANPRM did not specifically call for

comment on this subject.

Most individual commenters did not

support allowing airlines to impose

breed restrictions on service animals.

These commenters stated that pit-bull

bans are discriminatory and that their

pit-bull-type dogs, like other dogs, can

be trained to perform tasks to mitigate

a user’s disabilities and can be well

behaved. These commenters also

questioned an airline’s ability to

determine whether a dog is a ‘‘pit bull’’

simply by looking at the animal’s

features. Conversely, approximately 22

percent of commenters supported a

breed or type restriction on dogs such as

pit bulls (typically taken to include

American pit bull terriers, Staffordshire

bull terriers, and American Staffordshire

bull terriers), as well as other types of

dogs that commenters believe are

commonly known to be aggressive.

DOT Response

The Department is proposing that

airlines should continue to be

prohibited from restricting service

animals based solely on the breed or

generalized type of dog. The

Department’s policy has been to require

airlines to conduct individualized

assessments of particular service

animals based on the animal’s evident

behavior or health, rather than applying

generalized assumptions about how a

breed or type of dog would be expected

to behave. Under this policy, the

Department allows airlines to refuse

transportation to dogs that exhibit

aggressive behavior and that pose a

direct threat to the health or safety of

others regardless of breed, and we

propose to retain that policy in our new

service animal rule. We note that DOJ

43 Comment of Delta Air Lines, Inc., https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-4141.

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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.44

However, the Department

understands the concerns raised about

pit bulls and certain other breeds or

types of dogs that have a reputation of

attacking people and inflicting severe

and sometimes fatal injuries. The

Department also understands that there

may be concerns that certain dogs may

be dangerous because of their muscular

bodies, large and powerful jaws and

neck muscles, and ferocity when

provoked to attack. The Department

seeks comment on whether these

concerns are valid. In particular, the

Department seeks comment on whether,

notwithstanding the DOJ rules under the

ADA, the unique environment of a

crowded airplane cabin in flight justifies

permitting airlines to prohibit pit bulls

and any other particular breeds or types

of dogs from traveling on their flights

under the ACAA even when those dogs

have been individually trained to

perform as service animals to assist a

passenger with a disability. The

Department will consider this question

in light of the full rulemaking record

when finalizing this rule. The

Department also seeks comment on

44 See Frequently Asked Questions about Service

Animals and the ADA, Questions 22–24, available

at 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.

whether its proposal to allow airlines to

conduct an individualized assessment

of a service animal’s behavior to

determine whether the service animal

poses a direct threat to the health or

safety of others is an adequate measure

to ensure that aggressive animals are not

transported on aircraft, rather than

banning an entire breed or type of

service animal.

3. Emotional Support Animals

Current Requirements

For purposes of air transportation,

under our existing rules, DOT considers

a service animal to be any animal that

is individually trained or able to

provide assistance to a qualified person

with a disability; or any animal shown

by documentation to be necessary for

the emotional well-being of a

passenger.45 However, while the

Department currently requires airlines

to recognize emotional support animals

as service animals, it allows airlines to

require that emotional support animal

users provide a letter from a licensed

mental health professional of the

passenger’s need for the animal.

Currently, the Department’s ACAA rules

allow airlines to require emotional

support animal users to provide current

documentation (no older than one year

from the date of the passenger’s

scheduled initial flight) on the

letterhead of a licensed mental health

professional stating the following:

(1) The passenger has a mental or

emotional disability recognized in the

Diagnostic and Statistical Manual of

Mental Disorders—Fourth Edition (DSM

IV);

(2) The passenger needs the emotional

support or psychiatric service animal as

an accommodation for air travel and/or

for activity at the passenger’s

destination;

(3) The individual providing the

assessment is a licensed mental health

professional, and the passenger is under

his or her professional care; and

(4) The date and type of the mental

health professional’s license and the

state or other jurisdiction in which it

was issued.46

Furthermore, to enable airlines

sufficient time to assess the passenger’s

documentation, DOT permits airlines to

require 48 hours’ advance notice of a

passenger’s wish to travel with an

emotional support animal so that

airlines can verify the documentation.

Airlines are also permitted to require

that passengers traveling with emotional

45 See 14 CFR 382.117; Guidance Concerning

Service Animals, 73 FR 27614, 27663 (May 13,

2008).

46 14 CFR 382.117(e)(1)–(4).

support animals check-in one hour

before the check-in time for the general

public.47

The ANPRM

In the ANPRM, the Department

described the concerns raised by

airlines, disability advocates, flight

attendants, and the traveling public that

emotional support animals may pose a

safety risk to other service animals,

passengers, and airline personnel and

could create a disturbance or disruption

that would interfere with the safe and

efficient operation of the aircraft. The

Department sought comment on

whether it should continue to include

emotional support animals in the

definition of a service animal in its

ACAA regulation, or adopt a definition

of service animal similar to the

definition in DOJ’s ADA regulation

where emotional support animals are

not recognized as service animals.48

In the event that the Department

decided to continue to recognize

emotional support animals as service

animals, the Department sought

comment on whether it should continue

to allow airlines to require emotional

support animal users to provide

documentation.49 The Department also

sought comment on alternative

approaches to documentation that can

be used to verify an emotional support

animal’s status.50 Further, the

Department sought comment on

whether emotional support animals

should be regulated separately and

distinctly from service animals, and if

airlines are required to transport

emotional support animals, whether

airlines should be allowed to require

that emotional support animals be

contained.51

Comments Received

Should the Department continue to

include emotional support animals in

the Department’s ACAA definition of a

service animal?

Most organization commenters urged

the Department to align its definition of

a service animal with DOJ’s definition of

a service animal, which does not

recognize emotional support animals

and limits service animals to dogs

individually trained to do work or

perform a task for an individual with a

disability. As part of this NPRM, the

Department seeks comment on reasons

47 14 CFR 382.27(c)(8).

48 Traveling by Air with Service Animals,

Advance Notice of Proposed Rulemaking, 83 FR

23832, 23838.

49 Id.

50 Id

51 Id

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the regulation of service animals on

aircraft should or should not differ from

DOJ’s regulation of service animals

under its rules implementing the ADA.

Airline organizations commented that

the Department should follow DOJ’s

lead and exclude emotional support

animals from the definition of a service

animal in the air transportation context

because DOJ’s definition is ‘‘better

suited to the particular challenges

associated with accommodating animals

in the aircraft cabin environment, which

involves allowing animals to travel in a

confined, noisy, moving space at high

altitude . . . and in close proximity to

crew, passenger, and other animals and

no opportunity to remove the animal

during flight.’’ 52 Similarly, disability

advocates have commented that the

Department’s current rule, which

classifies emotional support animals as

service animals, causes significant

confusion in the disability community.

However, while disability advocates,

airlines, and the majority of commenters

agree that emotional support animals

should be removed from the definition

of a service animal, they disagree on

whether the Department should

recognize emotional support animals as

an accommodation for individuals with

disabilities that would be regulated

separately and distinctly from service

animals. Most advocacy organizations

support a definition of service animal

focused on animals trained to do work

or perform tasks for the benefit of

individuals with disabilities, similar to

DOJ’s definition. Those advocacy

organizations, however, support the

Department’s continued recognition of

emotional support animals, so long as

emotional support animals are regulated

separately and distinctly from service

animals.

The National Federation of the Blind

(NFB) 53 commented that emotional

support animals, which are untrained to

mitigate a disability, should be

permitted as an accommodation subject

to ‘‘specific and more restrictive

conditions’’ of carriage. In addition,

Psychiatric Service Dog Partners

(PSDP) 54 commented that regulating

emotional support animals differently

from other service animals is warranted

given that emotional support animals

have not been trained to perform a

52 Comment of Airlines for America, Regional

Airline Association, and International Air Transport

Association, https://www.regulations.gov/

document?D=DOT-OST-2018-0068-4288.

53 Comment of the National Federation of the

Blind, https://www.regulations.gov/document?

D=DOT-OST-2018-0068-3261.

54 Comment of Psychiatric Service Dog Partners,

https://www.regulations.gov/document?D=DOT-

OST-2018-0068-3117.

specific task for a passenger with a

disability, and emotional support

animal users are likely not aware of

DOT’s behavior expectations or the

required public access training

protocols.

Similarly, in a joint comment filed by

A4A, RAA, and IATA, these

associations commented that should the

Department continue to recognize

emotional support animals, a decision

opposed by the associations, emotional

support animals should be regulated

separately and distinctly from service

animals and subject to more stringent

requirements than service animals, such

as documentation from a licensed

mental health professional who has

examined and diagnosed the emotional

support animal user in person.55

The majority of individual

commenters provided general

statements of support for the

Department’s continued recognition of

emotional support animals, and did not

opine on whether emotional support

animals should be regulated separately

from service animals. Generally, these

individuals, along with those disability

advocates in support of the continued

recognition of emotional support

animals, argue that the Department

should continue to recognize the vital

role that emotional support animals

play in mitigating mental and emotional

disabilities during air transportation and

at a passenger’s destination.

Specifically, PVA insists that passengers

with disabilities have access to their

emotional support animals as the mere

presence of these animals

accommodates a person’s disability and

may be crucial to allowing a person

with a disability to travel by air.56

Similarly, the American Council of the

Blind (ACB) recognizes that emotional

support animals can perform a vital role

for individuals who are incapable of

moving freely through society.57

Autism Speaks commented that the

Department should afford individuals

with disabilities who rely on emotional

support and psychiatric service animals

‘‘with the same legal protections as

people who use other service

animals.’’ 58 Autism Speaks

acknowledges that ‘‘people may not see

55 Comment of Airlines for America, Regional

Airline Association, and International Air Transport

Association, https://www.regulations.gov/

document?D=DOT-OST-2018-0068-4288.

56 Comment of Paralyzed Veterans of America,

https://www.regulations.gov/document?D=DOT-

OST-2018-0068-4187.

57 Comment of American Council of the Blind,

https://www.regulations.gov/document?D=DOT-

OST-2018-0068-4133.

58 Comment of Autism Speaks, https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-4268.

the services psychiatric service animals

and emotional support animals provide

because sometimes these services may

not be obvious; autism itself may be an

invisible disability,’’ but ‘‘the needs of

many people with autism for emotional

support, however, are very real.’’

Airlines have indicated that fraud and

safety are the primary reasons they

oppose the Department’s continued

recognition of emotional support

animals. In a joint comment filed by

A4A, RAA, and IATA, these

associations commented that ‘‘incidents

involving animals that allegedly are

[emotional support animals] [have]

become an unacceptable threat to the

health and safety of airline staff and the

traveling public, including qualified

individuals with a disability who travel

with a trained service animal and those

trained service animals themselves.’’ 59

With respect to fraud, airlines

commented that individuals traveling

with purported emotional support

animals may not actually be individuals

with disabilities, and the surge in the

transport of emotional support animals

on aircraft is fueled by ‘‘cheap and easy

availability of fraudulent credentials.’’

American Airlines, Inc. (American

Airlines) commented that it experienced

a 48-percent increase in the number of

emotional support animals carried in

2017 compared to 2016 (105,155 in 2016

and 155,790 in 2017).60 American

Airlines also commented that it

experienced a 17-percent decline in the

number of requests to transport pets for

a fee in 2017 in comparison to 2016.

Spirit Airlines, Inc. (Spirit Airlines)

commented on the loss of millions of

dollars in pet carriage fees from

passengers fraudulently claiming their

‘‘house pets are service or support

animals’’ and on instances of emotional

support animal misbehavior as

justification for why the Department

should not recognize emotional support

animals.61 Delta Air Lines recognizes

that some passengers with disabilities

‘‘have a legitimate need’’ for emotional

support animals; however, the carrier

opposes the Department’s continued

recognition of emotional support

animals and urged the Department to

adopt the DOJ definition of a trained

service animal. Delta believes that

passengers who currently have a

59 Comment of Airlines for America, Regional

Airline Association, and International Air Transport

Association, https://www.regulations.gov/

document?D=DOT-OST-2018-0068-4288.

60 Comment of American Airlines, Comment of

American Airlines, Inc. https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-3507.

