

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 27

RIN 2105-AD91

Docket No. DOT-OST-2011-0182

Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance (U.S. Airports)

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

ACTION: Final Rule.

SUMMARY: The Department is issuing a final rule to amend its rules implementing section 504 of the Rehabilitation Act of 1973, which requires accessibility in airport terminal facilities that receive Federal financial assistance. The final rule includes new provisions related to service animal relief areas and captioning of televisions and audio-visual displays that are similar to existing requirements applicable to U.S. and foreign air carriers under the Department's Air Carrier Access (ACAA) regulations, 14 CFR Part 382 (Part 382). The final rule also reorganizes the provision in 49 CFR § 27.72 concerning mechanical lifts for enplaning and deplaning passengers with mobility impairments, and amends this provision to require airports to work not only with U.S. carriers but also foreign air carriers to ensure that lifts are available where level entry loading bridges are not available. This final rule applies to airport facilities located in the United States with 10,000 or more annual enplanements that receive Federal financial assistance.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Maegan L. Johnson, Senior Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue, SE, Room W96-409, Washington, D.C., 20590, (202) 366-9342. You may also contact Blane A. Workie, Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue, SE, Room W96-464, Washington, D.C., 20590, (202) 366-9342. Arrangements to receive this notice in an alternative format may be made by contacting the above named individuals.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1996, the U.S. Department of Transportation amended its regulation implementing section 504 of the Rehabilitation Act of 1973 to create a new section, 49 CFR 27.72, concerning regulatory requirements for U.S. airports to ensure the availability of lifts to provide level-entry boarding for passengers with disabilities flying on small aircraft.¹ *See* 61 FR 56409. This requirement paralleled the lift provisions applicable to U.S. carriers in the ACAA rule, 14 CFR Part 382. On May 13, 2008, the Department of Transportation published a final rule that amended Part 382 by making it applicable to foreign air carriers. *See* 73 FR 27614. This amendment also included provisions that require U.S. and foreign air carriers, in cooperation with airport operators, to provide service animal relief areas for service animals that accompany passengers

¹Recognizing the need for level-entry boarding for passengers with mobility impairments on larger aircraft, the Department extended the applicability of its 1996 rule to aircraft with a seating capacity of 31 or more passengers in 2001. *See* 66 FR 22107.

departing, connecting, or arriving at U.S. airports. *See* 14 CFR 382.51(a)(5). Part 382 also now requires U.S. and foreign air carriers to enable captioning on all televisions and other audio-visual displays that are capable of displaying captioning and that are located in any portion of the airport terminal to which any passengers have access. *See* 14 CFR 382.51(a)(6). As a result of the 2008 amendments to Part 382, the requirements in Part 27 no longer mirrored the requirements applicable to airlines set forth in Part 382 as had been intended.

On September 21, 2011, the Department issued a notice of proposed rulemaking (NPRM) in Docket OST 2011-0182 titled, “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance (U.S. Airports).” *See* 76 FR 60426 *et.seq.* (September 29, 2011). The Department proposed to amend Part 27 by inserting provisions that would require airport operators to work with carriers to establish relief areas for service animals that accompany passengers with disabilities departing, connecting, or arriving at U.S. airports; to enable high-contrast captioning² on certain televisions and audio-visual displays in U.S. airports; and to negotiate in good faith with foreign air carriers to provide, operate, and maintain lifts for boarding and deplaning where level-entry loading bridges are not available. The Department also proposed updates in the NPRM to outdated references that existed in 49 CFR Part 27 by deleting obsolete references to the Uniform Federal Accessibility Standards in 49 CFR § 27.3(b), and changing the language “appendix A to part 37 of this title” to “appendices B and D of 36 CFR part 1191, as modified by appendix A to part 37 of this title.”

² High-contrast captioning is defined in 14 CFR § 382.3 as “captioning that is at least as easy to read as white letters on a consistent black background.” As explained in the preamble to Part 382, defining “high-contrast captioning” in such a way not only ensures that captioning will be effective but also allows carriers to use existing or future technologies to achieve captioning that are as effective as white on black or more so.

