

**BEFORE THE  
CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)  
WASHINGTON, D.C.**

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<b>In the matter of:</b>	:	
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<b>Notice of Proposed Rulemaking</b>	:	<b>Docket No. CDC-2023-0051</b>
<b>Control of Communicable Diseases;</b>	:	
<b>Foreign Quarantine: Importation of Dogs</b>	:	
<b>and Cats</b>	:	
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**COMMENTS OF AIRLINES FOR AMERICA**

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Airlines for America<sup>1</sup> (“A4A”) respectfully submits comments in response to the Centers for Disease Control and Prevention’s (“CDC” or “Agency”) Notice of Proposed Rulemaking on the “Control of Communicable Diseases; Foreign Quarantine: Importation of Dogs and Cats” (“NPRM”).<sup>2</sup>

First and foremost, safety is A4A and its Members’ main concern. We support the efforts by the CDC to incorporate practices used during the temporary suspension period<sup>3</sup> to mitigate the risk posed by dogs from dog-maintained rabies virus variant (“DMRVV”) high-risk countries that are unvaccinated or inadequately vaccinated against rabies, including reducing potential instances of fraudulent documentation.<sup>4</sup> However, the process by which the NPRM proposes to offset the risk of dogs reintroducing and spreading the DMRVV fails to consider the new regulatory burdens proposed, including a short compliance period and lack of precedential guidance. In particular, at

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<sup>1</sup> A4A’s members are Alaska Airlines, Inc.; American Airlines Group, Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; FedEx Corp.; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

<sup>2</sup> Hawaiian Airlines is not joining these comments.

<sup>3</sup> See CDC, *Notice of Temporary Suspension of Dogs Entering the United States from High-Risk Rabies Countries*, 86 FR 32041 (June 16, 2021) (hereinafter, “Notice”).

<sup>4</sup> *Id.*

issue are the following NPRM proposals: (1) Airlines' obligation to transport animals to CDC-approved facilities, particularly within six (6) hours of an animal being denied admission into the United States; (2) Airlines shall assume financial responsibility for housing and other care if an importer abandons an animal or refuses to pay for federally mandated examination, testing, or quarantine; and, (3) Airlines can only permit dog imports that are microchipped, six-month of age, have an importer submission of a CDC import form, and an airline bill of lading.

**I. The Proposed Six-Hour Timeline to Transport Animals That Arrived By Air and are Denied Admission into the United States<sup>5</sup> Prioritizes Timeliness Over the Health and Safety of the Animals.**

The NPRM earmarked a six-hour window from which an animal denied admission into the United States should be relocated to a CDC-facility or a CDC-registered facility. The CDC reasoned that any time beyond six (6) hours leads to prolonged conditions that are unsafe for the animal.<sup>6</sup> However, the NPRM does not provide corroborative evidence demonstrating such an effect. Rather than arbitrarily having air carriers adhere to a time-constrained compliance period, deference should be given to the health and safety of the animal. A4A, therefore, suggests that airlines notify the CDC within six (6) hours of an animal being denied admission into the U.S. with transport scheduled within 24 hours.

Without the necessary personnel infrastructure, the six-hour window forces airlines to adhere to more stringent regulatory burdens whose outcome fails to consider the logistical barriers surrounding the transport of live animals. Priority should be based on the need to protect the health and safety of animals within the complexity of airport operations.

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<sup>5</sup> Hereinafter "U.S." or the "States."

<sup>6</sup> See 88 Fed. Reg. 43978, 282 (July 10, 2023).

Aside from the CDC’s acknowledgment of “extraordinary circumstances,” the NPRM does not account for the unique situation of each individual animal that can affect the overall timeline of transport.<sup>7</sup> Specifically, carriers must first assess the situation—including (1) identifying why an animal is being denied admission; (2) relaying notification to appropriate personnel on-site, in transit, and at-delivery; (3) coordinating with the animal’s owner, who may also be facing personal-admissibility status complications; and (4) determining the state of the animal’s welfare and ability to be transported to ensure that not only is the animal transported in a safe and efficient manner but also that the personnel whom are tasked with the transport are well-advised and equipped to handle the relocation—prior to any actual relocation of the animal to a CDC-facility or CDC-registered animal care facility. Adhering to the stringency of a six-hour timeline adds an immediacy element that may run counter to the important steps outlined above regarding the safety of the pet and those handling the animal.

