

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**14 CFR Part 382**

**Docket No. DOT-OST-2018-0067**

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

**AGENCY:** Office of the Secretary (OST), U.S. Department of Transportation (DOT).

**ACTION:** Interim Statement of Enforcement Priorities Regarding Service Animals.

**SUMMARY:** The U.S. Department of Transportation (DOT or the Department) is issuing a statement of enforcement priorities to apprise the public of its intended enforcement focus with respect to transportation of service animals in the cabin of aircraft. The Department regulates the transportation of service animals under the Air Carrier Access Act (ACAA) and its implementing regulation, 14 CFR Part 382 (Part 382). The Department seeks comment on this interim statement, and intends to issue a final statement after the close of the comment period.

**DATES:** Comments should be filed by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number DOT-OST-2018-0067 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov> and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202-493-2251

*Instructions:* You must include the agency name and docket number DOT-OST-2018-0067 at the beginning of your comment. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

*Privacy Act:* Anyone can search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the Federal Register published on April 11, 2000 (65 FR 19477-78), or you may visit <https://www.transportation.gov/privacy>

*Docket:* For access to the docket to read background documents and comments received, go to <https://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Robert Gorman, Senior Trial Attorney, or Blane A. Workie, Assistant General Counsel, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC, 20590, 202-366-9342, 202-366-7152 (fax), [robert.gorman@dot.gov](mailto:robert.gorman@dot.gov) or [blane.workie@dot.gov](mailto:blane.workie@dot.gov) (e-mail).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Air Carrier Access Act (ACAA) prohibits discrimination in airline service on the basis of disability. 49 U.S.C. 41705. DOT's rule implementing the ACAA generally requires that airlines permit an individual with a disability to travel with his or her service animal in the cabin at no additional charge. 14 CFR 382.31(a). Service animals play a vital role in the lives of many individuals with disabilities. For example, service animals serve as guides for persons with visual impairments, notify persons who are deaf or hard of hearing of public announcements and/or possible hazards, warn persons with post-traumatic stress disorder or other mental or emotional disabilities at the onset of an emotional crisis, and retrieve items for passengers with mobility impairments. At the same time, the Department recognizes that airlines have a responsibility to ensure the health, safety, and welfare of all of its passengers and employees. In enforcing the requirements of Federal law, the Department is committed to ensuring that our air transportation system is safe and accessible for everyone.

DOT requires airlines to allow a wide variety of service animals in the cabin of aircraft flying to, from, and within the United States. Under the ACAA, the Department considers a service animal to be any animal that is individually trained to assist a person with a disability, or an animal that is necessary for the emotional well-being of a passenger. 14 CFR 382.117(e) and Guidance Concerning Service Animals in Air Transportation, 73 FR 27614, 27658 (May 13, 2008). However, airlines are never required to accept snakes, reptiles, ferrets, rodents, sugar gliders, and spiders. Airlines may also exclude animals that are too large or heavy to be accommodated in the cabin, pose a direct threat to the health or safety of others, cause a significant disruption of cabin service, or are prohibited from entering a foreign country.

14 CFR 382.117(f). In addition, airlines may deny transport to a service animal that is not well-behaved, suggesting a lack of proper training. 14 CFR 382.117(i) and Guidance Concerning Service Animals in Air Transportation, 73 FR 27614, 27659 (May 13, 2008). Foreign air carriers are required to only transport dogs. 14 CFR 382.117(f).

Under DOT rules, airlines determine whether an animal is a service animal or pet by the credible verbal assurance of an individual with a disability using the animal, or by looking for physical indicators such as the presence of a harness or tags. 14 CFR 382.117(d). If the animal is a psychiatric service animal (PSA) or an emotional support animal (ESA), airlines may also require documentation by a licensed mental health professional stating that the passenger has a mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders IV (DSM-IV) and that the passenger needs the animal for air travel or activity at the passenger's destination. 14 CFR 382.117(e). Airlines may also require 48 hours' advance notice and check-in one hour before the check-in time for the general public as a condition for travel with an ESA or PSA. 14 CFR 382.27(c)(8). Airlines are prohibited from imposing such a requirement for travel with other types of service animals, except for travel with a service animal on a flight segment scheduled to take 8 hours or more. 14 CFR 382.27(a); 382.27(c)(9).

