

**BEFORE THE  
U.S. DEPARTMENT OF TRANSPORTATION  
WASHINGTON, DC**

**In the matter of:**

TRAVELING BY AIR WITH SERVICE ANIMALS

Docket No. DOT-OST-2018-0068-1157

**COMMENTS OF DELTA AIR LINES, INC.**

83 Fed. Reg. 23804 (Wednesday, May 23, 2018)

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## **GENERAL COMMENTS**

Delta Air Lines, Inc. (“Delta”) welcomes the opportunity to comment on the Department of Transportation’s (“DOT”) Advanced Notice of Proposed Rulemaking (“ANPRM”), issued on May 23, 2018, seeking public input on possible amendments to regulations governing the transport of service and support animals in aircraft cabins.

Delta takes pride in our customer service and strives to make sure all of our passengers have a safe and comfortable flight experience – including our passengers with disabilities. To this end, Delta is committed to addressing air travel accessibility issues in cases where service animals provide critical assistance to passengers with disabilities. Delta works closely with several individuals that represent a broad spectrum of disabilities and with our employees to develop and implement service and support animal policies and procedures that support their legitimate use. At the same time, passenger air carriers have an obligation to balance this important commitment with our responsibility to ensure the health, safety, and welfare of all our passengers and employees. 49 USC § 40101(a)(3); 83 Fed. Reg. at 23804, 23838 (May 23, 2018).

Accommodating service and support animals has become a growing challenge for Delta and other U.S. airlines. Incidents have included animals running freely about the cabin, urinating and defecating, and engaging in aggressive behavior such as barking, growling, or biting. This creates very real threats to the safety and health of passengers, cabin crew, and other animals that may be on board. In June 2017, a Delta passenger required 28 stitches after being attacked by a psychiatric service dog sitting on its owner’s lap. We recently had another incident in June 2018 where an emotional support dog bit a flight attendant on the face, and then bit a customer service agent sent to resolve the situation.

These unfortunate incidents demonstrate the challenges Delta and other airlines face as a result of the current regulatory framework (and guidance) applicable to service animals, emotional support animals (“ESAs”), and psychiatric service animals (“PSAs”). Part of this challenge has resulted from the sheer growth in the number of service and support animals

transported over the past few years. In 2017, Delta carried nearly 250,000 service and support animals, or almost 700 per day. The volume of service and support animals transported increased about 50 percent from 2016 to 2017 (along with an additional 240,000 pets), but the growth was not uniform over all categories of animals. ESAs led this growth with an increase of approximately 63 percent, while other service animal transport grew by only approximately 30 percent. Along with this dramatic growth in ESAs, the number of incidents increased about 53 percent during this same time period. There were a total of 136 incidents in 2017, or one every 2-3 days. These trends are consistent with those of the broader industry. Airlines for America reported that the number of ESAs that U.S. airlines accommodated increased by 56 percent from 2016 to 2017, with service animals (excluding ESAs) increasing by nearly 24 percent during that same period.<sup>1</sup>

Our main challenge in implementing the Air Carrier Access Act (“ACAA”) 49 U.S.C. § 41705, however, arises from the ambiguity and inconsistency in the current regulatory framework that has led to widespread fraud and abuse. This is particularly true with regard to ESAs, which accounted for nearly 70 percent of the service and support animals Delta transported in 2017. In contrast to how DOT regulations and non-binding guidance materials define trained service animals, ESAs are not required to be trained to perform any specific tasks. *See* Guidance Concerning Service Animals in Air Transportation, 68 Fed. Reg. 24874, 24875, 24878 (May 9, 2003); Current Guidance, 73 Fed. Reg. at 27657, 27659 (May 13, 2008). Further, ESAs may accompany a person who does not have a qualifying disability under the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (“ADA”), the broad civil rights law that prohibits discrimination by public entities and in public facilities based on disability. Finally, there is no medically-recognized protocol for determining if a person with a qualifying disability requires an ESA for their specific condition.

The DOT’s recognition of ESAs as a distinct category of animals allowed on aircraft has facilitated rampant fraud and abuse.<sup>2</sup> Indeed, a simple internet search reveals multiple sites

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<sup>1</sup> *See* In-Cabin Animals Aboard U.S. Passenger Airlines, Airlines for America, Feb. 28, 2018 (“Appendix”) at 2.

