

compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This rule amends Title 14 Code of Federal Regulations part 71 by establishing a Class E airspace area extending upward from 700 feet above the surface at Potosi Washington County Airport, MO. The establishment of Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedures (IAP) to Runways 2 and 20 have made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Potosi Washington County Airport, MO. The area will be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. of the same Order. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing

instrument approach procedures to Potosi Washington County Airport, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Potosi, MO

Potosi, Washington County Airport, MO
(Lat. 37°55'45" N., long. 90°43'53" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Potosi, Washington County Airport, MO.

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Issued in Fort Worth, TX, on February 14, 2007.

Walter Tweedy,

*Manager, System Support Group, ATO
Central Service Area.*

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

Guidance Concerning the Carriage of Service Animals in Air Transportation Into the United Kingdom

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of guidance concerning the carriage of service animals in air transportation from the United States to the United Kingdom.

SUMMARY: This notice publishes guidance concerning the carriage of

service animals in air transportation from the United States (U.S.) to the United Kingdom (U.K.). These guidelines address the differences between U.K. laws regulating the transport of service animals on flights into the U.K. and U.S. law with respect to the carriage of service animals in air transportation. U.K. laws affecting the transport of service animals in air travel differ significantly from the requirements of the Air Carrier Access Act (ACAA), 49 U.S.C. 41705, and its implementing regulation in 14 CFR Part 382, resulting in uncertainty for carriers and persons with disabilities about the requirements that apply on flights into or transiting the U.K.

The purpose of this guidance document is to assist U.S. and foreign carriers, as well as passengers with disabilities, in complying with both U.S. and U.K. regulations concerning the transport of service animals on flights from the U.S. to the U.K. by: (1) Explaining the procedures passengers must follow to comply with the U.K.'s Pet Travel Scheme (PETS); (2) explaining the procedures U.S. and foreign carriers must follow to obtain an approved Required Method of Operation (RMOP) from the U.K.'s Department for Environment Food and Rural Affairs (DEFRA); and (3) notifying both U.S. and foreign carriers operating flights between the U.S. and the U.K. that failure to obtain an approved RMOP from DEFRA will be considered a violation of the ACAA and may subject such carriers to enforcement action by the U.S. DOT.

ADDRESSES: This guidance document is available on the Department's Web site at <http://airconsumer.ost.dot.gov/> and future updates or revisions will also be posted there. Questions regarding this notice may be addressed to the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, C-70, 400 Seventh Street, SW., Room 4116, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Kathleen Blank Riether, Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–9342; e-mail kathleen.blankriether@dot.gov.

Introduction

Service animals perform many tasks to improve the quality of life and independence of persons with disabilities. Accordingly, the ability to travel with a service animal is critically important to those passengers who rely on them to assist with their disabilities. For health and safety reasons, until

February 2000, all animals traveling into the U.K. were subject to quarantine for six months. From February 2000 to April 2004, U.K. law allowed certain animals to enter the U.K. without a six-month quarantine, but required, among other things, that they travel in a sealed kennel on flights into the U.K. In April 2004, U.K. laws were changed to remove the requirement that dogs and cats meeting the requirements of the U.K.'s Pet Travel Scheme (PETS) must be transported in a sealed kennel when traveling by air into the U.K.

Consequently, airlines could seek approval to legally transport PETS-compliant animals in the aircraft passenger cabin for the first time, opening the door for carriers to comply with many of the U.S. service animal requirements on flights into the U.K.

U.S. service animal requirements are based on the ACAA, which was enacted in 1986 to prohibit U.S. carriers from discriminating against air travelers on the basis of disability. The ACAA was amended in 2000, by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. 106-181 (April 5, 2000), to specifically cover foreign carriers. The Department's rule implementing the ACAA, 14 CFR Part 382 (Part 382), which was adopted in 1990, does not by its terms address foreign carriers. However, DOT's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) gave notice, on May 18, 2000, of its intent to use Part 382 as guidance in applying the ACAA to foreign carriers until that rule is amended to cover those carriers. In November 2004, DOT published a proposed rule to modify Part 382 to cover foreign carriers. The Department expects to complete that rulemaking in 2007.

DOT has received a number of complaints against foreign and U.S. carriers from passengers alleging unlawful discrimination under the ACAA because they were prevented from traveling into the U.K. with their service animals. DOT has also received inquiries from members of the U.S. Congress on behalf of their constituents on this issue. Among a number of actions taken in response to these complaints and inquiries, the Department (1) Investigated several U.S. and foreign carriers; (2) reviewed relevant European Union (EU) and U.K. laws and agency guidance documents; (3) consulted with members of the U.K. government; and (4) spoke with an international working group seeking to establish consensus on best practices for transporting guide and assistance dogs

in the passenger cabin, particularly on long haul flights such as those from the U.S. to the U.K. We found that there were many complexities involved in the transport of service animals in the passenger cabin on flights into the U.K. and concluded that guidance for foreign and U.S. carriers, as well as passengers with disabilities, was needed to clarify their respective rights and responsibilities under the ACAA and Part 382 in the context of U.K. laws and agency guidance.

Background

Until 2000, all animals traveling into the U.K. were subject to a six-month quarantine upon entry in order to ensure that they were not contaminated with rabies. On February 28, 2000, the U.K. implemented the Pet Travel Scheme (PETS), a regulatory plan administered by the U.K.'s Department for Environment, Food and Rural Affairs (DEFRA), that allows certain animals holding appropriate documentation and transported by an approved air carrier—initially dogs and cats, and as of July 2004 also ferrets—from certain countries to enter England without a six-month quarantine as long as the animals are identified by microchip, vaccinated against rabies, blood tested (except ferrets), and treated against certain parasites.

In May 2003, European Union Regulation (EC) No. 998/2003 established the current health requirements for animals traveling under the Pet Travel Scheme between European Union (EU) member states or into a member state from third countries, superseding the earlier U.K. laws. The EU regulation allows the U.K. to broadly continue its domestic Pet Travel Scheme for dogs and cats and covers import requirements for some other species, including ferrets. It should be noted that the Council of the European Union subsequently adopted a community regulation on July 5, 2006, concerning the rights of disabled persons and persons with reduced mobility when traveling by air, which will apply to commercial carriers flying into, from, or through an airport situated in an EU member state. The regulation, effective July 26, 2008, will require carriers to transport recognized assistance dogs in the aircraft cabin free of charge, subject to national legislation. See http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_204/l_20420060726en00010009.pdf.

