

38 CFR Part 1

RIN 2900-AO39

Animals on VA Property

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulation concerning the presence of animals on VA property. This final rule expands the current VA regulation to authorize the presence of service animals consistent with applicable Federal law when these animals accompany individuals with disabilities seeking admittance to property owned or operated by VA.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

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(This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On November 21, 2014, VA published in the Federal Register (79 FR 69379) a proposed rule to amend VA regulations

regarding the presence of animals on VA property. This rule authorizes the access of service animals when these animals accompany individuals with disabilities seeking admittance to VA property in a manner consistent with applicable Federal law, and clarifies the authority of a VA facility head or designee to allow non-service animals to be present on VA property.

Interested persons were invited to submit comments to the proposed rule on or before January 20, 2015, and VA received 96 comments. All of the issues raised by the commenters that concerned at least one portion of the rule can be grouped together by similar topic, and we have organized our discussion of the comments accordingly. For the reasons set forth in the proposed rule and below, we are adopting the proposed rule as final, with changes, explained below, to proposed 38 CFR 1.218(a)(11).

Multiple commenters stated that it was unclear to what groups of individuals the proposed rule would apply. One commenter specifically expressed concern as to whether a service animal that assisted a visitor of a veteran would be permitted on VA property. We clarify for these commenters that this VA regulation applies to everyone seeking access to VA property, to include employees, veterans, and visitors. The rule as proposed did not contain any limiting language to restrict applicability to only certain groups of individuals, and we therefore do not make any changes to the final rule based on these comments. Several commenters applauded the development by VA of a uniform regulation for service animal access for all VA property, and did not recommend

any changes. VA appreciates these comments and believes that this regulation will allow for more consistent access of VA property by service animals.

One commenter asserted that VA should use the term “assistance animal” instead of “service animals” throughout the proposed regulation because, they assert, the term “service animals” is understood more narrowly in the service animal industry to refer only to those animals that assist with mobility impairments. We do not make any changes based on these comments. We disagree that the term “assistance animal” is better understood than “service animal” by those in the service animal industry. Additionally, this regulation is written for a broader audience than just those in the service animal industry, to include any member of the public that may have need to access VA property. Indeed, the term “service animal” as defined in the proposed rule is well understood by the general public because it is consistent with the definition of “service animal” in the regulations that implement the Americans with Disabilities Act (ADA). We therefore do not make any changes based on these comments. A commenter also urged that VA use the phrase “guide dog” versus “seeing eye dog.” We do not make any changes based on this comment because, as proposed and in this final rule, “seeing eye dog” is replaced in § 1.218(a)(11) with the term “service animal,” and “service animal” includes those dogs trained for the purpose of assisting individuals with a sensory disability (to include visual impairments). Other commenters further asserted that the definition of “service animal” in proposed § 1.218(a)(11)(viii) be changed to refer to a dog that does “work or performs tasks” as opposed to a dog that does “work and performs

tasks.” Particularly, commenters noted that VA used both these phrases interchangeably in proposed §1.218(a)(11)(viii), and asserted that this was confusing. We agree with these comments, and clarify that the intent was to use only the phrase “work or performs tasks” throughout the definition of “service animal.” We therefore make changes to ensure that the phrase “work or perform tasks” is used consistently throughout § 1.218(a)(11)(viii).

One commenter was concerned that breed restrictions may be imposed based on a perception that certain breeds of dogs are prone to violence. This VA regulation does not impose breed restrictions, and VA will not otherwise pose breed restrictions for purposes of access of service animals on VA property. VA will only deny access to VA property or will remove a service animal from VA property based on an individual assessment in accordance with objective criteria of the risks that the individual service animal poses to the health or safety of people or other service animals. VA makes no changes based on this comment.