<sup>2</sup> As DOT discussed in the ANPRM, the ADA does not recognize ESAs as a legitimate category of service animal and questioned whether defaulting to the ADA definition would be appropriate. 83 Fed. Reg. 23832, 23834 (May

where the documentation for an ESA can be obtained after answering a few questions and paying a small fee. *See, e.g.*, [www.emotionalpetsupport.com](http://www.emotionalpetsupport.com); [www.thedogtor.net/Get-Approved/For-ESA-Letter](http://www.thedogtor.net/Get-Approved/For-ESA-Letter). The sophistication, ease of access, and availability of such illicit documentation makes it exceedingly difficult, if not impossible, for airlines to distinguish between legitimate ESAs and pets, or have confidence that an animal is trained to properly behave. This prevents carriers from effectively the screening of animals as demonstrated by the growth in ESA incidents.

Combined with rapid growth in the number of service and support animals transported in the cabin, the result is that existing regulation and guidance simply does not support the practical accommodation of legitimate service and support animals in today's environment. In light of these concerns, Delta strongly supports reform of the existing regulatory framework governing service and support animals. Delta recommends the DOT should keep the following principles in mind as it conducts its review of current regulations and considers updated approaches:

*Recognize that the aircraft cabin is a unique environment.* There are meaningful differences between aircraft cabins and other public spaces (e.g. restaurants, parks, hotels, retail stores, sports facilities, etc.) that merit the DOT's thoughtful consideration as it endeavors to craft new regulations and guidance. Relative to most other public spaces, service and support animals on aircraft are in close proximity with other passengers, cabin crew, and other animals. There is little room to isolate an animal that is exhibiting aggressive behavior, or otherwise acting inappropriately. There are also unique aspects to the aircraft cabin that may agitate animals, such as noises outside the range of the human hearing range and recirculated air that spreads scents of other animals throughout the cabin. These inherent differences warrant a different, more restrictive standard for defining a reasonable accommodation compared to other environments to ensure the safety of other passengers and cabin crew.

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23, 2018). Neither the ACAA (at 49 U.S.C. § 41705) nor DOT's implementing service animal regulations (at 14 C.F.R. § 382.117) require or even mention ESAs. DOT itself did not expressly recognize ESAs until in 2003, when it issued revised non-binding Guidance which redefined a service animal to include any animal needed for the "emotional well-being of a passenger."

Reduce abuse and fraud by clarifying and simplifying regulations to the greatest extent possible. The multiple categories with different standards and guidance do not serve passengers with disabilities or airlines well. The DOT should establish one category of service animals to accommodate any trained service animal providing assistance to a person with a qualifying disability. DOT must develop clear and consistent standards and processes for determining that a dog is trained and establishing that a person has a need for the service animal to prevent fraud and abuse. Reform should also limit the definition of service animals to dogs.

Eliminate the burden on front line staff to make subjective assessments. The time to effectively evaluate animals is not at the airport, during the boarding process, or after an animal has boarded the plane. Airport service agents, gate agents, and flight attendants have other responsibilities and limited time to police fraudulent service or support animal claims, or deal with aggressive animal behavior. It would be unreasonable to expect individuals with extensive training and experience with animals to properly evaluate them and identify stress signals in this environment and under strict time constraints.

To address operational issues, airlines should be permitted to require documentation of (a) the passenger's qualifying disability by a licensed medical professional, (b) behavioral training of the service animal, and (c) veterinary health records. Airlines should be permitted to require this documentation 48 hours in advance of a flight to provide opportunity to effectively evaluate the documentation. This approach is similar to the "Pet Passport" adopted by European Union countries. Absent an approach that clearly demonstrates an animal can behave properly, airlines should be able to impose breed restrictions to ensure passenger safety. Airlines should also have the ability to require those traveling with any service animal to check in at the service counter prior to security if they have not already provided proper documentation. This option accommodates the needs of those passengers with disabilities that have last minute travel requirements (within 48 hours) that may not have previously submitted proper documentation.