Following the adoption of the 2003 EU regulation, the U.K. Parliament passed the Non-Commercial Movement of Pet Animals (England) Regulations 2004 No. 2363 (NCMPAR 2004), which

became effective on October 1, 2004, implementing and enforcing the EU regulation in England only. The other regions within the U.K., Scotland, Wales and Northern Ireland, each have their own PETS regulations. However, as of January 1, 2007, the only DEFRA-approved routes for service animals to enter the U.K. from the U.S. are into England, primarily through the London Gatwick and London Heathrow airports.

NCMPAR 2004 outlines the responsibilities and conditions that carriers and passengers must meet to comply with the EU and U.K. regulations with respect to the transport of dogs, cats and ferrets into England. Carriers seeking approval to participate in PETS must submit written procedures to DEFRA for transporting these animals into England from listed countries on specific routes in accordance with NCMPAR 2004. Listed countries, which include the U.S., are those from which the movement of animals into the EU Community under the Pet Travel Scheme may be authorized, provided that certain requirements are met, under regulation (EC) No. 425/2005. See DEFRA's Web site for listed and non-listed countries at http://www.defra.gov.uk/animalh/quarantine/pets/regulation/eu_reg.htm.

Passengers wishing to transport dogs, cats and ferrets into England and U.K. airports that opt to accept such animals also have responsibilities that they must meet. Passengers are obliged to take specific steps to ensure their animals meet PETS health requirements before entering the U.K. U.K. airports must establish an onsite DEFRA-approved animal reception center (ARC) facility in order to participate in PETS. An animal reception center is a facility located at the airport and operated by a public or private sector organization for the purpose of verifying the PETS compliance status of animals arriving on flights into the U.K. before they deplane or are removed from the cargo area. Animals found not to be PETS-compliant are detained at the ARC until they can be transferred to a quarantine facility or removed from the country.

Although PETS now allows dogs, cats, and ferrets to enter the U.K. without a six-month quarantine and without being sealed in a kennel, from February 2000 to April 2004, PETS required the animals to travel in a sealed kennel on flights into England. Given the space constraints in the aircraft cabin, participating carriers (*i.e.*, carriers approved by DEFRA for transporting PETS-compliant animals) would only transport such kennels in the cargo hold of the aircraft. This restriction discouraged persons with disabilities

from traveling from the U.S. to the U.K. with a service animal because the passenger necessarily would be separated from his or her service animal during flight. Separating a service animal from the passenger with a disability can impair the passenger's ability to function independently when the animal is unavailable to perform a vital task (e.g., navigation, mobility assistance, seizure alert, etc.). The disability community also advises that separation can create stress on the service animal, affecting its ability to perform necessary tasks for its owner when the service animal and its user reconnect.

With the PETS amendment of April 2004, participating carriers were in a position to seek DEFRA approval to transport PETS-compliant animals accompanied by their owners in the passenger cabin of aircraft on approved routes into England. This substantive change in the PETS order then prompted the U.K.'s Civil Aviation Authority (CAA) to issue a Flight Operations Department Communication (FODCOM) on March 11, 2005, addressing cabin safety considerations concerning the carriage of guide and assistance dogs in the aircraft cabin. Besides defining the criteria for the acceptance of guide and assistance dogs qualifying for carriage in the passenger cabin, the FODCOM explained that all other animals should be treated as pets and that other arrangements be made for their transport. See Carriage of Guide Dogs and Assistance Dogs in the Aircraft Cabin, FODCOM 3/2005 (March 11, 2005). The CAA has informed DOT that compliance with FODCOM provisions, which interpret U.K. safety regulations, is mandatory for all U.K. carriers.

In sum, these changes to EU and U.K. law have allowed individual carriers to modify their policies and procedures and obtain DEFRA approval to carry guide and assistance dogs in the passenger cabin. In addition, to comply with the ACAA and Part 382, U.S. carriers operating flights from the U.S., or any other listed country, into the U.K. must obtain DEFRA approval to transport all PETS-compliant animals that serve as service animals in the cabin on approved routes into any participating U.K. airport (*i.e.*, approved by DEFRA to receive animals coming into the U.K.) served by the carrier. (See GLOSSARY for the definition of "listed country.") It is the position of the Enforcement Office that the ACAA itself imposes the same obligation on non-U.K. foreign carriers for flights from the U.S. into the U.K. Similarly, it is the position of the Enforcement Office that the ACAA itself requires U.K. carriers to

obtain DEFRA approval to transport PETS-compliant guide and assistance dogs in the cabin and all other PETS-compliant animals that serve as service animals in the cargo hold in accordance with FODCOM 3/2005, which is mandatory for such carriers.

Guidance Concerning the Carriage of Service Animals in Air Transportation From the United States to the United Kingdom

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Glossary

A. Overview

1. What Is the Purpose of This Guidance?

As previously stated in the opening summary, this guidance assists carriers in addressing the differences between U.K. and U.S. law with respect to the carriage of service animals into the U.K., (e.g., the ACAA requirement that carriers generally must transport all service animals in the passenger cabin versus the U.K. rule that requires carriers to restrict in-cabin transport to guide and assistance dogs only).

In addition, this guidance notifies carriers that failure to obtain approval to participate in the U.K.'s Pet Travel Scheme (PETS) when flying from the U.S. (or for U.S. carriers, from any listed country) into participating U.K. airports violates the ACAA and may subject the carrier to enforcement action by the DOT.

Most importantly, this guidance provides both carriers and passengers an overview of what they must do to comply with U.K. and U.S. laws affecting the carriage of service animals accompanying passengers with disabilities on flights between the U.S. and U.K.

2. To Whom Does This Guidance Apply?

Foreign carriers operating to and from U.S. airports are subject to the provisions of the ACAA, while U.S. carriers must comply with the ACAA and the rules set forth in Part 382 wherever they operate. Accordingly,

this guidance applies to U.S. carriers under the ACAA and Part 382 on flights from any point of origin within a listed country to the U.K. It also applies to foreign carriers under the ACAA on flights from the U.S. to the U.K.

It is worth noting that U.S. and foreign carriers operating flights from the U.S. into the U.K. under code-share agreements both have a responsibility for ensuring the transport of PETS-compliant service animals consistent with U.S. and U.K. law.