The Department asked a series of questions regarding the proposed amendments to Part 27. We received 481 comments in response to the NPRM, the majority of which were received from individual commenters. The Department also received a number of comments from disability organizations, airports, and airport associations. We have carefully reviewed and considered these comments. The significant, relevant issues raised by the public comments to the NPRM are set forth below, as is the Department's response.

Service Animal Relief Areas

In the NPRM, the Department sought comment on whether it should adopt requirements regarding the design of service animal relief areas and what, if any, provisions the rule should include concerning the dimensions, materials used, and maintenance for service animal relief areas. The Department explained that commenters should consider the size and surface material of the area, maintenance, and distance to service animal relief areas, which could vary based on the size and configuration of the airport. The Department also sought comment on the compliance date for these requirements.

Comments:

Commenters that indicated that they are service animal users, and other individual commenters, favor the construction of service animal relief areas on non-cement surfaces. These commenters also expressed a desire to see overhangs covering service animal relief areas to protect service animal users from the elements. Airport and airport organization commenters, however, do not support specific mandates regarding the design, number, or location of service animal relief areas, and encourage the Department to adopt the

general language that appears in Part 382. Airports and airport organizations explain that using broader guidelines with respect to the design, materials and maintenance of service animal relief areas would allow airports to try new materials in the future as technology improves, and would allow airports to design service animal relief areas based on that airport's unique geographical location.

The Department also sought comment on what would be an appropriate number of service animal relief areas in an airport and how that number should be determined. For example, should the number be determined by the size or configuration of the airport (e.g., the number, location, and design of terminals and concourses) and/or the amount of time it would take for an individual with a disability to reach a service animal relief area from any gate within the airport?

The majority of individual commenters and disability organizations favored a rule that would require at least one relief area in each airport terminal. These commenters also suggest, however, that if the rule were to only require one relief area per terminal, the airport should provide either escort service or transportation to service animal relief areas to expedite trips to service animal relief areas. A number of individual commenters opposed using the amount of time it would take an individual with a disability to reach a relief area from a particular gate as a barometer for determining the number of required service animal relief areas an airport should have, reasoning that walking time varies depending upon the individual. Some individual commenters, however, did suggest imposing a blanket standard of one service animal relief area per every 15 gates or at every quarter of a mile.

Finally, with respect to the placement of service animal relief areas, the Department sought comment on whether service animal relief areas should be located inside or outside the sterile³ area of an airport. The Department presented this question to the public after the Transportation Security Administration (TSA) in May 2011 revised its guidelines, “Recommended Security Guidelines for Airport Planning, Design and Construction,” making clear that airports may provide Service Animal Relief Areas in sterile areas of the airport. There is overwhelming support by individual commenters and disability organizations that at least one relief area should be located in the sterile area of each airport terminal. Airports and airport associations, however, advocate that the rule not specifically mandate that service animal relief areas be located in the sterile area of an airport. These groups argue that the determination as to whether to place service animal relief areas in the sterile area of an airport should be made on an airport-by-airport basis.

The Department also sought comment on whether the rule should include a provision requiring airports to specify the location of service animal relief areas on airport websites, maps and/or diagrams of the airport, including whether the relief area is located inside or outside a sterile area. Individual commenters support requiring airports to specify relief area locations on websites, maps and signage, but also suggest that airports make braille maps available to individuals with visual impairments to locate service animal relief areas. Some individual commenters also suggest that the Department establish a “universal symbol” for service animal relief areas, which could be used by airports throughout the country to identify service animal relief areas.

Conversely, the Airports Council International—North America states that additional

³ The sterile area is the area between the TSA passenger screening checkpoint and the aircraft boarding gates. See 49 CFR 1540.5.

direction signage within the terminal building could potentially overload passengers and become counterproductive in assisting passengers with locating service animal relief areas. The organization reasoned that because carriers provide escorts to passengers with service animals, escorts who know the location of the service animal relief areas should be sufficient.

