



July 9, 2018

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave. SE
West Building Ground Floor, Room W12-140
Washington, DC 20590-0001

Re: Docket No. DOT-OST-2018-0068, Traveling by Air With Service Animals, Advance notice of proposed rulemaking

I am writing on behalf of the Association of Flight Attendants-CWA (AFA) in response to the U.S. Department of Transportation (DOT) advance notice of proposed rulemaking (ANPRM) seeking comment on amending the DOT Air Carrier Access Act (ACAA) regulation on transportation of service animals.¹ AFA represents nearly 50,000 flight attendants at 20 airlines. All flight attendants work in the cabin to ensure the safety, health and security of people on commercial passenger airplane flights. They do this despite chronic understaffing, which has grown significantly since the tragic events of 9/11/2001 due in no small measure to expanded security duties and ever-increasing passenger seat occupancy rates.²

The DOT states as reasons for this ANPRM that it wants to “ensure that individuals with disabilities can continue using their service animals while also helping to ensure that the fraudulent use of other animals not qualified as service animals is deterred and animals that are not trained to behave properly in the public are not accepted for transport as service animals.”³ We support these objectives. In recent comments⁴ submitted to the DOT regarding a companion “interim statement of enforcement priorities,”⁵ AFA stated that airlines should be allowed the discretion to deny transport of service animals such as (but not limited to) snakes, other reptiles, ferrets, rodents and spiders. In those comments, AFA also recommended that all pets and service animals be evaluated at the airport check-in desk prior to boarding to preclude problems that are more difficult to correct later. This evaluation, which should be undertaken by trained, experienced airline personnel, will help to determine whether the animal’s size, weight, and expected behavior are appropriate for the airplane’s cabin configuration. We encourage the DOT to incorporate these measures into any future revisions to its Air Carrier Access Act (ACAA) regulation.

¹ 83 FR 23832, May 23, 2018.

² Airline load factors for scheduled domestic and international travel grew from 73.48% in 2003 to 83.5% in 2017, based on Bureau of Transportation Statistics data available at <https://www.transtats.bts.gov/TRAFFIC/>

³ 83 FR 23832, May 23, 2018.

⁴ Association of Flight Attendants-CWA, *Re: Docket No. DOT-OST-2018-0067, Nondiscrimination on the Basis of Disability in Air Travel, Interim statement of enforcement priorities*, available at <https://www.regulations.gov/contentStreamer?documentId=DOT-OST-2018-0067-0080&attachmentNumber=1&contentType=pdf>

⁵ 83 FR 23804, May 23, 2018.



In a section of the ANPRM entitled “Request for Data and Comments,” the DOT solicited comments on 10 specific service animal issues. The following are AFA responses.

1. Psychiatric Service Animals

ANPRM Requests/Questions: “Should the DOT amend its service animal regulation so psychiatric service animals are treated the same as other service animals? DOT’s current service animal regulation allows airlines to require a user of a psychiatric service animal or emotional support animal to provide airlines with medical documentation and up to 48 hours’ advance notice prior to travel.”

AFA Response: We consider that all service animals, whether psychiatric or otherwise, have been properly trained to behave appropriately in public settings. This is in contrast to emotional support animals, to which we would apply additional requirements as detailed in comments below. Given that we recommend above that service animals, like pets, be evaluated by trained, experienced airline employees at the check-in desk to assess appropriateness for boarding, we see no reason not to treat psychiatric service animals the same as other service animals.

2. Emotional Support Animals

ANPRM: “The Department is seeking comment on whether it should continue to include ESAs [emotional support animals] in its definition of a service animal under the ACAA. ... [T]he Department seeks comment on whether emotional support animals should be regulated separately and distinctly from service animals? If yes, should DOT allow airlines to require ESA users to provide a letter from a licensed mental health professional stating that the passenger is under his or her care for the condition requiring the ESA and specifying that the passenger needs the animal for an accommodation in air travel or at the passenger’s destination? Would such a documentation requirement be stringent enough to prevent individuals who do not have disabilities from skirting the rules by falsely claiming that their pets are ESAs? Suggestions are welcome on approaches to minimize the use of letters from licensed mental health professionals that enable passengers without disabilities to evade airline policies on pets. Are there other types of documents or proof that could be required for carriage of ESAs in the passenger cabin that would be just as effective? Is advance notice of a passenger’s intent to travel with an ESA needed to provide the airline time to review documents or other proof? If the documentation needed to fly with an ESA is rigid, would ESA users be less likely to fly and choose other modes of transportation? The Department seeks comment on the practical implications of these options.”