3. What Service Animals May Accompany a Passenger With a Disability on Flights Into the U.K.?

a. U.S. carriers, under sections 382.55(a)(1) and (2), are required to permit service animals used by individuals with a disability to accompany the person in the aircraft passenger cabin in accordance with applicable safety regulations. It is the Enforcement Office's position that this requirement also applies under the ACAA to foreign carriers operating to and from the U.S. absent a direct conflict of law.

b. U.S. regulatory guidance generally defines as service animals those animals that are individually trained to perform functions to assist passengers who are qualified individuals with a disability, but recognizes that an emotional support animal or an animal such as a seizure alert animal may be capable of performing functions to assist a qualified individual with a disability without formal training regarding the assistance it performs. Similarly under DOT guidance, a service animal is (i) An animal individually trained to perform a function and which performs that function to assist a person with a disability; (ii) an animal that has been shown to have the innate ability to assist a person with a disability, e.g., a seizure alert animal; or (iii) an emotional support animal. Regardless of the function it performs to assist a passenger with his or her disability, a service animal should be trained to behave properly in the airport and in the passenger cabin (e.g., not to run around freely, bark, bite other persons, or urinate in the cabin). Improper behavior indicating a lack of training may result in the service animal legitimately being denied transport in the cabin.

c. Under FODCOM 3/2005, which interprets U.K. safety regulations, only guide and assistance dogs may accompany their owners in the passenger cabin on a flight. The FODCOM defines guide and assistance dogs as dogs trained by an individual or organization accepted by and affiliated

with the International Guide Dog Federation to provide assistance to a person with a disability and requires formal identification indicating such training. Dogs not meeting the above criteria for guide or assistance dogs, as well as cats and ferrets, are considered pets and are not recognized as service animals in the U.K., even if trained to perform a function to assist a person with his or her disability. FODCOM 3/2005, which is mandatory for U.K. carriers and guidance for non-U.K. carriers, states that PETS-compliant animals other than guide and assistance dogs should be carried in the cargo hold.

d. Under Part 382, U.S. carriers must accept PETS-compliant service dogs and service cats for transport in the aircraft cabin on flights into the U.K. when they can behave appropriately and can be accommodated without violating FAA safety regulations. When not, carriers must transport such animals in the cargo hold. It is the position of the Enforcement Office that the requirement to transport service dogs and service cats also applies to non-U.K. foreign carriers under the ACAA on flights from the U.S. to the U.K. It is also the position of the Enforcement Office that U.K. carriers, to whom FODCOM 3/2005 applies, are subject to its requirement to permit only guide and assistance dogs in the aircraft cabin. Since U.K. law does not prohibit U.S. and non-U.K. foreign carriers from transporting PETS-compliant animals in the cabin in accordance with a carrier's approved required method of operation (RMOP), these carriers must request an approved RMOP for transporting PETS-compliant service dogs and service cats in the cabin in order to comply with the ACAA and Part 382. (For further explanation of an RMOP, see "What Steps Must a Carrier Take To Obtain DEFRA Approval To Participate in PETS?")

e. Although ferrets may be accepted for transport under PETS, U.S. regulatory guidance permits carriers to refuse transport to ferrets for safety reasons (See "Under What Circumstances May a Carrier Refuse Transport to a Service Animal?")

f. Under section 382.57, U.S. carriers may not charge for transporting service animals from the U.S. or any listed country to the U.K. It is the Enforcement Office's position that this prohibition also applies to all foreign carriers under the ACAA on flights from the U.S. to the U.K. absent a direct conflict of law. The cost of animal inspections and other fees to the passenger that airport animal reception centers bill directly to carriers for administrative convenience may be

charged back to the passenger by the carrier.

g. Because section 382.55(a) requires that service animals be permitted to accompany persons with disabilities on their flights, U.S. carriers with routes into participating U.K. airports must also participate in PETS so that the aforementioned service animals can enter the U.K. in accordance with applicable U.K. laws. Under the ACAA, it is the Enforcement Office's position that all foreign carriers operating flights from the U.S. to the U.K. must also participate in PETS. The Enforcement Office may pursue enforcement action against carriers that fail to participate in the U.K.'s Pet Travel Scheme, which is a necessary component to accepting service animals accompanying passengers with disabilities on flights to the U.K.

4. What About Service Animals That Are Not PETS-Compliant?

a. Due to U.K. law requiring animals that are not PETS-compliant to be quarantined or removed from the country and the penalties that may result to the carrier for an illegal landing, a service animal for which a passenger cannot demonstrate PETS compliance may be denied transport.

b. Carriers have discretion to transport dogs, cats and ferrets that are not PETS-compliant into the U.K. under the terms and conditions of a U.K. quarantine import license. Dogs, cats and ferrets that must be quarantined because they do not meet all PETS requirements on the day they enter the UK, but at a later date can be shown to meet the necessary PETS requirements, can be released early from the six-month quarantine.

c. Carriers may choose to transport other service animals under the terms and conditions of a U.K. quarantine import license, which includes a six-month quarantine of the animal upon entry to the U.K.

d. For further information on import licensing and quarantine procedures, see DEFRA's Web site at <http://www.defra.gov.uk/animalh/quarantine/pets/procedures/support-info/listq&a.htm>.

5. Under What Circumstances May a Carrier Refuse Transport to a Service Animal?

a. Under U.S. law and regulatory guidance, refusing any type of service animal for transport in the aircraft cabin is permitted only when the animal's presence on the aircraft (1) Poses a direct threat to the health or safety of passengers or crewmembers (e.g., airlines are not required to transport, either in the cabin or in the cargo hold,

snakes, other reptiles, ferrets, rodents, and spiders as DOT has determined that these animals pose unavoidable safety and/or public health concerns), or (2) would cause a significant disruption to the airline service in the cabin (e.g., the service animal is not trained to behave properly in public settings so the animal barks at other persons on the aircraft, jumps on people or urinates in the cabin), or (3) would violate an applicable Federal Aviation Administration (FAA) safety regulation (e.g., accepting a service animal for carriage in the cabin that would block egress to the aisle from any row of seats on the aircraft), or (4) is prohibited in the cabin by the law of the country where the carrier operates.

b. Under section 382.37(c), U.S. carriers are required to transport in the cargo hold any PETS-compliant service dogs and service cats that cannot be accommodated in the cabin either for safety reasons or due to behavior that significantly disrupts cabin service. It is the position of the Enforcement Office that the same requirement applies to foreign carriers under the ACAA.

c. U.S. and non-U.K. foreign carriers that permit only service dogs and service cats to accompany their owners in the passenger cabin (or in the cargo hold when safety requires) on flights from the U.S. into the U.K. will be considered in compliance with the ACAA and Part 382. U.K. carriers that permit only guide and assistance dogs in the passenger cabin (or in the cargo hold when safety requires), and transport other PETS-compliant service animals in the cargo hold on flights from the U.S. into the U.K. will also be considered in compliance with the ACAA. Due to the quarantine restrictions for other animal species and their subsequent unavailability to their owners for six months following entry to the U.K., carriers that accept only PETS-compliant animals on flights from the U.S. into the U.K. will be considered in compliance with the ACAA and Part 382.