Anticipating that its final rule might include requirements with respect to service animal relief areas that are more involved than the requirements for U.S. and foreign carriers that exist in Part 382, the Department solicited comment in the NPRM on whether any requirement that applies to U.S. airports should also be applied to U.S. and foreign carriers. All commenters that addressed the Department's inquiry agreed that any requirement that applied to U.S. airports should also be applied to both U.S. and foreign carriers.

Finally, the NPRM sought comment on whether the final rule regarding establishing service animal relief areas should take effect 120 days after its publication in the Federal Register. While the majority of individual commenters believe that 120 days is an appropriate amount of time to comply with the requirements of the rule regarding service animal relief areas, airports and airport organizations generally support a longer timeframe to comply with the requirements. These groups argue that airports need additional time to raise revenue to implement any additional requirements with respect to service animal relief areas that may be imposed by the rule.

DOT Response:

Having fully considered the comments, the Department has decided that it will not adopt specific requirements with respect to the dimensions, design, materials, and

maintenance of service animal relief areas, with the exception that such service animal relief areas be wheelchair accessible. While the Department specifically mandates in the final rule that service animal relief areas be wheelchair accessible, this requirement, although new to Part 27, is already a requirement that is imposed upon U.S. airports by the Americans with Disabilities Act. Nonetheless, the Department decided to include this mandate in the final rule to remind U.S. airports of their obligation to ensure that service animal relief areas are wheelchair accessible.

This final rule, similar to Part 382, also requires airports to consult with service animal training organizations regarding the design, dimensions, materials and maintenance of service animal relief areas. We expect that most airports will likely choose to work with local chapters of national service animal training organizations to comply with this requirement as those organizations may be better suited to make specific suggestions that are tailored to individual airports though many service animal training organizations can undoubtedly be a useful resource for U.S airports.

With respect to the number of service animal relief areas required at an airport, the Department has decided to require airports to provide at least one service animal relief area in each airport terminal. As proposed in the NPRM, the Department is using airport terminals as the standard upon which airports must determine the number of required service animal relief areas, rather than using the amount of time it would take for an individual with a disability to reach a service animal relief area from a particular gate. The Department notes that while some individual commenters and disability organizations suggest that we adopt requirements in Part 27 that would require escort service to relief areas in the event that the Department decided to adopt the requirement

for a single relief area per terminal, Part 382 already requires U.S. and foreign air carriers to provide, in cooperation with U.S. airport operators, escorts to individuals with disabilities to service animal relief areas upon request. *See* 14 CFR 382.91(c). As such, the Department is not imposing a requirement for U.S. airports to provide escort service to relief areas.

This final rule does require that airports not only have at least one relief area per terminal but also that this service animal relief area, with limited exceptions, be located in the sterile area of each airport terminal to ensure that individuals with service animals are able to access service animal relief areas when traveling, particularly during layovers. Recognizing that the TSA may prohibit a particular airport from locating a relief area in the sterile area of a terminal, the rule provides airports with an exception to this requirement if TSA prohibits a particular airport from locating a relief area in the sterile area of a terminal for security-related reasons. The Department also realizes that, based on an airport's configuration, a relief area in the non-sterile area of an airport may be more desirable to relief area users. As such, the Department is allowing airports the option of placing a relief area in a location other than the sterile area of a terminal if a service animal training organization, the airport, and the carriers in the terminal in which the relief area will be located agree that a relief area would be better placed outside the terminal's sterile area instead of inside the sterile area. The airport must, however, document and retain a record of this agreement.

The Department decided not to adopt a provision in the rule requiring airports to specify the location of service animal relief areas on airport websites, on any airport map intended for use by travelers, and on signage located throughout the airport. The

Department reasoned that a regulation requiring airports, which have already been equipped with service animal relief areas for a number of years as a result of the requirements in Part 382, to specify the location of service animal relief areas is unnecessary as a number of airports already have signage indicating the location of service animal relief areas. Airports also generally aim to provide signage in accordance with internationally-agreed standards as set forth in ICAO Annex 9. If the Department finds that there is confusion about the location of service animal relief areas at U.S. airports, it will revisit this issue.