Crafted carefully by DOT, such requirements could better balance the needs of passengers with disabilities and the airlines' practical implementation concerns, eliminate the

need for gate agents and cabin crew to conduct subjective evaluations, and provide a more effective assessment of an animal's behavior to reduce incidents. Importantly, this would require DOT to establish clear standards for assessing the behavior of animals for certification that they have been trained properly to behave in an aircraft cabin. Moreover, advanced documentation allows airlines to better anticipate passengers' travel needs so better service can be provided. We believe this is a reasonable, balanced approach to both accommodate animals and ensure the safety of passengers, crew, and other service animals.

Taking these considerations in mind, Delta announced changes to its service and support animal policies in January of 2018. Customers traveling with an ESA or PSA are now required to submit three documents:

- A. a signed Veterinary Health Form and/or an immunization record current within one year of the travel date;
- B. an ESA/PSA Request form prepared and signed by a licensed medical professional; and,
- C. certification that the animal is trained to behave in appropriately in public.

These forms must be submitted to Delta's Service Animal Support Desk via Delta.com at least 48 hours before travel. DOT has, in its Interim Statement of Enforcement Priorities issued May 23, 2018, made clear its position that these documentation requirements are not "unduly burdensome or effectively impossible" requirements, and that it will focus its enforcement resources on other priorities during the service animal rulemaking. 83 Fed. Reg. 23804, 23807 (May 23, 2018).

It is Delta's view that our requirements represent good, common-sense first steps to address the growing service and support animal problems we are experiencing, and believe they are consistent with DOT's recently announced service animal enforcement policy guidelines. But we believe additional reform must be implemented to better balance the air transportation needs of passengers with disabilities with those of other passengers and crew.

## **RESPONSES TO SPECIFIC DOT QUESTIONS**

### **(1) Whether psychiatric service animals should be treated similar to other service animals.**

As noted above, Delta supports establishing only one category of service animals that must be accommodated. An animal (dog) “that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability” This singular category would include any trained service animals that currently fall into the PSA category, addressing a specific concern raised by groups representing people with disabilities.

### **(2) Whether there should be a distinction between emotional support animals and other service animals.**

As noted above, Delta supports establishing a single category of service animals to provide accommodation for any trained service animal providing assistance to a person with a qualifying disability under the ADA. Delta recognizes that some passengers have a legitimate need for some animals which are currently classified as ESAs – but we believe that those passengers could qualify for a PSA, and would be accommodated under our suggested approach. However, Delta has serious questions about the statutory basis for ESAs, and believes that DOT can best address service and support animal concerns by making their regulations more reflective of those by adopted by the Department of Justice (DOJ) to implement the ADA.

The ADA is the broad civil rights law that prohibits discrimination in public facilities based on disability, including both physical and mental conditions. Title II of the ADA prohibits disability discrimination by all public entities. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). This includes Amtrak, busses, subways, and other forms of public surface transportation operating over regular routes. 42 U.S.C. § 12131(1)(C); 42 U.S.C. § 12181(10); 28 C.F.R. § 35.104; 28 C.F.R. § 36.104. Title III of the ADA prohibits discrimination on the basis of a disability by any place of public accommodation, including the publicly-owned and operated portions of airport terminals and airport transportation systems. 42 U.S.C. § 12182; 28 C.F.R. § 36.201&.202. To

avoid discrimination, DOJ regulations mandate that service animals be allowed to accompany their disabled owners into covered facilities. 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

However, the DOJ's ADA regulations do not apply to those engaged in air transportation. The ACAA and implementing regulations apply exclusively to "air carriers" engaged in providing air transportation. 49 U.S.C. § 41705(a); 14 C.F.R. § 382.3; 14 C.F.R. § 382.117. When DOJ's implementing regulations for the ADA were originally adopted, the chosen definition of service animal not only included guide and signal dogs, but any "other animal individually trained to work or perform tasks for an individual with a disability." 56 Fed. Reg. 35544, 35554, 35594 (July 26, 1991). Even though the vast majority of service animals at the time were guide dogs or signal dogs assisting the visually and hearing impaired, DOJ was simply acknowledging that this was not always the case. As the species of animals used as service animals and the tasks performed expanded, DOJ clarified its longstanding position, narrowing the service animal definition under the ADA with the following language:

any **dog** that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. ..The crime deterrent effects of an animal's presence and **the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.**"