Several commenters sought clarification between a “service animal” and a “pet,” and whether animals other than dogs were included in the definition of “service animal.” As proposed, § 1.218(a)(11)(viii) defined a “service animal” as any dog that accompanies an individual with a disability and that is individually trained for that purpose. The definition in proposed §1.218(a)(11)(viii) specifically excluded any species of animal other than a dog, and specifically required that the work or tasks performed by the service animal be directly related to the individual’s disability. Further, § 1.218(a)(11)(viii) distinguished that the crime deterrent effects of an animal’s presence, or the provision of emotional support or

well-being, comfort, or companionship do not constitute “work or tasks.” The definition as proposed in §1.218(a)(11)(viii) clearly excluded any animal other than a dog, and also excluded any dog that is not individually trained to assist an individual with a disability. As proposed, § 1.218(a)(11)(viii) makes clear that unless the animal is a dog that is individually trained to do something that qualifies as work or a task, the animal is a pet or other type of animal and does not qualify as a service animal. We believe the definition in proposed § 1.218(a)(11)(viii) is clear enough to exclude a “pet,” and we therefore do not make any changes based on these comments.

Several commenters wanted VA to permit miniature horses on VA properties. As discussed in the proposed rule, VA believes the presence of a miniature horse poses legitimate safety concerns, both to people on VA property and the miniature horse, especially on VA healthcare properties. This final rule reiterates VA’s determination from the proposed rule, that, in light of a review of the multiple assessment factors, miniature horses are excluded from VA properties. We restate from the proposed rule that these assessment factors include the larger size of a miniature horse as well as their reduced predictability in behaving in accordance with typical standards of public access required of service animals. Additional factors from the proposed rule that VA considers to support the exclusion of miniature horses include elimination of horse waste, a heightened flee response of a miniature horse, the smooth flooring common to VA properties, and the likely disruptive attention a horse would receive. We therefore do not make any changes based on these comments.

Many commenters expressed concern that the proposed rule restricted access to only those dogs trained or certified by Assistance Dogs International (ADI), International Guide Dog Federation (IGDF), or one of their affiliated organizations. The proposed rule did not create such restrictions; as proposed, VA's standard for service animal access is consistent with regulations that implement the ADA and is not dependent on how the service animal was trained or by whom, but instead depends on the service animal's ability to behave in accordance with typical public access standards for public settings. Therefore, we do not make any changes based on these comments. VA notes that a service animal must be certified by ADI or IGDF as a requirement for veterans seeking service dog benefits under 38 CFR 17.148, however, those requirements for benefits do not apply to access. Conversely, several commenters asserted that service animal access to VA properties should be restricted to only those animals that are certified or trained by ADI, IGDF, or an affiliate—these commenters articulated various negative experiences where a “fake service animal” threatened their person, their service animal, or another person while on VA property or other property. VA recognizes that these commenters have legitimate concerns related to dogs that are not appropriately trained possibly being able to access VA property under the guise of a “service dog,” because VA will not be requiring any proof of training or certification for purposes of access. However, the lack of such a documentation requirement is consistent with regulations that implement the ADA, and otherwise provides the benefit of the doubt to individuals with disabilities unless the service animal's behavior

necessitates that access be denied or the service animal be removed. VA does not make any changes based on these comments, but we stress that § 1.218(a)(11)(ii) still provides for removal of a service animal from certain areas on VA property if the animal exhibits behavior or other signs that it is a threat to the health or safety of individuals or other service animals on VA property.

Several commenters objected to the requirements in proposed §1.218(a)(11)(vii) to provide proof of a service animal's good health when an individual will be accompanied by a service animal while receiving treatment in a Veterans Health Administration (VHA) residential program. Some of these commenters alluded to an administrative burden of “registering” a service animal to obtain access to the VA property. We clarify for these commenters that § 1.218(a)(11)(vii) only applies to situations where an individual would be accompanied by a service animal for the duration of his or her treatment in a VHA residential program—these documentation requirements would not apply for more general access to a VA property, such as to receive outpatient care provided by VA. The presentation of certain records as proof of an animal's health required in § 1.218(a)(11)(vii) is necessary when a service animal will have routine and constant interaction with employees, veterans, patients, and visitors over the course of an extended period of time in a residential setting, so that VA may ensure patient care, patient safety, and infection control standards are met. However, we do agree with the commenters who noted that some of the requirements in § 1.218(a)(11)(vii) as proposed could create an undue administrative burden on both individuals receiving treatment as well as VA staff.

