

products identified in this rulemaking action.

### Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39-11457 (64 FR 69389, December 13, 1999) and adding the following new AD:

**McDonnell Douglas:** Docket No. FAA-2009-0866; Directorate Identifier 2009-NM-074-AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by November 2, 2009.

#### Affected ADs

(b) This AD supersedes AD 99-25-14.

#### Applicability

(c) This AD applies to McDonnell Douglas Model MD-11 and MD-11F airplanes, certificated in any category, as identified in

Boeing Alert Service Bulletin MD11-28A140, dated November 6, 2008.

#### Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

#### Unsafe Condition

(e) This AD results from reports that the wire assembly for the alternate fuel pump is missing a case ground wire, and the lightning protection wire braid for wire assemblies located in the empennage and number 2 engine inlet are grounded improperly. The Federal Aviation Administration is issuing this AD to prevent insufficient grounding of the fuel pump, which in combination with an electrical failure within the fuel pump and a compromised electrical bond could cause a fuel tank ignition, resulting in consequent fire or explosion.

#### Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Restatement of Requirements of AD 99-25-14 With No Changes

#### Inspection and Corrective Actions

(g) Within 30 days after January 18, 2000 (the effective date of AD 99-25-14), perform a one-time visual inspection of the wire harnesses of the tail tank fuel transfer pumps to determine if metallic transitions are installed, and to determine if damaged wires are present, in accordance with McDonnell Douglas Alert Service Bulletin MD11-28A101, dated August 24, 1998 ("the service bulletin").

(1) If all metallic transitions are installed, no further action is required by paragraph (g) of this AD.

(2) If metallic transitions are not installed, accomplish the following:

- (i) Prior to further flight, accomplish the temporary repair in accordance with condition 2 of the service bulletin;
- (ii) Repeat the visual inspection thereafter at intervals not to exceed 2 years; and
- (iii) Within 5 years after January 18, 2000, permanently modify the wire harnesses in accordance with McDonnell Douglas Service Bulletin MD11-28-102, Revision 01, dated June 23, 1999. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

**Note 1:** Modification of the wire harnesses accomplished prior to January 18, 2000 (the effective date of AD 99-25-14), in accordance with McDonnell Douglas Service Bulletin MD11-28-102, dated January 29, 1999, is considered acceptable for compliance with the modification required by paragraph (g)(2)(iii) of this AD.

#### New Requirements of This AD

#### Modification

(h) Within 72 months after the effective date of this AD, modify the case grounding for the alternate fuel pump of the tail tank, the leak detection thermal switch grounding for the number 2 engine, and wire braid

grounding in the empennage and number 2 engine inlet, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11-28A140, dated November 6, 2008.

#### Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5262; fax (562) 627-5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on September 11, 2009.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. E9-22580 Filed 9-17-09; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Part 382

[Docket No. OST-2009-0093]

#### Nondiscrimination on the Basis of Disability in Air Travel

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Request for comments on petition for rulemaking.

**SUMMARY:** An advocacy group representing users of psychiatric service dogs has petitioned the Department to eliminate a provision of the Department of Transportation's Air Carrier Access regulation. The provision in question permits air carriers to require documentation and 48 hours' advance notice for users of psychiatric service animals. In this document, the Department is seeking comment on the group's petition and related questions. This document is not a notice of proposed rulemaking. The Department has not decided whether to grant the petition by initiating rulemaking action or to deny the petition and retain the provisions without change. The Department will publish a document in

the **Federal Register** regarding the determination of the petition.

**DATES:** Comments in response to this request must be received by December 17, 2009.

**ADDRESSES:** You may submit comments (identified by the agency name and DOT Docket ID Number OST-2009-0093) 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 Avenue, 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 Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251

**Instructions:** You must include the agency name (Office of the Secretary, DOT) and Docket number (OST-2009-0093) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://www.DocketsInfo.dot.gov>.