75 Fed. Reg. 56236, 56250, 56269 (2010)(emphasis added); *see* 28 C.F.R. § 36.104.

Thus, only dogs, whether being used for traditional purposes or as PSAs, are required by DOJ regulation to be accommodated in the public spaces covered by the ADA. In contrast to ESA regulations, this means that only a dog performing a specific task related to a psychiatric or other mental disability would qualify as a service animal under the ADA. The key determining



factor is training to perform a particular task or do some work for the person with a disability. 75 Fed. Reg. at 56250, 56269. No other species of animals are included. ESAs are excluded entirely from the ADA's coverage; even a doctor's letter cannot transform an emotional support dog or any other type of ESA into a qualified service animal. Accordingly, public spaces or facilities, such as publicly-owned airports and other forms of public surface transportation are not required to accommodate ESAs.

DOT's regulations applying the ADA to public transportation providers (other than air carriers) and portions of airport terminals within its domain, have adopted a service animal definition identical to that originally used by the ADA. As set forth in 49 C.F.R. § 37.3, service animal is defined as:

any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Importantly, the DOT's service animal regulation for air carriers under the ACAA does not define service animals, nor does it mention or even allude to the existence of ESAs. However, the ADA's service animal definition was incorporated into and discussed in DOT's original non-binding Guidance Concerning Service Animals in Air Transportation relating to the service animal issue under the ACAA ("Guidance").<sup>3</sup> See Guidance, 61 Fed. Reg. 56420-22, Service Animal Question 1 (Nov. 1, 1996). Echoing the DOJ, the DOT stated that "an animal that does not perform identifiable tasks or functions for an individual with a disability probably is not a service animal." *Id.* at Question 2. In short, DOT's original position was that ESAs would not ordinarily qualify as service animals for the purpose of access to aircraft cabins under

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<sup>3</sup> DOT's Guidance is purely advisory in nature without any "independent mandatory effect." 73 Fed. Reg. at 27655. It makes suggestions and recommendations concerning how carriers can best accommodate service animals and their users, but does not impose any binding legal prohibition under the ACAA upon airlines. *Id.*

the ACAA, and there were no separate regulations requiring that they be recognized in this situation.

DOT did not expressly recognize ESAs until it issued revised non-binding Guidance in 2003 which redefined a service animal to include any animal needed for the “emotional well-being of a passenger.” See Revised Guidance, 68 Fed. Reg. 24874, 24875, 24878 (May 9, 2003). In explaining why it was fundamentally changing its view of what constitutes a service animal, DOT noted only that a wider variety of animals, such as cats and monkeys, had over the years been trained to assist people with disabilities, and that those animals were performing a much wider variety of functions than ever before. *Id.* at 24875. DOT did not otherwise engage in an analysis of the pros and cons of including ESAs within the scope of the service animal regulations, such as whether ESA’s can be expected to properly behave in the confines of a commercial aircraft.

The ACAA itself, at 49 U.S.C. § 41705(a), contains only one short broadly-stated discrimination provision. Specifically, it states in the most general terms, that an air carrier:

may not discriminate against an otherwise qualified individual on the following grounds:

- (1) the individual has a physical or mental impairment that substantially limits one or more major life activities.
- (2) the individual has a record of such an impairment.
- (3) the individual is regarded as having such an impairment.

Thus, there is no statutory language that should or could be interpreted to require air carriers to accommodate ESAs. To the contrary, this broad prohibition on discrimination is comparable to the general prohibitions on discrimination in the ADA at 42 U.S.C. § 12132 (Title II), 42 U.S.C. § 12182 (Title III) which have been interpreted by DOJ’s regulations not to include ESAs in covered facilities, including other forms of public transportation or at airport terminals. There is no apparent or logical reason why air carriers should be singled out for disparate treatment that is more stringent than that applicable to other providers of public transportation services. Indeed, due to the unique problems with safely providing access to ESAs in the narrow confines of the aircraft cabin, which have been recognized by the DOT (83 Fed. Reg. at 23838), DOT must

carefully weigh the needs of passengers demonstrating some need for support with the obligation imposed upon carriers to provide a safe environment for all passengers and to eliminate factors that could be expected to interfere with cabin services and distract flight and in-cabin crewmembers from their duties.