We therefore make changes in the final rule to remove § 1.218(a)(11)(vii)(A)-(C), and to revise § 1.218(a)(11)(vii) to require that the individual receiving treatment in a residential program must only provide documentation that confirms that the service animal has a current rabies vaccine and current core canine vaccines. We further revise the conditions in § 1.218(a)(11)(vii) related to when a rabies vaccine and core canine vaccines are considered “current” to require “a current rabies vaccine as determined by state and local public health requirements, and current core canine vaccines as dictated by local veterinary practice standards (e.g. distemper, parvovirus, and adenovirus-2).” These changes will retain the requirement for documentation of basic canine vaccinations that we believe is necessary to ensure the service animal is in good health, while providing more flexibility of those required vaccinations in accordance with local requirements. These revisions will also remove the requirement for proof of a comprehensive exam within the past 12 months, as well as remove the requirement that an individual must otherwise confirm in writing that the service animal is healthy. We believe that the revised documentation requirements in § 1.218(a)(11)(vii) now relate only to the basic canine vaccines that an the individual would have merely as a function of being a responsible dog owner, and therefore providing such documentation to VA for confirmation is not burdensome. We make similar changes to the documentation requirements related to the health of non-service animals in § 1.218(a)(11)(ix)(C)-(E), specifically to clarify that the prophylactic medication requirement for non-service animals applies only to parasite control medications (e.g. monthly flea and tick prevention), and to clarify that the health

requirements for non-service animals are consistent with local veterinary practice standards.

One commenter suggested that the mere presence of a flea or tick on a service animal should not be grounds for removal of a service animal under § 1.218(a)(11)(ii)(C)(2), particularly for individuals being treated in VA residential settings. VA does not make any changes based on this comment. We reiterate from the proposed rule that the presence of a flea or tick poses a threat to the health and safety of others, as fleas, ticks, and other parasites can be spread by physical contact and close proximity and can reproduce quickly and in great volume to create infestation conditions that are much more difficult to remediate, versus removing a service animal with visible external parasites.

We note, however, that under § 1.218(a)(11)(ii)(C), VA staff must complete an individualized assessment based on objective indications, such as external signs of parasites, to ascertain the severity of risk to the health or safety of people or other service animals.

Several commenters suggested that VA revise § 1.218(a)(11)(viii) to permit service dogs in training to access VA property. Some of these commenters reasoned that a service dog in training could be well trained enough to dependably behave safely in public settings, even without having fully completed their training. Other commenters expressed that VA properties could be used as training opportunities for service animals. VA seeks to maintain a safe and therapeutic environment at its properties. In a complex hospital environment, we believe that service animals should be fully trained and a

“service animal in training” is not fully trained. We therefore do not revise § 1.218(a)(11)(viii) to permit service animals in training.

Several commenters inquired as to how VA’s service animal access rule would be enforced, particularly with regard to staff training. Some commenters expressed concerns about “fake service animals” interfering with the need for people and service animals to safely access VA properties. Others expressed concerns that VA’s proposed rule would establish a barrier to access or expressed concern regarding the authority of varying facility directors to devise implementation criteria that would restrict access outside of the proposed rule. VA does not make any changes based on these comments. The final rule establishes a set of standardized criteria that can be uniformly enforced on VA property, and removes variation amongst individual facilities that existed prior to this final rule. A service animal meeting VA’s requirements under this final rule will not be subject to any barrier to access. And once on VA property, service animals are subject to the same terms, conditions and regulations that govern the admission of the public to VA property, to include certain exceptions on VHA properties to ensure patient care, patient safety, and infection control standards are not compromised. Therefore, service animals would only be denied access or removed if, based on an individualized assessment that is subject to objective indications in the final rule to ascertain severity of risk, there is cause for access denial or removal. VA anticipates that in most cases concerns related to access and removal will be communicated by veterans, employees, or visitors to VA staff members (including security and law enforcement) who will manage any

concerns and facilitate an appropriate response. VA anticipates all appropriate staff members will be trained on what is and what is not allowed under this regulation and how it should be implemented.