In 2016, the Department attempted to change its service animal requirements through a negotiated rulemaking because of widespread dissatisfaction with the current rule. Some disability rights advocates asserted that the Department's service animal requirements discriminate against passengers with mental and emotional disabilities by allowing airlines to require them to give advance notice and documentation that other individuals with disabilities are not required to give. There was also concern that a growing number of passengers are presenting untrained animals that are essentially just pets, and demanding the right to bring them

onboard as service animals. Airlines reported to the Department a proliferation of websites offering certificates of psychological need for essentially any applicant who pays a small fee. The use of unusual species such as turkeys and pigs as service animals also caused unease not only with airlines but also with advocates. Some advocates worried that the use of unusual service animals would create distrust by flight crew and other passengers that could affect their ability to bring legitimate service animals onboard. Unfortunately, while the negotiated rulemaking process was highly informative and productive, the Department's efforts to find full consensus on these issues was not successful.

Since that time, the need for the Department to address these issues has only grown. Airlines have become increasingly concerned that untrained service animals pose a risk to the health and safety of its crewmembers and passengers. Carriers have reported increased incidents of misbehavior including urination, defecation, and biting. A few have established policies that they deem appropriate given their belief that there has been a significant increase in passengers bringing animals onboard that have not been properly trained as service animals. For example, one airline declared its intention to require, effective March 1, 2018, that all passengers traveling with service animals provide immunization records and/or veterinary health forms for their animal signed by a veterinarian at least 48 hours before the flight's scheduled departure time.<sup>1</sup> In addition, this airline specified that PSA and ESA users must also submit documentation that their animal has been trained to behave in a public setting as a condition for travel, and required that all passengers with service animals must check-in at the airport counter. The airline further states that it will evaluate on a case-by-case basis whether it will accept any animal that is not a dog or a cat for travel. Another airline has indicated that, effective March 1, 2018, it will require

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<sup>1</sup> On February 22, 2018, that airline changed its policy so it no longer required all service animal users to provide immunization records/and or veterinary health forms.

passengers who use PSAs or ESAs to provide, no later than 48 hours prior to travel, two separate forms in addition to the medical form already permitted under section 382.117(e). First, under the airline policy, the passenger must attest that he or she is not aware of any reason that the animal would pose a direct threat to the health or safety of others, and that the passenger accepts full legal responsibility for any misbehavior by the animal. Second, the passenger must provide a form, signed by a licensed veterinarian, providing information about the medical history of the animal.<sup>2</sup> Other airlines have informally expressed to the Department an interest in similarly amending their service animal policies.

Many disability advocates oppose these new policies for various reasons. They broadly contend that the Department should not tolerate these restrictions because they impose burdens that go beyond what the Department has indicated airlines may impose on passengers with disabilities. More specifically, they contend that the inconvenience and expense of providing veterinary forms outweigh their limited value. They note that whether an animal poses a direct threat to the health or safety of others should be assessed on an individualized, real-time basis, rather than through a general requirement that applies to all service animals. Advocates have also pointed out to the Department that a 48 hours' advance notice requirement prevents

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<sup>2</sup> Among other data, the veterinarian form must include the type/breed/weight of the animal, the date of the animal's last rabies vaccine, and a statement that at the time of the animal's last physical examination, the animal appeared to be free of infectious or contagious diseases that would endanger other animals or public health. The veterinarian must also relay information from the animal's owner regarding whether the animal has injured or attacked any person.