The only statutory scheme requiring recognition of ESAs by private entities, other than the ACAA regulations, is the Fair Housing Act, 42 U.S.C. Chapter 45 (“FHA”), which requires landlords and homeowner’s associations to provide reasonable accommodation to **people with disabilities** to give them an equal opportunity to occupy a dwelling. 42 U.S.C. § 3604(f); FHEO Notice 2013-01, Service Animals & Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, at [hud.gov/sites/documents/SERVANIMALS\\_NTCFHEO2013-01.PDF](http://hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF). ESAs ordinarily qualify to live with their owners as a reasonable accommodation under the FHA. Thus, no-pet rules and pet deposits are expected to be waived to accommodate documented ESAs. However, there is a striking and important distinction between housing and an airplane. **To state the obvious, an individual’s dwelling is not a public space where the rights of persons other than the individual with a disability must also be considered. Indeed, in the context of air transportation, an air carrier is legally obligated to consider and protect the health, safety, and welfare of all passengers. 49 USC § 40101(a)(3); 83 Fed. Reg. at 23838.**

As discussed above, it is Delta’s primary position that ESAs should not be a separately-recognized category of service animals under the ACAA that are allowed in the aircraft cabin. Unlike the service animals that were the initial focus of DOT’s nondiscrimination rules, ESAs are not trained to perform any specific work or task for their owner. By definition, they are animals that provide comfort to their owners without having any particular training associated with their owner’s disability to qualify (Revised Guidance, 68 Fed. Reg. at 24875; Current Guidance, 73 Fed. Reg. at 27659), which is precisely the situation that has led to the dramatic rise in behavioral incidents that air carriers have been experiencing in recent years.

Delta respects that stress, anxiety, or other emotional conditions might be serious enough to qualify as a disability and could be mitigated by a service animal. In these cases the person should be able to utilize a trained service animal. That is precisely the approach taken under the

ADA. In its “Frequently Asked Questions about Service Animals and the ADA (“Service Animal FAQs”), at [ada.gov/regs2010/service\\_animal\\_qa.pdf](http://ada.gov/regs2010/service_animal_qa.pdf), the DOJ at Q4, answers the question “If someone's dog calms them when having an anxiety attack, does this qualify it as a service animal?” with the following response:

It depends. The ADA makes a distinction between psychiatric service animals and emotional support animals. If the dog has been trained to sense that an anxiety attack is about to happen and take a specific action to help avoid the attack or lessen its impact, that would qualify as a service animal. However, if the dog's mere presence provides comfort, that would not be considered a service animal under the ADA.

**(3) Whether emotional support animals should be required to travel in pet carriers for the duration of the flight.**

As noted above, Delta supports the elimination of the ESA category. It is Delta’s position that trained service and support animals are unlikely to be able to perform their function while contained in a carrier, and that such a requirement would not be consistent with the spirit of the ADA and ACAA to provide equal access to people with disabilities if the animal is trained to behave properly.

**(4) Whether the species of service animals and emotional support animals that airlines are required to transport should be limited.**

Delta supports limiting the species of any permitted service animal to dogs. Moreover, this view is shared by many stakeholders. DOT cited in the ANPRM that there was a consensus among the members of the ACCESS Advisory Committee (“ACCESS Committee”) that limits upon species recognized as service animals are appropriate. 83 Fed. Reg. at 23836-23837. Many prominent disability organizations believe that coverage should be limited to dogs, which are by far the most common type of service animals. *Id.* at 23837. As noted above, such a limitation is fully consistent with DOJ’s ADA regulations. *See* 28 CFR § 36.104. The ACCESS Committee noted that this approach provides greater predictability and added assurance of access

for individuals with disabilities with legitimate service animals. *Id.* It is also consistent with the ACAA requirements imposed upon foreign carriers flying to/from the United States, who are only required to accept dogs as service animals. 14 C.F.R. § 382.117(f). In short, this approach would harmonize the policies of domestic and foreign air carriers, and with other regulated providers of public surface transportation, while reducing the burdens and inconsistencies on those with trained service dogs when traveling by air.