61 Comment of Spirit Airlines, Inc., https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-4226.

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legitimate need for an emotional

support animal could still be

accommodated on aircraft under the

DOJ definition of a service animal, if

these passengers trained their animals to

become psychiatric service animals,

which are recognized as service animals

by DOJ.62 However, Spirit Airlines

contends that the Department should

eliminate the category of emotional

support animals in its regulations

because emotional support animals

generally receive ‘‘absolutely no

training, neither obedience nor specific

to their owner’s disability’’ (emphasis in

original).63 Most U.S. carriers believe

that most of the fraud and safety issues

on which the Department sought

comment in the ANPRM would be

mitigated if DOT adopted a definition of

service animal that excluded emotional

support animals.

While U.S. airlines oppose the

Department’s continued recognition of

emotional support animals, foreign

carriers are split on this issue. Those

foreign carriers in support of emotional

support animals urge the Department to

define emotional support animals

separately from service animals and

subject them to a more stringent

regulatory standard. Health and safety

concerns continue to be the primary

justification provided by foreign carriers

in support of eliminating emotional

support animals or subjecting them to

stricter regulation.

Should the Department continue to

allow airlines to require emotional

support animal users to provide medical

documentation and advance notice?

While most disability advocates

oppose allowing airlines to require

documentation from service animal

users, including emotional support

animal users, some advocacy

organizations are in favor of

documentation exclusively for

emotional support animals. Some

advocacy organizations support

documentation for all service animal

users in the form of a decision-tree,

which is a series of questions designed

to educate the public on traveling with

service animals and reduce the

instances of individuals fraudulently

representing their pets as service

animals. Some advocates and airlines

expressed support for behavior

attestations, another form of

documentation first suggested during a

2016 negotiated rulemaking as a

62 Comment of Delta Air Lines, Inc., https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-4141.

63 Comment of Spirit Airlines, Inc., https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-4226.

potential measure to be proposed by the

Department in a future rulemaking.64

Since the negotiated rulemaking, several

carriers have created their own

behavioral attestations as one of many

service animal policy changes that

carriers put into place in 2018 and 2019.

Finally, some disability advocacy

organizations that oppose

documentation for service animals,

including emotional support animals,

commented that the Department should

only permit airlines to make the same

inquiries that DOJ permits under its

regulation implementing the ADA: (1) Is

the animal required because of a

disability? and (2) What work or task

has the animal been trained to

perform? 65

While all commenting U.S. airline

opposed the Department’s continued

recognition of emotional support

animals, airlines have commented that

if the Department continues to require

airlines to transport emotional support

animals as an accommodation for

individuals with disabilities, airlines

should be permitted to require those

passengers to provide documentation

from a medical professional that

confirms the passenger’s need for the

animal. Airlines also commented that

airlines should be able to impose more

restrictive requirements—for example,

that the passenger’s diagnosis be based

on an in-person visit and that the

documentation state that the passenger

has a mental impairment as defined in

the Department’s ACAA regulations, as

opposed to stating only that the

passenger has a disorder recognized

under the Diagnostic and Statistical

Manual of Mental Disorders.

Both U.S. and foreign carriers believe

that allowing airlines to require

documentation to prove the passenger’s

need for an emotional support animal is

essential if the Department continues to

recognize emotional support animals.

Airlines commented that there is a

significant problem with fraud under

the Department’s current requirements

and that fraud would only become more

prevalent should the Department

dispense with a documentation

requirement for emotional support

64 Service Animal—Vote Tally Sheet—3rd Party

Documentation, Mandatory Attestation (Oct. 26,

2016), https://www.regulations.gov/document?

D=DOT-OST-2015-0246-0281.

65 See 28 CFR 35.136(f); 28 CFR 36.302(c)(6).

DOJ’s ADA regulations do not generally permit a

covered entity to make these two inquiries when it

is readily apparent that an animal is trained to do

work or perform tasks for an individual with a

disability, (e.g., the dog is observed guiding an

individual who is blind or has low vision, pulling

a person’s wheelchair, or providing assistance with

stability or balance to an individual with an

observable mobility disability).

animal users. The Association of Flight

Attendants (AFA) also favors a

documentation requirement for

emotional support animal users and

noted that while some emotional

support animal users may be

discouraged from flying if required to

produce documentation, the correlation

between a documentation requirement

and fraud reduction justifies the

requirement. That association also noted

that while a documentation requirement

may not eliminate fraud entirely, fraud

reduction, to any degree, benefits the

traveling public, individuals with

disabilities, and airlines.

Should the Department allow airlines to

require emotional support animals to be

contained in pet carriers?

Disability advocates are largely split

on the issue of whether emotional

support animals should be contained in

pet carriers. Some advocates support

requiring the containment of emotional

support animals but comment that they

should be allowed to be removed from

the carrier to mitigate a disability. Other

disability advocates only support the

containment of emotional support

animals when the animal is behaving

badly. Some disability advocates oppose

a containment requirement altogether

fearing that large emotional support

animals that do not fit in pet carriers

would not be permitted access on

airplanes. Finally, some advocates

recommend that emotional support

animals merely be leashed, harnessed,

or tethered, rather than contained.

The majority of airlines commented

that if the Department chooses to

recognize emotional support animals,

emotional support animals should be

contained for the duration of the flight.

If the animal is too large to fit in a

container, one airline suggests that the

airline be permitted to treat the animal

as a pet and offer the passenger the

option for the animal to fly in the cargo

compartment. Conversely Delta Air

Lines, which generally opposes the

Department’s recognition of emotional

support animals, does not support

containing emotional support animals

for the duration of the flight.66 That

carrier explained that if the Department

were to decide to continue to recognize

emotional support animals, emotional

support animals would be unable to

mitigate a passenger’s disability if

contained in a carrier. The carrier

further stated that a containment

requirement for emotional support

animals, if allowed, would be

66 Comment of Delta Air Lines, Inc., https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-4141.

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inconsistent with the spirit of the ADA

and the ACAA. The carrier does,

however, support that airlines be

granted the authority to restrain

emotional support animals by harness,

leash, or other restraint mechanisms.

Airport commenters support a

requirement that emotional support

animals be contained if they continue to

be recognized, especially while

traversing through the airport. Airports

argue that airport operators have the

right to require any animal that is not

a service animal under the ADA to be

contained and a containment

requirement promotes consistency

between the ADA and ACAA

regulations.

What species should be accepted as

emotional support animals?

Disability advocacy organizations and

the public are generally split on what

species of emotional support animals

the Department should recognize if it

continues to recognize emotional

support animals. Some public

commenters and disability advocacy

organizations favor the Department’s

current species requirement for

emotional support animals, which does

not limit species except with respect to

unusual species such as snakes, other

reptiles, fetters, rodents, and spiders.67

Conversely, other individual

commenters and disability advocates

urge the Department to recognize only

dogs and miniature horses as emotional

support animals.

The majority of disability advocacy

organizations and public commenters,

however, are split between favoring a

requirement that dogs and cats be

recognized as emotional support

animals and favoring a requirement that

dogs, cats, and rabbits be recognized as

emotional support animals because, as

noted by these organizations, dogs, cats

and rabbits are the most commonly used

species of emotional support animal. A

small contingent of disability advocacy

organizations encourage the Department

to allow airlines to limit emotional

support animals to animals that have

been trained to behave properly in

public, rather than specifying a species

in the rule. Finally, one advocacy

organization argues that all trained or

domesticated emotional support

animals should be permitted to be

recognized as a service animal under

DOT’s ACAA rule.

Most airlines commented that they

should only be required to carry dogs as

emotional support animals if the

Department continues to recognize

emotional support animals, although

67 14 CFR 382.117(f).

some also support permitting miniature

horses, subject to airline pre-approval.

One airline suggests that cats be allowed

as emotional support animals if the

Department continues to recognize

emotional support animals.

DOT Response

Definition of a Service Animal

The Department proposes in this

NPRM to define a service animal as a

dog that is individually trained to do

work or perform tasks for the benefit of

a qualified individual with a disability.

This definition is similar to DOJ’s

definition of a service animal under

Title II and Title III of the ADA.68 DOJ’s

Title II rules for State and local

governments govern airports owned by

a public entity and DOJ’s Title III rules

for public accommodations and

commercial facilities govern privately

owned airports and airport facilities.

Under DOT’s proposed service animal

definition, like DOJ’s service animal

definition in its ADA rules, emotional

support animals would not be

recognized as service animals as they

are not trained to do work or perform a

task for the benefit of an individual with

a disability. The Department’s proposal

is intended to align DOT’s ACAA

definition of a service animal with the

service animal definition established by

DOJ in its rules implementing the ADA

and thereby decrease confusion for

individuals with disabilities, airline

personnel, and airports. While the

Department proposes to allow airlines to

treat emotional support animals as pets

rather than service animals, airlines

could choose to continue to recognize

emotional support animals and

transport them for free pursuant to an

airline’s established policy. The

Department seeks comment on its

proposed service animal definition,

which does not recognize emotional

support animals and limits the species

that qualify as service animals to dogs.

Although the NPRM proposes not to

treat emotional support animals as

service animals, the Department seeks

further comment on whether the

Department should recognize emotional

support animals as an accommodation

for individuals with disabilities that

would be regulated separately and

distinctly from service animals. The

Department recognizes that we have

already received considerable feedback

on this topic during the comment period

to the ANPRM; individuals and

organizations need not re-submit those

same comments during the comment

period to this NPRM. The NPRM solicits

68 See 28 CFR 35.104 and 28 CFR 36.104.

comment on whether, and to what

extent, the proposal not to recognize

emotional support animals would

impact the ability of individuals with

disabilities who rely on emotional

support animals to travel via aircraft.

The Department seeks comment on

whether individuals with disabilities

who use emotional support animals to

mitigate their disabilities would be less

likely to travel by air if they are no

longer permitted to travel with their

emotional support animal. Furthermore,

since airlines would be permitted to

treat emotional support animals as pets,

the Department requests information

from airlines on whether individuals

would be able to transport emotional

support cats or other small animals as

pets in the cabin for a fee and whether

there are limits on the number of pets

an airline would allow per flight which

could impact their transport.

Some commenters have noted that

emotional support animal users who

have a mental health disability may

train their dogs to do work or perform

a task to assist them with their

disability, thereby transforming the

animal from an emotional support

animal to a psychiatric service animal.

The Department requests comment as to

whether the Department should

recognize this option and, if so, whether

the availability of this option would

mitigate any negative impact of this

proposal on users of emotional support

dogs.

Alternatively, if the Department

decides not to adopt the definition of

service animal as proposed (and instead

adopts a final rule that continues to

recognize emotional support animals),

the Department requests comment on

whether emotional support animals are

more likely to misbehave in comparison

to traditional service animals because

they have not been trained to mitigate

a disability. While one solution

suggested by commenters is to permit

airlines to require stricter

documentation for emotional support

animal users (e.g., forms completed and

signed by a medical practitioner such as

a doctor or nurse practitioner,

verification of in-person treatment by a

medical practitioner, and verification

that the patient has or will receive

ongoing treatment from the medical

practitioner), others expressed concern

that these stricter measures may impose

unnecessary burdens on passengers

with disabilities. The Department

requests comment on whether stricter

documentation for emotional support

animal users would be effective in

decreasing the likelihood of fraud by

businesses seeking to profit by

guaranteeing emotional support animal

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documentation to individuals traveling

with pets.

The Department also seeks comment

on how limiting emotional support

animals to dogs and cats might impact

individuals with disabilities who rely

on other species of animals to

accommodate their disability. It is the

Department’s understanding that dogs

currently represent the majority

(approximately 90 percent) of service

animals transported on aircraft

(including emotional support animals)

and cats are the second largest species

used as emotional support animals. As

such, the Department seeks comment on

how individuals who rely on emotional

support cats would be impacted should

the Department decide not to recognize

emotional support animals or only

recognize emotional support dogs.

Finally, if the Department decides not

to adopt the definition of service animal

as proposed (and instead adopts a final

rule that continues to recognize

emotional support animals), the

Department seeks comment on whether

airlines should be allowed to require

that emotional support animals be

contained in an FAA-approved in-cabin

pet carrier in the airport and on the

aircraft and whether providing

passengers the ability to open the carrier

and touch the animal is sufficient

disability mitigation, even if the animal

is required to remain in its carrier for

the duration of a flight. The Department

also seeks comment on whether to allow

airlines to accept only those emotional

support animals that fit in in-cabin pet

carriers that are consistent with

applicable FAA regulations and, if so,

the impact of limiting the size of

emotional support animals. Finally, the

Department seeks comment on whether

limiting emotional support animals to

one per passenger would sufficiently

mitigate a passenger’s disability on a

flight or at the passenger’s destination.