An earlier version of this airline's policy would have required the veterinarian to directly attest that the animal's behavior would not pose a direct threat onboard the aircraft. The American Veterinary Medical Association (AVMA) has raised concerns with the Department about airlines' service animal forms, to the extent that they would require veterinarians to predict or certify that an animal will behave appropriately onboard an aircraft. The AVMA noted that veterinarians generally rely on reports from the animal's owner and on their direct observations of the animal during a physical examination. The AVMA explained to the Department, however, that veterinarians cannot guarantee the behavior of an animal, particularly in a new environment like an aircraft. The AVMA emphasized to the Department that expanding the scope of the veterinary form beyond the health status of the animal and behavioral information of the animal based on owner reports or the veterinarian's observations could lead to refusals by veterinarians to fill out these forms, which would result in more service animals being denied air transportation.

passengers from traveling in the event of an emergency. In addition, advocates assert that requiring passengers to check-in at the ticket counter is burdensome, particularly in an era where many passengers skip the ticket counter and proceed directly to the gate because they have checked in online. PSA users further contend that it is discriminatory to apply greater restrictions to PSAs than are applied to other service animals. More generally, advocates have expressed a concern that passengers with disabilities may be subject to a shifting patchwork of carrier policies.

### **Advance Notice of Proposed Rulemaking**

Today, the Department issued an advance notice of proposed rulemaking (ANPRM) in response to concerns expressed by the stakeholders about the need for a change in the Department's service animal requirements. The ANPRM solicits comments on ways to ensure that individuals with disabilities can continue using their service animals while deterring the fraudulent use of other animals not qualified as service animals and ensuring that animals that are not trained to behave properly in the public are not accepted for transport. Because the rulemaking process can be lengthy, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office), within the Office of the General Counsel, is issuing this statement to apprise the public of its intended enforcement focus with respect to transportation of service animals in the cabin until the service animal requirements are revised.

### **Interim Statement of Enforcement Office Priorities**

The Enforcement Office has the authority to pursue or not to pursue enforcement action against airlines for not complying with the ACAA and the Department's implementing regulation. Given that the service animal issue is currently the subject of an open rulemaking,

the Enforcement Office will focus its enforcement on clear violations of the current rule that have the potential to adversely impact the largest number of persons.<sup>3</sup>

#### Service Animals—Species and Number

The Enforcement Office intends to exercise its enforcement discretion by focusing its resources on ensuring that U.S. carriers continue to accept the most commonly used service animals (i.e., dogs, cats, and miniature horses) for travel. While the Enforcement Office will focus on ensuring the transport of commonly used service animals such as dogs, cats and miniature horses by U.S. carriers, it may take enforcement action against U.S. carriers for failing to transport other service animals on a case-by-case basis. Airlines are expected to continue to comply with the existing service animal requirement which allows U.S. airlines to deny transport only to certain unusual service animals such as snakes, other reptiles, ferrets, rodents and spiders. The Enforcement Office believes that the public interest will be better served by this exercise of its enforcement discretion because dogs, cats, and miniature horses are the most commonly used service animals.

The Department's service animal regulation does not indicate whether airlines must allow passengers to travel with more than one service animal. In the past, the Enforcement Office has informed airlines that they will not be subject to enforcement action if they limit passengers to transporting three service animals. The Enforcement Office continues to recognize that a passenger may require more than one task trained service animal. Multiple task trained service animals may be needed to the extent that they are trained to perform different tasks, or in cases where an individual trained service animal must rest and cannot perform tasks for the passenger

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<sup>3</sup> To the extent that this interim statement of enforcement priorities conflicts with the Enforcement Office's 2009 Frequently Asked Questions guidance document (<https://www.transportation.gov/airconsumer/frequently-asked-questions-may-13-2009>), this more recent document will control.

for extended periods. On the other hand, it is less clear that passengers require more than one ESA for travel or at the passenger's destination. Accordingly, as a matter of discretion, the Enforcement Office does not intend to take action if airlines limit passengers to transporting one ESA. Additionally, the Enforcement Office does not intend to take action if airlines limit passengers to transporting a total of three service animals.