6. Are Carriers Permitted To Require Passengers To Provide Documentation That Their Animal is a Service Animal as a Condition for Transport in the Cabin?

a. Under the ACAA and Part 382, carriers may look for indicators to confirm that an animal is a service animal either through (1) An ID issued by a guide or assistance dog organization or state or local government agency; (2) service equipment on the animal such as a harness, vest, or side-packs; or (3) the credible verbal assurance of the

qualified individual with a disability using the animal. Under the ACAA and Part 382, any of these observations or procedures may be sufficient to make the determination.

b. Under FODCOM 3/2005, a guide or assistance dog should meet the full membership criteria in an accredited organization (e.g., Guide Dogs for the Blind Association, Assistance Dogs International, etc.) and have formal identification. Therefore, U.K. carriers may require passengers to present such identification as a condition for acceptance of a guide or assistance dog in the passenger cabin. For other PETS-compliant animals, U.K. carriers should use as indicators of service animal status those defined under the ACAA and Part 382.

c. U.S. law allows carrier personnel to request documentation for service animals other than emotional support animals as a means of verifying that the animal is a service animal only in limited circumstances. However, the Enforcement Office urges U.S. and foreign carriers, in the absence of a conflict of law, not to require documentation as a condition for accepting a PETS-compliant dog or cat for transport as a service animal in the cabin or the cargo hold unless a passenger's verbal assurance is not credible. In that case, the airline may require documentation (e.g., a service animal organization membership ID). See Notice of Policy Guidance Concerning Service Animals in Air Transportation, 68 FR 24,874 (May 9, 2003), available at <http://airconsumer.ost.dot.gov/rules/20030509.pdf>.

d. In order to prevent abuse by passengers who do not have a medical need for an emotional support animal, DOT permits carriers to require recent medical documentation of the passenger's disability-related need as a condition for acceptance of an emotional support animal as a service animal under the ACAA and Part 382. (See Notice of Policy Guidance Concerning Service Animals in Air Transportation at the above-noted Web site.)

e. The ACAA, Part 382 and FODCOM 3/2005 allow guide and assistance dogs in the cabin of any breed and size provided they can be carried in the cabin in accordance with applicable safety regulations.

7. Why Must Carriers Obtain Approval From DEFRA To Carry Service Animals on Flights Into the U.K.?

a. The Enforcement Office considers a covered carrier's approval by DEFRA to transport PETS-compliant service

animals on flights from the U.S. to participating U.K. airports, in accordance with this guidance, necessary to comply with the ACAA since without such approval service animals may not be legally transported into the U.K. See "To Whom Does This Guidance Apply?" for the definition of a covered carrier.

b. U.S. air carriers operating between the U.S. or any other listed country and the U.K., and foreign carriers operating between the U.S. and the U.K., are put on notice that a failure to obtain DEFRA approval may result in enforcement action initiated by DOT's Enforcement Office for violating the ACAA.

c. To demonstrate to the Enforcement Office that a carrier is seeking to participate in PETS, the office recommends that the carrier retain all relevant records of the steps taken to obtain DEFRA approval until it is granted.

B. Specific Requirements for Carrier Compliance With British Laws Governing the Carriage of Animals Into the U.K.

1. What Steps Must a Carrier Take To Obtain DEFRA Approval To Participate in PETS?

a. Before a carrier can participate in PETS, it first must prepare a proposed Required Method of Operation (RMOP) and submit it to DEFRA for approval. The RMOP must describe the specific procedures the carrier will follow to ensure the proper transport of PETS-compliant animals in accordance with applicable DEFRA, CAA and the International Air Transport Association (IATA) requirements.

b. The RMOP for carriage of animals should include all relevant details on:

- i. How the carrier will transport the animals in the passenger cabin and in the cargo hold;
- ii. How the carrier will ensure that the passenger presents the required PETS documentation for the animal prior to departure;
- iii. How the carrier will ensure that the animals are checked-in by the animal reception center (ARC) upon arrival into the U.K.;
- iv. What contingency plans the carrier intends in the event of emergencies or route deviations; and
- v. On what routes (point-to-point between city pairs) the carrier proposes to transport animals in the passenger cabin and cargo hold.

c. There is no charge for filing an RMOP. Instructions for preparing an RMOP covering the carriage of service animals in the passenger cabin and in the cargo hold can be obtained from

DEFRA by contacting quarantine@defra.gsi.gov.uk.

d. Carriers must coordinate a written service level agreement (SLA) with the local ARC at each airport they serve with an ARC in the U.K. and submit a copy with their proposed RMOPs to DEFRA. The SLA is an agreement between the ARC and the carrier that the ARC will verify the PETS compliance status of any animal arriving at the local airport over one of the carrier's approved routes. This step is necessary to obtain final approval to participate in PETS.

e. Failure to reach agreement with DEFRA on a proposed RMOP does not exempt the carrier from its obligation to accommodate service animals under Part 382 and/or the ACAA. If a carrier's initial proposed RMOP is not approved, the carrier is obliged to pursue good faith efforts with DEFRA until an agreement on procedures acceptable to DEFRA is reached and approval is granted.

f. The approved RMOP and SLA spell out the carrier's legal obligations with respect to the transport of animals into the U.K. Failure to adhere to their terms may result in liability of the carrier under U.K. law.