4. Psychiatric Service Animals

Current Requirements

The Department’s current ACAA

regulation allows airlines to treat

psychiatric service animals and

emotional support animals differently

from other animals that assist

individuals with disabilities.69 Similar

to emotional support animals, airlines

are permitted to require psychiatric

service animal users to provide medical

documentation to prove the passenger’s

need for the psychiatric service animal,

to provide 48—hours advance notice

prior to travel, and check-in one hour

69 See 14 CFR 382.117(e).

before the check-in time for the general

public.70

The ANPRM

In the ANPRM, the Department

solicited comment on whether it should

amend its service animal regulation to

ensure individuals traveling with

psychiatric service animals are not

subject to more burdensome

requirements than passengers traveling

with other service animals that do work

or perform a task to mitigate a disability.

More specifically, the Department

sought comment in the ANPRM on

whether it should amend its service

animal regulations no longer to permit

airlines to require medical

documentation, 48—hours advance

notice of travel, or check-in in one hour

before the general public for psychiatric

service animal users.71

The Department also requested

comment on whether there may be a

valid basis for allowing airlines to treat

individuals traveling with psychiatric

service animals differently from

individuals traveling with traditional

service animals.72 The Department

inquired about the practical

implications of no longer permitting

airlines to require medical

documentation from psychiatric service

animal users if the ACAA rule were to

treat psychiatric service animals like

other service animals.73 The Department

sought comment in the ANPRM on

whether airline personnel would be able

to distinguish between a psychiatric

service animal and an emotional

support animal should the Department

amend its regulation to treat psychiatric

service animals like other service

animals that do work or perform tasks.74

Further, to gauge whether the problem

of individuals’ falsely claiming to have

a mental-health-related condition is

greater than the problem of individuals’

falsely claiming other hidden

disabilities, such as a seizure disorder,

to avoid paying airline pet fees, the

Department sought comment on what, if

any, experience airlines have had with

passengers’ claiming to have a seizure

disorder, diabetes, or non-mental-

health-related condition, and

fraudulently attempting to travel with

their pets as service animals.75 In

addition, the Department sought

feedback on alternatives to a medical

documentation requirement that would

70 14 CFR 382.27(c)(8).

71 Traveling by Air with Service Animals,

Advance Notice of Proposed Rulemaking, 83 FR

23832, 23838).

72 Id.

73 Id.

74 Id.

75 Id.

prove the passenger’s need for a

psychiatric service animal.76

Comments Received

Most commenters support an ACAA

definition of a service animal that treats

psychiatric service animals the same as

other service animals that do work or

perform a task. The National Disability

Rights Network commented that treating

psychiatric service animals the same as

other tasked-trained service animals is

fair because treating them differently

perpetuates the myth that psychiatric

service animals are inferior to service

animals used to mitigate other types of

disabilities.77 Similarly, American

Airlines commented that psychiatric

service animals should be treated the

same as other service animals trained to

do work or perform a task because

psychiatric service animals are

professional working dogs.78 American

Airlines also commented that treating

psychiatric service animals the same as

other task-trained service animals

would provide consistency between the

DOT’s ACAA regulation and DOJ’s ADA

regulations.

A4A urged the Department to treat

psychiatric service animals the same as

other task-trained service animals and

no longer to recognize emotional

support animals.79 But A4A encourages

the Department to dispense with the

medical documentation and advance

notice allowance for psychiatric service

animal users for only a one-year review

period. A4A reasoned that removing the

documentation and advance notice

allowance for psychiatric service

animals may encourage pet owners, who

once claimed that their pets were

emotional support animals, to pivot to

claiming that their pets are psychiatric

service animals to avoid airline pet fees

and to travel with their pets in the

cabin. A4A suggests allowing airlines to

collect data during the one-year review

period and if enough evidence exists to

suggest that some pet owners are falsely

representing their pets as psychiatric

service animals after the one-year

period, airlines should be allowed to

request medical documentation, and

proof of training and/or vaccination

from psychiatric service animal users.

Some U.S. carriers disagree with

treating psychiatric service animals the

76 Id.

77 Comment of National Disability Rights

Network, https://www.regulations.gov/document?

D=DOT-OST-2018-0068-4307.

78 Comment of American Airlines, Inc. https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-3507.

79 Comment of Airlines for America, Regional

Airline Association, and International Air Transport

Association, https://www.regulations.gov/

document?D=DOT-OST-2018-0068-4288.

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same as traditional service animals and

encourage the Department to continue

to allow airlines to require

documentation and advance notice from

psychiatric service animal users. United

Airlines states that the Department

should ‘‘retain (and consider

strengthening) documentation

provisions for [psychiatric service

animals] in the event that it becomes

apparent that individuals without

disabilities are attempting to assert that

their untrained pets are [psychiatric

service animals].’’ 80 Spirit Airlines

commented that psychiatric service

animals do not receive the same level of

training as ‘‘true’’ service animals,

which are subjected to training to attend

to their ’handlers’ needs, specifically in

the area of obedience training.81 Spirit

Airlines also expressed concerns that

dispensing with the documentation

requirement for psychiatric service

animals would result in more animals

being transported for free as airlines

would only be able to rely on a

passenger’s verbal assurances that the

animal was a service animal and not a

pet.

DOT Response

As discussed above, the Department

proposes to define a service animal as

a dog that is individually trained to do

work or perform tasks for the benefit of

a qualified individual with a disability.

Because psychiatric service animals are

trained to do work or perform tasks for

an individual with a disability, the

Department proposes to treat psychiatric

service animals the same as other

service animals trained to do work or

perform tasks. The Department proposes

this change not only to harmonize

DOT’s ACAA service animal definition

with DOJ’s ADA service animal

definition, which, as noted above,

defines a service animal as one that is

individually trained to do work or

perform tasks for the benefit of an

individual with a disability, but also

because the rationale for having a

different regulatory requirement for

users of psychiatric service animals is

weak. The current medical

documentation, 48 hours’ advance

notice, and check-in requirements for

psychiatric service animal users were

adopted in the Department’s 2008

amendment to the ACAA rule to address

concerns raised about passengers falsely

claiming to have a mental health

condition in order to pass off their pets

80 Comment of United Airlines, https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-4283.

81 Comment of Spirit Airlines, Inc., https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-4226.

as service animals. While the

Department is aware of concerns about

passengers who falsely claim to have a

mental health condition that may

require the use of a service animal,

unscrupulous passengers may also

falsely claim to have other hidden

disabilities such as seizure disorder or

diabetes to pass off their pets as service

animals and avoid paying airline pet

fees. Thus, we believe that the

justification for treating service animal

users with mental or emotional

disabilities different from service animal

users with other hidden disabilities is

currently lacking.

If the rule is adopted as proposed, the

Department would monitor the

experience of airlines in accommodating

the use of service animals for those

passengers with mental-health needs

who depend upon such service animals.

We would consider revisiting whether it

is reasonable and appropriate to allow

additional requirements for the use of

such animals if there is a demonstrated

need—for example, if there is a notable

increase in instances of passengers

falsely representing pets as mental-

health-related service animals.

5. Large Service Animals

Current Requirements

The Department’s current regulation

allows airlines to determine whether

factors preclude a given service animal

from being transported in the cabin,

including whether the animal is too

large or too heavy to be accommodated

in the cabin. Under this rule, an animal

may be excluded from the cabin if it is

too large or too heavy to be

accommodated in the specific aircraft at

issue.

However, the Department’s guidance

on the issue of a service animal’s

encroaching on the foot space of a

passenger is not clear. DOT has

previously stated that service animals

may be ‘‘placed at the feet of a person

with a disability at any bulkhead seat or

in any other seat as long as when the

animal is seated/placed/curled up on

the floor, no part of the animal extends

into the main aisle(s) of the aircraft, the

service animal is not at an emergency

exit seat, and the service animal does

not extend into the foot space of another

passenger seated nearby who does not

wish to share foot space with the service

animal.’’ 82 DOT has also stated that a

82 See FAA Order 8900.1, Vol. 3, Ch. 33, Section

6 at ¶ 3–3576 (March 5, 2019), http://fsims.faa.gov/

wdocs/8900.1/v03%20tech%20admin/

chapter%2033/s\_03\_033\_006.pdf and FAA

Guidance, What Airline Employees, Airline

Contractors, and Air Travelers with Disabilities

Need to Know About Access to Air Travel for

Persons with Disabilities, A Guide to the Air Carrier

service animal may need to use a

reasonable portion of an adjacent seat’s

foot space that does not deny another

passenger effective use of the space for

his or her feet by taking all or most of

the passenger’s foot space.83 The

Department advised airlines to seek out

and seat the individual with a disability

next to a passenger willing to share foot

space with the animal. The Department

also advised airlines to reseat

passengers traveling with a service

animal in a location on the aircraft

where the service animal can be

accommodated—e.g., next to an empty

seat. Finally, DOT advised airlines that

if there are no alternatives available to

enable the passenger to travel with the

service animal in the cabin on that

flight, the carrier should offer the

passenger the option of either

transporting the service animal in the

cargo hold or on a later flight with more

room.84

The ANPRM

In the ANPRM, the Department

sought comment on whether to allow

airlines to limit the size of service

animals that travel in the cabin, and the

implications of such a decision.85

Airlines had previously indicated to the

Department that some passengers have

felt coerced when asked by the airline,

in front of other passengers on aircraft,

to share their space with a service

animal and they may have agreed to

share space even if they did not wish to

so. As such, the Department sought

comment on whether passengers find it

burdensome to share foot space on the

aircraft with service animals.

Comments Received

The comments received by disability

advocates uniformly discourage the

Department from adopting a rule that

would allow airlines to limit the size of

service animals on an aircraft. Disability

advocates argue that aircraft seat sizes

have shrunk, and continue to shrink,

and that the Department should adopt a

rule that prohibits airlines from

decreasing seat size rather than allowing

airlines to limit the size of service

Access Act (ACAA) and its implementing

regulations, 14 CFR part 382 (part 382), https://

www.transportation.gov/sites/dot.gov/files/docs/

TAM-07-15-05\_0.pdf.

83 See 73 FR 27614, 27634, ‘‘The fact that a

service animal may need to use a reasonable portion

of an adjacent seat’s foot space—that does not deny

another passenger effective use of the space for his

or her feet—is not, however, an adequate reason for

the carrier to refuse to permit the animal to

accompany its user at his or her seat.’’

84 See 73 FR 27614, 27661.

85 Traveling by Air with Service Animals,

Advance Notice of Proposed Rulemaking, 83 FR

23832, 23841.

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animals. Furthermore, disability

advocates argue that there is little

evidence to show that large service

animals pose a greater safety risk than

small service animals on aircraft and

that limiting the size of service animals

would be disproportionately unfair to

individuals with mobility impairments

who use larger animals to mitigate their

disability.

Airlines, however, argue that it is

unfair to paying passengers to be forced

to share their limited space on the

aircraft with a large service animal.

Airlines also believe that limiting the

size of service animals would decrease

burdens on flight attendants, as flight

attendants must spend time rearranging

passengers to accommodate large

animals and flight crew frequently

suffer the ire of passengers unhappy

with having to move or being asked to

share their foot space with an animal.

Airlines also argue that the carriage of

large animals in the cabin violates FAA

safety requirements, which require that

aisles and other passageways be free of

obstructions to allow all passengers

egress in the case of an emergency. A4A,

RAA, and IATA commented that

allowing large untrained emotional

support animals in the cabin threatens

the safety and health of other passengers

on aircraft.86 Finally, AFA commented

that airlines should be allowed to limit

the size of service animals on aircraft,

but the limitation should be based on

the aircraft type and the available space

in the cabin.87

DOT Response

The Department proposes to allow

airlines to place size limitations on

service animals to the extent that the

animal must fit within the passenger’s

foot space on the aircraft or can be

placed on the passenger’s lap. While the

Department is sensitive to the fact that

many large service animals, such as

German Shepherds, Golden Retrievers,

and Labrador Retrievers, tend to

accompany individuals with

disabilities, particularly individuals

with mobility impairments, these

animals are often trained to fit into

small spaces. The Department seeks

comment on its proposal to limit the

size of service animals based on

whether the animal can fit into the foot

space afforded to the passenger on that

particular aircraft type, or on whether

the service animal is no larger than a

86 Comment of Airlines for America, Regional

Airline Association, and International Air Transport

Association, https://www.regulations.gov/

document?D=DOT-OST-2018-0068-4288.