**Docket:** For internet access to the docket to read background documents and comments received, go to <http://www.regulations.gov>. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, Room W94-302, 202-366-9310, [bob.ashby@dot.gov](mailto:bob.ashby@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### The Current Rule

On May 13, 2008, the Department of Transportation (the Department; DOT) issued a revision to its Air Carrier

Access Act (ACAA) regulation (14 CFR Part 382). The regulation went into effect on May 13, 2009, replacing the previous version of Part 382 on that date.

Section 382.117(e) of the revised Part 382, concerning service animals, states: If a passenger seeks to travel with an animal that is used as an emotional support or psychiatric service animal, the airline is not required to accept the animal for transportation in the cabin unless the passenger provides the airline current documentation (i.e., no older than one year from the date of the passenger's scheduled initial flight) on the letterhead of a licensed mental health professional (e.g., psychiatrist, psychologist, licensed clinical social worker, including a medical doctor specifically treating the passenger's mental or emotional disability). The documentation must state 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. In addition, section 382.27(c)(8) provides that airlines may require a passenger using a PSA or ESA to give up to 48 hours' advance notice and check in one hour before the check-in time for the general public, in order to permit the carrier to review and verify the documentation.

The entire purpose of the ACAA, and the Department's rules implementing it, are to ensure nondiscriminatory air travel opportunities are available to people with disabilities. The service animal sections of the rule were drafted to carry out that purpose. In the preamble to the rule, the Department discussed issues concerning ESAs and PSAs two places. In the general discussion of service animal issues, the Department made the following statements:

Another important issue that a number of commenters raised concerned "emotional support animals." Unlike other service animals, emotional support animals are often not trained to perform a specific active function, such as path finding, picking up objects, carrying things, providing additional stability, responding to sounds, etc. This has led some service animal advocacy groups to

question their status as service animals and has led to concerns by carriers that permitting emotional support animals to travel in the cabin would open the door to abuse by passengers wanting to travel with their pets. The Department believes that there can be some circumstances in which a passenger may legitimately travel with an emotional support animal. However, we have added safeguards to reduce the likelihood of abuse. The final rule limits use of emotional support animals to persons with a diagnosed mental or emotional disorder, and the rule permits carriers to insist on recent documentation from a licensed mental health professional to support the passenger's desire to travel with such an animal. In order to permit the assessment of the passenger's documentation, the rule permits carriers to require 48 hours' advance notice of a passenger's wish to travel with an emotional support animal. Of course, like any service animal that a passenger wishes to bring into the cabin, an emotional support animal must be trained to behave properly in a public setting. (73 FR 27614; May 13, 2008)

In the preamble's discussion of section 382.117, the Department added the following:

There are new, more detailed procedures for the carriage of emotional support and psychiatric service animals. The carrier may require the passenger to provide current documentation from a mental health professional (e.g., a medical doctor that is treating the passenger's mental or emotional disability or a licensed clinical social worker) caring for the passenger that the passenger has a specific, recognized mental or emotional disability and that the passenger needs to be accompanied by the specific emotional support or psychiatric service animal in question, either on the flight or at the passenger's destination \* \* \* [C]arriers can properly apply the same policies to "psychiatric service animals" as they do for emotional support animals. This is because carriers and the Department have encountered instances of attempted abuse of service animal transportation policies by persons traveling with animals in both categories [e.g., in communications among carriers, passengers, and the Department's aviation consumer protection staff]. Should the Department encounter a pattern of abuse concerning service animals in other categories, we can consider additional safeguards with respect to those categories as well. (Id. at 27655)

The ACAA final rule also included a guidance document concerning service animals, which made the following statements concerning emotional support animals (ESAs) and psychiatric support animals (PSAs):

With respect to an animal used for emotional support (which need not have specific training for that function but must be trained to behave appropriately in a public setting), airline personnel may require current documentation (i.e., not more than one year old) on letterhead from a licensed mental health professional, including a

medical doctor that is treating the passenger's mental or emotional disability or a licensed clinical social worker, stating (1) that the passenger has a mental health-related disability listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV); (2) that having the animal accompany the passenger is necessary to the passenger's mental health or treatment; (3) that the individual providing the assessment of the passenger 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. Airline personnel may require this documentation as a condition of permitting the animal to accompany the passenger in the cabin. The purpose of this provision is to prevent abuse by passengers that do not have a medical need for an emotional support animal and to ensure that passengers who have a legitimate need for emotional support animals are permitted to travel with their service animals on the aircraft. Airlines are not permitted to require the documentation to specify the type of mental health disability, e.g., panic attacks.