#### Advance Notice

The Enforcement Office plans to use its resources to ensure that airlines are not improperly requiring passengers with service animals to provide advance notice prior to travel. Under existing DOT rules, carriers generally may not require advance notice for passengers with disabilities, unless the rule specifically permits advance notice. 14 CFR 382.27(a). Carriers may require advance notice for passengers traveling with PSAs or ESAs, or for any service animal where the flight segment is scheduled to take 8 hours or more, but only with regard to the animal's need to relieve itself during the flight. 14 CFR 382.27(c). Thus, under existing rules, carriers may not otherwise require advance notice for passengers traveling with service animals (e.g., seeing eye dogs) other than ESAs or PSAs unless the flight segment is 8 hours or more. Requiring advance notice for service animals outside of these specific circumstances violates the Department's regulation and may significantly harm passengers with disabilities as it prevents them from making last minute travel plans that may be necessary for work or family emergencies.

#### Proof that an Animal is a Service Animal

The Department's service animal regulation requires airlines to accept the following as proof of a service animal's status: identification cards, other written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using

the animal. 14 CFR 382.117(d). Airlines have pointed out to the Department that accepting identification cards, harnesses, or tags as the sole evidence that an animal is a service animal is problematic because service animal paraphernalia are sold online and may be obtained by unscrupulous individuals so their pets can fly in the aircraft cabin as service animals. However, the Department's disability regulation makes clear that these protections are for individuals with disabilities. See 14 CFR 382.1 and 382.3. When deciding to accept an animal as a service animal, airlines must determine both that the passenger is an individual with a disability and that the animal is a service animal. See 73 FR 27614, 27658. If a passenger's status as an individual with a disability is unclear (for example, if the disability is not clearly visible), then the airline personnel may ask questions about the passenger's need for a service animal. For example, airlines may ask "how does your animal assist you with your disability?" See 73 FR 27614, 27660. A credible response to this question would establish both that the passenger is an individual with a disability and that the animal is a service animal. While airlines are required to accept items such as vests and harnesses as evidence of a service animal's status, it would be reasonable for airlines to also request the passenger's credible verbal assurance to ensure the passenger is an individual with a disability who has a need for that service animal.

### Check-in Requirements

Airlines generally allow passengers to check-in electronically before arriving at the airport. DOT prohibits airlines from denying an individual with a disability the benefit of any air transportation or related services that are available to other persons. 14 CFR 382.11. Among the many benefits of electronic check-in is the ability to skip the ticket counter and proceed directly to the gate. One of the reasons that the Department requires airlines to make its websites accessible is to enable individuals with disabilities to check-in electronically like other travelers.

See 14 CFR 382.43. For these reasons, and considering the prohibition against discrimination in the ACAA, the Enforcement Office intends to act should an airline require that a passenger with a service animal check-in at the ticket counter, thereby denying those passengers the same benefits that are available to other passengers.

### Documentation

As noted above, carriers may refuse transportation to any service animal that displays behavior evidencing a lack of training in a public space. For example, an untrained animal may bark or growl at other persons on the aircraft, bite or jump on people, or urinate or defecate in the cabin. The Department's disability rule does not clearly indicate how carriers determine whether a service animal poses a direct threat to the health or safety of others. The provision in the current regulation that allows airlines to deny boarding to an animal that poses a direct threat to the health or safety of others will be further clarified through the rulemaking process. As described previously, certain carriers have indicated that they need veterinary forms or behavioral attestations to determine whether a service animal, particularly a PSA and/or an ESA poses a direct threat. At the same time, we understand the disability advocates' view that these policies violate the Department's disability regulation because they impose new requirements on passengers with disabilities.