87 Comment of the Association of Flight

Attendants, https://www.regulations.gov/document?

D=DOT-OST-2018-0068-4207.

lap-held child and can be placed on the

passenger’s lap.

In instances where an animal is too

large to fit in the passenger’s foot space

or be placed on the passenger’s lap, the

Department proposes to require airlines

to seat the passenger traveling with a

service animal next to an empty seat

within the same class of service where

the animal can be accommodated, if

such a seat is available. If there are no

empty seats available to allow a

passenger to travel with the service

animal in the cabin on the passenger’s

scheduled flight, the Department

proposes to require airlines to provide

passengers the option to transport the

animal in the cargo hold for free, or to

transport the passenger on a later flight

with more room if available. The

Department seeks comment on these

proposals.

6. Number of Service Animals per

Passenger

Current Requirements

Under the Department’s current

service animal regulation, it is not clear

how many service animals may

accompany a single passenger on an

aircraft. Section 382.117(a) states that an

airline ‘‘must permit a service animal to

accompany a passenger with a

disability’’ (emphases added). While

this language could be read as

suggesting that an airline is only

required to transport one service animal

per passenger, section 382.117(i)

references guidance concerning carriage

of service animals, which does not have

independent mandatory effect, but

rather describes how the Department

understands the requirements of section

382.117. That guidance states, ‘‘A single

passenger legitimately may have two or

more service animals.’’ See 73 FR

27614, 27661 (May 13, 2008). In its

Final Statement of Enforcement

Priorities Regarding Service Animals,

the Department’s Enforcement Office

stated that it would focus its

enforcement efforts on ensuring that

airlines are not restricting a single

passenger from traveling with a total of

three service animals if needed.88 While

the Department’s disability regulation

does not specify how many service

animals may travel with a passenger

with a disability, it does not allow

airlines to deny transport to a service

animal accompanying a passenger with

a disability because of a limit on the

88 Final Statement of Enforcement Priorities

Regarding Service Animals, 84 FR 43480 (August

21, 2019).

total number of service animals that can

be on a flight.89

The ANPRM

In the ANPRM, the Department

sought comment on whether to limit the

number of service animals that a single

passenger with a disability may carry

onboard a flight and how many service

animals should be permitted to

accompany a single passenger with a

disability. DOT also sought comment on

whether airlines should allow

passengers to justify the need for more

than a single animal, and what the

parameters of such a justification should

be.90

Comments Received

Most disability advocates commented

that airlines should be required to allow

at least two service animals to travel

with a single passenger if needed.

Advocates reason that some individuals

have multiple disabilities and that while

some animals have been trained to

perform multiple tasks, some

individuals with disabilities may need

animals that are focused on mitigating a

specific disability for the mitigation to

be effective. Airlines, however,

commented that they should be

permitted to limit the number of service

animals traveling with a passenger to

one service animal. Airlines argue that

allowing one service animal per

passenger helps support safety and

would help to avoid disruptions in the

cabin. Airlines also argue that given the

space afforded to individual passengers

on aircraft, transporting more than one

service animal could be problematic.

DOT Response

The Department proposes to limit the

number of service animals traveling

with a single passenger with a disability

to no more than two service animals.

The Department acknowledges

comments from disability rights

advocates that certain individuals with

disabilities require more 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

89 For example, if Ms. Smith needs to travel with

a service dog, an airline cannot deny transport to

that service dog because the airline believes that

there are already too many service dogs on the

aircraft. Section 382.117(a) requires airlines to

permit a service animal to accompany a passenger

with a disability. Section 382.17 prohibits airlines

from limiting the number of passengers with a

disability on a flight.

90 Traveling by Air with Service Animals,

Advance Notice of Proposed Rulemaking, 83 FR

23832, 23840.

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destination if the passenger uses the

animals for lengthy periods of time (e.g.,

if one animal may need a break from

work). Furthermore, disability advocate

commenters noted that while a service

animal may be trained to assist an

individual with multiple disabilities, a

passenger’s animal may need to focus

on mitigating one disability at a time for

the mitigation to be effective so multiple

animals may be needed at once. For

those passengers who seek

accommodation for two service animals,

the airline would be permitted to

require the passenger to complete two

separate attestation forms, one for each

animal, to verify that each qualifies for

appropriate accommodation as a service

animal to accompany the passenger on

the flight.

In response to the carriers’ argument

regarding the lack of space in the cabin

to accommodate a passenger traveling

with two service animals, the

Department notes that this NPRM does

not propose that an airline be required

to provide an individual with two

service animals with additional space

but would require the airline to allow

the individual to use all his or her

allotted space without encroaching into

the space of another passenger. Airlines

may refuse transportation to the animals

in the cabin if the animals would not

safely fit in the passenger’s lap or foot

space. The Department seeks comment

on its proposal to limit the number of

service animals traveling with a single

individual with a disability to two

animals, specifically including whether

there are compelling safety-related

reasons to limit each qualifying

passenger to no more than one service

animal.

7. Service Animal Restraints

Current Requirements

The Department’s current rule does

not clearly specify whether or how

airlines may restrict the movement of

service animals in the cabin. However,

the Department has issued guidance that

service animal users are expected under

the Department’s current ACAA service

animal rule to maintain control of their

animals both in the airport and on

aircraft. In the Final Statement of

Enforcement Priorities Regarding

Service Animals, the Department’s

Enforcement Office also noted that, in

general, tethering and similar means of

controlling an animal that are permitted

in the ADA context would appear to be

reasonable in the context of controlling

service animals in the aircraft cabin.

The ANPRM

Because of the potential safety risks

associated with transporting

unrestrained animals, including both

the risks to the well-being of other

passengers and crew as well as the risks

of interfering with the safe and efficient

operation of the aircraft, DOT sought

comment on whether its service animal

rule should explicitly state that service

animals must be harnessed, leashed,

tethered, or otherwise under the control

of its handler or whether it is reasonable

for airlines to make this requirement a

condition of providing air

transportation.91 DOT also sought

comment on whether a leash, tether,

harness or other restraint device would

increase safety on aircraft.92 Finally, the

Department sought general feedback on

the advantages and disadvantages of

adopting such a requirement.93

Comments Received

Airlines, disability advocates,

organizations, and individual

commenters were unified in their

support that the Department adopt a

requirement that requires service

animals to be harnessed, leashed,

tethered, or otherwise under the control

of the service animal user. A4A, RAA,

and IATA, commented that if

harnessing, leashing, and tethering is

appropriate for trained animals under

the ADA, a similar requirement is

appropriate for service animals on

aircraft.94 A number of commenters also

recognized that a control requirement is

especially crucial in the airport/aircraft

environment given the high-stakes

nature of air transportation.

Some airlines recommended muzzling

as a form of control, although some

advocates discouraged muzzling as an

acceptable restraint measure because it

may limit a service animal’s ability to

breathe properly. But even those

advocacy groups that opposed muzzling

supported a requirement that service

animals be under the control of an

individual with a disability at all times.

Some disability advocates also

recommend that DOT, similar to DOJ,

should permit service animal handlers

to exercise voice command over service

animals as a means of control if a

service animal needs to be free from a

restraint device to mitigate a passenger’s

disability.

91 Traveling by Air with Service Animals,

Advance Notice of Proposed Rulemaking, 83 FR

23832, 23840.

92 Id.

93 Id.

94 Comment of Airlines for America, Regional

Airline Association, and International Air Transport

Association, https://www.regulations.gov/

document?D=DOT-OST-2018-0068-4288.

DOT Response

The Department proposes to allow

airlines to require service animals to be

harnessed, leashed, or tethered unless

the device interferes with the service

animal’s work or the passenger’s

disability prevents use of these devices.

In that case, the carrier must permit the

passenger to use voice, signal, or other

effective means to maintain control of

the service animal. This proposal is

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.95

While the Department always

anticipated that a service animal would

be under the constant control of its

handler during air transportation, the

Department was persuaded to propose

that the rule include a provision on

service animal restraints given the

increased concern of animal

misbehavior on aircraft. Specifically, the

Department is proposing to allow

airlines to determine that an animal is

not a service animal if it is not under the

control of its handler. The Department’s

proposal to allow airlines to determine

that an animal is not a service animal if

it is not under the control of its handler

differs from DOJ’s approach. DOJ’s

regulations do not allow covered

entities to determine that such animal is

‘‘not a service animal.’’ DOJ’s ADA

regulations do, however, allow covered

entities to exclude a service animal if

the animal is out of control and the

animal’s handler does not take effective

action to control it.96

In addition, the DOT Air

Transportation Service Animal Behavior

and Attestation Form, which airlines

may require of passengers with

disabilities seeking to travel with a

service animal on aircraft, includes a

statement that the passenger

understands that the animal must be

harnessed, leashed, or tethered, unless

the passenger is unable because of a

disability to use a harness, leash or

other tether, or the use of a harness,

leash, or other tether would interfere

with the service animal’s safe, effective

performance of work or tasks. In such

cases, the animal must otherwise be

under the handler’s control through

voice, signals, or other effective means.

The Department proposes to define a

service animal handler as a qualified

individual with a disability who

receives assistance from a service

animal(s) that does work or performs

95 See 28 CFR 35.136(d); 28 CFR 36.302(c)(4).

96 See 28 CFR 35.136(b)(1); 28 CFR 36.302(c)(2)(i).

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tasks that are directly related to the

individual’s disability, or a safety

assistant, as described in section

382.29(b),97 who accompanies an

individual with a disability traveling

with a service animal(s). The service

animal handler is responsible for

keeping the service animal under

control at all times, and caring for and

supervising the service animal, which

includes toileting and feeding. The DOT

proposed definition of a service animal

handler differs from DOJ’s technical

assistance, which states that a service

animal handler can be either an

individual with a disability or a third

party who accompanies the individual

with a disability.98 The Department

proposes to limit service animal

handlers to individuals with disabilities

and their safety assistants, which are

required to travel with those individuals

with a disability who are unable to

assist in their own evacuation from the

aircraft, in order to make clear that

service animal trainers traveling with

trained service animals not serving as a

safety assistant for a passenger with a

disability, and other passengers

traveling with an individual with a

disability on aircraft, would not be

considered service animal handlers

under the ACAA rules. The Department

recognizes that there may be occasions

where an individual with a disability

who does not require a safety assistant

must rely on a third party to control

their service animal during air travel,

e.g., a small child who uses a service

animal or a passenger with a disability

capable of assisting with their own

evacuation, but incapable of controlling

or caring for their service animal. The

Department seeks comment generally on

its decision to define the term ‘‘service

animal handler’’ and seeks comments

on its proposed definition. The

Department also seeks comment on

what impact, if any, its exclusion of

third parties as service animal handlers

might have on individuals with

disabilities traveling on aircraft with a

service animal.

The Department seeks comment on its

proposal to allow airlines to require that

service animals be under the service

animal user’s constant control, via

97 The term ‘‘safety assistant’’ is used in the

Department’s disability regulation. See 14 CFR

382.29(b).

98 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.

restraint devices or, if the restraint

device interferes with the animal’s work

or the handler is unable because of a

disability to use the restraint device, by

voice command, signals, or other

effective means. The Department also

seeks comment on whether in-cabin pet

carriers that are consistent with

applicable FAA regulations should be

included in the rule as an optional

service-animal restraint device if the

final rule recognizes emotional support

animals.

8. Service Animal Documentation

Current Requirements

While the Department’s current rule

sets forth the type of medical

documentation that airlines may request

from emotional support and psychiatric

service animal users to reduce

likelihood of abuse by passengers

wishing to travel with their pets, the

regulation does not explicitly permit or

prohibit the use of additional

documentation related to a service

animal’s vaccination, training, or

behavior. Moreover, while Part 382

permits airlines to determine, in

advance of flight, whether any service

animal poses a direct threat, the rule

does not clearly indicate how airlines

must make that assessment—for

example, behavioral assessments or

information from a service animal user’s

veterinarian.