Finally, the Department is providing U.S. airports one year to comply with the requirement to establish at least one service animal relief areas per airport terminal. The Department believes this is sufficient time for U.S. airports to raise the needed revenue⁴ and determine the appropriate location as well as the design of the service animal relief areas in consultation with service animal training organizations and in cooperation with airlines.

Information for Passengers

The Department sought comment in the NPRM on its proposal to require airport operators to enable high-contrast captioning on television and audio-visual displays in U.S. airports, which is a requirement that is imposed upon U.S. and foreign carriers in Part 382 for the portion of the terminal facilities they own, lease or control at U.S. airports to which passengers have access. The Department also sought comment on whether a thirty-day implementation period is adequate.

Comments:

⁴ See NPRM wherein the Department estimates that the initial cost to establish a relief area for each terminal is approximately \$5,000 per terminal, with low- and high-cost alternatives ranging from \$1,000 to \$10,000.

Airport and airport organization commenters suggest that the Department only require those televisions and audio-visual displays owned or controlled by airports to be subject to the captioning requirement. Individual commenters, however, favor a blanket requirement that captioning be enabled on all televisions throughout the airport. Given the non-burdensome nature of this requirement, the Department proposed a thirty-day implementation period in the NPRM. All but one of the nine commenters that submitted comments on this subject agree that 30 days is a sufficient implementation period for this requirement, while one airport commenter suggests a 90 to 120 day implementation period for larger airports with more televisions.

The Department sought comment on whether it should require U.S. airports to display messages and pages broadcast over public address systems on video monitors so that persons who are deaf or hard-of-hearing do not miss important information available to others at an airport. The Department also sought comment on whether visual display of information announced over the public address system is the best means to disseminate airport-related announcements to passengers with hearing impairments. Some airports and airport organizations commented that while displaying messages on video monitors is one method of providing information to passengers with a hearing impairment, the Department should not adopt a rule specifically requiring that this method be used. Individual commenters suggest, however, that in addition to the use of video monitors to communicate with individuals with a hearing impairment throughout the airport, the Department could require airports to install hearing loops at ticket counters and in the gate areas of airports and LED screens reserved for the display of essential announcements.

The Department also sought comment as to whether it should establish a performance standard for providing information to individuals with hearing impairments rather than require airports to use a particular medium (e.g., video monitors, wireless pagers, erasable boards). Some airport and airport organization commenters support the adoption of performance standards rather than specific requirements, in order to allow airports the flexibility to determine the most effective way to communicate with passengers and to account for developing technologies.

The Department also asked interested persons to comment on whether the Department should simply require that airports provide the text of the announcements made over the public address system promptly or should instead require that there be simultaneous visual transmission of the information. While one airport organization supports providing the text of the announcement promptly, as the display of the text usually closely follows announcements made over public address systems, a disability rights organization supports simultaneous transmission of the information through public information displays.

Finally, the Department sought comment on whether all announcements made through the public address system should be displayed in a manner that is accessible to deaf and hard-of-hearing travelers, or only those announcements that are essential. The Department also sought comment on the amount of time and the cost involved in establishing such a system. Individual commenters support displaying all announcements in a manner accessible to deaf and hard-of-hearing travelers, with one commenter suggesting that essential messages should be given priority over non-essential messages. Airports and airport associations advocate that only essential messages be displayed in an

accessible manner so as not to overwhelm a technology system and dilute the information that passengers need. With respect to the amount of time and cost involved in establishing such a system, one individual commenter and one disability organization suggest that 30 days would be a sufficient amount of time for airports to establish the system, while an airport commenter contends that 30 days is too short a time period to establish such a system and suggests a two-year implementation time period. Furthermore, one airport commenter states that it would cost \$100,000 to establish such a system as long as the capability exists in the airport's visual display software. The airport further explains that the cost to establish such a system would be difficult to determine if the airport didn't have software capable of displaying visual pages.