2. On Which Routes Must Carriers Participate in PETS?

a. London Heathrow and London Gatwick are the primary U.K. airports participating in PETS that serve flights from the U.S. See DEFRA's Web site at <http://www.defra.gov.uk/animalh/quarantine/pets/procedures/support-info/assistance-air.htm#noneu> for a list of approved routes from the U.S. to the U.K.

b. DEFRA approves a carrier's participation in PETS on a per-carrier, route-by-route basis. To remain in compliance with the ACAA, U.S. carriers must seek approval from DEFRA to participate in PETS on all direct routes from the U.S., or any other listed country, to participating U.K. airports. Foreign carriers must seek approval from DEFRA to participate in PETS on all of its direct routes from the U.S. to participating U.K. airports. For example, a carrier that only operates direct flights between Dulles International Airport and London Heathrow must seek approval for only that route. However, if a U.S. carrier operates direct flights from a number of cities to participating U.K. airports, it must seek DEFRA approval for all such routes.

c. The carrier's RMOP should be submitted with a list of all routes (point-to-point between city pairs) on which it

proposes to transport service animals in the aircraft cabin and cargo hold.

d. Although carriers must request approval for all routes they operate between the U.S. and participating U.K. airports, they will be held responsible under the ACAA and Part 382 for transporting PETS-compliant service animals only on those routes for which they have received approval from DEFRA.

3. Who is Responsible for Ensuring That a Service Animal is PETS Compliant Before Traveling to the U.K.?

a. It is the passenger's responsibility to obtain the correct documentation verifying that his or her service animal is PETS-compliant, and to present it to the carrier before take off and again to the ARC officer upon landing. See "What Documentation Must Be Presented Upon Arrival in the U.K. Demonstrating That a Service Animal is PETS Compliant?"

b. The ARC may require these documents to be faxed to it by the passenger up to 14 days before travel to allow sufficient time to notify the passenger of any deficiencies in the documentation that must be corrected to avoid quarantine of the animal upon landing. Passengers should contact the ARC to determine how far in advance the ARC will require the documents. Final clearance will be given only after the service animal's microchip has been checked and documents have been found to be in order by ARC personnel upon the passenger's arrival in the U.K.

c. The carrier's sole responsibilities with respect to PETS documentation are (1) To ensure that the passenger is carrying a third country official veterinary certificate or an EU pet passport and supporting documents upon boarding the aircraft with the animal or when checking the animal in as cargo; and (2) to affix these documents to the kennel in the manner prescribed by DEFRA for animals transported in the cargo hold.

4. What Other Requirements Apply to Carriers?

a. The carrier must notify the ARC at least 24 hours before the scheduled departure of a flight to the U.K. if an animal will be onboard. The carrier must comply with this notification requirement or be subject to possible prosecution and penalty by local U.K. authorities for an illegal landing. (See Veterinary Checks Legislative Directive, EU 91/268.) As a best practice, DEFRA and the Enforcement Office urge carriers to fax notification to the ARC at the time of booking, or at least 72 hours before departure, to ensure that ARC staff are

available for dispatch to the proper aircraft and/or cargo location upon landing.

b. If the carrier discovers a smuggled animal onboard a flight into the U.K., the pilot must ensure that the ARC is notified before landing.

c. Carriers transporting a PETS-compliant service animal in the cargo hold must ensure that (1) The animal's kennel meets IATA specifications, and (2) the animal's third country official veterinary certificate or EU pet passport and supporting documents provided by the passenger are affixed to the kennel in the manner prescribed by DEFRA.

5. Are There Penalties for a Carrier's Noncompliance With U.K. Regulations?

a. U.K. regulations require carriers to (1) Obtain approval from DEFRA to participate in PETS; (2) comply with the terms and conditions of the approval; and (3) notify the ARC at least 24 hours prior to a flight's departure to the U.K. that an animal will be onboard.

b. A carrier that transports an animal into the U.K. without meeting any one of the above requirements may be prosecuted for an illegal landing and fined up to £5,000 (approximately \$9,890 as of early January 2007) by the local U.K. enforcement authorities. For example, a carrier that transports animals into the U.K. without an approved RMOP, or a DEFRA-approved carrier that fails to follow its RMOP (e.g., brings animals into the country with insufficient or no documentation, or that fails to comply with the ARC notification requirement) may be prosecuted and fined by the local U.K. enforcement authorities as stated above.

c. If the carrier notifies the ARC of an animal's arrival as described above, and upon landing the ARC determines that the animal is not compliant with U.K. regulations, the passenger, and not the carrier, will be held liable for any penalties that may result from the illegal landing.

C. Specific Guidelines for Air Carriers on Dual Compliance With U.K. Regulations and the ACAA/Part 382

1. May Carriers Require Advance Notice That a Qualified Individual With a Disability Plans To Travel With a Service Animal Between the U.S. (or Any Other Listed Country) and the U.K.?

- U.K. law requires carriers to coordinate with the ARC at least 24 hours in advance when carrying an animal into the U.K. to ensure adequate time to schedule the PETS inspection required upon landing. Carriers may legitimately deny boarding to a service animal when the ARC has had

insufficient notice to schedule an inspection. Therefore, carriers may strongly recommend that passengers with disabilities intending to travel with a service animal on a flight from the U.S. to the U.K. notify them of their intention when making a reservation, or at the latest 72 hours before departure, to avoid the service animal being denied boarding. Carriers must inform passengers traveling with a service animal, and who make a reservation less than 72 hours before departure, that the service animal may be denied boarding if the ARC has insufficient time to schedule the required inspection.

2. May Carriers Limit the Number of Service Animals Allowed Per Flight?

a. U.K. regulatory guidance does not limit the number of guide or assistance dogs allowed in the passenger cabin on a given flight, but the Enforcement Office notes that foreign carriers may wish to take into account the safety provisions outlined in the European Joint Airworthiness Regulations (JAR-OPS 1.260, Carriage of Persons with Reduced Mobility) requiring carriers to ensure that persons with disabilities do not occupy seats where their presence could: (1) Impede the crew in their duties, (2) obstruct access to emergency equipment, or (3) impede the emergency evacuation of the aircraft.

b. Under Part 382, U.S. carriers may not limit the number of service animals allowed in the passenger cabin on any given flight except for safety reasons. It is the position of the Enforcement Office that the same requirement applies to foreign carriers operating to and from the U.S. under the ACAA.

c. Therefore, carriers may only limit the number of service animals in the cabin for legitimate safety reasons.

3. May Carriers Limit the Duration of Flights on Which a Service Animal Will Be Allowed to Travel?

• There are no U.K. laws specifically addressing this issue. The Enforcement Office's view is that U.S. law does not allow carriers covered by Part 382 and/or the ACAA to limit flight duration for service animals on flights between the U.S. and the U.K.

4. May Carriers Require an Early Check-In for a Passenger With a Disability Who Intends To Travel Between the U.S. (or Any Other Listed Country) and the U.K. With a Service Animal?