Several commenters expressed concern about the requirement in proposed § 1.218(a)(11)(i) that the service animal be in a guiding harness or on a leash, as well as under the control of the individual with a disability, at all times while on VA property. These commenters asserted that multiple disabilities might prevent an individual from physically controlling a service animal via a harness or leash, or that the service animal's presence on a leash or other tether at all times might prevent that service animal from completing work or tasks they are trained to perform. Further, some commenters urged VA to adopt a standard that mimics that of the regulations that implement the ADA, whereby control over the service animal by the handler can be in the form of voice control. VA agrees with these comments, and amends § 1.218(a)(11)(i) to incorporate comparable language to that used in the regulations that implement the ADA. Cf. 28 CFR 36.302(c)(4).

Likewise, after considering related comments, VA recognizes that individuals with disabilities may require the assistance of an alternate handler to control the service animal while on VA property. The need for an alternate handler may arise when the individual with the disability is unable to control the service animal because of the care the individual receives; or when the service animal, individual with a disability, and the alternate handler routinely operate as part of a team when accessing public areas. For this reason, VA amends §

1.218(a)(11)(i) and (a)(11)(ii)(A) to allow for an alternate handler to also be in control of the service animal. Specifically, § 1.218(a)(11)(i) will state that a service animal shall be under the control of the person with the disability or an alternate handler at all times while on VA property. Section 1.218(a)(11)(i) will also state that a service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means). We reiterate, that at no time is any VA employee to be responsible for the control of the service animal, as set forth in § 1.218(a)(11)(i).

Several commenters inquired into whose responsibility is it to clean up animal waste and if VA properties have to designate an area for animals to relieve themselves. Commensurate with the requirements for access is a properly housebroken service animal. Should a service animal relieve bowel or bladder on VA property, it is the responsibility of the handler or the alternate handler to properly dispose of the waste in accordance with standards appropriate for public settings. VA again notes that at no time is any employee to be responsible to control a service animal and part of the access requirements is that an animal is housebroken. VA makes no change based on this comment.

Several commenters objected to the absolute prohibition of service animal access to certain areas of VHA property in proposed 1.218(a)(11)(iii), citing

contrary standards that permit such access in regulations that implement the ADA as well as guidance issued by the Centers for Disease Control and Prevention (CDC). Particularly, commenters objected to the categorical exclusion of service animals from inpatient hospital settings to include locked mental health units (in proposed § 1.218(a)(11)(iii)(C)), and from patient rooms or treatment areas where patients may have an animal allergy or phobia (in proposed § 1.218(a)(11)(iii)(E)). VA cited three examples of acute inpatient hospital settings in proposed § 1.218(a)(11)(iii)(C) (intensive care units, stabilization units, and locked mental health units) in a representative but not exhaustive list of areas that could be covered by this exclusion. In light of the comments received, VA revises § 1.218(a)(11)(iii)(C) to remove these examples, and instead qualify the exclusion of service animals in acute inpatient settings to exclude such animals when their presence is not part of a documented treatment plan. VA agrees with the commenters that there are scenarios in which a service animal on any of the specific areas in proposed § 1.218(a)(11)(iii)(C) may provide its services when the individual being treated or an alternate handler can control a service animal as part of a treatment plan established by the clinical care team. Although VA used CDC guidance to justify the area-based exclusions in proposed § 1.218(a)(11)(iii)(C) (see 79 FR 69379, 69381), VA believes that this revision is still consistent with CDC's guidance because the service animal would not be permitted to access the inpatient area if not part of a documented treatment plan. The animal would require a staff assessment under § 1.218(a)(11)(ii)(C) to evaluate any threat to the health or safety of patients or staff. A

service animal could still be removed under § 1.218(a)(11)(ii) if it presented a risk to patient safety or infection control standards after gaining access to an acute inpatient setting. For these same reasons, VA removes proposed § 1.218(a)(11)(iii)(E), the prohibition of the presence of service animals in patient rooms or areas where a patient may have an animal allergy or phobia. Again, a service animal could be removed from such an area if the animal posed a risk to patient safety or health, under § 1.218(a)(11)(ii). By removing proposed § 1.218(a)(11)(iii)(E), we will renumber proposed § 1.218(a)(11)(iii)(F) and (iii)(G) as (iii)(E) and (iii)(F), respectively.