There is a separate category of service animals generally known as "psychiatric service animals." These animals may be trained by their owners, sometimes with the assistance of a professional trainer, to perform tasks such as fetching medications, reminding the user to take medications, helping people with balance problems caused by medications or an underlying condition, bringing a phone to the user in an emergency or activating a specially equipped emergency phone, or acting as a buffer against other people crowding too close). As with emotional support animals, it is possible for this category of animals to be a source of abuse by persons attempting to circumvent carrier rules concerning transportation of pets. Consequently, it is appropriate for airlines to apply the same advance notice and documentation requirements to psychiatric service animals as they do to emotional support animals. (Id. at 27659).

### The PSDS Petition

The Psychiatric Service Dog Society (PSDS) is an Arlington, Virginia, based organization that describes itself as a service and advocacy organization focused exclusively on the use of psychiatric service dogs by persons living with mental health disabilities. At the Department's June 3, 2008, consumer forum concerning the revised ACAA rule, a PSDS representative expressed the organization's objections to section 382.117(e). DOT staff responded that the organization could file a petition for rulemaking concerning the section, and the PSDS representative indicated that the organization would do so.

Under the Department's regulatory procedures, any person may file a petition to issue, amend, or repeal a rule (49 CFR 5.11(a)). The PSDS petition,

dated April 13, 2009, has now been received by the Department. Interested persons can read the entire petition at DOT-OST-2009-0093. It consists of a three-page letter from PSDS and 32 pages of letters or e-mails from constituents or supporters of the organization. In its petition, which meets the procedural requirements of section 5.11, PSDS requests that section 382.117(e) be repealed. While the petition does not specifically refer to section 382.27(c)(8), we understand the petition to seek its repeal as well.

The Department can take one of two actions with respect to the petition: It can grant the petition by initiating rulemaking action (e.g., publishing a notice of proposed rulemaking to repeal or modify the provisions in question) or it can deny the petition and retain the provisions without change. When the Department denies a petition, we send a denial letter to the petitioner explaining our reasons for the decision.

In order to assist the Department in deciding which course to follow, we are, in this document, seeking comment on the issues PSDS raises in its petition. We note that taking action at this time to change the regulatory provisions in question would constitute a substantive amendment requiring us to issue a notice of proposed rulemaking for public comment. Because PSDS waited as long as it did to file its petition, the Department did not have time to take action before the May 13, 2009 effective date for the revised Part 382. Nor does the Department believe that immediate action to change the final rule would be prudent prior to an opportunity to review comments on issues concerning which a wide variety of parties may have an interest in.

The main arguments that PSDS and its supporters cite as a basis for the repeal of section 382.117(e) are the following:

- In terms of applicable procedures, the Department's final rule does not draw distinctions between the two categories of animal. The PSDS petition appears to support drawing a sharp distinction between PSAs and ESAs. The former must be trained for public access and have basic obedience training as well as handler-specific behaviors to ameliorate or mitigate the effects of a mental health-related disability. The latter are rarely more than pets, requiring little or no training. Therefore, it is improper for the rule to apply the same procedural provisions to both categories of assistance animal.
- By imposing additional procedural requirements on users of PSAs, which are not imposed on service animals used by individuals with other disabilities,

the rule discriminates against and stigmatizes individuals with mental health-related disabilities who use PSAs. If DOT thinks it appropriate to impose these requirements on PSA users, then DOT should be amenable to imposing similar requirements on people with other disabilities who use service animals.

- It would be easy for someone with a PSA to cheat, simply by claiming that his or her dog was a service animal for another disability, such as epilepsy, heart disease, diabetes, dementia etc.