DOT's Response:

After carefully considering the comments the Department received on this subject, we have decided to adopt the proposed language in the NPRM, which closely follows the current requirements that apply to U.S. and foreign carriers in Part 382. As such, airport operators will be required to enable or ensure high-contrast captioning at all times on televisions and other audio-visual displays capable of displaying captions located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal to which passengers have access. In the case of televisions and other audio-visual displays located in space leased by a shop or restaurant, the airport operator is obligated to ensure by contract or other means that the shop or restaurant enables the captioning feature on its televisions and other audio-visual displays in a manner that meets this obligation.

The Department decided to adopt the language in the NPRM reasoning that the adoption of a rule requiring airports to enable the captioning feature is not a costly or otherwise onerous requirement as most televisions currently in use at U.S. airports have captioning capabilities. Notwithstanding this, because the Department received such a limited number of comments with respect to its questions regarding how to best provide information to deaf and hard-of-hearing passengers in airports, we have decided not to impose any new requirements on this subject that exceed the requirements that currently exist with respect to U.S. and foreign air carriers in Part 382.

Boarding Lifts for Aircraft

The Department sought comment as to whether it should require U.S. airport operators to negotiate in good faith with foreign carriers to ensure that ramps or mechanical lifts are available for enplaning and deplaning passengers with disabilities.

Comments:

We received one comment from an airport organization in response to our inquiry. This commenter supports airports negotiating with foreign carriers to ensure the availability of lifts. The organization reasons that this requirement would ensure that all parties would be held accountable for providing boarding assistance to passengers.

With respect to our last inquiry, whether the Department should require airports to purchase additional lifts, the only comment we received was from an airport that opposes adopting such a requirement because of the potential financial impact it could have on airports.

DOT's Response:

The Department has considered the two comments received with respect to the questions it posed regarding boarding lifts for aircraft. The Department has decided to adopt the proposed language in the NPRM, which requires airports to negotiate with foreign carriers, in addition to U.S. carriers, to ensure the provision of lifts, ramps and other devices used for boarding and deplaning where level-entry boarding is not available. This requirement only imposes the same requirement for foreign carriers that has existed for airport operators with respect to U.S. carriers. Due to the lack of commentary from the public, the Department has decided to refrain from imposing additional requirements on airports to purchase additional lifts.

REGULATORY ANALYSES AND NOTICES

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

This action has been determined not to be significant under Executive Order 12866 and the Department's Regulatory Policies and Procedures. It has not been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 and Executive Order 13563.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, tailor the regulation to impose the least burden on society consistent with obtaining the regulatory objectives, and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Of the three provisions in the final rule, the only element of the final rule that will involve a substantial cost to airports is the requirement that service animal relief areas for service animals be located inside the sterile area of each terminal. The relief area requirement in the final rule promotes the aforementioned qualitative values by ensuring equal access to air transportation by passengers with disabilities traveling with service animals. In the Department's view, the non-quantifiable benefits associated with requiring at least one relief area per airport terminal and requiring this service animal relief area be in the sterile area of the airport with limited exceptions is wholly consistent with the ACAA's mandate to eliminate discrimination against individuals with disabilities in air transportation.

The primary non-quantifiable benefit to a passenger with a disability traveling with a service animal is that he or she does not have to leave the sterile area of the terminal to access the airport's relief area. While the Department does not have sufficient information to quantify the value of time savings associated with requiring that service animal relief areas be located in the sterile area of the airport, a number of commenters to the NPRM commented that they were often forced to create itineraries with longer layover times because of the amount of time it takes for passengers with a disability to locate service animal relief areas and the amount of time it takes to exit the sterile area, relieve a service animal, and pass through security again. The Department recognizes that individuals with disabilities may be prevented from visiting service animal relief areas located outside the sterile area of an airport during a layover. Furthermore, travelers with disabilities that have a layover may not be able to access landside service animal relief areas due to time constraints and disability-related reasons. The new

requirement in the rule requiring airports to place a relief area in the sterile area of each terminal of the airport will allow such travelers access to service animal relief areas.⁵