However, VA will not remove all categorical area-based exclusions of service animals on VHA property from proposed § 1.218(a)(11)(iii). VA's healthcare facilities reflect evidence based standards governing safe operation of a healthcare facility, patient care, and infection control. Consistent with CDC guidance, VA still finds certain locations such as operating rooms, surgical suites, areas where invasive procedures are being performed, decontamination, sterile processing, sterile storage areas, food preparation areas (not to include public food service areas), and any areas where protective barrier measures are required, to be inappropriate environments for a service animal. One commenter recommended removing the representative examples in proposed § 1.218(a)(11)(iii)(A)-(C) as redundant of places where protective barrier measures are required. We decline to remove these examples because they add clarity regarding the types of areas where access must be restricted to ensure patient care, patient safety or infection control standards are not compromised. While

we will retain these area-based exclusions and the examples provided in the final rule, in response to comments we will revise § 1.218(a)(11)(iii)(F) as proposed, renumbered as § 1.218(a)(11)(iii)(E), to include the clarifying parenthetical “(not to include public food service areas).” We will also revise § 1.218(a)(11)(iii)(G) as proposed, renumbered as § 1.218(a)(11)(iii)(F), to refer to areas “where personal protective clothing must be worn or barrier protective measures must be taken to enter,” instead of referring to areas that require “personal protective equipment” to be worn. We agree with commenters that “personal protective equipment” in proposed § 1.218(a)(11)(iii)(G) could be interpreted to encompass even the wearing of basic equipment by patients, staff, or visitors like paper face masks or examination gloves, which could qualify nearly any area of a VHA medical facility as categorically excluding the presence of a service animal. The revisions to proposed § 1.218(a)(11)(iii)(G) (§ 1.218(a)(11)(iii)(F) as renumbered) more accurately describe the types of areas that a service animal will be restricted from entering.

We emphasize that even with these changes to the area-based exclusions in § 1.218(a)(11)(iii), a specific service animal may still be individually denied access or removed if it does not meet the standards in § 1.218(a)(11)(i) and (a)(11)(ii), namely that the animal must be controlled (by the individual or an alternate handler that is not a VA employee), be housebroken, and not pose a threat to the health and safety of people or other service animals.

Several commenters expressed concerns regarding the provision of service dogs, service dog training, and service dog benefits by VA. Particularly,

some commenters asserted that VA should assist veterans to obtain a service dog and have such a dog trained and certified. These comments are beyond the scope of this rule, and we therefore do not make any changes. We note, however, that the provision of service dog benefits by VA is regulated at 38 CFR 17.148. Other commenters noted the benefits of service animals for the treatment of PTSD, but did not necessarily suggest any changes to the proposed rule. Again, these comments are beyond the scope of this rule, and we therefore do not make any changes. Some commenters requested that the final rule provide examples of what VA considers to be “work” or “tasks” that a service animal may be trained to perform, either in the preamble or through revisions to the regulation text. Commenters noted that such examples would be particularly helpful for a service animal that might assist an individual with a mental disability or illness. We decline to make revisions to the regulation text or provide examples in the preamble of this final rule. However, we do provide as reference here the supplemental guidance issued by the Department of Justice when it last issued regulations on this subject in 2010, specifically on what constitutes “work or tasks” that a service animal may provide (see Appendix A to 28 CFR part 36, Guidance on Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and Commercial Facilities, 75 FR 56236, 56258). This reference provides examples of work or tasks that VA understands to be performed by service animals for individuals with disabilities so that such individuals may better navigate public spaces. By providing this reference of examples of work and tasks in the context of public access, VA is not expressing

a position on the efficacy of such dogs for the treatment of the disabilities of the individuals.