The ANPRM

Airlines have asserted that the risk to

passenger safety is increasing. In the

ANPRM, the Department sought data on

the number of service animal-related

incidents of misbehavior on aircraft and

what amount of increase in animal

misbehavior was sufficient to warrant a

requirement for animal health records

and behavior forms.99 The Department

also sought comment on whether it

should amend its service animal

regulation to allow airlines to require

that service animal users attest that their

animal can behave properly in a public

setting, whether airlines should be

permitted to require the attestation in

advance, the impacts that a behavior

attestation requirement would have on

individuals with disabilities, and

alternatives to a behavioral attestation

that would allow airlines to assess an

animal’s behavior.100

The Department was interested in

knowing whether a behavior attestation

would reduce the safety risk for

passengers, crewmember, and other

99 Traveling by Air with Service Animals,

Advance Notice of Proposed Rulemaking, 83 FR

23832, 23840.

100 Id.

service animals on aircraft.

Furthermore, recognizing that DOJ’s

ADA regulation prohibits covered

entities from requiring service animal

users to provide documentation, the

Department sought comment on

whether DOT should have a different

standard from the ADA given the

unique nature of air transportation.101

With respect to animal health records,

the Department sought comment on

what burdens, if any, would exist

should the Department allow airlines to

require individuals with disabilities to

submit veterinary forms and related

animal health documentation.102 The

Department also sought comment on

whether an airline should be permitted

to require animal health forms as a

condition of travel, or whether the

airline should be required to conduct an

individualized assessment of the

animal’s behavior based solely on its

observations to assess whether the

animal poses a direct threat to humans,

before requiring these forms.103 Finally,

the Department sought comment on

whether airlines should be able to

require passengers to obtain signed

statements from veterinarians about an

animal’s behavior.

Comments Received

Behavior/Training Attestations

The majority of public commenters

and disability advocacy organizations

that commented on this issue oppose

the use of behavior/training attestations

as a measure of ensuring that a service

animal has been trained to, or will,

behave appropriately in public and on

the aircraft. These groups argue that

attestation documents are ineffective

and do not provide realistic assurances

that an animal will behave

appropriately as passengers can easily

lie that their animal has been trained to

behave properly in public. Others who

oppose this form argue that filling out

behavior/training attestations is

burdensome as each airline has its own

unique form, and it is difficult to follow

each airline’s individual policy.

Furthermore, some groups note that

some airline websites make it difficult

to submit these forms to the airline prior

to travel. These groups also oppose

behavior/training attestations on the

basis that these practices are

inconsistent with the ADA and that

service animal users do not have to

provide attestations to travel by train or

other modes of transportation.

Some disability advocates are in favor

of behavior/training attestations, but

101 Id.

102 Id. at 23841.

103 Id.

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only for emotional support animals

arguing that emotional support animals,

which are not trained to do work or

perform a task, have likely received less,

if any, public-access training. Further, a

few disability advocates oppose the

behavior/training attestations that some

airlines currently have in place, but they

support a ‘‘decision tree’’ approach,

which is a sequence of questions that

service animal users would be prompted

to complete as a condition of travel. As

explained in a comment filed by PSDP,

the decision-tree approach is designed

to confirm that service animals have

been trained to behave properly on

aircraft and to ensure that users are

educated on the requirements for

traveling with service animals on

aircraft.104 Finally, Autism Speaks is in

favor of behavior/training attestations

for all service animal users but urges the

Department to develop unified

attestation requirements to decrease

confusion for service animal users.105

Some airlines broadly support

behavior and training attestations for

service animal users, or support

attestations for only emotional support

and psychiatric service animal users.

These airlines argue that behavior/

training attestations eliminate the need

for airline personnel to observe and

evaluate a service animal’s behavior in

the airport, a task that airline personnel

are often not qualified to perform and

that is burdensome given their primary

responsibilities. Furthermore, these

airlines argue that the Department’s

service animal guidance currently

requires that service animals be trained

to behave appropriately in public, and

behavior/training attestations are a

means of ensuring that service animal

users are aware of this requirement and

aware that if their animal is not trained,

the animal may be removed from the

aircraft or treated like a pet. Some

airlines, however, only support

behavior/training attestations in the

event that the Department continues to

recognize emotional support animals.

Animal Health Records

The majority of disability advocates

who commented oppose a requirement

that allows airlines to require service

animal users to produce animal health

information as a condition of

transportation. These groups argue that

requiring service animal users to

produce animal health information,

which must be completed by a third

104 Comment of Psychiatric Service Dog Partners,

https://www.regulations.gov/document?D=DOT-

OST-2018-0068-3117.

105 Comment of Autism Speaks, https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-4268.

party, is costly and would pose

unnecessary burdens on individuals

with disabilities, especially on those

service animal users who are not

currently required to produce any

documentation when traveling on

aircraft. Furthermore, these groups

argue that animal health information is

not helpful in determining if an animal

poses a direct threat. Finally, these

groups argue that requiring animal

health information is excessive, as

airlines have provided no evidence that

passengers on aircraft have contracted

rabies or other diseases from service

animals or that service animal users

have refused to provide animal health

information in cases where a service

animal has bitten or injured someone on

an aircraft.

Some disability rights advocates are

also concerned that if service animal

users are required to provide airlines

with animal health records, users will

be unable to check-in for travel online

or travel seamlessly through the airport

to their gate. While there are a few

advocacy organizations that support an

animal health form requirement for

service animal users, this support is

limited to information regarding the

animal’s rabies vaccinations.

Conversely, many airlines, an animal

health organization, a flight attendant

association and most individual

commenters who commented on this

issue support a requirement that would

allow airlines to require animal health

information from service animal users.

Similar to the rationale used by airlines

in support of behavior/training

attestations, airlines argue that animal

health information is a reasonable

means to determine if an animal

presents a direct threat to the health and

safety of individuals on aircraft. Airlines

also argue that in the event a service

animal bites an individual on an

aircraft, proof of up-to-date vaccinations

will prevent the need for the injured

passenger to undergo unnecessary and

painful treatments for certain diseases,

e.g., rabies, although according to the

Center for Disease Control and

Prevention (CDC), any dog that bites an

individual should be assessed and

monitored by a local or state health

department over a 10-day period

irrespective of whether there is proof

that the animal has been vaccinated.

Airlines also argue that providing

animal health information is not

burdensome as most, if not all, States

and localities already require that

animals be vaccinated.

In a joint comment filed by Avianca,

Avianca Costa Rica, Aviateca, TACA,

and TACA Peru, these carriers note that

many ‘‘foreign carriers, currently have a

general requirement for veterinary

certification as a condition of

transport.’’ These carriers further state

that ‘‘[m]any foreign countries require

veterinary certification for all animals

entering the country, including all

service animals’’ and that ‘‘DOT should

clarify in any rulemaking that carriers

may require veterinary certification for

all service animals as a condition for

entry into all countries that require such

certification.’’ 106

One animal health organization

supports allowing airlines to require

proof of rabies vaccinations arguing that

these vaccinations are necessary to

protect both animal and public

health.107 Furthermore, certain airline

organizations support an animal health

record allowance if the Department

decides to recognize emotional support

animals. These organizations reason that

emotional support animal users should

provide information on their animal’s

health as a matter of public safety and

public health as these untrained animals

are in close proximity to passengers,

airline crewmember, other staff, and,

sometimes, other animals. While the

American Association of Airport

Executives (AAAE) is in favor of

allowing airlines to verify that an

animal has been vaccinated, this

organization believes that if the

Department chose not to recognize

emotional support animals, allowing

airlines to require proof may not be

necessary as the risk to passengers

would automatically decrease.108

DOT Response

After carefully reviewing the

comments received, the Department is

proposing to allow airlines to require

individuals traveling with a service

animal to provide to the airlines

standardized documentation of the

service animal’s behavior, training, and

health. Also, if the service animal would

be on a flight segment that is longer than

8 hours, the Department is proposing to

allow a standard form attesting that the

animal will not need to relieve itself or

can relieve itself in a way that does not

create a health or sanitation risk. The

Department proposes that these forms

be the only forms of documentation that

an airline can require of a passenger

traveling with a service animal. In other

words, under this proposed rule, an

106 Comment of Avianca Carriers, https://

www.regulations.gov/document?D=DOT-OST-2018-

0068-4289.

107 Comment of American Veterinarian Medical

Association, https://www.regulations.gov/

document?D=DOT-OST-2018-0068-4276.

108 Comment of the American Association of

Airport Executives, https://www.regulations.gov/

document?D=DOT-OST-2018-0068-4138.

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airline would not be required to ask a

passenger traveling with a service

animal for any documentation but, if

they choose to do so, the airline must

use the forms established by the

Department. The Department seeks

comment on whether airlines should be

allowed to create their own forms or if

uniformity would be more helpful. Are

there other existing forms that could be

utilized such that the establishment of

departmental forms would be

unnecessarily duplicative?

First, the Department proposes to

allow airlines to require passengers

seeking to travel with service animals to

submit to the airline, as a condition of

accepting the animal as a service animal

for travel, a DOT Air Transportation

Service Animal Behavior and Training

Attestation Form, which is a form to be

completed by the passenger. This form

would provide assurance that the

service animal traveling on the aircraft

has been individually trained to do

work or perform tasks for the benefit of

the passenger with a disability and has

been trained to behave properly in

public, and that the user is aware that

the service animal must be under his or

her control at all times. The Department

agrees with comments from airlines that

airline personnel are often unable to

observe service animals sufficiently

prior to a flight in the fast-paced airport

environment to determine whether the

service animal would be a direct threat

to the health or safety of others. Further,

the Department believes that the form

would serve as a deterrent for

individuals who might otherwise seek

to claim falsely that their pets are

service animals, as those individuals

may be less likely to falsify a Federal

form. The Department seeks comment

on its proposal to allow airlines to

require all service animal users to

provide this form to airlines and on

whether this form would be effective in

ensuring that service animals have been

properly trained and in deterring

individuals from misrepresenting their

pets as service animals on aircraft.

The Department understands that this

form would impose a burden on those

individuals traveling with traditional

service animals who are not currently

required to provide documentation. The

Department seeks comment from the

public on ways to reduce the burden

that the Department’s behavior and

training form would have on passengers

with disabilities. Should airlines be

allowed to require the form each time a

service animal user travels, even for

round-trip flights? What medium should

airlines use, e.g., hardcopy, electronic,

email, to provide and collect this form

from passengers with disabilities? Also,

are there privacy concerns that airlines

should consider? Furthermore, the

Department seeks comment on whether

the questions in this form would help

an airline determine whether an animal

has been adequately and properly

trained, and whether the form

adequately educates passengers on how

a service animal is expected to behave,

the consequences of a misbehaving

service animal, and the seriousness of

falsifying the DOT form. The

Department seeks comment on whether

it should allow airlines to require only

emotional support animal users to

complete such an attestation form, in

the event the Department were to

continue to require airlines to transport

emotional support animals. Finally, the

Department seeks comment on the

general content and layout of the form,

which is provided below.

BILLING CODE 4910–9X–P

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Second, the Department proposes to

allow airlines to require passengers to

submit to the airline a DOT Service

Animal Health Form, which is a form to

be completed by the passenger’s

veterinarian.109 In completing the form,

the veterinarian would describe the

animal, indicate whether the service

animal’s = rabies vaccinations are up to

date and whether the animal has any

known diseases or infestations, and

state whether the veterinarian is aware

of any aggressive behavior by the

animal. The Department proposes that

the form be valid for 1 year from the

date of issuance. The Department seeks

comment on whether 1 year is too long

or too short for the vaccination form to

be valid, and the reasons for this belief.

The Department modeled its DOT

Service Animal Health Form after a

number of State certificate of veterinary

inspection (CVI) forms and the United

States Department of Agriculture’s

(USDA) APHIS 7001 form.110 The

Department’s decision to use the

content of State CVI forms and the

USDA APHIS 7001 form was based on

a recommendation from the American

Veterinary Medical Association

(AVMA). The AVMA, some airlines, and

other commenters have requested that

the Department require all service

animals to produce proof of

vaccinations because of the potential

threat to health and public safety that

might result from the transport of

109 We note that the CDC requires that all dogs

imported into the United States, including service

dogs, be vaccinated for rabies if coming from a high-

risk rabies country. A current list of high risk rabies

countries may be found at: https://www.cdc.gov/

importation/bringing-an-animal-into-the-united-

states/rabies-vaccine.html. See 42 CFR 71.51(e).