- Many people with mental health-related disabilities use general practitioners rather than specialists in mental health matters, and the Department's rule appears not to allow for letters from general practitioners.

- The rule violates the medical privacy of PSA users by requiring confidential medical information to be provided to airline personnel. Moreover, the rule makes no provision for the confidential treatment of this information once it gets into the airline's hands, and fails to answer questions concerning the security, storage, or use of the information. PSDS expresses the concern that the Transportation Security Administration could gain access to the information and require additional security measures (e.g., secondary screening) for persons identified as having mental health-related disabilities.

- It may be difficult or impossible for persons who do not have medical insurance or otherwise lack access to affordable medical care to obtain the medical documentation the rule allows airlines to require. In addition, the requirement that the documentation be no more than a year old could work an additional financial hardship on PSA users, because they would have to pay annually for the required documentation. This could result in the denial of air transportation to people in this situation.

- The 48 hours' advance notice provision would make it very difficult for PSA users to fly in the case of short-term situation (e.g., a family or medical emergency) that did not permit them to provide 48 hours' advance notice.

- DOT does not have adequate evidence that there is a problem with people trying to sneak pets aboard aircraft, so as to justify imposing the procedural requirements on PSA users.

- Under the Americans with Disabilities Act (ADA) and other laws concerning nondiscrimination on the basis of disability, users of service animals (including PSAs) do not have to comply with requirements like those in section 382.117(e).

• Some letters from supporters of the PSDS petition suggested that other provisions of Part 382, such as those concerning “direct threat,” “fundamental alteration,” and general language concerning identification of service animals would be sufficient with respect to PSAs and ESAs, without including language like that of section 382.117(e).

#### Information and Questions Concerning the PSDS Petition

To help highlight issues raised by the petition for commenters, the Department presents the following information and questions:

##### *Differences Between PSAs and ESAs*

The letters of support for PSDS’ petition mention that PSAs are trained for public access and obedience (which a number of letters assume or say is not true of ESAs). In fact, are ESAs trained to behave properly in public settings? Note that, under the ACAA rules, airlines are never required to carry in the cabin an animal—even one that is assisting a person with a disability—that is not behaving appropriately in a public setting.

The letters of support for PSDS’ petition state that PSAs are trained to provide medically necessary, therapeutic, or other services for their users. However, the letters do not specify what any of these services are. What are these services, and how, if at all, are they relevant to the use of a PSA during the user’s air travel or activities at the user’s destination? With respect to travel on an aircraft, how do these services differ from those that would be provided by an ESA during a flight or at the passenger’s destination? How, if at all, would any such differences justify treating ESAs and their users differently from PSAs and their owners in the context of air transportation? What, if any, distinctions have airlines drawn or attempted to draw between the two categories of animals, and what is the basis for any such distinctions?

It appears from some material in the supporting letters that PSAs do, in fact, provide services related to emotional support. For example, one letter from a PSA user related the following about her dog:

\* \* \* [H]e gives me unconditional love no matter what I look or feel like that day. He is there right by my side even when I don’t ask him to, lying at my feet because he knows that helps me. He helps me when no nothing or no one else will. He is very reliable. I never have to worry if he is going to be “busy” that night like I would friends or family. He is never angry if I talk too much or pet him too much \* \* \*. He gives me better hugs than my husband \* \* \*.

Another letter, from a therapist, said that an assistance animal enabled her clients to “get out of the house and go places without the fear and panic they had before. It is so helpful for them to have their dog with them in all environments to reduce dissociation, panic, and anxiety.” Do these obviously significant functions that dogs called PSAs perform for their owners differ from those that would be performed for their owners by dogs called ESAs in a way that would support different treatment for the two groups in airline travel? We note that over the years, many individuals who travel with ESAs have stated that their service animals, in addition to being trained to behave properly in public settings and providing needed emotional/mental health support without which they cannot travel, do in fact perform specific physical tasks related, for example, helping lessen anxiety in stressful situations.