The Enforcement Office does not intend to use its limited resources to pursue enforcement action against airlines for requiring proof of a service animal's vaccination, training, or behavior so long as the documentation is not required for passengers seeking to travel with a service animal that is not an ESA or PSA. Under section 382.27, carriers may not require advance notice to obtain services or accommodations, except under circumstances specifically permitted by rule. As noted above, however, under DOT's rule, airlines are permitted to ask for

up to 48 hours' advance notice for passengers using PSAs and ESAs. 14 CFR 382.27(c)(8). The Department permits airlines to require 48 hours' advance notice of a passenger wishing to travel with an ESA or PSA in order to provide the carrier the necessary time to assess the passenger's documentation.<sup>4</sup> As such, the Enforcement Office does not intend to use its limited resources to pursue enforcement action against airlines for requiring proof of a service animal's vaccination, training, or behavior for passengers seeking to travel with an ESA or PSA. At present, the Enforcement Office is not aware of any airline requesting information from ESA or PSA users that would make travel with those animals unduly burdensome or effectively impossible (e.g., requiring veterinarians to directly guarantee or certify that an animal will behave appropriately onboard an aircraft). The Enforcement Office will continue to monitor the types of information sought by ESA and PSA users, however.

#### Containing Emotional Support Animals in the Cabin

Part 382 does not clearly specify whether or how airlines may restrict the movement of service animals in the cabin. The FAA determined as a matter of aircraft safety that passengers may carry service animals in their lap during all stages of flight, so long as the animal does not weigh more than a lap child (i.e., a child that has not reached his or her second birthday).<sup>5</sup> The Enforcement Office then interpreted section 382.117 as prohibiting an airline from requiring service animals to be harnessed in the cabin, and requiring airlines to transport service animals in

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<sup>4</sup> See 73 FR 27614, 27636 (May 13, 2008).

<sup>5</sup> FAA Order 8400.10, FSAT 04-01A (2004) at [http://fsims.faa.gov/WDocs/Bulletins/Information%20Bulletins/Air%20Transportation%20Info%20Bulletins%20\(FSAT\)/FSAT0401A.htm](http://fsims.faa.gov/WDocs/Bulletins/Information%20Bulletins/Air%20Transportation%20Info%20Bulletins%20(FSAT)/FSAT0401A.htm).

the cabin free of restraining devices while accompanying users at their seats in accordance with applicable safety requirements since there appeared to be no safety reason to do so.<sup>6</sup>

However, because the regulatory text is not explicitly clear on this topic and the FAA order does not address the behavior of service animals, the Enforcement Office now intends to exercise its enforcement discretion with respect to carriers that restrict the movement of ESAs in the cabin. We recognize the possibility that ESAs may pose greater in-cabin safety risks because they may not have undergone the same level of training as other service animals (including PSAs). Accordingly, at this time, the Enforcement Office will not take action against carriers that impose reasonable restrictions on the movement of ESAs in the cabin so long as the reason for the restriction is concern for the safety of other passengers and crew. Such restrictions may include requiring, where appropriate for the animal's size, that the animal be placed in a pet carrier, the animal stay on the floor at the passenger's feet, or requiring the animal to be on a leash or tether.

### **Request for Comments**

This interim statement of enforcement priorities reflects the Department's current view of where to focus its limited resources with respect to service animal issues, given airlines recently announced service animal policies. In appropriate cases, the Enforcement Office may take enforcement action against carriers for violations that are not described in this interim statement. The Department solicits comment on the effects and implications of adopting these enforcement priorities. The comment period will remain open for 15 days after publication in the Federal

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<sup>6</sup> See letter dated March 22, 2010 from the Department's Office of Aviation Enforcement and Proceedings stating that the office "has long interpreted this provision to mean that, in general, service animals should be transported in the cabin free of restraining devices while accompanying users at their seats in accordance with applicable safety requirements, and prohibits carriers from otherwise mandating conditions or restrictions not stated in section 382.117." DOT-OST-2008-0272-0091 at <https://www.regulations.gov/document?D=DOT-OST-2008-0272-0091>.

Register. Late-received comments will be considered to the extent practicable. After the close of the comment period, the Department will issue a final statement of enforcement priorities. Comments relating to amending the Department's disability regulation should be directed to the ANPRM docket: DOT-OST-2018-0067.

Issued this 16<sup>th</sup> day of May, 2018, in Washington, DC.

- Original Signed -

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