110 https://www.aphis.usda.gov/library/forms/

pdf/APHIS7001.pdf.

unvaccinated animals on aircraft.111 The

Department agrees that requiring proof

of rabies vaccinations should be

permitted to help ensure that the animal

does not pose a direct threat to the

health and safety of others.

Airlines have expressed concerns that

their inability to verify, pre-incident,

that an animal has received the proper

vaccinations has caused individuals

bitten by service animals to undergo

painful and expensive rabies treatment.

The Department, along with a number of

U.S. airlines, attended a meeting at the

AVMA’s headquarters on October 29,

2018, to discuss the potential for the

airlines to create a standard form

document to use to verify service animal

vaccinations. The Department used

information learned at this meeting,

such as what vaccinations should be

required to ensure the health and safety

of the traveling public, the duration for

which the form should be valid, and

whether animals should be inspected

for pests, as guidance for the content of

this form. The Department seeks

comment from the public on its

proposal to allow airlines to require that

passengers provide this vaccination

form as evidence that a service animal

has received the rabies vaccine and that

the animal has not exhibited aggressive

behavior, known to the veterinarian.

The Department seeks comment on its

proposal to permit airlines, as a

condition of travel, to require this form

and whether airlines should be able to

refuse transportation to a service animal

based on the information contained in

the form (e.g., the veterinarian discloses

on the form that the animal has a history

111 Comment of American Veterinarian Medical

Association, https://www.regulations.gov/

document?D=DOT-OST-2018-0068-4276.

of aggressive behavior or has caused

serious injury to a person or animal).

The Department also seeks comment on

whether the form would be effective in

ensuring that the traveling public would

not contract rabies from service animals

should they be bitten.112 Furthermore,

the Department seeks comment on the

burden on individuals traveling with

service animals of allowing airlines to

require the Department’s service animal

health form as it is the Department’s

understanding that USDA’s APHIS 7001

form already includes the type of

information contained on the proposed

DOT form. Could passengers traveling

with a service animals have their

veterinarians complete the Department’s

Service Animal Air Transportation

Health Form at the animal’s annual

physical? Should the requirement for an

animal health form be limited to

emotional support animal users, in the

event the Department were to continue

to require airlines to transport emotional

support animals?

The Department’s air transportation

animal health form requires

veterinarians to provide a physical

description of the service animal.

Should the Department consider

allowing airlines to require passengers

traveling with a service animals to

provide photo identification of the

service animal as an additional measure

to verify a service animal’s identity?

Finally, the Department seeks comment

on the general content and layout of the

form, which is provided below, and

whether airlines that require the form

should accept the form in both a paper

and electronic format.

112 See the Rabies Compendium available at:

www.nsphv.org/documents/

NASPHVrabiescompendium.

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Third, while airlines are currently

permitted to require individuals

traveling with service animals on a

flight segment that is longer than 8

hours to provide documentation that the

animal will not need to relieve itself or

can relieve itself in a way that does not

create a health or sanitation risk, the

Department proposes to amend this rule

to allow airlines to require only a DOT

Service Animal Relief Attestation Form

be completed by the service animal user

to attest that the animal will not create

a health or sanitation risk on long

flights.

The Department seeks comment on

whether the DOT Service Animal Relief

Attestation Form serves as adequate

proof to verify that a passenger’s animal

will not need to relieve itself on flight

segments of eight or more hours, or can

relieve itself in a way that does not

create a health or sanitation issue. The

Department also seeks comment on the

content and layout of the form, which

is provided below.

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BILLING CODE 4910–9X–C

provide the proposed DOT health, although an airline would not be

The Department also asks for behavior and training, and relief forms prohibited from requesting the forms so

comment on its proposal to prohibit prior to the passenger’s date of travel, long as it was clear that passengers wereairlines from requiring passengers to

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not obligated to remit the forms to the

airline in advance of their travel date.

At the beginning of 2018, several

airlines started requiring individuals

traveling with service animals to

provide service animal health forms and

attestations that a passenger’s service

animal had been trained to behave

appropriately in public. In a Final

Statement of Enforcement Priorities, the

Department’s Office of Aviation

Enforcement and Proceedings

(Enforcement Office) indicated that it

did not intend to take action against an

airline for asking users of any type of

service animal to present

documentation related to the service

animal’s vaccination, training, or

behavior, so long as it is reasonable to

believe that the documentation would

assist the airline in making a

determination as to whether an animal

poses a direct threat to the health or

safety of others. The Enforcement Office

explained that the existing rule permits

airlines to determine, in advance of

flight, whether any service animal poses

a direct threat, but the rule does not

clearly indicate how airlines must make

that assessment. While the Department

recognized that airlines may have a

valid basis for requesting certain health

and behavior information from

individuals traveling with service

animals, commenters stated that it has

become burdensome and confusing for

individuals with disabilities to comply

with these documentation requirements

because many of the airlines require

different information from passengers

traveling with service animals and have

adopted their own unique forms and

data collection methods.

The Department is proposing to

require standard departmental forms to

establish a uniform process for

collecting data about a service dog’s

health as well as behavior and training

from passengers traveling with a service

dog. The Department is also proposing

to allow airlines to require passengers

with a disability to complete a DOT

Service Animal Relief Attestation Form

Service Animal Relief Attestation Form

for flight segments of 8 hours or longer.

The Department seeks comment on

whether using standardized U.S.

Department of Transportation forms is

the best way for airlines to collect data

from passengers traveling with a service

dog.

The Department recognizes that these

forms go beyond what DOJ allows in its

ADA service animal regulations, but the

Department believes that air

transportation, which involves

transporting a large number of people in

a very confined space thousands of feet

above the ground, is unique in

comparison to airports, libraries, and

other locations covered by Title II or

Title III of the ADA. For this reason, the

Department believes that a proposal

allowing airlines to require all service

dog users to provide these forms to

assist airlines in determining whether a

service dog poses a direct threat to the

health or safety of others is appropriate.

Under this NPRM, the Department

would prohibit airlines from requiring

individuals traveling with a service

animals to provide the DOT-issued

forms even a day in advance of the

passenger’s flight because advance

notice may present significant

challenges to passengers with

disabilities wishing to make last minute

travel plans that may be necessary for

work or family emergencies. However,

the Department is proposing to allow

airlines to require users of a service

animals to check-in at the airport one

hour before the check-in time at the

airport for the general public to process

service animal documentation so long as

the airline similarly requires advance

check-in for passengers traveling with

their pets in the cabin. This rulemaking

would also permit airlines to require

that the check-in take place at any

designated airport location including

the terminal lobby. One concern is that

service animal users would not be able

to check-in electronically before arriving

at the airport like other passengers and

would be unable to avoid the

inconvenience of long waits when

checking in. To address this concern,

the Department is proposing to require

airlines to make an employee trained to

handle disability-related matters

available in-person at the airline’s

designated airport location to process

service animal documentation

promptly. The Department solicits

comment on whether one hour before

the general public check-in is sufficient

time for airline personnel to process

service animal documentation. The

Department also seeks comment on its

proposal to require airlines to try to

accommodate passengers who fail to

meet the one-hour check-in requirement

so long as the airline can do so by

making reasonable efforts without

delaying the flight. Finally, the

Department would like commenters to

identify potential benefits that service

animal users may forgo by not being

permitted to check-in electronically,

and steps that can be taken to ensure

that these benefits are provided to them.

9. Codeshare Flights

Current Requirements

Under the Department’s current

ACAA rule, U.S. carriers that participate

in a code-sharing arrangement with a

foreign carrier are responsible for

ensuring that the foreign carrier

complies with the service animal

provisions of the rule with respect to

passengers traveling under the U.S.

carrier’s code on the foreign carrier’s

aircraft on flights between two foreign

points.113 While the Department’s

current rule requires foreign carriers to

transport only dogs, the Department

could, based on the language in the

current rule, hold a foreign carrier’s U.S.

codeshare partner responsible for that

foreign carrier’s refusal to transport

other service animal species when the

passenger is traveling under a U.S.

carrier’s code.114

The ANPRM

The Department sought comment in

the ANPRM on whether DOT’s service

animal rule should explicitly state that

a U.S. carrier would not be held

responsible for its foreign codeshare

partner’s refusal to transport service

animals other than dogs.115

Comments Received

Few individual commenters and

disability advocates commented on

whether the Department should

explicitly state in its service animal

regulation that U.S. airlines should not

be held responsible if a foreign airline

only transports dogs as service animals,

but one advocacy organization states

that making this clarification in the rule

would clear up ambiguity caused by the

provision in DOT’s rules implementing

the ACAA, 14 CFR part 382.

Airlines also agree that the

Department’s rule should explicitly

state that U.S. carriers would not be

held responsible if a foreign carrier only

transports dogs as service animals.

These carriers believe that the

Enforcement Office’s decision not to

pursue action against U.S. carriers is

reasonable and appropriate as it would

be fundamentally unfair to hold a U.S.

carrier accountable for the flight

operations and procedures of its foreign

codeshare partners, over which it has no

control. Furthermore, these carriers

argue that an express statement of the

Department’s enforcement position in

the rule would alleviate any confusion

that may arise from otherwise

ambiguous provisions in Part 382. One

foreign airline also commented that

while the Department has chosen not to

take legal action against U.S. carriers as

113 14 CFR 382.7(c).

114 The Department’s Aviation Enforcement

Office does not enforce section 382.7(c) in this way.

115 Traveling by Air with Service Animals,

Advance Notice of Proposed Rulemaking, 83 FR

23832, 23842.

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a matter of enforcement discretion, it

would be better for the Department

specifically to state its position in a

regulation so that carriers have concrete

legal certainty of the Department’s

position.

DOT Response

The Department’s proposed service

animal regulation would recognize only

dogs as service animals. If the rule were

finalized as proposed, the species

requirements for both U.S. carriers and

foreign carriers would be the same,

thereby eliminating situations whereby

a U.S. carrier could be held responsible

for a foreign carrier’s failure to transport

service animals other than dogs but a

foreign carrier could not. However, if

the DOT final rule differs from the

proposal and recognizes other species of

service animals and/or emotional

support animals, the Department would

consider including language in the rule

to make it clear that U.S. airlines are not

responsible for their foreign carrier

codeshare partners’ failure to transport

animals other than dogs. The

Department seeks comment on this

proposed action.

Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory

Planning and Review), Executive Order

13563 (Improving Regulation and

Regulatory Review), and DOT

Regulatory Policies and Procedures

This proposed rulemaking has been

determined to be significant under

Executive Order 12866 (Regulatory

Planning and Review) and the

Department of Transportation’s

Regulatory Policies and Procedures

because of its considerable interest to

the disability community and the

aviation industry. It does not, however,

meet the criteria under Executive Order

12866 for an economically significant

rule. It has been reviewed by the Office

of Management and Budget under that

Order.

Executive Orders 12866 (‘‘Regulatory

Planning and Review’’) and 13563

(‘‘Improving Regulation and Regulatory

Review’’) require agencies to regulate in

the ‘‘most cost-effective manner,’’ to

make a ‘‘reasoned determination that

the benefits of the intended regulation

justify its costs,’’ and to develop

regulations that ‘‘impose the least

burden on society.’’ DOT proposes to

define a service animal as a dog that is

individually trained to do work or

perform tasks for the benefit of a

qualified individual with a disability. In

addition, DOT proposes to treat

psychiatric service animals like other

service animals and to allow airlines to

require passengers traveling with a

service animal to attest to the animal’s

good behavior and good health. DOT

also proposes that airlines no longer be

required to recognize emotional support

animals as service animals.

The primary economic impact of this

proposed rulemaking is that it

eliminates a market inefficiency. The

current policy amounts to a price

restriction which requires that airlines

forgo a potential revenue source, as

airlines are currently prohibited from

charging a pet fee for transporting

emotional support animals. A4A

estimates that airline carriers

transported 751,000 emotional support

animals in 2017, a 56.1 percent increase

from 2016. This number nearly equals

the 784,000 pets transported in 2017.