One commenter urged VA to include emotional support animals in the definition of “service animal” in § 1.218(a)(11)(viii) as proposed. The commenter asserted that because many veterans with PTSD use emotional support animals in their homes, that refusing access to emotional support animals on VA property could discourage use of VA services by such veterans. This same commenter also made a reference to Department of Housing and Urban Development (HUD) regulations and guidance that create exclusions for public housing’s “no pet” policies for certain animals, to include permitting access for emotional support animals in applicable circumstances, and suggested that VA consider developing a similar rule regarding emotional support animal access on VA property. Another commenter suggested adopting HUD’s approach in the context of VA’s residential treatment programs. VA does not disagree that some veterans may use emotional support animals, nor disagree with the commenters’ subjective accounts that such animals have improved the quality of their lives. However, the HUD regulations and guidance referenced by the commenters appropriately apply in the context of public housing. In particular, the HUD regulations and guidance do not require an animal to be individually trained to do work or perform tasks for the benefit of the individual with a disability. However, there is a distinction between the presence of an animal in public areas and the functions that animal performs to enable an individual to use public services and public accommodations (service animal), as compared to the presence and use

of a comfort or emotional support animal in the home (emotional support animal). Regarding VHA's residential treatment programs, these programs involve shared spaces amongst multiple veterans, where there is an active treatment component that involves the participation of not only the veterans but also treatment providers as well as other members of the public at times. Therefore, we interpret VHA residential programs to be public treatment spaces (just as the other areas of VHA property that are specified in this final rule), rather than a residential space analogous to the HUD public housing context. We therefore do not make any changes based on these comments.

Commenters expressed concern about the area-based restrictions for property under the control of the National Cemetery Administration (NCA) in proposed § 1.218(a)(11)(iv). We interpret such comments to be the result of a misunderstanding by commenters that new restrictions were being created in the proposed rule when in fact the proposed area-based restrictions reflect existing restrictions on NCA property in accordance with rules requiring access on the same terms, conditions, and regulations that generally govern admission of the public to the property. That is, the proposed and final rules only clarify that where an individual may not access NCA property (i.e., in NCA construction or maintenance sites, or in NCA open interment areas), so, too, a service animal may not access such property. This rule does not affect the right of an individual to be accompanied by their service animal on NCA grounds in those areas where the general public is permitted. However, these comments raise the possibility that the provision regarding restriction of access to open interment areas may be

perceived as overly restrictive. We have, therefore, made a change to §1.218(a)(11)(iv)(A) to remove the reference to columbaria (as columbaria pose minimal safety issues), and to indicate that individuals may be permitted to observe an individual interment or inurnment accompanied by a service animal. This change will allow family or representatives (such as clergy), accompanied by their service animals, to observe an interment or inurnment when requested and when such observation can be safely accommodated.

VA makes one technical correction in § 1.218(a)(11)(viii). In the last sentence, VA is replacing “of this chapter” with a complete citation “38 CFR 17.148.” VA also makes several minor, non-substantive edits for clarity such as removing the first commas appearing in proposed § 1.218(a)(11)(ix)(C) and (D), replacing the word “on” with the word “in” three places in § 1.218(a)(11)(ix)(E) in reference to VA Community Living Centers, and adding the clarifying phrase “with respect to an individual” to the definition of a disability in § 1.218(a)(11)(x).

One commenter asked for clarification if animals other than dogs can participate in Animal Assisted Activities (AAA) or Animal Assisted Therapy (AAT) programs under § 1.218(a)(11)(ix)(C) and (ix)(D) as proposed. Unlike service animals under the proposed and final rules, there is no species restriction for AAA or AAT animals, and AAA or AAT animals are permitted on VHA property only at the discretion of the VA facility head or designee. Should an AAA or AAT animal that is not a dog meet the requirements in § 1.218(a)(11)(ix)(C) and (D), a VA facility head or designee may grant that animal access to VA property.

