

## AVIATION

# ALERT

JANUARY  
2021

## New Rules from U.S. Department of Transportation: Tell Your Emotional Support Peacocks to Stay Home – This Is a Dog’s World Now

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The U.S. Department of Transportation (“DOT”) isn’t horsing around with its new rules governing service animals on commercial airline flights, which went into effect last week. In response to a growing backlash as to perceived fishy interpretations of what qualifies as a service animal, the new narrow rules will allow airlines to limit service animals to dogs that meet specific criteria. Under the new rules, airlines are not required to recognize emotional support animals as service animals and may treat them as pets. Therefore, the emotional support peacocks, pigs, cats, rabbits, miniature horses, monkeys, hamsters, and comfort turkeys will have to find a new means of transport.

### BACKGROUND

These new rules come after a year-long process commenced in response to perceived abuses of the system as well as public debates over the genuine needs for emotional support animals on commercial flights for people with disabilities. Prior to these new rules, the Air Carrier Access Act (“ACAA”) recognized two types of service animal: (1) any animal that was individually trained or able to provide assistance to a qualified person with a disability; and (2) emotional support animals, defined as any animal shown by documentation to be necessary for the emotional well-being of a passenger.

The new DOT rules, limiting service animals to dogs that are individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, were prompted by the increasing number of service animal complaints received from airlines, confusion from inconsistent definitions of what consti-

tuted a “service animal”, increasing incidents of alleged fraud regarding the classification of pets as service animals, a decrease in public trust due to the transport of obscure and exotic animal species, and an increase in reported incidents of misbehavior of emotional support animals onboard aircrafts which included animals urinating, defecating, and in some instances, harming passengers and crew members as well as other animals on the aircraft. Safety of the airline crews and passengers was the primary concern expressed by supporters of the DOT’s proposal to exclude emotional support animals from the service animal definition.

### PUBLIC COMMENTS

When the new rules were first proposed, more than 15,000 members of the public submitted comments, and more than 10,000 of those comments concerned the transport of emotional support animals. A large majority of airlines and related entities that submitted comments on the issue expressed their support for the DOT’s proposal to allow airlines to treat emotional support animals as pets. Airlines for America, the Regional Airline Association, and the National Air Carrier Association submitted a joint comment expressing that numerous incidents on aircrafts have demonstrated that emotional support animals were substantially more likely to misbehave during a flight due to the stressful and challenging aircraft environment. These organizations emphasized the substantial risks to flight safety posed by misbehavior of uncontained emotional support animals. The Association of Professional Flight Attendants submitted a comment noting that emotional support animals are known to

bite passengers and flight attendants, relieve themselves, cause allergic reactions, and encroach on the space and comfort zone of other passengers who have purchased tickets. Moreover, untrained emotional support animals put the entire cabin, passengers and crew at risk during emergency situations.

More than 3,000 individuals and, interestingly, approximately half of disability rights organizations that commented (mainly organizations that represent individuals with allergies and individuals with visual impairment who use guide dogs), did so in support of the DOT's proposed rule changes. The other half of disability rights organizations argued that emotional support animals provide a vital accommodation for many individuals suffering from a wide range of serious mental and emotional disabilities.

#### DETAILS OF THE NEW RULES

According to the new rules, service animals are defined as "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." This definition excludes all non-task-trained animals, such as emotional support animals, comfort animals, and service animals in training. In reaching this definition, the DOT considered whether emotional support animals should be treated as service animals, whether psychiatric service animals should be treated the same as other service animals, whether to limit service animals to certain species of animals, whether certain breeds or generalized physical types of animals should not be considered service animals, and whether the DOT's definition of a service animal under the ACAA should be similar to the U.S. Department of Justice's (the "DOJ") definition of a service animal under the Americans with Disabilities Act ("ADA").

Individual policies are to be set by the airlines but any such policy must conform to the DOT rules. As stated above, these new rules are meant to allow airlines to recognize emotional support animals as pets, rather than service animals, and to allow airlines to limit the number of service animals for one passenger. This classification will have an economic effect for airlines,

as airlines are permitted to charge passengers for transporting pets but are prohibited from charging passengers traveling with service animals.

Prior to travel, an airline may require passengers with disabilities traveling with a service animal to complete and submit to the airline a form, developed by the DOT, attesting to the animal's training and good behavior and certifying the animal's good health. For flights longer than eight hours, an airline may require an additional form from the passenger, also developed by the DOT, attesting that the animal has the ability either to not relieve itself on a long flight or to relieve itself in a sanitary manner. Moreover, an airline may require a passenger with a service animal to provide these forms up to 48 hours in advance of their flight or to provide these forms at the departure gate. In terms of safety, airlines also are permitted to require that a service animal be harnessed, leashed, or otherwise tethered on an aircraft and to set requirements as to the size of the service animals. For example, an airline is permitted to require a service animal to fit on their handler's lap or within its foot space on the aircraft.

These new rules depart from the DOT's prior guidance wherein airlines were not permitted to restrict passengers from traveling with emotional support animals nor place restrictions on specific breeds or species. Even under the new rules, however, airlines still are prohibited from refusing service dogs based on breed or generalized physical type. These rules are expected to reduce confusion by more closely aligning the DOT's definition of a service animal with the DOJ's definition of a service animal under the ADA, which applies to a broad array of entities, including airports, and which covers only dogs that are individually trained to do work or perform tasks for the benefit of an individual with a disability.

The National Disability Rights Network has indicated its intention to lobby the new Biden administration to reverse or revise these new narrower rules. ♦

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