Airlines charge as much as $175 to

transport pets on a one-way trip, giving

passengers an incentive to claim their

pets as emotional support animals. The

proposed rulemaking will eliminate a

pricing restriction currently imposed by

government on airlines by allowing

them to set a price on the transport of

emotional support animals other than

zero.

Removing the current requirement

that carriers must transport emotional

support animals free of charge would

allow market forces (i.e., carriers as

producers and passengers as consumers)

to set the price for air transportation of

emotional support animals. This

provision would allow carriers to charge

passengers traveling with emotional

support animals (dogs and other

accepted species on board of an aircraft)

with pet transportation fees. This

represents a transfer of surplus from

passengers to airlines, and does not

have implications for the net benefits

calculation.

The proposed rulemaking would also

allow airlines to require passengers

traveling with service animals to

produce three forms of documentation

developed by DOT. This cost element

places a potential burden on passengers

traveling with service animals who

would need to submit three DOT forms

to airlines. We estimate that, by

Paperwork Reduction Act (PRA)

accounting standards, the forms create

144,000 burden hours and $3.0 million

in costs per year. In some cases,

however, carriers already ask passengers

to complete equivalent

nongovernmental forms. Thus, the PRA

accounting overestimates the net burden

created by this rulemaking.

Furthermore, Executive Orders 12866

and 13563 require agencies to provide a

meaningful opportunity for public

participation. Accordingly, we have

asked commenters to provide feedback

on the proposed change to the

regulation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5

U.S.C. 601 et seq.) requires an agency to

review regulations to assess their impact

on small entities unless the agency

determines that a rule is not expected to

have a significant economic impact on

a substantial number of small entities. A

direct air carrier or foreign air carrier is

a small business if it provides air

transportation only with small aircraft

(i.e., aircraft with up to 60 seats/18,000-

pound payload capacity).116 Relative to

typical airlines’ operating costs and

revenues, the impact is expected to be

nonsignificant. Accordingly, the

Department does not believe that the

NPRM would have a significant impact

on a substantial number of small

entities. However, we invite comment

on the potential impact of this

rulemaking on small entities.

C. Executive Order 13132 (Federalism)

This NPRM has been analyzed in

accordance with the principles and

criteria contained in Executive Order

13132 (‘‘Federalism’’). This NPRM does

not include any provision that: (1) Has

substantial direct effects on the States,

the relationship between the national

government and the States, or the

distribution of power and

responsibilities among the various

levels of government; (2) imposes

substantial direct compliance costs on

State and local governments; or (3)

preempts State law. States are already

preempted from regulating in this area

by the Airline Deregulation Act, 49

U.S.C. 41713. Therefore, the

consultation and funding requirements

of Executive Order 13132 do not apply.

D. Executive Order 13084

This rulemaking has been analyzed in

accordance with the principles and

criteria contained in Executive Order

13084 (‘‘Consultation and Coordination

with Indian Tribal Governments’’).

Because this rulemaking does not

significantly or uniquely affect the

communities of the Indian Tribal

governments or impose substantial

direct compliance costs on them, the

funding and consultation requirements

of Executive Order 13084 do not apply.

E. Paperwork Reduction Act

This NPRM proposes three new

collections of information that would

require approval by the Office of

Management and Budget (OMB) under

the Paperwork Reduction Act of 1995

116 See 14 CFR 399.73.

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(Pub. L. 104–13, 49 U.S.C. 3501 et seq.).

Under the Paperwork Reduction Act,

before an agency submits a proposed

collection of information to OMB for

approval, it must first publish a

document in the Federal Register

providing notice of the proposed

information collection and a 60-day

comment period, and otherwise consult

with members of the public and affected

agencies concerning each proposed

collection of information.

The proposed rulemaking would

allow airlines to require passengers

traveling with service animals to

provide carriers with the following three

forms of documentation developed by

the Department:

1. DOT Air Transportation Service

Animal Health Form (‘‘Health Form’’):

This form would be completed by a

veterinarian who would certify that the

service dog has obtained the required

vaccinations, is not showing signs of

infectious or communicable diseases,

and, to the veterinarian’s knowledge,

has not exhibited aggressive behavior or

caused injury to another.

2. DOT Air Transportation Service

Animal Behavior and Training

Attestation Form (‘‘Behavior Attestation

Form’’): This form would be completed

by the passenger with a service animal.

This passenger would certify his/her

service animal has been trained to

behave properly in public, is aware of

the handler’s responsibility to maintain

the animal under control at all times,

and understands the consequences of

service animal misbehavior.

3. DOT Service Animal Relief

Attestation Form (‘‘Relief Attestation

Form’’): This form would be completed

by passengers traveling with a service

animal on flight segments scheduled to

take 8 hours or more. It would require

the passenger to affirm that the service

animal will not need to relieve itself on

the flight or that the service animal can

relieve itself in a way that does not

create a health or sanitation issue.

For each of these information

collections, the title, a description of the

respondents, and an estimate of the

annual recordkeeping and periodic

reporting burden are set forth below:

1. Requirement To Prepare and Submit

to Airlines the DOT Air Transportation

Service Animal Health Form

Respondents: Passengers with

disabilities traveling on aircraft with

service animals.

Number of Respondents: Using A4A’s

estimate of 281,000 117 service animals

transported in 2017, and assuming one

passenger with a disability travels with

a service animal, 281,000 respondents

would have to provide a health form

signed by a veterinarian and the

passenger.

Estimated Annual Burden on

Respondents: We estimate that

completing the form would require 15

minutes (.25 hours) per response, per

year, including the time it takes to

retrieve an electronic or paper version of

the form from the carrier’s or DOT’s

website, reviewing the instructions, and

completing the questions. Passengers

and veterinary assistants would spend a

total of 70,250 hours (0.25 hours ×

281,000 passengers) to retrieve an

accessible version of the form and

provide it to the veterinarian for

completion. To calculate the hourly

value of time spent on the forms, we

used median wage data from the Bureau

of Labor Statistics.118 For the health

form, which veterinary assistants

perform on the job, we assume a fully

loaded median wage rate of $26.48/hour

($13.24/hour × 2). A ‘‘fully loaded’’

wage includes benefits and indirect

costs.

2. Requirement To Prepare and Submit

to Airlines the DOT Air Transportation

Service Animal Behavior and

Attestation Form

Respondents: Passengers with

disabilities traveling on aircraft with

service animals.

Number of Respondents: Using A4A’s

estimate of 281,000 service animals

transported in 2017, and assuming one

passenger with a disability travels with

a service animal, 281,000 respondents

would have to provide a behavior form

signed by the passenger.

Estimated Annual Burden on

Respondents: We estimate that

completing the form will require 15

minutes (.25 hours) per response, per

year, including the time it takes to

retrieve an electronic or paper version of

the form from the carrier’s or DOT’s

website, reviewing the instructions, and

completing the questions. Passengers

would spend a total of 70,250 hours

117 A4A used data from five U.S. airlines to

extrapolate the number of all service animals

transported on U.S. airlines.

118 Bureau of Labor Statistics (2019). ‘‘May 2018

National Occupational Employment and Wage

Estimates: United States.’’ https://www.bls.gov/oes/

current/oes\_nat.htm.

(0.25 hours × 281,000 passengers) to

retrieve an accessible version of the

form and complete the form. To

calculate the hourly value of time spent

on the forms, we use median wage data

from the Bureau of Labor Statistics.119

For the behavior attestation, which

passengers fill out on their own time

without pay, we use a post-tax wage

estimate of $15.42 ($18.58 median for

all occupations minus a 17% percent

estimated tax rate).

3. Requirement To Prepare and Submit

to Airlines the DOT Service Animal

Relief Attestation Form

Respondents: Passengers with

disabilities traveling on aircraft with

service animals on flight segments

scheduled to take 8 hours or more.

Number of Respondents: To estimate

the paperwork costs associated with the

new forms, we used A4A’s estimate of

281,000 service animals transported in

2017.120 We estimate that 5 percent of

those passengers (14,050) would be on

flight segments scheduled to take 8

hours or more and would also have to

complete the Relief Attestation Form.

Estimated Annual Burden on

Respondents: We estimate that

completing the form will require 15

minutes (.25 hours) per response, per

year, including the time it takes to

retrieve an electronic or paper version of

the form from the carrier’s or DOT’s

website, reviewing the instructions, and

completing the questions. Passengers

would spend a total of 3,512.5 hours

(0.25 hours × 14,050 passengers) to

retrieve an accessible version of the

form and complete the form. To

calculate the hourly value of time spent

on the forms, we use median wage data

from the Bureau of Labor Statistics.121

For the relief form, which passengers fill

out on their own time without pay, we

use a post-tax wage estimate of $15.42

($18.58 median for all occupations

minus a 17% percent estimated tax

rate).

119 Bureau of Labor Statistics (2019). ‘‘May 2018

National Occupational Employment and Wage

Estimates: United States.’’ https://www.bls.gov/oes/

current/oes\_nat.htm.

120 A4A used data from five U.S. airlines to

extrapolate the number of all service animals

transported on U.S. airlines.

121 Bureau of Labor Statistics (2019). ‘‘May 2018

National Occupational Employment and Wage

Estimates: United States.’’ https://www.bls.gov/oes/

current/oes\_nat.htm.

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TABLE 1—PAPERWORK COST ESTIMATES FOR DOT SERVICE ANIMAL FORMS

Form Passengers Hours Total hours Hourly

time value Subtotal

Health .....................................................

Behavior attestation ...............................

Relief ......................................................

281,000

281,000

14,050

0.25

0.25

0.25

70,250

70,250

3,512.5

$26.48

15.42

15.42

$1,860,220

1,083,255

54,163

Total ................................................ .............................. .............................. 144,012.5 .............................. 2,997,638

The estimated burden and costs of

these three new DOT forms are

primarily for Paperwork Reduction Act

(PRA) accounting purposes. In some

cases, carriers already require

passengers traveling with service

animals to complete equivalent forms.

Allegiant Air and Delta Air Lines ask

passengers to carry health forms, for

example, while American Airlines and

Hawaiian Airlines ask passengers to fill

out relief attestation forms. Thus, the

cost estimates above are likely to

overestimate any new burden created by

this rulemaking.

The Department invites interested

persons to submit comments on any

aspect of each of these three information

collections, including the following: (1)

The necessity and utility of the

information collection, (2) the accuracy

of the estimate of the burden, (3) ways

to enhance the quality, utility, and

clarity of the information to be

collected, and (4) ways to minimize the

burden of collection without reducing

the quality of the collected information.

Comments submitted in response to this

notice will be summarized or included,

or both, in the request for OMB approval

of these information collections.

F. Unfunded Mandates Reform Act

The Department has determined that

the requirements of Title II of the

Unfunded Mandates Reform Act of 1995

do not apply to this rulemaking.

G. National Environmental Policy Act

The Department has analyzed the

environmental impacts of this proposed

action pursuant to the National

Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321 et seq.) and has

determined that it is categorically

excluded pursuant to DOT Order

5610.1C, Procedures for Considering

Environmental Impacts (44 FR 56420,

Oct. 1, 1979). Categorical exclusions are

actions identified in an agency’s NEPA

implementing procedures that do not

normally have a significant impact on

the environment and therefore do not

require either an environmental

assessment (EA) or environmental

impact statement (EIS).122 In analyzing

the applicability of a categorical

exclusion, the agency must also

consider whether extraordinary

circumstances are present that would

warrant the preparation of an EA or EIS.

Id. Paragraph 3.c.6.i of DOT Order

5610.1C categorically excludes

‘‘[a]ctions relating to consumer

protection, including 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,

Reporting and recordkeeping

requirements.

For the reasons set forth in the

preamble, the Department of

Transportation proposes to amend 14

CFR part 382 to read as follows:

PART 382—NONDISCRIMINATION ON

THE BASIS OF DISABILITY IN AIR

TRAVEL

¦ 1. The authority citation for part 382

continues to read as follows:

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

and 41310.

¦ 2. 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 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,

122 See 40 CFR 1508.4.

comfort animals, companionship

animals, and service animals in training

are not service animals for the purposes

of this Part.

A Service animal handler is a

qualified individual with a disability

who receives assistance from a service

animal(s) that does work or performs

tasks that are directly related to the

individual’s disability, or a safety

assistant, as described in section

382.29(b), who accompanies an

individual with a disability traveling

with a service animal(s). The service

animal handler is responsible for

keeping the animal under control at all

times, and caring for and supervising

the service animal, which includes

toileting and feeding.