• It is the Enforcement Office's position that carriers may not require advance check-in times for passengers with service animals beyond what is required of other passengers; however, carriers may strongly recommend early

arrival at the airport to allow adequate time to complete all check-in requirements.

5. May Carriers Designate Seating for Qualified Individuals With a Disability Who Travel With a Service Animal?

a. U.S. carriers must and foreign carriers should provide a bulkhead seat or any other seat consistent with safety regulations, as requested by a passenger accompanied by a service dog.

b. Under Part 382, U.S. carriers must permit a service animal to accompany the passenger with a disability at any seat in which the person sits unless a legitimate safety reason would preclude it (e.g., a dog obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation). It is the Enforcement Office's position that foreign carriers operating to and from the U.S. must also provide similar accommodations under the ACAA.

c. If a service animal cannot be accommodated at the seat location of the passenger with a disability, U.S. carriers must and foreign carriers should offer the passenger the opportunity to move with the animal to a seat location in the same class of service, if present on the aircraft, where the animal can be accommodated.

6. Are There Any Special Equipment Requirements for Carrying Service Animals in the Passenger Cabin or in the Cargo Hold on Flights Between the U.S. (or Any Other Listed Country) and the U.K.?

a. The FODCOM, which is mandatory for U.K. carriers and guidance for non-U.K. carriers, states that as a matter of safety assistance dogs should be properly secured by a harness during take-off, landing, and turbulence. Accordingly, U.K. carriers may require that passengers use a harness to restrain guide and assistance dogs in the cabin on flights between the U.S. and U.K. U.S. and non-U.K. foreign carriers, unless required by their nation's laws, should not require that a harness be used to restrain service animals transported in the passenger cabin on flights from the U.S. to the U.K.

b. Although it is a standard practice by some foreign carriers to require that absorbent mats be placed under guide and assistance dogs traveling in the aircraft cabin, it is not required by U.K. regulations. It is the Enforcement Office's view that carriers may require an absorbent mat to be placed under a service animal during travel in the cabin, but should not require passengers to provide the mat. Carriers that require

the use of absorbent mats should have such mats available.

c. Service animals traveling in the cargo hold must be transported in kennels that meet specifications for size, construction, etc., set forth in IATA's Live Animal Regulations.

7. May Carriers Charge a Passenger With a Disability For Carrying a Service Animal on Flights Between the U.S. and the U.K.?

• Under Part 382, and it is the Enforcement Office's position that under the ACAA itself, carriers may not impose charges for transporting service animals. However, carriers are encouraged to inform qualified individuals with a disability traveling with a service animal that the passenger is responsible for any on-the-ground fees or charges by a public or private sector organization for the purpose of ensuring the animal is compliant with PETS. Inspection fees for assistance dogs are waived by some U.K. airports. Charges to the carrier by the ARC for inspections and other services related to ensuring an animal is PETS-compliant may be passed on to the passenger along with a reasonable administrative fee to cover payment processing expenses. The passenger will also be responsible for any veterinary, kenneling and other costs resulting if the animal is not PETS-compliant and must be treated after arrival, placed in temporary quarantine for up to six months, or removed from the country.

8. May Carriers Require Documentation of PETS Compliance and a Signed Release Before They Will Transport a Passenger's Service Animal Into the U.K.?

• It is the Enforcement Office's position that, as a condition for transporting a PETS-compliant service animal accompanying a qualified individual with a disability into the U.K., a carrier may require the individual to: (1) Present a third country official veterinary certificate or EU pet passport with supporting documents at the gate or when checking a service animal in for cargo hold transport; and (2) sign a release assuming responsibility for fees charged by the ARC to verify that the animal is PETS-compliant and for other costs (e.g., quarantine charges, treatment fees, etc.), including penalties assessed to the passenger by the ARC for failing to ensure the animal is PETS-compliant.

9. May Carriers Require Passengers to Contact the ARC for Confirmation That Their PETS Documentation is in Order?

• Carriers may require that passengers contact the ARC for a pre-approval document indicating that their PETS documentation is in order if the ARC requires a pre-approval document be presented to the ARC inspector upon landing. Otherwise, the carrier should strongly recommend that passengers contact the ARC in advance to verify that the necessary documents are in order and avoid the possibility of the animal being held in quarantine.

10. What Information Must Be Made Available to Passengers Regarding PETS?

a. Under section 382.45, U.S. carriers are required to make available, upon request, information concerning facilities and services related to providing air transportation to qualified individuals with disabilities. This would include information concerning the transport of service animals from the U.S. or other listed country into the U.K. It is the position of the Enforcement Office that such information must also be provided by foreign carriers under the ACAA on flights from the U.S. to the U.K. upon request.

b. Even if not requested, carriers are encouraged to provide all passengers who wish to travel to or transit the U.K. with an animal, whether or not the animal is a service animal, with as much information as possible regarding PETS. It is recommended that this information include the potential consequences of an illegal landing such as prosecution, fines, and quarantine. If a carrier chooses to provide information on PETS compliance to passengers, U.S. carriers are advised that under section 382.55(a)(3), they must provide this information to all passengers accompanied by animals traveling with the carrier into the U.K., including those accompanied by service animals. Foreign carriers operating flights from the U.S. to the U.K. are also urged to provide all passengers traveling with animals into the U.K. with information on PETS compliance, even if not requested.

D. Guidance for Passengers With Service Animals Traveling on Flights Into the U.K.

1. What Should Passengers Know About Bringing a Service Animal Into the U.K.?

a. The U.K. is a rabies-free country and its rules governing the entry of animals into the country, including service animals, are strictly enforced. These rules apply to the transport of

animals on flights that either terminate in or transit the U.K. enroute to a third country.

b. Under U.K. law, only airlines granted official approval by DEFRA may transport animals into the U.K. on approved routes under PETS. U.K. carriers having an approved RMOP may only transport PETS-compliant guide and assistance dogs in the aircraft cabin and must transport other PETS-compliant service animals in the cargo hold. Non-U.K. carriers having an approved RMOP may transport PETS-compliant dogs, cats or ferrets in the cabin or in the cargo hold of the aircraft. However, under Part 382, U.S. carriers having an approved RMOP must transport PETS-compliant service dogs and service cats in the aircraft cabin consistent with FAA safety requirements. It is the position of the Enforcement Office that non-U.K. foreign carriers also must transport PETS-compliant service dogs and service cats in the aircraft cabin on flights into the U.K., consistent with applicable safety requirements, unless prohibited by their nation's laws.