Delta recognizes that the DOJ's ADA regulations were revised to include a separate provision, adopted in 2010, that allows miniature horses in public places on a case-by-case basis. 28 C.F.R. § 35.136(i); 28 C.F.R. § 36.302(c)(4). The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility: (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility (e.g. aircraft) can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility. *Id.* Given the limited number of passengers attempting to bring trained miniature horses on-board as service animals, Delta would consider accepting them on a case-by-case basis under the established screening criteria set out in the ADA regulations. Delta recommends that these same factors should be considered for other service animals, and represent the type of standards DOT should establish as part of this rulemaking process for the effective evaluation of all service animals.

Delta understands that many advocates for people with disabilities favor the inclusion of capuchin monkeys as service animals for ACAA purposes because these animals can perform tasks for mobility impaired persons that dogs and miniature horses are unable to do. DOJ considered this precise issue when it incorporated a dog limitation into its ADA regulations and determined that, upon balance, wild animals, whether taken from the wild or bred in captivity, should not be allowed in public spaces. DOJ found specifically that with capuchin monkeys the risk of injury from their unpredictable and aggressive behavior, plus the potential for transmission of diseases to humans, outweighed the benefits of allowing them. 75 Fed. Reg. at 56163, 56193 (Sept. 15, 2010). DOT has noted in the ANPRM the uncontrollable aggressive behavior of capuchin monkeys, which can be exhibited with only slight provocation, and that

may be inevitable given the confines of a passenger cabin. 83 Fed. Reg. at 23840. Moreover, according to the National Primate Research Center, at the University of Wisconsin, “[m]onkeys like routine and familiar surroundings; they are not good traveling companions.” See [pin.primate.wisc.edu/aboutp/pets/areyousure.html](http://pin.primate.wisc.edu/aboutp/pets/areyousure.html). Given the crowded environment of an aircraft cabin, Delta’s view is that the risks to the health and safety of passengers and crew outweigh the benefits from allowing capuchin monkeys as service animals under the regulations. Accordingly, Delta’s position is that they should not be permitted as a service animal under the ACAA. DOT asked in the ANPRM whether these concerns can be addressed by requiring the monkeys to travel in pet carriers. While this suggestion may have surface appeal, it is impractical as keeping them in a pet carrier would likely prevent them from being available to provide assistance.

**(5) Whether the number of service animals/emotional support animals should be limited per passenger.**

Delta supports limiting service animals to one per passenger. The DOT’s service animal regulation only requires air carriers to permit “a service animal” to accompany a passenger with a disability on-board an aircraft. 14 CFR § 382.117. Although the regulation does not contemplate the possibility of multiple animals for one passenger, DOT’s current Guidance does acknowledge that a single passenger may legitimately have two or more service animals. *Id.*; 73 Fed. Reg. at 27661. Delta recognizes that certain individuals with disabilities may have a legitimate need to travel with more than one task-trained service animal. However, DOT should consider the practicality of this in its revised regulations given that even if multiple animals are allowed, all of the animals must be able to fit within the passenger’s allotted space on the aircraft. Delta also notes that under its Interim Enforcement Guidelines, DOT permits limiting ESAs to one per passenger. 83 Fed. Reg. at 23806.

**(6) Whether an attestation should be required from all service animal and emotional support animal users that their animal has been trained to behave in a public setting.**

In January 2018, when Delta announced modified procedures for bringing an ESA into the aircraft cabin, it added a requirement that those traveling with ESAs attest that their animal is trained to behave in public. As recognized by DOT Guidance, the key factor in determining whether an animal presents a direct threat to others or a significant threat of disrupting operations is whether it has been properly trained. 73 Fed. Reg. at 27658. Thus, ESAs that may not have been trained to perform specific tasks for their owners must still be trained to behave properly in a public setting. *Id.* at 27636, 27659, 27661. Delta has attempted to ensure such training via a simple “Confirmation of Animal Training Form” that contains the following two attestations:

I confirm that this animal has been trained to behave in a public setting and takes my direction upon command (Mark check box to confirm.)

I understand that if my service animal acts inappropriately, that it will be considered not acceptable for air travel and will be denied boarding or will be removed from the aircraft. (Mark check box to confirm.)

Some advocates for the rights of people with disabilities have objected to the forms, favoring case-by-case observation of each animal to support individualized determinations as to whether that particular animal is likely to behave in an appropriate manner in the aircraft cabin.

