

DOT Confirms That Comfort Animals Are Not Service Animals

The U.S. Department of Transportation (DOT) has issued a new regulation, “Traveling by Air with Service Animals,” that substantially revises its rules governing the transportation of service animals onboard aircraft. Under the new regulation, airlines will no longer be required to transport emotional support or comfort animals in cabin. Airlines will only be required to transport service dogs (not other species) and a passenger with a disability may only bring a maximum of two service dogs in cabin. Airlines will continue to be required to accommodate psychiatric service dogs. Airlines will be allowed to require passengers to complete a DOT form attesting that their animal is a legitimate service dog that is trained and vaccinated and will behave appropriately during the journey.

The Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, prohibits discrimination in air transportation based on disability, but does not prescribe precisely how DOT, the responsible federal agency, should prohibit such conduct. Over the years, DOT has issued regulations and guidance under this statutory authority, including on service animal transport in air travel. Those regulations and guidance documents obligated airlines to allow passengers claiming to have a disability to be accompanied in cabin not just by service animals that assist with physical disabilities such as seeing eye dogs, but also by emotional support animals that do not have to be trained to perform any task but rather simply provide comfort to the individual.

In recent years, airlines experienced a huge escalation in the number of animals being presented for transportation in cabin as emotional support animals. The number of passengers traveling with emotional support animals jumped from 1.02 million in 2018 to 1.13 million in 2019 — almost double the increase in the number of passengers traveling with pets. These included not only dogs, but a wide range of other species (including peacocks, ducks, turkeys, pigs, and iguanas). In addition, because emotional support animals are not required to undergo any particular training, airlines experienced an increased number of incidents in which such animals attacked passengers, airline employees, and other animals, causing injuries and harm, or that caused significant damage to aircraft through incidents involving urination and defecation onboard aircraft and in airport terminals. In promulgating the new rule, DOT recognized that “the statute requires airlines to provide accommodations that are reasonable given the realities and limitations of air service and the onboard environment of commercial airplanes,” but acknowledged that “animals on aircraft may pose a risk to the safety, health, and well-being of passengers and crew, and may disturb the safe and efficient operation of the aircraft.”

DOT received more than 15,000 comments on its notice of proposed rulemaking, including from individuals with disabilities, airlines, flight attendants, airports, aviation transportation stakeholders, and members of the public.

The most significant aspects of DOT’s final rule are:

Definition of Service Animal

A service animal is a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. DOT is limiting the species of service animals to dogs only because “dogs are the most common animal species used by individuals to mitigate disabilities both on and off aircraft,” and therefore such an approach “will permit the vast majority of service animal users to travel with their service animals while also minimizing confusion and safety concerns for airlines, airports, and individuals with disabilities.”



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Emotional Support Animals

Airlines are not required to recognize emotional support animals as service animals. The exclusion of emotional support animals (and species other than dogs) from the definition of service animal more closely aligns with the Department of Justice's regulations under the Americans with Disabilities Act, which do not require the accommodation of emotional support animals in places of public accommodation such as restaurants, hotels, theaters, and airports.

Psychiatric Service Animals

Psychiatric service animals are treated the same as other service animals that are individually trained to do work or perform a task for the benefit of a qualified individual with a disability. DOT will no longer draw a distinction between psychiatric service animal users and other service animal users, but will monitor to determine "whether unscrupulous individuals are attempting to pass off their pets as service animals for non-apparent disabilities, including (but not limited to) psychiatric disabilities."

Health, Behavior, and Training Form; Relief Attestation Form

Airlines may require passengers with a disability traveling with a service animal to submit to the airline a DOT form attesting to the animal's training and good behavior, and certifying the animal's good health (Air Transportation Form). For flight segments of eight hours or more, airlines may require passengers to submit a DOT form attesting that the animal has the ability either not to relieve itself on such a long flight or to relieve itself in a sanitary manner (Relief Form). Airlines are not permitted to require any other documentation as a condition of transport.

Forms in Advance of Travel

Airlines may require a service animal user to provide forms up to 48 hours in advance of the date of travel if the passenger's reservation was made prior to that time or, in the alternative, require a passenger with a disability seeking to travel with a service animal in the cabin to provide the forms at the passenger's departure gate on the date of travel.

Number of Service Animals Per Passenger

Airlines may limit to two the number of service animals traveling with a single passenger with a disability. For passengers who seek accommodation for two service animals, airlines may require two separate attestation forms, one for each animal.

Service Animal Size

Airlines may require that a service animal fit on the handler's lap or within the handler's foot space on the aircraft. If they do not fit in their handler's foot space, airlines are required to move them to another seat location within the same class of service where the animal can be accommodated, such as a seat next to an empty seat on the aircraft, if available. If there are no alternatives available to enable the travel with the service animal in the cabin, airlines are required to offer passengers the opportunity to transport the service animal in the cargo hold free of charge or travel on a later flight to the extent there is space available on a later flight and the transport is consistent with the safety requirements.

Requiring Physical Airport Check-In

Airlines may not require that a passenger physically check-in (vs. online) at the airport solely on the basis that the individual is traveling with a service animal.

Service Animal Leashing/Harnessing/Tethering

Airlines may require that service animals be harnessed, leashed, or otherwise tethered onboard an aircraft and in areas of the airport that they own, lease, or control. Non-physical means of control over the service animal, such as voice commands or signals, are not sufficient because they could implicate aircraft safety. If a passenger with a disability is unable to physically control the service animal, even if the reason is related to the person's disability, airlines may deny transport of the animal in the cabin.

Service Animal Denial of Transport

Airlines may deny transport of a service animal if (1) the animal poses a direct threat to the health or safety of others; (2) the animal causes a significant disruption in the aircraft or at the airport; (3) doing so would violate applicable safety, health, or other regulations of a U.S. federal agency, a U.S. territory, or a foreign government; or (4) the airline required the passenger to complete an Air Transportation Form or a Relief Form and the passenger failed to do so.

No Breed Restrictions

Airlines may not refuse transport of a dog that is individually trained to do work or perform tasks for the benefit of a qualified person with a disability and that otherwise satisfies the requirements of a service animal based solely on the dog's breed or generalized type. However, airlines may "make an individualized assessment based on reasonable judgement and objective evidence to determine if a service animal poses a direct threat to the health or safety of others." Given that foreign jurisdictions may prohibit the transport of certain breeds, DOT's rule allows airlines to deny transport to a service animal if carriage would violate foreign government health or safety requirements.

Damage Caused By Service Animals

Airlines may charge passengers traveling with service animals for damage to the aircraft caused by the passenger's service animal as long as the airline charges passengers without disabilities for similar repairs or damage.

The final rule will be effective 30 days after date of publication in the Federal Register.
