

NATIONAL  
**DISABILITY RIGHTS**  
NETWORK



Protection & Advocacy for Individuals with Disabilities

April 6, 2020

Submitted to: <http://www.regulations.gov>

Office of the Secretary  
U.S. Department of Transportation  
1200 New Jersey Ave. SE, West Building Ground Floor, Rm. W12-140  
Washington, DC 20590-0001

Re: Travelling by Air with Service Animals NPRM  
Docket # DOT-OST-2018-0068  
RIN No. 2105-AE63

To Whom It May Concern:

Thank you for the opportunity to comment on the U.S. Department of Transportation's (DOT) Travelling by Air with Service Animals Proposed Rules. The National Disability Rights Network (NDRN) commends the Department's action proposing to amend the regulations to treat individuals who use psychiatric service animals identically to individuals who use service animals for other disabilities in air travel. NDRN also fully supports the Department's reinforcing its consistent position prohibiting airlines from restricting any breeds of service animal dogs. At the same time, NDRN opposes the Department's proposed rules regarding emotional support animals as well as imposing documentation, advanced check in requirements and other restrictions on individuals who use service animals. NDRN also has a number of concerns about other elements of the proposed rule that will be set out in more detail below.

NDRN is the non-profit membership association of Protection and Advocacy (P&A) agencies that are located in all 50 States, the District of Columbia, Puerto Rico, and the United States Territories. In addition, there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A Network comprises the nation's largest provider of legally-based advocacy services for persons with disabilities, including advocacy on accessible transportation to ensure people with disabilities who want to live in the community can do so.

NDRN (then the National Association of Protection and Advocacy Systems, NAPAS) was a member of the Department's original 1990 Air Carrier Access Act negotiated rule-

making process as well as the 2016 Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee).

### **Service Animal Species**

NDRN is gratified that the Department responded to the comments of NDRN, other members of the disability community, members of the public and some airlines to the 2018 Advance Notice of Proposed Rulemaking (ANPRM) and has decided to treat individually trained psychiatric service dogs the same as all trained service animals. Removing the discriminatory requirement that psychiatric service animal users provide advance written documentation that confirmed that they were receiving treatment for a condition listed in the DSM-IV in order to bring their psychiatric service animals aboard an aircraft is a small positive step toward helping to eliminate the stigma and discrimination faced by individuals with mental disabilities.

NDRN also supports DOT's position to reject the requests by commenters to the 2018 ANPRM that proposed allowing airlines to refuse transportation to certain breeds or types of service dogs. People with disabilities use a wide range of dog breeds as service animals for a wide range of reasons and should not be limited to certain breeds as long as the dogs are individually trained to do work or perform tasks for the benefit of an individual with a disability. As many commenters to the ANPRM stated, airline personnel cannot be trained as experts in determining dog breeds or types. NDRN and disability advocates uniformly agree that a service animal that is out of control can be barred from boarding a flight so a blanket breed ban would be inappropriate and unnecessary.

NDRN has some concerns with DOT's proposal in the NPRM to limit service animals to just dogs. NDRN has heard of examples where individuals with disabilities have trained non-canine species, specifically cats, to do work or perform tasks for the benefit of the individual with a disability. NDRN believes more information from the public is needed before moving to limit service animals to just dogs.

P&As have been involved in cases where individuals with disabilities have trained miniature horses to be service animals. NDRN acknowledges that miniature horses are relatively uncommon in air travel but NDRN notes that a user of a larger miniature horse attended the Department's Air Carrier Access Act Advisory Committee in early March and the miniature horse was well behaved. If an individual with disabilities chooses a miniature horse as a service animal and successfully trains the miniature horse to do work or perform tasks for the benefit of the individual with a disability, NDRN believes the miniature horse should not be excluded from the definition of a service animal because of its species.

Alternatively, DOT could chose to treat miniature horses in much the same way as the Department of Justice (DOJ) does in its 2010 Americans with Disabilities Act (ADA) regulations. DOJ chose to impose a species limitation on service animals to just dogs. However, recognizing that miniature horses are used as service animals by people with disabilities, DOJ's 2010 ADA regulations provide that while miniature horses are not

included in the definition of service animals, public accommodations and facilities of state and local governments must generally treat miniature horses like service animals taking into consideration factors like limitations on space.