c. Dogs, cats and ferrets that are not PETS-compliant must be carried in the cargo hold and are subject to U.K. import licensing requirements.

d. The ACAA and Part 382 leave it to the discretion of carriers to accept or reject ferrets as service animals, even for transport in the cargo hold.

e. It is a passenger's responsibility to ensure that his or her service animal is fully compliant with PETS requirements. Passengers living outside the U.K. must have a licensed veterinarian certify that all PETS requirements have been met by completing, signing and date-stamping a third country official veterinary certificate for domestic dogs, cats and ferrets. See the question below "What Documentation Must Be Presented by Passengers Upon Arrival in the U.K. Demonstrating That a Service Animal is PETS Compliant?"

f. The ARC may require that passengers fax the third country official veterinary certificate and supporting documents to the ARC up to 14 days prior to the date of travel. The ARC may issue a pre-approval document to the passenger indicating that these documents are in order and require that it be presented to the ARC inspector. The passenger is responsible for obtaining all documents the particular ARC requires for presentation upon landing. The Heathrow ARC can be contacted at

HARC.GeneralEnq@cityoflondon.gov.uk, 011 44 20 8745 7894 (telephone) or 011 44 20 8759 3477 (fax). The Gatwick ARC

can be contacted at *animalaircare@btconnect.com*, 011 44 12 9346 2180, or 011 44 12 9366 6841 (fax).

g. An animal that leaves the aircraft in a non-listed country will be refused re-entry into the U.K. under PETS until a new blood test and 6 month waiting period have elapsed.

h. Passengers traveling with a service animal should provide notice to the carrier at the time the reservation is made or at the latest 72 hours prior to the flight's departure. This will allow the carrier to give the ARC ample notice to plan for the animal's PETS inspection upon the flight's arrival in the U.K.

i. The passenger must present the required documents to airline personnel at the gate prior to departure and to ARC personnel upon landing in the U.K. before deplaning.

j. There are costs and fees associated with PETS compliance, all of which are paid by the passenger, unless the carrier has voluntarily arranged with the ARC to pay the fee for the initial inspection upon landing, or the ARC provides initial inspection services free of charge (e.g., at the time this guidance was published the London Heathrow ARC inspected guide and assistance dogs at no charge). Passengers should check with the ARC concerning any fees for which they are responsible and acceptable payment methods.

k. Failing to comply with PETS will result in additional costs to the passenger. Egregious or repeated violations may result in prosecution and the imposition of fines by the local British enforcement authorities.

2. What Documentation Must Be Presented by Passengers Upon Arrival in the U.K. Demonstrating That a Service Animal is PETS Compliant?

a. Upon landing in the U.K., a passenger accompanied by a PETS-compliant service animal must present either a date-stamped third country official veterinary certificate, signed by a veterinarian licensed by an approved country or an EU pet passport demonstrating that the animal has received:

i. A microchip implant readable by an ISO (International Standards Organization)-compatible scanner or by another scanner compatible with the implanted microchip provided by the passenger,

ii. A vaccination against rabies, and
iii. A rabies antibodies blood test (except for ferrets). This test must be completed at least six months before the animal's initial entry to the U.K. This waiting period applies only once as long as subsequent rabies boosters are

administered in accordance with the vaccine manufacturer's instructions; and

iv. Treatment for certain parasites.

b. A model of the third country official veterinary certificate can be found at http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_065/l_06520040303en00130019.pdf.

c. For PETS-compliant service animals traveling in the cargo hold, the veterinary certificate or pet passport must be presented to the carrier at check-in so that the carrier can affix the certificates to the kennel in the manner prescribed by DEFRA. If the service animal is found not to be PETS-compliant, it may be placed in quarantine for up to 6 months or removed from the country, as determined by the ARC.

3. What Specific Steps Must a Passenger Take To Ensure a Service Animal Is PETS-Compliant?

- See DEFRA's Web site at <http://www.defra.gov.uk/animalh/quarantine/pets/procedures/owners.htm> for detailed current information about compliance procedures, including a compliance checklist and approved carriers and routes between the U.S. and U.K.

4. What Costs and Fees Must a Passenger Pay To Bring a Service Animal Into the U.K.?

a. The passenger will be responsible for paying all veterinary costs associated with preparing an animal for travel and any fees charged by the ARC for checking the animal upon arrival unless the airline has voluntarily arranged with the ARC to pay the fee for the initial inspection upon landing or the ARC provides initial inspection services free of charge. Passengers may also be required to pay a reasonable administrative fee to the airline to cover the cost of processing these payments to the ARC.

b. If an animal is not PETS-compliant, the passenger will be responsible for any costs associated with quarantine for tick and tapeworm treatment, a six-month quarantine after a rabies vaccination and follow-up blood test, or removing the animal from the country, as determined by the ARC.

c. Any penalties resulting from the illegal landing will be the sole responsibility of the passenger, unless it can be shown that the carrier made no attempt to check for the required PETS documents when accepting the animal for transport or to notify the ARC in advance of an animal on board or both.

5. What Are the Penalties to the Passenger for Failing To Comply With PETS?

- In egregious cases of noncompliance such as concealing and smuggling an animal not vaccinated against rabies, or for repeated failures to have the necessary treatments and tests performed and certified, a passenger may be prosecuted by the local British authorities and be subject to a penalty of up to £5,000 (approximately \$9,890 in early January 2007).

Glossary

ACAA—*Air Carrier Access Act*: U.S. legislation prohibiting discrimination on the basis of disability by both U.S. and foreign carriers in providing air transportation services.

ARC—*Animal Reception Center*: A facility at an airport for receiving and inspecting animals arriving in the U.K. from an EU or third country to ensure their compliance with EU and domestic regulations on animal health.

CAA—U.K. Civil Aviation Authority.

Community—A collective term referring to those countries that comprise the European Union.

DEFRA—U.K. Department for Environment, Food and Rural Affairs.

Direct conflict of law—A contradiction between a requirement of the ACAA and an applicable provision of the law of a foreign nation, precluding compliance with both.

FAA—U.S. Federal Aviation Administration.

IATA—International Air Transport Association.

ISO—International Standards Organization.

(EC) No. 425/2005—European Union regulation amending the list of third countries from which the movement of pet animals into the Community may be authorized.

(EC) No. 998/2003—European Union regulation on the animal health requirements applicable to the non-commercial movement of pet animals between member states and from listed third countries. The regulation allows the U.K. to broadly continue with its domestic Pet Travel Scheme for cats and dogs. Conditions for the entry of ferrets into member states from other member states and from listed third countries come directly within the scope of this regulation.