Another commenter suggested that VA allow for pets to visit patients in unique

circumstances such as end-of-life situations. As with other species of animals, there is no categorical restriction for AAA or AAT animals that would necessarily exclude a personal pet in an end-of-life or other special circumstance. Should an animal serve an AAA or AAT purpose and meet the requirements in § 1.218(a)(11)(ix)(C) and (D), a VA facility head or designee may grant that animal access to VA property. In addition, a commenter suggested that AAA and AAT animals be allowed on VA property only when their handler or organization has liability insurance. We do not disagree that liability insurance would be a sensible requirement, particularly as AAA is often conducted in group settings. However, VA believes that any liability insurance would be better addressed outside of a regulatory requirement by the VA facility head or designee and the AAA or AAT handler or organization prior to establishing a particular program at a facility. VA makes no changes based on these comments.

For all of the reasons noted above, VA is adopting the rule as final with changes as noted to 38 CFR 1.218.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule includes a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that requires approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 1.218(a)(11) contains a collection of information under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirement in this section as an emergency clearance under control number 2900-0831. This emergency clearance expires on December 31, 2015, before which time VA will submit to OMB a request for permanent clearance.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule directly affects only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the final regulatory flexibility analysis requirements of 5 U.S.C. 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by OMB, unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date.”

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the

programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.011, Veterans Dental Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on June 5, 2015, for publication.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Government property,
Security measures.

Dated: August 10, 2015

Michael Shores,
Chief Impact Analyst,
Office of Regulation Policy & Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 1 as follows:

PART 1 – GENERAL PROVISIONS

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

AUTHORITY: 38 U.S.C. 501(a), and as noted in specific sections.

2. Revise § 1.218(a)(11) to read as follows:

§ 1.218. Security and law enforcement at VA facilities.

(a) * * *

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(11) Animals. (i) Service animals, as defined in paragraph (a)(11)(viii) of this section, are permitted on VA property when those animals accompany individuals with disabilities and are trained for that purpose. A service animal shall be under the control of the person with the disability or an alternate handler at all times while on VA property. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means). VA is not responsible for the care or supervision of a service animal. Service animal

presence on VA property is subject to the same terms, conditions, and regulations as generally govern admission of the public to the property.

(ii) A service animal will be denied access to VA property or removed from VA property if:

(A) The animal is not under the control of the individual with a disability or an alternate handler;

(B) The animal is not housebroken. The animal must be trained to eliminate its waste in an outdoor area; or

(C) The animal otherwise poses a risk to the health or safety of people or other service animals. In determining whether an animal poses a risk to the health or safety of people or other service animals, VA will make an individualized assessment based on objective indications to ascertain the severity of the risk. Such indications include but are not limited to:

(1) External signs of aggression from the service animal, such as growling, biting or snapping, baring its teeth, lunging; or

(2) External signs of parasites on the service animal (e.g. fleas, ticks), or other external signs of disease or bad health (e.g. diarrhea or vomiting).

(iii) Service animals will be restricted from accessing certain areas of VA property under the control of the Veterans Health Administration (VHA properties) to ensure patient care, patient safety, or infection control standards are not compromised. Such areas include but are not limited to:

(A) Operating rooms and surgical suites;

(B) Areas where invasive procedures are being performed;

- (C) Acute inpatient hospital settings when the presence of the service animal is not part of a documented treatment plan;
- (D) Decontamination, sterile processing, and sterile storage areas;
- (E) Food preparation areas (not to include public food service areas); and
- (F) Any areas where personal protective clothing must be worn or barrier protective measures must be taken to enter.

(iv) Service animals will be restricted from accessing certain areas of VA property under the control of the National Cemetery Administration (NCA properties) to ensure that public safety, facilities and grounds care, and maintenance control are not compromised. Such areas include but are not limited to:

- (A) Open interment areas, except as approved to observe an individual interment or inurnment.
- (B) Construction or maintenance sites; and
- (C) Grounds keeping and storage facilities.

(v) If a service animal is denied access to VA property or removed from VA property in accordance with (a)(11)(ii) of this section, or restricted from accessing certain VA property in accordance with paragraphs (a)(11)(iii) and (iv) of this section, then VA will give the individual with a disability the opportunity to obtain services without having the service animal on VA property.