NDRN also believes that capuchin monkeys, which we understand are limited in number, deserve special treatment under the proposed rule. While capuchin monkeys clearly perform the role of service animals, NDRN understands there are legitimate behavioral and epidemiologic concerns about them. NDRN believes that capuchin monkeys should have a special category to require airlines to allow them access to air travel if they travel in a pet carrier and are being transported by their trainers.

### **Emotional Support Animals**

NDRN opposes DOT's proposed rule to restrict passengers who use emotional support animals (ESAs) to conditional protection under the current ACAA regulations. We also oppose allowing airlines to treat ESAs as mere pets and to collect pet fees from passengers with disabilities who need an ESA to travel. Passengers with disabilities who use ESAs need the animals to provide comfort and emotional support particularly in the stressful context of air travel. While ESAs are not trained to do work or perform tasks, it is their mere presence that provides support to some people with disabilities.

Under the current DOT ACAA regulations, a passenger seeking to travel with an ESA is required to provide the airlines a 48 hour advance notice. The airline can also require the passenger to provide written current (dated one year or less) verification from a licensed health care provider that states: (1) that the individual has a mental or emotional disability recognized in the DSM-IV; (2) that the person needs the ESA for travel or at their destination; (3) that the individual is under the care of the licensed health care provider, and (4) the date and the type of the health care providers license and state in which it was issued.

In addition, in the past two years, most of the airlines have unilaterally added additional verification rules and forms for ESAs. We believe these unilateral decisions have placed additional burdens and caused considerable confusion for people with disabilities who need ESAs to fly and have likely deterred air travel by many people with disabilities.

NDRN believes that it is the airlines own failure to enforce the current regulatory scheme which has largely contributed to the practice of people without disabilities asserting their pets are ESAs. NDRN also notes that the airlines have a financial incentive to exaggerate fraudulent ESA issues in order to be able to impose pet carriage fees on as many animals travelling by air as possible.

Recognizing that the current regulatory scheme is not working appropriately, NDRN agrees that because ESAs are not required to have the training of a service animal, some additional restrictions would be appropriate. NDRN would accept some additional species exclusions (beyond current exclusion of snakes, other reptiles, ferrets, rodents and spiders) for emotional support animals.

NDRN also rejects the mandatory use of Federal Aviation Administration (FAA) approved pet carriers because it will inevitably mean that individuals with disabilities will be limited to only small ESAs.

Given that ESAs are not required to have the training of a service animal, NDRN believes that some uniform documentation of the need for an ESA and an attestation of behavior by the individual seeking to fly with an ESA would be acceptable. In order to eliminate the fraudulent documentation provided through the Internet, NDRN would find acceptable a requirement that an individual with a disability seeking verification of their need have at least one in-person visit with a health care provider although ongoing care through telehealth/telemedicine or other electronic means be permitted. However, we believe the medical verification form and attestation forms used must be uniform DOT forms and not different depending upon the airline being flown.

NDRN believes that the proposal to require a separate animal relief attestation form for scheduled flight segments that exceed 8 hours is an unnecessary burden for both air travelers with disabilities travelling with a service animal or ESA as well as on the airlines. There are only a few non-stop domestic flight segments that are 8 hours or longer. These flights include direct flights to and from Honolulu to inland U.S. cities or East Coast cities. The longest flight segments between the lower 48 states are Seattle to Miami or Los Angeles to Boston and they are both under 7 hours long.

### **Large Animals**

Some individuals with disabilities need large service animals because of their disabilities. Guide dogs need to be large enough to guide and some individuals with disabilities use larger service animals to assist with balance or to retrieve items too heavy for a small dog.

DOT and the airlines' concerns about service animals and ESAs not fitting in the foot space of passengers is almost completely a result of airlines' decisions to reduce seat pitch (the distance between the same part of the seat in the next row). Seat pitch in economy class seats had typically been 32" but in the late 2000s, airlines began to reduce seat pitch in economy class seats to 30" or 29" or even 28" in the case of Spirit and Frontier Airlines.