Other non-quantifiable benefits associated with locating service animal relief areas in the sterile area of each airport terminal include the ability for passengers to consider more flight options. Those passengers previously limited to selecting itineraries with extended layover periods may consider travel itineraries with shorter layover times once service animal relief areas are located in the sterile area of an airport. In addition, locating service animal relief areas in the sterile area would promote independence among those passengers accompanied by service animals as they may be able to independently locate service animal relief areas without relying on the assistance of escorts, which are now commonly used to assist passengers traveling with service animals in traversing through the airports and exiting and reentering the sterile area during a layover. Locating service animal relief areas in the sterile area will also reduce the amount of effort and discomfort experienced by individuals with disabilities when trying to relieve their service animals during a layover.

The final rule also offers the benefits of improved convenience to non-disabled persons accompanied by an animal or pet while at the airport. Although these benefits are not encompassed by the rule's purpose, individuals traveling with pets or security dogs trained to detect security threats may also find it convenient to use service animal relief areas located in the secure area of the airport.

As stated above, the final regulatory assessment estimates that there will be some cost for airports to implement the service animal relief area requirements in the final rule.

⁵ See the Transportation Security Administration's (TSA) Recommended Security Guidelines for Airport Planning, Design and Construction, May of 2011.
http://www.tsa.gov/assets/pdf/airport_security_design_guidelines.pdf.

The Federal Aviation Administration (FAA) lists 387 airports in the United States. Of these, 29 are large hubs, 35 are medium hubs, 74 are small hubs, and 249 are non-hubs, which are defined as having more than 10,000 passenger enplanements per year but less than 0.05% of the overall total enplanements. As we explained in the NPRM, there is no consistent method for assigning a number of terminals to an airport given the widely divergent plans for airports. Notwithstanding, we were able to use the airport category defined by the FAA in terms of the number of enplanements to estimate the number of terminals in a given airport. Based on this system, we assume that large hubs have an average of 7 terminals; medium hubs average 5 terminals, small hubs average 3 terminals, and non-hubs average 1 terminal per airport. As a result, we estimate that 849 terminals would be affected by this service animal relief requirement in the final rule. We do note that this is a high estimation given that some airports may have already installed service animal relief areas within the sterile area of the airport; however, because most service animal relief areas currently reside outside of the sterile area, we expect that most of these terminals would be impacted by the requirements in the final rule.

The final regulatory assessment estimates that the service animal relief area requirements will cost those 387 airports affected by the rule approximately \$88.1 million over 20 years, discounted at 7%. As explained above, the total cost of installing service animal relief areas varies by airport as the cost incurred by an airport will depend upon the number of terminals in the airport. This cost estimate, however, considers the cost of construction and maintenance of service animal relief areas and the calculation of the amount of foregone rent that airports may forfeit by using space in an airport terminal for

service animal relief areas that, conceivably, would have been rented out to restaurants or other vendors. We note that the cost of foregone rent and construction materials is also dependent upon airport size as rent space and materials appear to be more expensive at larger airports. This cost estimate also factors in the cost incurred by airports from consulting with service animal training organizations on the design, dimensions, materials, maintenance, and location of service animal relief areas.

While the final regulatory assessment estimates that there will be some cost for airports to implement the service animal relief area requirements in the final rule, the boarding lift requirement and the captioning requirement are expected to have minimal financial impact on airports. The requirements in the final rule related to lifts will not require airports to purchase additional lifts because the airports with 10,000 or more enplanements will already have lifts available as a result of the existing agreements between airports and U.S. carriers requiring the availability of lifts at those airports.

