

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT-OST-2018-0067]

RIN 2105-ZA05

Guidance on Nondiscrimination on the Basis of Disability in Air Travel

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

ACTION: Final Statement of Enforcement Priorities Regarding Service Animals.

SUMMARY: The U.S. Department of Transportation (DOT or the Department) is issuing a final statement of enforcement priorities to apprise the public of its enforcement focus with respect to the 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).

DATES: This final statement is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and 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., S.E., Washington, D.C., 20590, 202-366-9342, 202-366-7152 (fax), robert.gorman@dot.gov or blane.workie@dot.gov (e-mail).

Final Statement of Enforcement Priorities

The purpose of this Final Statement is to provide the public with greater transparency with respect to the Enforcement Office's interpretation of existing requirements and its exercise of enforcement discretion surrounding service animals. Our enforcement efforts will be focused on clear violations of the current rule that have the potential to impact adversely the largest number of persons. These determinations will be made on a case-by-case basis.

This guidance is not legally binding in its own right and will not be relied on by the Department as a separate basis for affirmative enforcement or other administrative penalty. Conformity with this guidance (as distinct from existing statutes and regulations at Part 382) is voluntary only, and nonconformity will not affect rights and obligations under existing statutes and regulations.

- 1. Species and Breed Restrictions.** The Enforcement Office intends to use available resources to ensure that dogs, cats, and miniature horses are accepted for transport. Airline policies that categorically refuse transport to all service animals that are not dogs, cats, or miniature horses violate the current disability regulation. Categorical restrictions on dog breeds are inconsistent with Part 382 and the Department's enforcement priorities. Airlines will not be subject to enforcement action if they continue to deny transport to snakes, other reptiles, ferrets, rodents, and spiders; however, airlines will remain subject to potential enforcement action if they categorically refuse to transport other animals.
- 2. Number Restrictions.** We will focus our enforcement efforts on ensuring that airlines are not restricting passengers from traveling with one ESA and a total of three service animals if needed. Airlines may not impose categorical restrictions on the total number of service animals to be transported in the aircraft cabin.

- 3. Weight Restrictions.** Airlines may not impose a categorical restriction on service animals over a certain weight, without regard to specific factors that would preclude transport of that animal in the cabin.
- 4. Age Restrictions.** We do not anticipate exercising our enforcement resources to ensure the transport of service animals that are clearly too young to be trained to behave in public.
- 5. Flight-Length Restrictions.** Airlines may not categorically restrict service animals on flights scheduled to last 8 hours or more, and would be subject to potential enforcement action if they do so. On flights scheduled to last 8 hours or more, airlines may ask for 48 hours' advance notice, early check-in, and documentation that the animal will not need to relieve itself on the flight or that it can do so in a way that does not create a health or sanitation issue on the flight.
- 6. Proof that an Animal is a Service Animal.** If a passenger's disability is not clear, airlines may ask limited questions to determine the passenger's need for the animal even if the animal has other indicia of a service animal such as a harness, vest, or tag.
- 7. Documentation Requirements.** We do not anticipate taking enforcement action against an airline for asking users of any type of service animal to present documentation related to the animal's vaccination, training, or behavior, so long as it is reasonable to believe that the documentation would assist the airline in determining whether an animal poses a direct threat to the health or safety of others. We will monitor airlines' animal documentation requirements to ensure that they are not being used to unduly restrict passengers with disabilities from traveling with their service animals. Airlines may ask or encourage an ESA and PSA user to submit the medical form provided on the airline's

web site, but may not reject documentation provided by an ESA or PSA user from a licensed mental health professional treating the passenger that meets all of the criteria found in the rule itself.

- 8. Lobby Verification.** We do not anticipate taking enforcement action against an airline if it requires passengers with ESAs or PSAs to present service animal documentation in the lobby/ticket counter area, rather than the gate/sterile area.
- 9. Advance Notice/Check-In.** Airlines may require ESA/PSA users to provide up to 48 hours' advance notice of travel with an ESA/PSA, and may require ESA/PSA users to appear in the lobby for processing of service animal documentation up to one hour prior to the check-in time for the general public. However, airlines may not require non-ESA/PSA users to provide advance notice of travel with a service animal, or require non-ESA/PSA users to appear in the lobby for processing of service animal documentation.
- 10. Containment.** We will exercise our discretion with respect to containment issues for all service animals on a case-by-case basis, with a focus on reasonableness. For example, in general, tethering and similar means of controlling an animal that are permitted in the ADA context would appear to be reasonable in the context of controlling service animals in the aircraft cabin. Other factors bearing on reasonableness include, but are not limited to, the size and species of the animal, the right of other passengers to enjoy their own foot space, and the continued ability of the animal to provide emotional support or perform its task while being restrained or kept in a pet carrier.

Effective Date

This Final Statement is effective upon publication. Airlines are expected to review their policies and revise them, if necessary, to comply with the Department's disability regulation.

As a matter of enforcement discretion, we intend to refrain from taking enforcement action with respect to the issues set forth in this Final Statement for a period of up to 30 days from the date of publication so long as the airline demonstrates that it began the process of compliance as soon as this notice was published in the Federal Register. This timeframe should provide airlines with adequate time to review and revise their policies as needed to comply with the ACAA and the Department's disability regulation.

Issued this 8th day of August, 2019, in Washington, D.C.

/original signed/

James C. Owens,
Deputy General Counsel,
U.S. Department of Transportation.