As recognized by DOT and noted above, an aircraft cabin is a unique environment. 83 Fed. at 23838. Large numbers of people spend a prolonged amount of time in very close proximity to each other, probably closer than most other settings that could be encountered by service animals. A sizable number of both passengers and crewmembers necessarily come into close contact with any animals brought on-board. Further, there is limited ability, if any, to isolate an animal if it behaves inappropriately or demonstrates aggressive behavior, especially once the aircraft closes its door and takes off.

Moreover, evaluating an animal's disposition involves a subjective determination on the part of service or gate agents before boarding, or crewmembers once an animal is on-board. Delta's personnel are not extensively trained as animal behavioral experts, and DOT should not require them to be so experienced. It is a task that does and would continue to interfere with their primary responsibilities. Service and gate attendants, who currently have the front-line responsibility for individualized evaluations of animal behavior, may book passengers, assign seats, board flights, confirm that luggage meets carry-on requirements, and assist passengers requiring special assistance, among other duties, and must often do so under tight time constraints.

While Delta strives to provide reasonable accommodations to people with disabilities, airlines cannot and should not be expected to require service and gate agents to take time away from critical customer-oriented tasks to observe and evaluate the behavior of each service animal in the waiting area. Nor should flight attendants have this responsibility added to their lengthy list of duties to attend to during boarding, or be expected to deal with the increasing number of unruly animals during a flight. With these responsibilities in mind, Delta implemented a policy to collect behavioral attestations to increase the likelihood that PSAs and ESAs in the cabin will behave properly. Of course, if animal misbehavior is observed at any time during the pre-boarding and boarding process, carriers must be free to refuse to permit the animal to travel, irrespective of whether an attestation has been submitted and accepted by a carrier.

It is Delta's position that the DOT should go further, however, than permitting behavioral attestations from passengers by allowing airlines to require documentation of behavioral training based on clear standards established by the Department. While behavioral attestation forms are fully consistent with existing DOT's service animal regulations and Guidance, documentation of training based on a well-considered standard would provide better assurance that animals will behave properly. DOT's regulations, at 14 C.F.R. § 382.117(d) do not preclude airlines from requesting confirmation of behavioral training that would substantiate service animals will behave properly in the aircraft cabin.



**(7) Whether service animals and emotional support animals should be harnessed, leashed, or otherwise tethered.**

Delta supports granting carriers the authority to require some type of restraints (e.g., harnesses, leashes, or other tethers) for service and support animals. Restraints would prevent many incidents, including animals roaming the aisles of the aircraft, animals jumping on or otherwise bothering passengers and crewmembers, and would allow better control of animals displaying aggressive behavior. Under the ADA, service animals in public places must be harnessed, leashed, or tethered, except in the limited cases where any such restraints would interfere with the animal's work or where the individual's disability prevents using any of these devices. 28 C.F.R. § 35.136(d); 28 C.F.R. § 36.302(c)(4); see also Service Animal FAQs, at [ada.gov/regs2010/service\\_animal\\_qa.pdf](http://ada.gov/regs2010/service_animal_qa.pdf), Q27.

**(8) Whether there are safety concerns with transporting large service animals and if so, how to address them.**

DOT's current regulatory scheme requires that a service animal be allowed to accompany its owner at any seat "unless the animal obstructs an aisle or other area that must remain unobstructed to facilitate an emergency evacuation." 14 C.F.R. § 382.117(b). In practice, this requires an animal to be contained within the footprint of a passenger's seat. Further, the larger the animal the greater the risk that it may violate the FAA's safety requirement that aisles and other passageways be free of obstructions to allow all passengers rapid egress in the case of an emergency evacuation. 14 C.F.R. § 25.803(a); 14 C.F.R. § 25.813. Large animals at virtually any location in the plane have the potential to impede exiting during an emergency evacuation, especially if they are not well trained.

DOT Guidance provides carriers with several options when "no single seat in the cabin will accommodate the animal and passenger without causing an obstruction..." [[it]] "may offer the option of purchasing a second seat, traveling on a later flight or having the service animal travel in the cargo hold." 73 Fed. Reg. at 27661. However, neither the Guidance nor the regulation expressly states that, for the safety of all passengers, air carriers can refuse to accept

for travel in the cabin any animals an air carrier reasonably determines are too large to be accommodated in the aircraft cabin. Delta recommends that such a provision be added as a subsection to 14 C.F.R. § 382.117(b) to clarify the carrier's rights in such a situation. As noted above, Delta also recommends establishing clear standards for the evaluation of whether an animal is too large to accommodate in an aircraft cabin consistent with the factors outlined above for the consideration of miniature horses.