It is incumbent on carriers to prioritize the health and safety of animals in assessing the circumstances surrounding why an animal is denied admission. The CDC should not rely on “rare and unforeseen events” as the only factor causing delay in transport.<sup>8</sup> Every day, ordinary circumstances can and do affect airport operations. Adding in the layer of transporting live animals, it behooves the Agency to reassess its proposed six-hour window to factor in the ordinary circumstances, like personnel availability and training, in the transport of animals to CDC-approved facilities after being denied admission into the United States. Allotting for a 24-hour transport window using a six-hour notification requirement balances the need to safeguard the

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<sup>7</sup> *Id.* at 74.

<sup>8</sup> *Id.*

animals' wellbeing and the safe handling of such animals amid the confines of complex airport operations.

**II. Airlines Should Not be Liable for Medical Costs, Housing Expenses, and Other Financial Obligations in the Event an Animal is Required to Undergo Examination, Testing, or Quarantine for Illness or Denied Admission into the United States.**

The responsibility for finding appropriate housing for dogs denied admission should not be shifted to airlines. The care of a dog denied admission should be the responsibility of the federal agency denying access and/or the facility where access is denied. There is no justification for shifting the consequences of enforcing federal agency rules onto carriers; this is akin to an unfunded mandate.

Currently, some carriers allow transport of dogs in their cargo holds while others only allow boarding as in-cabin pets. For the latter, the carrier would have to obtain animal transport equipment, then train personnel on the handling of live animals using such equipment in order to comply with the proposed rule. By placing the onus on air carriers, time and resources would need to be reallocated to accommodate, for example, the additional travel costs and travel time associated with re-routing travel through an airport with a CDC quarantine station or a CDC-registered Animal Care Facility.

The CDC acknowledges, “[T]he inadequate number of facilities with a CBP-issued FIRMS code and USDA intermediate handlers license for holding and providing care for live animals creates significant administrative and financial burdens for Federal, State, and local governments.”<sup>9</sup> However, instead of obviating the burden by redirecting resources into expanding access to non-CDC facilities or creating an expedited route for approving new ones, the CDC’s

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<sup>9</sup> Id. at 200.

solution is apparently to merely shift those administrative and financial burdens to air carriers, which are not *de minimis*.

There are currently 18 airports with CDC quarantine stations and, as of today, there are only five (5) airports with CDC-registered Animal Care Facilities. Given the lack of available CDC facilities and CDC-registered Animal Care Facilities, carriers would either deny animal bookings over those gateways that do not have a CDC-approved facility, thus creating a competitive imbalance favoring carriers whose operational geographies happen to align best, while limiting travelers' options, or they would incur the additional costs associated with transport of denied animals at those gateways to other cities with approved facilities. For the latter, there would be additional logistical burdens of requiring entirely new processes for carriers that today only transport animals when they accompany their owners as in-cabin pets or service animals. In effect, the cost and logistical limitations would stymie consumer choice and place an undue burden on airlines to facilitate transport due to no fault of their own.

The CDC can better ensure the health and safety of the animals by providing flexibility in the event a CDC-registered animal facility is unavailable due to capacity or radius implications. A4A, therefore, suggests broadening the list of approved veterinarian facilities, perhaps including via an upon-application certification process, to ensure that there is at least one (1) available at all major U.S. hubs for international arrivals. For instance, in lieu of a CDC-registered animal care facility and/or an available process for certifying facilities, the CDC should permit transfer of the animal to a veterinary clinic or kennel that meets United States Department of Agriculture (USDA) Animal Welfare Act standards.<sup>10</sup>

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<sup>10</sup> Cf. at 200 (The NPRM suggests veterinarian clinic that meet USDA Animal Welfare Act standards *and* are approved by CDC.); see U.S. Department of Agriculture. *Animal Welfare Regulations; Part 3, Subpart A*:

*A. Airlines Should Not Bear the Cost for an Abandoned Animal or Assume Financial Responsibility Due to an Importer's Choices.*