Listed Country—A country listed in (EC) No. 425/2005, from which the movement of pet animals into a European Community member state may be authorized, provided that certain requirements are met.

Member State—A country that is a member of the European Union.

NCMPAR 2004—Non-Commercial Movement of Pet Animals (England) Regulations 2004: U.K. legislation implementing and enforcing the EU regulation EC 998/2003.

PART 382—Nondiscrimination on the Basis of Disability in Air Travel: U.S. regulation implementing the Air Carrier Access Act, which presently does not by its terms address foreign carriers except with respect to disability reporting requirements.

Participating Airport—An airport having an animal reception center approved by DEFRA to receive animals transported into the U.K. by air from an EU Community country or a listed third country.

Participating Carrier—A carrier whose required method of operation document (RMOP) has been approved by DEFRA, authorizing it to transport animals into the U.K. under the Pet Travel Scheme.

Pet Passport—A document that clearly identifies an animal and officially records the health information necessary under the Pet Travel Scheme (PETS) to verify its compliance with EU and local animal health regulations. A pet passport allows animals to travel easily between EU member countries without undergoing quarantine.

PETS (Pet Travel Scheme)—A regulatory plan administered by the U.K.'s Department for Environment, Food and Rural Affairs (DEFRA), that allows certain animals—dogs, cats, and as of July 2004, ferrets—from certain countries to enter the U.K. without a six-month quarantine as long as the animals are identified by microchip, vaccinated against rabies, blood tested (except ferrets), treated against certain parasites, accompanied by appropriate documentation and transported by an approved carrier.

Qualified Individual With a Disability—An individual with a disability who (a) With respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies, takes those actions necessary to avail himself or herself of facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier;

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

(c) With respect to obtaining air transportation, or other services or accommodations required by 14 CFR Part 382: (1) Purchases or possesses a valid ticket for air transportation on an

air carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and (2) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers.

Required Method of Operation (RMOP)—An agreement between a carrier and DEFRA concerning the procedures the carrier will use to ensure the proper transport of animals into the U.K. under PETS. This document must be approved by DEFRA before the carrier can begin PETS participation.

SLA (Service Level Agreement)—An agreement between an ARC and a carrier that the ARC will verify the PETS compliance status of any animal arriving at the local airport over one of the carrier's approved routes.

Issued in Washington, DC, on February 20, 2007.

Samuel Podberesky,

Assistant General Counsel for Aviation, Enforcement and Proceedings.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 365 and 366

[Docket No. RM05-32-003, Order No. 667-C]

Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005

Issued February 20, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final order; order denying rehearing.

SUMMARY: By this order, the Federal Energy Regulatory Commission denies rehearing of Order No. 667-B. Order No. 667-B addressed requests for clarification and rehearing of prior orders that implemented repeal of the Public Utility Holding Company Act of 1935 and enactment of the Public Utility Holding Company Act of 2005.

DATES: *Effective Date:* This order is effective on March 28, 2007.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Sudeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellenhoff.

Subtitle F of Title XII of the Energy Policy Act of 2005 (EPA 2005) repealed the Public Utility Holding Company Act of 1935 (PUHCA 1935) and enacted the Public Utility Holding Company Act of 2005 (PUHCA 2005).¹ In Order No. 667, the Federal Energy Regulatory Commission (Commission) issued regulations to implement Subtitle F.² In Order No. 667-A, the Commission denied rehearing in part and granted rehearing in part of Order No. 667.³ In Order No. 667-B, the Commission granted clarification in part, denied rehearing in part and granted rehearing in part of Order No. 667-A.⁴ In the present order, we deny rehearing of Order No. 667-B.

1. American Public Power Association together with National Rural Electric Cooperative Association (APPA/NRECA) and Florida Municipal Power Agency together with Seminole Electric Cooperative, Inc. (FMPA/Seminole) raise one issue on rehearing of Order No. 667-B: whether PUHCA 2005's accounting, record retention and reporting requirements should apply to a holding company system whose traditional utility operations are confined substantially to one state but that holds significant interests in out-of-state exempt wholesale generators (EWGs), foreign utility companies (FUCOs), and qualifying facilities (QFs). They assert that these requirements should apply because, they claim, regulators would not otherwise have

access to relevant accounts and records and therefore would be unable to prevent inappropriate cross-subsidization or other misallocations of costs within the holding company system. We deny rehearing as discussed below.

Background

2. Under the Commission's regulations under PUHCA 2005, a "single-state holding company system" is eligible for waiver of the Commission's PUHCA 2005 accounting, record retention and reporting requirements.⁵ In Order No. 667-A, the Commission defined "single-state holding company system" as a system that derives no more than 13 percent of its "public-utility company" revenues from outside a single state.⁶ In Order No. 667-B, the Commission clarified that revenues from EWGs, FUCOs or QFs do not constitute public-utility company revenues for purposes of determining status as a single-state holding company system.⁷ As a result, a single-state holding company system as defined in Order Nos. 667-A and 667-B may hold interests in EWGs, FUCOs and QFs without, by virtue of those interests, being subject to the Commission's PUHCA 2005 accounting, record retention and reporting requirements.

3. The Commission reasoned that this approach follows the approach taken under section 3(a) of PUHCA 1935, which exempted a holding company from plenary oversight under PUHCA 1935 if the holding company's traditional utility operations were largely confined to one state.⁸ The exemption in section 3(a) reflected Congress' assessment that other state and federal corporate and rate regulation was sufficient to protect against abuse in those circumstances. Further, the 13 percent standard adopted by the Commission in Order Nos. 667-A and B to determine who qualifies for the single state holding company waiver was the same standard applied by the SEC under PUHCA 1935, thus resulting in no more onerous regulatory requirements than those in place under PUHCA 1935. In Order No. 667-B, the Commission found that other state and federal regulation continues to be sufficient to protect against abuse, without subjecting a holding company system to the Commission's PUHCA 2005 accounting, record retention and

¹ Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005).

² *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005).

³ *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667-A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213 (2006).

⁴ *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667-B, 71 FR 42750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006).

⁵ 18 CFR 366.3(c)(1).

⁶ Order No. 667-A, FERC Stats. & Regs. ¶ 31,213 at P 28.

⁷ Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 at P 20.

⁸ U.S.C. 79c(a); see 15 U.S.C. 79z-5a and 79z-5b.