**(9) Whether airlines should be prohibited from requiring a veterinary health form or immunization record from service animal users without an individualized assessment that the animal would pose a direct threat to the health or safety of others or would cause a significant disruption in the aircraft cabin.**

Requiring animal health records is a rational means of satisfying an air carrier's obligation to determine whether the animal would present a direct threat to the health and safety of other passengers and crew, and provides vital information in the event of an incident. An unvaccinated animal clearly poses a health risk to other passengers, crew, and other animals. In the event an animal bites a passenger, crewmember, or other animal, the up-to-date vaccinations record will preclude the transmission of disease, prevent the need for a post-incident inquiry, and avert unnecessary – and painful – treatments for certain diseases (e.g. rabies).

The burden of providing such information is both reasonable and minimal. Passengers can easily submit this information at Delta through the form provided or using a copy of existing vaccination records. Nor is this likely to result in significant additional cost. Several organizations advocating for the rights of persons with disabilities have provided DOT with a report showing that the average cost to a service animal user to obtain such medical documentation is \$156.77 (83 Fed. Reg. at 23838). However, Delta's understanding is that this estimate includes the cost of a visit to the veterinarian – a cost that would be incurred even without the form being required for flight because most states and or localities require animals to be vaccinated. Delta's position is that it is reasonable to expect that any responsible owner of a service animal provides regular veterinary care to them and that it requires minimal effort and expense to retain up-to-date documentation of that care, no matter what the legal obligation.

**(10) Whether U.S. airlines should continue to be held responsible if a passenger traveling under the U.S. carrier's code is only allowed to travel with a service dog on a flight operated by its foreign code share partner.**

As noted above, foreign carriers are ordinarily required only to accept service dogs for transport in their aircraft cabins on flights to and from the United States. 14 C.F.R. § 382.117(f). DOT's regulation reflects a limitation in the laws governing most foreign flag carriers. Nevertheless, as DOT noted in the ANPRM, a U.S. carrier that code-shares with a foreign carrier on a flight is not released from its obligation under the ACAA service animal regulations to accept other species of animals. 83 Fed. Reg. at 23842.

While DOT states that it has not taken legal action against any domestic carrier under these circumstances (*id.*), the failure of the regulations to address the subject leaves those carriers in an uncertain legal position. A revised regulation that limits the species covered by the ACAA to dogs would not only be consistent with DOT's treatment of foreign carriers, but with the strictures of the ADA as applied by both DOJ and DOT, and resolve any concerns about this discrepancy. If, however, DOT ultimately retains the current expansive interpretation of the ACAA, it should explicitly state in the regulation (at § 382.117(f)) that the U.S. carrier would not be responsible for the limitations placed on the animals accepted for carriage on code-share flights by the operating foreign flag carrier. It is unfair to place legal responsibility on a domestic carrier when it has no ability to impose such an obligation on the foreign flag carriers it code shares with that is contrary to the laws governing the latter's operations.

**REQUESTED DATA**

DOT has requested data on the number of service animals that travel by air annually and the number of behavior related service animal problems that occur annually. DOT has also asked carriers to break out this data separately for ESAs if available and, if possible, to isolate incidents of biting. Delta’s available data is set out in the chart below. The DOT has also requested data, if available, about the species of service animals that carriers have transported year-over-year. Delta does not systematically track this information with respect to service animals that travel on our flights.

**Table #1: Service & Support Animal Data**

		2014	2015	2016	2017	2018 (YTD)
<b>Total Transported</b>	All	273,690	309,145	377,105	485,566	182,006
	SVA	42,333	52,477	63,275	81,250	27,562
	ESA	35,015	61,133	100,436	163,685	57,855
	PET	196,342	195,535	213,394	240,631	96,589
<b>Incidents-Combined<sup>4</sup></b>	ALL	104	117	89	136	3
<b>Biting Incidents<sup>7</sup></b>	ALL	2	6	5	19	3

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<sup>4</sup> Delta does not have data tracked separately for trained service animals, psychiatric service animals, emotional support animals, and pets.