Airlines should not bear the expenses of confinement, examination, testing, and treatment in a CDC-approved veterinary clinic where a dog or cat arrives ill, is denied admission, or is exposed to a sick animal in transit, because the liability should remain with the importer absent any failure or omission on the carrier's part. Of particular concern is the indeterminable amount of time that a dog must be housed and treated. The CDC is aware of this risk, even referencing a 2015 importation that resulted in 18 people receiving rabies PEP, seven (7) dogs undergoing a six-month quarantine, and eight (8) additional dogs undergoing a 45-day monitoring period.<sup>11</sup> In that situation, the importer admitted that the dogs' rabies vaccination documentation had been intentionally falsified to evade CDC entry requirements.<sup>12</sup> To the extent that the proposed rules require airlines to assume by default any other stakeholder's financial responsibility, especially for the negligent or intentional misconduct of a third-party, they are overburdensome and without justifiable merit. If an animal arrives ill, is denied admission, or is exposed to a sick animal in transit, the fault belongs with the importer as well as the financial obligations incurred by that importer's deficit of choice. If airlines incur these financial obligations, then the proposed rules should affirmatively acknowledge that airlines may pursue reimbursement for any expenses incurred as a result of backstopping importers' CDC liabilities. In doing so, the proposed rules would align with 7 U.S.C. 2148, "Importation of live dogs" – holding that an importer who fails

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*Transportation Standards*. Sections 3.14–3.20. July 2020. Available at: [https://www.aphis.usda.gov/animal\\_welfare/downloads/AC\\_BlueBook\\_AWA\\_508\\_comp\\_version.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/AC_BlueBook_AWA_508_comp_version.pdf).

<sup>11</sup> See 88 Fed. Reg. 43978, 129.

<sup>12</sup> *Id.*

to comply with importation requirements is liable for the incurred expenses, including appropriate veterinary care and forfeiture – and the clarity provided would likely have deterrent benefits.<sup>13</sup>

### **III. The CDC Should Provide More Definitive Guidance on the Implementation and Compliance Regarding Its Proposed Rules on Microchipping, the CDC Import Submission Form, and the Airline Bill of Lading.**

A4A supports the CDC’s willingness to obviate fraud in the furtherance of the health and safety of dogs. However, without further clarification on how carriers are to implement proposed rules regarding microchipping, the CDC Import Submission Form, and the airline bill of lading, carriers are left with the burden of developing processes to facilitate compliance based on unclear expectations. A4A, therefore, recommends that instead of mandating the aforementioned proposals, the CDC consider them as optional or consider alternatives.

#### *A. Air Carriers Cannot Definitively Determine if a Dog Has Been Microchipped Without Specialized Equipment.*

The NPRM proposes requiring that all dogs arriving from any country, including dogs returning to the United States after traveling abroad, be properly microchipped with an International Standards Organization (“ISO”)-compatible microchip prior to travel into the United States. Facially, such a requirement appears to reinforce that the dogs presented for admission are the same dogs as those listed on the rabies vaccination records. However, without specialized equipment to verify the implantation of a chip and to simultaneously check whether the dog matches both the chip and veterinarian records, the proposed rule adds an unnecessary and arguably unattainable task on air carriers. A4A recommends either the CDC undertake the proposed requirement to verify an animal is microchipped or make this recommendation optional.

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<sup>13</sup> *Id.*; see generally 7 U.S.C. 2148(d).



The CDC has recognized that previous public health investigations to confirm the identity of dogs was both “resource intensive and challenging”—and this was without the added element of microchipping.<sup>14</sup> It is, thus, impracticable to require airlines to authenticate whether a dog has a microchip when the carrier does not have the resources to do so and renders airlines reliant on the attestation of the passenger, which experience has shown may be unreliable. To the extent that the CDC identifies a preferred approach of authentication, A4A recommends the CDC allocate its own resources to assure the validity of passenger attestations while absolving carriers of any liability for verifying them independently.

*B. The Six-Month Minimum Age Requirement Exceeds Recommended Guidelines Establishing When a Dog Can be Effectively Vaccinated Against Rabies.*

It is unclear why the CDC has proposed requiring that any dog arriving in the United States be at least six months of age, when dogs can be vaccinated effectively against rabies at 12 weeks of age.<sup>15</sup> The NPRM cites 7 U.S.C. 2148, reasoning the proposed rule would align with USDA requirements for commercial dog imports under the Animal Welfare Act.<sup>16</sup> However, the six-month requirement is applicable only to dogs “imported for resale,” and there is a limited exception for dogs under six (6) months of age to enter if they are not imported for resale.<sup>17</sup> That is, if the dog is being transported for personal reasons or rescue (no cost), then it does not need to be six-months old.

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<sup>14</sup> *Id.* at 56.

<sup>15</sup> *Id.* at 58 citing National Association of State Public Health Veterinarians. *Compendium of animal rabies prevention and control*, 2016. *JAVMA* 2016; 248 (5):505–517.

<sup>16</sup> *Id.*; see generally 7 U.S.C. 2148.