AFA: We do not believe ESAs should continue to be included in the DOT definition of a service animal under the ACAA. We recommend they be regulated separately and distinctly from service animals. The DOT should allow airlines to require ESA users to provide a letter from a licensed mental health professional who has examined and diagnosed the person,⁶ specifying that the passenger needs the animal for an accommodation in air travel. If the animal is only required

⁶ The diagnosis should be of a disability “that substantially limits one or more major life activities.” See 14 CFR 382.3.

at the destination and not in the air, the animal could be transported in the aircraft hold rather than the cabin. Although this documentation requirement may not be stringent enough to preclude fraud entirely, the risk should be minimized if airlines are provided sufficient advance notice (at least 48 hours) to properly review documents and investigate discrepancies, and, as discussed above, trained, experienced airline employees are available at the check-in desk to assess the animal's appropriateness for boarding. While this documentation requirement may discourage some ESA users from flying, this would be a lesser burden for frequent flyers who would presumably only need to submit paperwork once. We believe the benefits of fewer onboard incidents involving ESAs and reductions in fraud are in the best interests of the traveling public, individuals with disabilities, and the airline employees tasked with mitigating onboard incidents and preventing fraudulent activity.

3. Containment of Emotional Support Animals

ANPRM: "If DOT adopts a rule that continues to require that ESAs be accepted for transport in the aircraft cabin, should DOT allow airlines to require that ESAs be in carriers for the duration of a flight?"

AFA: We believe that airlines should require that ESAs be in appropriate carriers that are properly sized and contain the animal safely for the duration of a flight. In addition, the carrier should have an insert(s) covering the bottom of the carrier to fully contain any urine/feces. The determination of whether the carrier is appropriate could be made on a case-by-case basis, preferably by the aforementioned trained, experienced airline employee tasked with evaluating animals at check-in using rigorous assessment procedures that have been developed and implemented by experienced animal handlers, and harmonized across the industry. ESAs should not be accepted for transport in the aircraft cabin, unless they are secured in a carrier, as described above, for the duration of flight.

4. Species Limitations

ANPRM: "The Department seeks comment on what, if any, limitations on species should be imposed for service animals/emotional support animals."

AFA: We do believe that service animals and ESAs should be limited by species, although we are not in a position to make specific recommendations beyond our statement above that airlines be allowed to deny transport, including but not limited, to snakes, other reptiles, ferrets, rodents and spiders and that the animal should not be so large that it is inappropriate for carriage in the cabin. As available space in the cabin varies by the airplane model, seating capacity, and various other factors, the advance notification requirement and the trained employee at check-in tasked with assessing the appropriateness of the animal and carrier/kennel for boarding should suffice.

5. Number of Service Animals Per Passenger

ANPRM: "The Department seeks comment on whether to limit the number of service animals/emotional support animals that a single passenger may carry onboard a flight. If so, what should the number limit be? The Department also seeks comment on whether justification should

be required for a single passenger to be allowed to carry more than one service animal/emotional support animal. If so, what would the parameters of that justification be?”

AFA: We do not believe it would be necessary to limit the number of animals that a single passenger may carry onboard, assuming the advance notification and employee evaluation requirements discussed above are put in place, to allow airlines to determine appropriateness for boarding on a case-by-case basis. Justification for more than one ESA may be in the form of letters from one or more licensed mental health professionals, who have examined and diagnosed the person,⁷ confirming the need for more than one animal. It is AFA’s position, stated in response to question #3, *supra*, that unless an ESA is contained in an appropriate carrier for the duration of a flight, it should not be accepted for transport in the aircraft cabin, even if this limits the number of a single passenger’s ESAs to one.

6. Social Behavior Training

ANPRM: “The Department seeks comment on whether it should amend its service animal regulation to allow airlines to require that all service animal users attest that their animal can behave properly in a public setting. The Department also solicits comments on alternatives to a documentation requirement to assess the service animal’s behavior.”

AFA: We do not believe it is necessary to require that owners of service animals (as opposed to ESAs) provide attestations of proper behavior in a public setting, as long as airlines have properly trained and experienced employees available at check-in to make these determinations prior to boarding.

7. Control of the Service Animal

ANPRM: “DOT expects that a service animal will be under the control of its user, but DOT’s service animal regulation does not contain any leash, tether, or harness requirement. We seek comment on whether tethering or other similar restrictions should be a condition for permitting travel with a service animal. The DOJ’s [Department of Justice] service animal regulation requires that dogs and miniature horses be harnessed, leashed or tethered unless the device interferes with the animal’s work or the individual with a disability is unable to hold a tether because of his or her disability. In such cases, the individual with a disability may control his service animal by some other means, such as voice control. Should DOT adopt a similar requirement? Would such a requirement further minimize the likelihood of unwelcome or injurious behavior by a service animal to other passengers or airline staff? What are the advantages or disadvantages in adopting this type of requirement?”

AFA: We do recommend that the DOT adopt a requirement for animal control similar to that used by the DOJ. We also believe that this will help to further minimize the likelihood of inappropriate behavior. We see no particular disadvantages to this type of requirement, especially if implemented on a case-by-case basis as determined at time of check-in by a trained

⁷ The diagnosis should be of a disability “that substantially limits one or more major life activities.” See 14 CFR 382.3.

airline employee experienced in assessing animal behavior and appropriateness for carriage in the cabin.