##### *Need for Procedural Requirements*

We seek comments from airlines and other interested persons about their experience with passengers attempting to pass off pets as service animals, especially as it may relate to ESAs and PSAs. Are there problems that air carriers have encountered in distinguishing pets from animals that provide services to passengers with disabilities? What procedures do airlines use to draw this distinction, and how well do these procedures work? How pervasive are any such problems? What, if any, experience do airlines have with people attempting to bring pets on board on the basis of claims that the animals are service animals for disabilities that are not readily apparent other than mental health-related conditions, such as seizure disorders, heart conditions, diabetes, etc? What, if any, problems are created for airlines when people have attempted to bring or have succeeded in bringing pets into the cabin under the guise of being service animals? Do airlines have any statistics or compilations of experience with people attempting to pass off their pets as service animals that they could share with the Department?

Do the procedural provisions of section 382.117(e)—and the previous provisions of DOT guidance concerning ESAs—help airlines distinguish between service animals and pets? If, as the petition requests, paragraph (e) were deleted, would airlines have sufficient other, arguably less burdensome, means of making these determinations? What would be the effect, if any, on the ability of airlines to make reasonable determinations in these matters if the

provisions of paragraph (e) remained in effect for users of ESAs but not users of PSAs? Are there problems that airlines have encountered in the past with passengers initially claiming that their animal is an ESA and later characterizing that same animal as a PSA? If so, please describe such problems. The Department’s rule is now in effect: Have passengers or airlines encountered any actual problems concerning the implementation of the provisions in question in this context?

The Department, the service animal community (e.g., handlers, organizations), and the airlines all share the goal of stopping the abuse of service animal access rights by passengers who fraudulently assert that their pets are service animals. The Department is interested in identifying effective alternative methods to prevent such fraud. We, therefore, invite members of the public, and in particular members of the service animal community, to propose methods for preventing/detecting fraud that they believe are feasible alternatives to the current medical documentation requirements.

##### *Medical Privacy*

With respect to the medical information provided to airlines under paragraph (e) and other provisions of Part 382 concerning medical documentation, the Department has issued the following guidance:

Q. What should carriers do to safeguard the personal medical information (e.g., physician’s statements, medical certificates and documentation from licensed mental health professionals for emotional support and psychiatric service animals) that they require of passengers in order to provide certain accommodations?

A. When a carrier requires a passenger to provide personal medical information as a condition for obtaining disability accommodations, we recommend that the carrier take steps to safeguard this information, such as maintaining it in a separate confidential file for the same period of time it retains that passenger’s reservation record for the flights involved.

Does this guidance sufficiently address medical privacy concerns arising from the operation of paragraph (e)? If not, should the Department amend its regulations to provide additional protections? If so, what should such amendments provide? Should there be additional language concerning such matters as how confidentiality is maintained, who has access to records and for how long, how are records disposed of, or whether a particular record retention period should be stated in the rule or guidance?

### *Family and Medical Emergencies*

Part 382 provides that, when a passenger does not provide advance notice for accommodations to which a carrier may apply an advance notice requirement, the carrier must provide the accommodation if it can do so by making reasonable efforts, without delaying the flights (see section 382.27(g)). The Department's rule is now in effect: Have passengers or airlines encountered any actual problems concerning the implementation of the provisions in question in this context?

The Department has issued the following FAQ discussing this principle in the context of the procedural steps of section 382.117(e):

Q. When must a carrier accommodate a passenger accompanied by an emotional support or psychiatric service animal who has not provided 48 hours' advance notice?

A. Carriers must accommodate a passenger accompanied by an emotional support or psychiatric service animal who has not provided 48 hours' advance notice if the carrier can do so by making reasonable efforts, without delaying a flight. The carrier, at its discretion, may waive its 48 hours' advance notice requirement in order to expedite the emergency air travel of a passenger accompanied by an emotional support or psychiatric service animal.

Does this guidance adequately handle the situation of ESA or PSA users with a family or medical emergency requiring short-notice travel? Should air carriers be able to require documentation of the emergency from someone seeking to travel with a PSA or ESA who cannot provide 48 hours' notice? Are there additional regulatory or guidance statements the Department should make on this matter, such as criteria for when and on what basis the 48 hours' advance notice period should be waived?