<sup>17</sup> *Id.*; see 7 U.S.C. 2148(b)(2)(B) (concerning lawful importation into Hawaii).

Further, there is discontinuity between what the CDC proposes for airline requirements as compared to other transport modalities such as sea or land.<sup>18</sup> The CDC reasoned that the six-month proposal would address concerns about importations of dogs that are too young to be properly vaccinated against rabies.<sup>19</sup> For this statement to be true, then, regardless of mode of travel, all dogs would need to meet to the six-month requirement. It does not follow that only dogs traveling by air would have to be six months of age, while land entries can be younger the proposed requirement.

A4A strongly recommends that the CDC adhere to established veterinarian guidance on the age of eligibility for dogs to receive the rabies vaccination, *i.e.*, 12 weeks old, and adopt a universal *de minima* age requirement for all dogs regardless of the modality used to enter into the United State, otherwise, failing to do so is arbitrary and capricious.

*C. The Authenticity and Reliability of a Proposed CDC Import Submission Form Hampers Airlines' Abilities to Confirm That an Importer Has all the Required Documentation Prior to Transport of the Dog.*

The CDC proposes requiring all dog importers to submit an online CDC Import Submission Form via a CDC-approved system prior to air travel to the United States with importers presenting their receipts to the airlines prior to boarding. No other information on the proposed form was provided that elaborated on when the CDC-created system will be operational, whether airlines would have direct access to it, or how long it would take to verify importer-entered data. More acutely, even with a printed confirmation receipt, the hardcopy can be altered or fraudulently recreated (as was the case for Covid-19 paperwork).

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<sup>18</sup> See 88 Fed. Reg. 43978, 415 (explaining dog imports arriving at land ports are only subject to the six-month minimum age requirement if an importer needs to import three or more dogs younger than six months of age in a calendar year).

<sup>19</sup> *Id.* at 58.

The CDC should balance passenger submissions of CDC-required documents with airline verification systems. As written, it is uncertain whether airlines have or will have access to confirm customers have submitted the required forms. If the CDC were to mandate that air carriers confirm that a dog possesses all required import documentation based on the country of origin, including the United States, then airlines would be unfairly liable for misinformation that they could not reasonably verify prior to boarding. Clarifying that airlines may rely on passengers' attestations would be, especially with respect to anything airlines are unable to reasonably verify themselves, a better alternative that balances the CDC's desire to track dog importations and the airlines' ability to trust importers' accompanying paperwork.

*D. The Requirement to Create an Airline Bill of Lading Lacks Definition and Functionality for Animals Transported in the Aircraft Cabin.*

The NPRM proposes an airline bill of lading to ensure airlines are accountable for the safety of the dog upon arrival in the United States, but it does not further elaborate on what constitutes a sufficient bill of lading. Presently, carriers use air waybills ("AWB") on goods shipped by international air couriers. AWBs include detailed information about the shipment (*e.g.*, the shipper's name and address, consignee's name and address, destination airport, and the value of contents) and provide a tracking option so all parties can be alert to the goods' whereabouts. As a legally enforceable document, AWBs are a type of bill of lading.

If the CDC were to adopt a bill of lading requirement, A4A recommends the proposed rules differentiate between pets carried in cabin versus in the cargo hold. A4A suggests AWBs be used to satisfy any proposed rule requiring a bill of lading for animal imports that are transported via cargo. Concurrently, A4A opposes the imposition of any type of bill of lading requirement for in-cabin animals, because this document is typically used only for goods which do not accompany

passengers. Requiring a “bill of lading” for animals transported as in-cabin pets or service animals would introduce a new type of document and accompanying process that do not exist today, engendering complications in verifying passengers’ paperwork.

The NRPM should implement measures that require customers and pets-in-cabin to be cleared into the U.S. together. Passengers should not be able to abandon an animal that traveled with them on their flight if the pet is not cleared to enter with the passenger. This approach would reduce the potential of smuggling and fraudulent vaccination records as well as decrease the number of abandoned animals at airports.

## **Conclusion**

For all of the reasons stated here, A4A respectfully requests that the CDC give due weight to its recommendations as airlines increase routes and frequency to high risk countries and there is a potential for new countries to be added to the list of high risk countries in the future. In moving forward with its proposed rulemaking, A4A strongly suggests the CDC adopt A4A’s recommendations in its final rule to ensure the health and safety of both animals and airline personnel alike.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Kenneally", with a long horizontal flourish underneath.

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