(vi) Unless paragraph (a)(11)(vii) of this section applies, an individual with a disability must not be required to provide documentation, such as proof that an animal has been certified, trained, or licensed as a service animal, to gain access

to VA property accompanied by the service animal. However, an individual may be asked if the animal is required because of a disability, and what work or task the animal has been trained to perform.

(vii) An individual with a disability, if such individual will be accompanied by the service animal while receiving treatment in a VHA residential program, must provide VA with documentation that confirms the service animal has had a current rabies vaccine as determined by state and local public health requirements, and current core canine vaccines as dictated by local veterinary practice standards (e.g. distemper, parvovirus, and adenovirus-2).

(viii) A service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition. Service dogs in training are not considered service animals. This definition applies regardless of whether VA is providing benefits to support a service dog under 38 CFR 17.148.

(ix) Generally, animals other than service animals ("non-service animals") are not permitted to be present on VA property, and any individual with a non-service animal must remove it. However, a VA facility head or designee may

permit certain non-service animals to be present on VA property for the following reasons:

(A) Animals may be permitted to be present on VA property for law enforcement purposes;

(B) Animals under the control of the VA Office of Research and Development may be permitted to be present on VA property;

(C) Animal-assisted therapy (AAT) animals may be permitted to be present on VHA property when the presence of such animals would not compromise patient care, patient safety, or infection control standards. AAT is a goal-directed clinical intervention, as provided or facilitated by a VA therapist or VA clinician, that incorporates the use of an animal into the treatment regimen of a patient. Any AAT animal present on VHA property must facilitate achievement of patient-specific treatment goals, as documented in the patient's treatment plan. AAT animals must be up to date with all core vaccinations or immunizations, prophylactic parasite control medications, and regular health screenings as determined necessary by a licensed veterinarian consistent with local veterinary practice standards. Proof of compliance with these requirements must be documented and accessible in the area(s) where patients receive AAT.

(D) Animal-assisted activity (AAA) animals may be permitted to be present on VHA property when the presence of such animals would not compromise patient care, patient safety, or infection control standards. AAA involves animals in activities to provide patients with casual opportunities for motivational, educational, recreational, and/or therapeutic benefits. AAA is not a

goal-directed clinical intervention that must be provided or facilitated by a VA therapist or clinician, and therefore is not necessarily incorporated into the treatment regimen of a patient or documented in the patient's medical record as treatment. AAA animals must be up to date with all core vaccinations or immunizations, prophylactic parasite control medications, and regular health screenings as determined necessary by a licensed veterinarian consistent with local veterinary practice standards. Proof of compliance with these requirements must be documented and accessible in the area(s) where patients may participate in AAA.

(E) Animals participating in a VA Community Living Center (CLC) residential animal program or a Mental Health Residential Rehabilitation Treatment Program (MHR RTP) may be permitted to be present on VHA property, when the presence of such animals would not compromise patient care, patient safety, or infection control standards. A residential animal program in a VA CLC or a MHR RTP is a program that uses the presence of animals to create a more homelike environment to foster comfort for veterans, while also stimulating a sense of purpose, familiarity, and belonging. Any VA CLC or MHR RTP residential animal present on VHA property must facilitate achievement of therapeutic outcomes (such as described above), as documented in patient treatment plans. Residential animals in a VA CLC or MHR RTP must be up to date with all core vaccinations and immunizations, prophylactic parasite control medications, and regular health screenings as determined necessary by a licensed veterinarian consistent with local veterinary practice standards. Proof

of compliance with these requirements must be documented and accessible in the VA CLC or MHR RTP.

(F) Animals may be present on NCA property for ceremonial purposes during committal services, interments, and other memorials, if the presence of such animals would not compromise public safety, facilities and grounds care, and maintenance control standards.

(x) For purposes of this section, a disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of the individual; a record of such an impairment; or being regarded as having such an impairment.

(OMB has approved the information collection requirements in this section under control number XXXX-XXXX.)

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(Authority: 38 U.S.C. 901, 40 U.S.C. 3103)