NDRN believes that the airline's speculation, as described in NPRM, that some passengers feel "put upon" or coerced to agree to sitting with a service animal that might slightly encroach on their foot space are unfounded. NDRN believes many passengers would welcome sitting with a service animal dog because 38.4 percent or 48,255,413 U.S. households have at least one dog. <https://www.avma.org/resources-tools/reports-statistics/us-pet-ownership-statistics>

Passengers with disabilities with service animals should get the space accommodation they need for their service animal unless because of needs of other passengers with disabilities there are no available empty seats that provide room.

### **Limit of Two Service Animals**

NDRN supports DOT in acknowledging that some individual with disabilities may need more than one service animal because service animals perform different tasks. NDRN agrees that two service animals as a general rule is reasonable. NDRN would note that even if the final rule will limit to two service animals that can accompany one passenger, airlines still might need to make individual case by case exceptions to the two service animals rule to permit additional animals as a reasonable accommodation.

### **Service Animal Restraints**

NDRN agrees that service animals should be restrained and agrees with the proposed rules as long as it retains the “otherwise under control provision”. NDRN strongly opposes DOT’s proposal that if a service animal is out of control, would “allow airlines to determine that the animal is not a service animal.” Service animals are always service animals. However, if a service animal cannot control its elimination functions because the service animal is ill or the service animal is uncontrollably barking or otherwise misbehaving because it was provoked by something or someone, the airlines are permitted to bar travel on a particular flight until the service animal is under control. This is similar to the principles applied under the 2010 DOJ ADA service animal regulations which a permit service animal that is out of control to be barred from a public accommodation or facility of the state or local government.

DOT also proposes a definition of a service animal handler in the proposed regulations. NDRN generally supports the definition but again urges DOT to use the DOJ ADA formulation to allow a third party, such as a parent, caretaker or aide, to also be a service animal handler for a young child or other individuals with a disability. NDRN wants to ensure that a person with a disability who needs a third party to exercise some control of the service animal also be ensured, under the proposed rule, access to allow the individual with a disability to travel and be seated where they can provide control and the service animal can provide assistance.

### **Service Animal Documentation**

NDRN strongly opposes any written documentation requirement for people with disabilities travelling with service animals as proposed by DOT. As DOT itself noted, the animal behavior and training attestation requirement is a new paperwork burden for passengers with disabilities travelling with service animals and the animal health form is both a paperwork, time and out of pocket expenditure burden likely requiring an additional veterinary office visit.

NDRN also believes that veterinarians will be unwilling to check the box indicating “To my knowledge this animal described above has not exhibited aggressive behavior or caused service injury to other persons or animals (if you are unable to check this box, please provide an explanation in Section 3 of this document). The explanation they provide will then provide the airlines no additional practical information about any potential direct threat the animal might cause during a flight making getting the form filled out an expensive, time-consuming and meaningless exercise by a person with a disability who uses a service animal.

As for the contention that an animal health form would provide proof of rabies vaccination, almost all the states already require rabies vaccinations. More importantly, as DOT itself acknowledged, “according to the Centers for Disease Control (CDC), any dog that bites an individual should be assessed and monitored by a local or state health department over a 10-day period irrespective of whether there is proof that the animal has been vaccinated.” Thus the animal health form provides little additional information useful to the airline or any passenger who may have been bitten.

At the same time, NDRN does agree that the animal behavior and training attestation form should be required of passengers with disabilities seeking to fly with an ESA because ESAs may not have the training of a service animal. NDRN does not believe that individuals with disabilities who use ESAs should be required to provide an animal health form for the same reason as stated above for service animals.

If the behavior and training attestation documentation is required for ESAs, NDRN believes it is critical to require airlines to staff a special separate check-in with staff trained to review the forms as outlined in the proposed regulation at all hours open for check-in.

#### **Additional concern**

There is one regulatory provision that seems not to have an existing counterpart and is not discussed by DOT in the NPRM. Sec. 382.78 “May carriers charge individual with disabilities for the damage their service animal causes?” NDRN does not believe this provision is justified unless airlines currently actually charge passengers without disabilities if they vomit on a seat or floor or break a tray table or cause any other damage to aircraft.

Thank you for the opportunity to provide comments on this important matter. If you have any questions, please contact Kenneth Shiotani at 202-408-9514 x126 or [kenneth.shiotani@ndrn.org](mailto:kenneth.shiotani@ndrn.org).

Sincerely,



Curtis L. Decker  
Executive Director