\* \* \* \* \*

¦ 3. Add § 382.28 to read as follows:

§ 382.28 What assistance must carriers

provide to passengers with a disability

required to check-in before the check-in

time for the general public?

If you require a passenger with a

disability to check-in in advance of the

check-in time for the general public, you

must make personnel or other

employees trained to proficiency on the

requirements of this Part available

promptly to assist the passenger at a

designated location in the airport.

§ 382.72 [Amended]

¦ 4. Amend § 382.27 by removing

paragraphs (c)(8) and (c)(9).

¦ 5. Add Subpart EE, consisting of

§§ 382.72 through 382.80, to read as

follows:

Subpart EE—Service Animals

Sec.

382.72 Must carriers allow a service animal

to accompany a passenger with a

disability?

382.73 How many service animals must a

carrier transport in the cabin of aircraft?

382.74 How do carriers determine if an

animal is a service animal?

382.75 May a carrier require documentation

from passengers with disabilities seeking

to travel with a service animal?

382.76 May a carrier require a service

animal user to check-in at the airport one

hour before the check-in time at the

airport for the general public as a

condition of travel to allow time to

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process the service animal

documentation?

382.77 May carriers restrict the location and

placement of service animals on aircraft?

382.78 May carriers charge individuals with

disabilities for the damage their service

animal causes?

382.79 Under what other circumstances

may carriers refuse to provide

transportation to a service animal

traveling with a passenger with a

disability?

382.80 May carriers impose additional

restrictions on the transport of service

animals?

§ 382.72 Must carriers allow a service

animal to accompany a passenger with a

disability?

You must allow a service animal to

accompany a passenger with a

disability. You must not deny

transportation to a service animal on the

basis that its carriage may offend or

annoy carrier personnel or persons

traveling on the aircraft.

§ 382.73 How many service animals must

a carrier transport in the cabin of aircraft?

You are not required to accept more

than two service animals for a single

passenger with a disability.

§ 382.74 How do carriers determine if an

animal is a service animal?

(a)You may make two inquiries to

determine whether an animal qualifies

as a service animal. You may ask if the

animal is required to accompany the

passenger because of a disability and

what work or task the animal has been

trained to perform. You must not ask

about the nature or extent of a person’s

disability or ask that the service animal

demonstrate its work or task.

(b) You may observe the behavior of

an animal. A trained service animal will

remain under the control of its handler.

It does not run freely around an aircraft

or an airport gate area, bark or growl

repeatedly at other persons or other

animals on the aircraft or in the airport

gate area, bite, jump on, or cause injury

to people, or urinate or defecate in the

cabin or gate area. An animal that

engages in such disruptive behavior

demonstrates that it has not been

successfully trained to behave properly

in a public setting and carriers are not

required to treat it as a service animal,

even if the animal performs an assistive

function for a passenger with a

disability.

(c) You may look for physical

indicators on the animal to determine if

the animal is a service animal. A service

animal must be under the control of its

owner. A service animal must have a

harness, leash, or other tether unless the

owner is unable because of a disability

to use a harness, leash, or other tether,

or the use of a harness, leash, or other

tether would interfere with the service

animal’s safe, effective performance of

work or tasks, in which case the service

animal must be otherwise under the

handler’s control (e.g., voice control,

signals, or other effective means).

§ 382.75 May a carrier require

documentation from passengers with

disabilities seeking to travel with a service

animal?

(a) If a passenger seeks to travel with

a service animal, you may require the

passenger with a disability to provide

you, as a condition of permitting the

service animal to travel in the cabin:

(1) A current (i.e., no older than one

year from the date of the passenger’s

scheduled initial flight) completed copy

of the U.S. Department of

Transportation Air Transportation

Service Animal Health Form; and

(2) A completed copy of the U.S.

Department of Transportation Air

Transportation Service Animal Behavior

and Training Attestation Form.

(b) On a flight segment scheduled to

take 8 hours or more, you may, as a

condition of permitting a service animal

to travel in the cabin, require the

passenger with a disability traveling

with the service animal to confirm that

the animal will not need to relieve itself

on the flight or that the animal can

relieve itself in a way that does not

create a health or sanitation issue on the

flight by providing a DOT Service

Animal Relief Attestation Form.

(c) You are not permitted to require

documentation of passengers with

disabilities traveling with service

animals beyond completion of the forms

identified in paragraphs (a) and (b) of

this section.

(d) You must keep copies of the forms

identified in paragraphs (a) and (b) at

each airport you serve. As a foreign

carrier, you must keep copies of the

forms at each airport serving a flight you

operate that begins or ends at a U.S.

airport.

(e) If you have a website, you must

make the blank forms identified in

paragraphs (a) and (b) available to

passengers on your website in an

accessible format.

(f) You must mail copies of the blank

forms identified in paragraphs (a) and

(b) to passengers upon request.

§ 382.76 May a carrier require a service

animal user to check-in at the airport one

hour before the check-in time at the airport

for the general public as a condition of

travel to allow time to process the service

animal documentation?

(a) You may require a passenger with

a disability to check-in at the airport one

hour before the check-in time at the

airport for the general public as a

condition of travel with a service animal

to allow time to process the service

animal documentation and observe the

animal so long as:

(1) You designate a specific location

at the airport where the passenger could

be promptly checked-in, the passenger’s

service animal would be observed, and

the passenger’s service animal

documentation would be promptly

reviewed by personnel trained to

proficiency on the service animal

requirements of this Part; and

(2) You have a similar or more

stringent check-in requirement for

passengers traveling with their pets in

the cabin.

(b) If a passenger does not meet the

check-in requirements you establish

consistent with this section, you must

still provide the accommodation if you

can do so by making reasonable efforts,

without delaying the flight.

§ 382.77 May carriers restrict the location

and placement of service animals on

aircraft?

(a) You must permit a service animal

to accompany a passenger with a

disability on the passenger’s lap or in

the foot space immediately in front of

the passenger’s seat, unless this location

and placement would be:

(1) Inconsistent with safety

requirements set by the FAA or the

foreign carrier’s government; or

(2) Encroaches into another

passenger’s space.

(b) If a service animal cannot be

accommodated on the passenger’s lap or

in the foot space immediately in front of

the passenger’s seat without

encroaching into another passenger’s

space, you must offer the passenger the

opportunity to move with the animal to

another seat location within the same

class of service, if available on the

aircraft, where the animal can be

accommodated. You are not required to

reseat other passengers to accommodate

a service animal except as required by

Subpart F.

(c) If there are no alternatives

available to enable the passenger to

travel with the service animal in the

cabin of the scheduled flight, you must

offer the passenger the opportunity to

transport the service animal in the cargo

hold free of charge or travel on a later

flight to the extent there is space

available on a later flight and the

transport is consistent with the safety

requirements set by the FAA or a foreign

carrier’s government.

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§ 382.78 May carriers charge individuals

with disabilities for the damage their

service animal causes?

While you cannot charge an

individual with a disability for

transporting service animals, or for

providing other services that this rule

requires, you may charge a passenger

with a disability for damage caused by

his or her service animal so long as you

normally charge individuals without

disabilities for similar kinds of damage.

§ 382.79 Under what other circumstances

may carriers refuse to provide

transportation to a service animal traveling

with a passenger with a disability?

(a) You may deny transport to a

service animal under the following

circumstances:

(1) The animal poses a direct threat to

the health or safety of others (see

definition in § 382.3);

(2) The animal causes a significant

disruption in the cabin or at an airport

gate area, or its behavior on the aircraft

or at an airport gate area indicates that

it has not been trained to behave

properly in public (e.g., running freely,

barking or growling repeatedly at other

persons on the aircraft, biting or

jumping on people, or urinating or

defecating in the cabin or gate area); or

(3) The animal’s carriage would

violate FAA safety requirements or

applicable safety requirements of a U.S.

territory or foreign government (e.g., the

animal is too large or heavy to be

accommodated in the cabin).

(b) In determining whether to deny

transport to a service animal on the

basis that the animal poses a direct

threat under paragraph (a)(1) of this

section, you must make an

individualized assessment based on

reasonable judgment that relies on the

best available objective evidence to

ascertain the nature, duration, and

severity of the risk; the probability that

the potential injury will actually occur;

and whether reasonable modifications

of policies, practices, or procedure will

mitigate the risk.

(c) In determining whether to deny

transport to a service animal on the

basis that the animal has misbehaved

and/or has caused a significant

disruption in the cabin under paragraph

(a)(2), you must make an individualized

assessment based on reasonable

judgment that relies on the best

available objective evidence to ascertain

the probability that the misbehavior

and/or disruption will continue to

occur; and whether reasonable

modifications of policies, practices, or

procedure will mitigate the misbehavior

and/or the disruption.

(d) In conducting the analysis

required under paragraph (a)(1) and

(a)(2), you must not deny transportation

to the service animal if there are means

available short of refusal that would

mitigate the problem (e.g., muzzling a

barking service dog or taking other steps

to comply with animal health

regulations needed to permit entry of

the service animal into a domestic

territory or a foreign country).

(e) If you refuse to provide

transportation to a service animal based

on any provision in this Part, you must

provide the individual with a disability

accompanied by the service animal a

written statement of the reason for the

refusal. This statement must include the

specific basis for the carrier’s opinion

that the refusal meets the standards of

paragraphs (a) through (c) of this section

or is otherwise specifically permitted by

this Part. You must provide this written

statement to the individual with a

disability accompanied by the service

animal either at the airport, or within 10

calendar days of the refusal of

transportation.

§ 382.80 May carriers impose additional

restrictions on the transport of service

animals?

Carriers are not permitted to establish

additional restrictions on the transport

of service animals outside of those

specifically permitted by the provisions

in this Part, unless required by

applicable FAA, TSA, or other Federal

requirements or a foreign carrier’s

government.

§ 382.117 [Removed]

¦ 6. Remove § 382.117.

Issued this 21st day of January, 2020, in

Washington, DC.

Elaine L. Chao,

Secretary.

[FR Doc. 2020–01546 Filed 2–4–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2019–0009]

RIN 0651–AD33

Small Entity Government Use License

Exception

AGENCY: United States Patent and

Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and

Trademark Office (USPTO or Office) is

proposing to amend the rules of practice

in patent cases to clarify and expand

exceptions to the rule pertaining to

government use licenses and their effect

on small entity status for purposes of

paying reduced patent fees so as to

support independent inventors, small

business concerns and nonprofit

organizations in filing patent

applications. The proposed rule change

is designed to encourage persons, small

businesses, and nonprofit organizations

to collaborate with the Federal

Government by providing an

opportunity to qualify for the small

entity patent fees discount for

inventions made during the course of

federally-funded or federally-supported

research.

DATES: Comments must be received by

March 23, 2020 to ensure consideration.

ADDRESSES: The USPTO prefers that

comments be submitted via electronic

mail message to AD33.comments@

uspto.gov. Written comments also may

be submitted by mail to Mail Stop

Comments-Patents, Commissioner for

Patents, P.O. Box 1450, Alexandria, VA

22313–1450, marked to the attention of

James Engel, Senior Legal Advisor,

Office of Patent Legal Administration.

Comments may also be sent by

electronic mail message via the Federal

eRulemaking Portal at https://

www.regulations.gov. See the Federal

eRulemaking Portal website for

additional instructions on providing

comments via the Federal eRulemaking

Portal. All comments submitted directly

to the USPTO or provided on the

Federal eRulemaking Portal should

include the docket number (PTO–P–

2019–0009).

Although comments may be

submitted by postal mail, the Office

prefers to receive comments by

electronic mail message over the

internet because the Office may easily

share such comments with the public.

Electronic comments are preferred to be

submitted in plain text, but also may be

submitted in portable document format

or DOC file format. Comments not

submitted electronically should be

submitted on paper in a format that

facilitates convenient digital scanning

into portable document format.

The comments will be available for

public inspection on the USPTO’s

website at https://www.uspto.gov, on the

Federal eRulemaking Portal, and at the

Office of the Commissioner for Patents,

Office of Patent Legal Administration,

600 Dulany Street, Alexandria, VA

22314. Because comments will be made

available for public inspection,

information that is not desired to be

made public, such as an address or

phone number, should not be included.