### *Lack of Medical Insurance or a Mental Health Care Provider*

In the absence of recent documentation from a mental health professional, how is an air carrier to determine whether a passenger has a current need for an ESA or PSA? Would anyone using a PSA or ESA have had a medical recommendation for the use of such an animal at some time in the past that could be documented? If not, what information could establish a basis for the individual's claim that he or she needs a service animal? The Department has issued the following FAQ discussing this principle in the context of the procedural steps of section 382.117(e):

Q. May a carrier accept documentation from a licensed mental health professional concerning his or her need for a psychiatric

or emotional support animal if the documentation is more than one year old?

A. Carriers may, at their discretion, accept from the passenger documentation from his or her licensed mental health professional that is more than one year old. We encourage carriers to consider accepting "outdated" documentation in situations where a passenger with a disability provides a letter or notice of cancellation or other written communication indicating the cessation of health insurance coverage, and his/her inability to afford treatment for his or her mental or emotional disability.

Does this guidance successfully address the situation of persons with mental health-related disabilities who may currently lack medical insurance? What is the experience of airlines and passengers with the existing rule and guidance, which are now in effect? Should the guidance or underlying regulatory provisions be changed (e.g., to eliminate the requirement, change the period of one year to something else, require airlines to include alternate documentation in some cases)?

### *Use of General Practitioners*

The Department has clarified in the regulatory text of section 382.117(e), quoted above under "The Current Regulation," that among the individuals authorized to provide documentation concerning the need for ESAs or PSAs include medical doctors who are specifically treating a passenger's mental or emotional disability. Does this clarification successfully address the concern about the types of doctors who can provide the documentation that the rule now requires? If not, what additional provisions would commenters recommend?

### *Americans With Disabilities Act (ADA) Analogy*

The Department notes that the ACAA is a separate statute from the ADA. The ACAA is a specialized statute dealing only with transportation by air, in an environment in which a large number of people are confined within a limited space for what may be a prolonged period of time. The Department has long taken the position that accommodations for persons with disabilities, and DOT requirements for them, may justifiably differ between the air travel context and other contexts, such as places of public accommodation regulated by the Department of Justice under its ADA regulations. We seek comment on the application of this principle in the matter of PSAs and ESAs.

### *Alternatives for Consideration*

After reviewing comments on this notice, the Department could make a number of different decisions with

respect to the issues involved. The following are examples of actions the Department could take:

1. Leave the rule unchanged.
  2. Leave the basic provisions of the rule (i.e., concerning documentation and advance notice) unchanged, but add provisions relating to specific concerns about the implementation of these provisions (e.g., with respect to medical privacy or other matters now addressed by FAQs).
  3. Eliminate documentation and advance notice provisions for all types of animals assisting passengers with disabilities.
  4. Eliminate the documentation and advance notice provisions for PSAs, but leave the provisions in effect for ESAs.
  5. Leave the existing documentation and advance notice provisions for passengers with disabilities who wish to bring service animals on board an aircraft but whose types of disabilities are not readily apparent.
  6. Leave the existing documentation and advance notice provisions in effect for ESAs and PSAs, but add parallel provisions for all passengers with disabilities who wish to bring service animals on board an aircraft.
  7. Substitute an alternative method of preventing "cheating" that would allow airlines to distinguish service animals from pets but that did not involve the current documentation and/or advance notice provisions.
- The fact that an idea is on this list does not mean that the Department necessarily supports it or believes that it would be good policy; the list merely sets out a range of possible approaches to the issues raised by the PSDS petition. Nor is the list exhaustive; the Department solicits other ideas for addressing these issues as well.

Issued this 27th day of August 2009, at Washington, DC.

**Christa Fornarotto,**

*Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. E9-21351 Filed 9-17-09; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 110

[Docket No. USCG 2008-1082]

RIN 1625-AA01

### Anchorage Regulations; Port of New York

AGENCY: Coast Guard, DHS.