There is, however, a cost associated with the enabling of captioning on airport-controlled televisions. The estimated total present value over 20 years to enable captioning on television is \$410,840, discounted at 7%. The respective annualized value is \$38,780. This figure is based on the assumption that, initially, captioning will need to be enabled on 100% of airport-controlled televisions; in subsequent years, captioning will only need to be reactivated on 10% per annum of those television in which captioning was initially activated.

B. Executive Order 13132 (Federalism)

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

regulation that: (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; or (2) imposes substantial direct compliance costs on States and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). The funding and consultation requirements of Executive Order 13084 do not apply because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), requires an agency to review regulations to assess their impact on small entities, including small businesses, small nonprofit organizations and small governmental jurisdictions. Privately owned airports with annual revenues that do not exceed \$32.5 million are considered small businesses by the size standards created by the Small Business Administration. Furthermore, publicly owned airports are categorized as small entities if they are owned by a jurisdiction with fewer than 50,000 inhabitants. In light of this standard, we estimate that approximately 55 of the 387 airports affected by the final rule are considered small entities. Therefore, the Department has determined that this rule will have an impact on

some small entities. However, the Department has determined that the impact on entities affected by the rule will not be significant. We estimate that the cost of constructing and maintaining service animal relief areas at those 55 airports, assuming that those airports contain only 1 terminal, is approximately \$4 million over 20 years at a 7% discount rate. Considering that the combined annual revenue of small-hub and non-hub airports in 2013 alone was \$2.4 billion, the costs associated with this rule will not be significant.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget (OMB) (Pub. L. 104–13, 44 U.S.C. 3501 et seq.). The Department may not impose a penalty on persons for violating information collection requirements when an information collection required to have a current OMB control number does not have one.

This final rule does not adopt any new information collection requirements subject to the Paperwork Reduction Act (PRA).

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and has determined that it is categorically excluded pursuant to DOT Order

5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes “[a]ctions relating to consumer protection, including regulations.” The purpose of this rulemaking to amend the Department's regulations implementing section 504 of the Rehabilitation Act to require service animal relief areas and captioning of televisions and audio-visual displays. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

List of Subjects

49 CFR Part 27: Airports, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Transportation is amending

49 CFR Part 27 as follows:

1. The authority citation for Part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16 (a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310 (a) and (f)); sec. 165 (b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

2. In § 27.3, paragraph (b) is amended to read as follows:

§ 27.3 Applicability.

* * * * *

(b) Design, construction, or alteration of buildings or other fixed facilities by public entities subject to part 37 of this title shall be in conformance with appendices B and D of 36 CFR part 1191, as modified by appendix A to part 37 of this title. All other entities subject to section 504 shall design, construct, or alter buildings, or other fixed facilities, in conformance with appendices B and D of 36 CFR part 1191, as modified by appendix A to part 37 of this title.

3. In § 27.71, paragraphs (h) and (i) are added to read as follows:

§ 27.71 Airport facilities.

* * * * *

(h) Service animal relief areas. Each airport with 10,000 or more annual enplanements shall cooperate with airlines that own, lease, or control terminal facilities at that airport to provide wheelchair accessible animal relief areas for service animals that accompany passengers departing, connecting, or arriving at the airport subject to the following requirements:

- (1) Airports must consult with one or more service animal training organizations regarding the design, dimensions, materials and maintenance of service animal relief areas;
- (2) Airports must establish at least one relief area in each airport terminal;
- (3) Airports must establish the relief area required by section 27.71 *(h)(2)* in the sterile area of each airport terminal unless:

(i) The Transportation Security Administration prohibits the airport from locating a relief area in the sterile area, or

(ii) A service animal training organization, the airport, and the carriers in the terminal in which the relief area will be located agree that a relief area would be better placed outside the terminal's sterile area. In that event, the airport must retain documentation evidencing the recommendation that the relief area be located outside of the sterile area; and

(4) To the extent airports have established service animal relief areas prior to the effective date of this paragraph:

(i) Airports that have not consulted with a service animal training organization shall consult with one or more such organizations regarding the sufficiency of all existing service animal relief areas,

(ii) Airports shall meet the requirements of this section [INSERT DATE ONE YEAR FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(i) *High-contrast captioning (captioning that is at least as easy to read as white letters on a consistent black background) on television and audio-visual displays.* This paragraph applies to airports with 10,000 or more annual enplanements.

