

Comfort Animals are Not Service Animals: U.S. DOT to Narrow Scope of Service Animal Accommodations

The U.S. Department of Transportation (DOT) has proposed significant changes to its disability regulations relating to the transportation of service animals by air. DOT's current regulations require that airlines allow passengers to travel with a wide range of animals in cabin on the basis that the animals are service animals or emotional support animals. U.S. airlines are estimated to have transported approximately one million such animals in cabin in 2018, which included ducks, turkeys, pigs, and iguanas. This has given rise to such problems as (apparently untrained) animals attacking, biting, and scratching passengers, airline employees, and other animals, as well as incidents of animals urinating and defecating in the airport terminal and onboard the aircraft.

The most significant of DOT's proposed changes follow.

Airlines Will Only Be Required to Accept Dogs as Service Animals

DOT proposes to define a service animal as a dog 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. Under DOT's current regulations, U.S. airlines are required to accept other species, including cats, miniature horses, pigs, and capuchin monkeys, as service animals.

Airlines Will Not Be Required to Accept Emotional Support or Comfort Animals as Service Animals

Airlines would be permitted to treat emotional support animals as pets because they are not trained to do work or perform a task for the benefit of a qualified individual with a disability.

Service Animal Documentation

Airlines will be permitted to require passengers with a disability traveling with a service animal to complete and submit to the airline the following forms developed by DOT (not the airlines' own forms) as a condition of transportation:

- DOT Service Animal Air Transportation Health Form, to be completed by a veterinarian, in order to certify the animal's good health;
- DOT Service Animal Air Transportation Behavior and Training Attestation Form, to be completed by the service animal handler, in order to attest to the animal's good behavior; and
- DOT Service Animal Relief Attestation, to be completed by the service animal handler, when traveling with a service animal on a flight eight hours or longer in order to verify that the animal has the ability to either not relieve itself, or can relieve itself in a sanitary manner.

The DOT forms would include a warning that it would be a federal crime for a service animal handler to make false statements or representations on these forms to secure disability accommodations.

Qualification as a Service Animal

In order to determine if an animal qualifies as a service animal, airlines would be permitted to ask passengers if the animal is required to accompany the passenger because of a disability and what work or task the animal has been trained to perform, but the airline could not ask the passenger the nature of his or her disability, nor are airlines permitted to ask service animals to demonstrate the work or tasks they have been trained to perform.

Psychiatric Service Dogs



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Psychiatric service dogs would continue to qualify as service animals on the basis that they are trained to do work or perform tasks.

Check-in Requirements

DOT proposes to allow airlines to require all passengers with a disability traveling with a service animal to check in one-hour before the check-in time for the general public as a condition for travel with a service animal to allow time to process the service animal documentation so long as the airline similarly requires advance check-in for passengers traveling with their pets in the cabin. Airlines would have to designate a location in the airport for these passengers to check-in promptly with a trained agent.

Number of Service Animals Per Passenger

DOT proposes to require airlines to accept up to two service animals per passenger.

Large Service Animals

DOT proposes to allow airlines to limit service animals based on whether the animal can fit onto the service animal handler's lap or foot space. Airlines could reject service animals that are too large to fit in these spaces. In cases where the service animal is too large to fit in the passenger's foot space or on the passenger's lap, DOT proposes to require airlines to: (i) seat the passenger with a service animal next to an empty seat within the same class of service, if available; (ii) provide the passenger with the option to transport the animal in the cargo hold for free; or (iii) transport the passenger on a later flight with more room, if available.

Control of the Animal

DOT proposes to continue to permit airlines to require that service animals be harnessed, leashed, tethered, or otherwise under the control of its handler at all times in the airport and on the aircraft unless the device interferes with the service animal's work, or the passenger's disability prevents use of these devices.

Direct Threat

DOT proposes to continue to allow airlines to refuse to transport a service animal if the animal poses a direct threat to the health or safety of others. In determining whether to deny transport to a service animal on the basis that the animal poses a direct threat, an airline must make an individualized assessment based on reasonable judgments that relies on the best available objective evidence to ascertain the nature, duration, and severity of the risk; the probability that the potential injury will occur; and whether reasonable modifications will mitigate the risk.

Breed Restrictions

DOT proposes to continue prohibiting airlines from imposing breed and other categorical restrictions on service animals, but seeks comment about the unique environment of a crowded airplane cabin in flight that would justify permitting airlines to prohibit pit bulls and other particular breeds from traveling on their flights.

DOT is requesting comments on the proposed rule by April 6, 2020.