8. Large Service Animals

ANPRM: “The Department seeks comment on whether it should allow airlines to limit the size of emotional support animals or other service animals that travel in the cabin and the implications of such a decision.”

AFA: The airline should be allowed to limit the size of ESAs and other service animals to account for the available space in the cabin. This determination should be made at time of check-in by an airline employee who is properly trained and experienced.

9. Veterinary Forms

ANPRM: “The Department seeks comment on whether its service animal regulation should explicitly prohibit airlines from requiring veterinarian forms as a condition for permitting travel with a service animal beyond those specifically allowed by the Department in its regulation unless there is individualized assessment that such a documentation is necessary. If veterinarian forms are not allowed to be required as a condition for travel, what about other types of documentation to ensure that the animal is not a public health risk to humans? Specifically, the Department seeks comment on whether airlines should be allowed to require that service animal users provide evidence that the animal is current on the rabies vaccine as that vaccine is required by all 50 states for dogs and by most states for cats. Finally, should airlines be permitted to require passengers to obtain signed statements from veterinarians regarding the animal’s behavior. And if so, what recourse should be available for service animal users if the veterinarian refuses to fill out the behavior form.”

AFA: We believe airlines should be allowed to require veterinarian forms for service animals not specifically allowed by the DOT, as it is in the public interest to ensure that animals brought on board are free of communicable diseases and not considered a threat to the safety and health of passengers and crew. Should the veterinarian refuse to fill out the behavior form, the airline should be allowed to determine through appropriate risk analysis methods whether in-cabin carriage of the animal is acceptable.

10. Code-Share Flights

ANPRM: The DOT “seeks comment on whether the rule should explicitly state that U.S. carriers would not be held responsible for its foreign code-share partner’s refusal to transport transportation service animals other than dogs.”

AFA: We do not have a specific position as to whether the DOT should or should not hold an airline responsible for the refusal by its foreign code-share partner to refuse transportation of service animals other than dogs. We do believe that passengers who need to travel with service animals should be given full information by airlines during the ticketing process so that the

possibility of denied boarding due to more restrictive code-share partner requirements is fully disclosed.

Finally, DOT rulemaking should also address the following issues that have been raised by AFA safety committee representatives. In no specific order, these issues include the following:

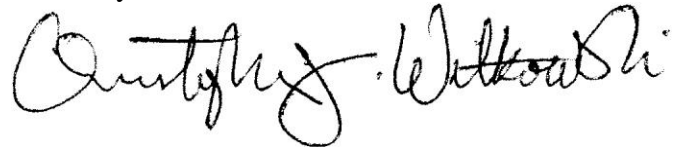
- Flight attendants at one carrier noted that documentation is required for an emotional support or psychiatric service animal, but the flight attendant manual does not go on to define differences between the two; it appears they are considered to be one and the same. Generally a flight attendant will not know the difference between the two.
- Flight attendants at several carriers said they are provided no specific training by airlines on the difference between ESAs and psychiatric service animals.
- Large animals may encroach on the space of other passengers, the aisle, etc.
- Passengers have been non-compliant when instructed by crewmembers to keep an animal off of aircraft seats, etc.
- Passengers may feed or provide drinks to animals.
- Animals may lunge, snap, growl and even bite other passengers, crew and other service animals.
- Animals sometimes relieve themselves on the aircraft.
- The animal may not be with the person it is designated for on some occasions, such as when the designee is in the lavatory.
- There have been recent requests for medical attention for animals, and passengers have demanded oxygen because their animal was in distress.
- There seems to be a shift in who is receiving the emotional support: Animal or Passenger? Very often flight attendants encounter passengers who are non-compliant because their animal is in some sort of distress and their excuse for being non-compliant is because the animal is upset etc. People seem to think that their doctor's note gives them carte blanche and are unaware of the airline's policies.
- Some passengers have multiple emotional support animals in carriers; the carrier may not fit under the seat in front.

To mitigate such issues, in addition to chronic understaffing, flight attendants have suggested solutions that could be mandated in a revision to the ACAA regulation. These include the following:

- Require airlines to develop specific procedures and concomitant training and information to address attacks and other non-compliant behavior by service animals and their owners in the cabin.
- Require use of a form or other sort of informational tool to give to passengers who are non-compliant with respect to their animal in the cabin. This form would state the airline's rules and thereby reinforce the flight attendant requests.
- Require that some form of accurate, pre-flight, standardized documentation be provided to crewmembers specifying the category of each animal in the cabin (e.g., whether they are pets, emotional support, or service animals.)
- Require that flight attendant manuals, training materials, and other bulletins better reflect the rules and policies of the airline and the contents of its contract of carriage.

Thank you for your consideration of these comments. As always, AFA looks forward to assisting the DOT with its deliberations on these issues of particular significance to flight attendants.

Sincerely,

A handwritten signature in black ink, reading "Christopher J. Witkowski". The signature is written in a cursive style with a large, prominent initial "C".

Christopher J. Witkowski, Director
Air Safety, Health and Security Department