(1) Airport operators must enable or ensure high-contrast captioning at all times on all televisions and other audio-visual displays that are capable of displaying captions and that are located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal to which any passengers have access and that are owned, leased, or controlled by the airport.

(2) With respect to any televisions and other audio-visual displays located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal to which any passengers have access that provide passengers with safety briefings, information, or entertainment that do not have high-contrast captioning capability, an airport operator must replace or ensure the replacement of these devices with equipment that does have such capability whenever such equipment is replaced in the normal course of operations and/or whenever areas of the terminal in which such equipment is located undergo substantial renovation or expansion.

(3) If an airport installs new televisions and other audio-visual displays for passenger safety briefings, information, or entertainment on or after [INSERT EFFECTIVE DATE OF THE FINAL RULE], such equipment must have high-contrast captioning capability.

* * * *4. Amend § 27.72 to read as follows:

§ 27.72 Boarding assistance for aircraft.

- (a) This section applies to airports with 10,000 or more annual enplanements.
- (b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. This section applies to all aircraft with a passenger capacity of 19 or more passenger seats, except as provided in paragraph (e) of this section. Paragraph (c) of this section applies to U.S. carriers and paragraph (d) of this section applies to foreign carriers.
- (c) Each airport operator shall negotiate in good faith with each U.S. carrier serving the airport concerning the acquisition and use of boarding assistance devices to ensure the

provision of mechanical lifts, ramps, or other devices for boarding and deplaning where level-entry loading bridges are not available. The airport operator must have a written, signed agreement with each U.S. carrier allocating responsibility for meeting the boarding and deplaning assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

- (1) All airport operators and U.S. carriers involved are jointly and severally responsible for the timely and complete implementation of the agreement.
- (2) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.
- (d) Each airport operator shall negotiate in good faith with each foreign carrier serving the airport concerning the acquisition and use of boarding assistance devices to ensure the provision of mechanical lifts, ramps, or other devices for boarding and deplaning where level-entry loading bridges are not available. The airport operator shall, by no later than [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER OF THE FINAL RULE], sign a written agreement with the foreign carrier allocating responsibility for meeting the boarding and deplaning assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.
- (1) The agreement shall provide that all actions necessary to ensure accessible boarding and deplaning for passengers with disabilities are completed as soon as practicable,

but no later than [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER OF THE FINAL RULE].

- (2) All airport operators and foreign carriers involved are jointly and severally responsible for the timely and complete implementation of the agreement.
- (3) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.
- (e) Boarding assistance agreements required in paragraphs (c) and (d) are not required to apply to the following situations:
 - (1) Access to float planes;
 - (2) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31 and 32, the Beech 1900 (C and D models), and the Embraer EMB-120;
 - (3) Access to any other aircraft model determined by the Department of Transportation to be unsuitable for boarding and deplaning assistance by lift, ramp, or other suitable device. The Department will make such a determination if it concludes that –
 - (i) No existing boarding and deplaning assistance device on the market will accommodate the aircraft without significant risk of serious damage to the aircraft or injury to passengers or employees, or
 - (ii) Internal barriers are present in the aircraft that would preclude passengers who use a boarding or aisle chair from reaching a non-exit row seat.
- (f) When level-entry boarding and deplaning assistance is not required to be provided under paragraph (e) of this section, or cannot be provided as required by paragraphs (b), (c), and (d) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger

consents. However, hand-carrying (i.e., directly picking up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft) must never be used, even if the passenger consents, unless this is the only way of evacuating the individual in the event of an emergency.

(g) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

ISSUED THIS 29th DAY OF July, 2015, IN WASHINGTON, D.C.

_____/s/_____

Anthony R. Foxx,
Secretary of Transportation.