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Comment on “Notice of Submission of Proposed Information Collection to OMB; Agency Request for Reinstatement of Previously Approved Collections: Traveling by Air With Service Animals—U.S. Department of Transportation Service Animal Air Transportation Form and U.S. Department of Transportation Service Animal Relief Attestation Form”

Office of Aviation Consumer Protection, Office of the Secretary, U.S. Department of Transportation

Docket ID# *DOT-OST-2018-0068*

May 26, 2024

Office of Aviation Consumer Protection:

We immensely appreciate DOT's plan to provide Service Animal Air Transportation Form (“the form”) instructions. These new instructions provide several opportunities to improve the practical use of the form, both for consumers and airlines.

Among the opportunities DOT seized is clarifying that owner-training one's service dog is acceptable. This clarification was greatly needed due to consumer and airline personnel confusion—confusion that one entire airline has egregiously used to wrongly reject all owner-trainers.

Below, we detail remaining opportunities for improvement in the form and its instructions. The sections are listed here for easy reference:

1. Stop the devolution of intended first-party attestations into third-party verifications
 2. There's still zero evidence rabies information is needed
 3. Assistance not just for merely disability-based issues; airlines must also help when the barrier is technology (etc.)
 4. No special carve-outs based on disability type or training source
 5. Airlines must clarify exactly how they send and receive hard copies
 6. "Work" has a separate meaning and should not be dropped
 7. Include a "same as above" box for second trainer
 8. Consistent capitalization of terms needed
 9. The work or task question must be disallowed as a de facto part of the form
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1. *Stop the devolution of intended first-party attestations into third-party verifications*

We believe DOT and the advocates intended the form to do away with the previous paradigm of requiring (some) disabled people to get verified by third parties that they were okay to travel, replacing this with a first-party attestation. We didn't want disability access to depend on an outsider's stamp of approval.

We were fine with providing contact information for veterinarians and trainers as *emergency contacts* for the rare occasion there was an incident requiring such contact. However, since some airlines or their agents are rejecting forms if they can't verify all the info with the third parties (a la a *universal background check*), this has devolved from the intended exclusively first-party attestation to third-party verification by default. Without the outsider cooperating in just the way the airline expects, the airline feels entitled to reject the service dog user from travel.

We do not object to the new split in trainer information on the form, as this captures the variables (see more in a section below about how to make this more user-friendly). However, this now possibly gives the airline three different chances to unduly reject a service dog team through the background check paradigm.

How can this undue rejection happen? Many third parties don't want to divulge private information about clients, some simply don't answer the phone or get back within the airline's window, some have new employees that may not be aware of how to access the requested information, and some have retired or died and cannot be contacted (even though they appropriately rendered the claimed services).

We believe the new instructions are an opportunity to shift airlines' paradigm from *universal background check* to *emergency contacts*. Instructing airlines to operate only in the emergency contacts paradigm would rebalance the system from the highly problematic third-party verification into the intended way moving forward: first-party attestation.

If DOT chooses not to take this opportunity, DOT should at least instruct airlines to be more lenient in any cases in which they do not get very clear confirmation of a falsehood on the form—as opposed to merely not getting confirmation of the truth of an entry on the form. Airlines should be discussing any potentially borderline issue with the handler before unduly rejecting a form, yet without DOT's commanding guidance, we have little faith things will change in this regard. It has been distressing to know our community members can be denied travel not because they don't meet the requirements, but because they must rely on others to complete a leg in a bureaucratic relay race a third party may simply be unable or unwilling to run.

2. *There's still zero evidence rabies information is needed*

We take time here to renew some points we explained in detail in §6 of our June 3, 2018 "Enforcement Priorities Comment" (<https://www.regulations.gov/comment/DOT-OST-2018-0067-0048>). We will not equivocate. Gathering rabies vaccination information, specifically, is a practically useless burden that is mere security theater. It is a heightened barrier on the disability community, the only justification for which is fear born of ignorance. We do not want you to take our word for this.

This becomes apparent if one does the tiniest bit of research and considers: the

shockingly low statistics of rabies incidence in dogs in the US, the nature of the lives led by infected dogs and how they differ in the extreme from service dogs, the incredible unlikelihood that a service dog would be worked while being infectious with rabies, and the absolute lack of any evidence that rabies in service dogs has ever been a public access issue—whether in air travel or at all. The CDC says of rabies that “The disease is rare in humans in the United States, with only 1 to 3 cases reported each year” and “In the United States, more than 90% of reported cases of rabies in animals occur in wildlife” (<https://www.cdc.gov/rabies/about/>). So it’s unlikely in any given year that there are *any* rabies cases in humans caused by the around 90 million dogs in the US, let alone any caused by the small number that are service dogs in air travel.

We agree with other organizations that it’s possibly useful for DOT to have people attest that their service dog is free of fleas, ticks, and disease harmful to humans or other animals. But we maintain that requiring the rabies information has done nothing more than make it harder for disabled people to fly; it has not provided any significant benefit to any party, beyond false comfort to airlines. As such, DOT should eliminate the rabies information portion of the form.

In the rare case there is a biting incident that merits contacting someone’s veterinarian, one might believe it’s a good thing for airlines to have easy access to the vet’s contact info. That would be fine, if that were the purpose. However, we are not aware of airlines using the information for this purpose. This is typically the sort of thing handled by law enforcement or medical personnel. From what airline representatives have told us, they don’t share information across passengers anyway, which means the airline having the information would not be useful to the affected party. Again, we have to wonder whether this information-gathering is serving a just purpose.

In a context where airlines are taking advantage of opportunities to unduly reject the form because they cannot verify with a third party what may be seen as privileged information, it seems simply gratuitous to require the vaccination information and the vet’s contact info. Has DOT verified that (and how) airlines are using the veterinarian contact info for bite incidents? Do airlines, specifically, even need this info ahead of time, such that this burden is justified for every service dog team?

At this point, in the absence of evidence of the proportional usefulness of the rabies vaccination and veterinarian contact information *beyond* unduly denying service dog teams, we call on DOT to cease allowing airlines to collect this information by default on the form.

3. Assistance not just for merely disability-based issues; airlines must also help when the barrier is technology (etc.)

Instruction #3 indicates that prospective passengers can only get airline assistance in completing the form if their difficulty is *disability*-based. But the cited 14 CFR §382.13 does not say airlines must assist disabled consumers *only* if the difficulty is disability-based (and for no other reason). Additionally, an airline could claim that most of the problems people are having filling out the form—e.g., with screenreader or cell phone software—are *technology*-based, which airlines could use as an excuse not to provide assistance that it might seem obvious to others they should. So, this must be changed to at least indicate that technology-based issues are just as valid for requiring help.

For instance, we had a form rejected recently due to a single field that appeared to be

filled in on the handler's computer, but the airline's software didn't register the field as completed. Our community member had sufficient technological know-how to work around the software issue and resubmit the form after calling the airline, but the airline should simply provide assistance in such a case because not everyone has the extra software or know-how to do this. And DOT should specify in the instructions that one way the airline has to help is by filling out the form over the phone with/for people who provide the answers that way.

Disabled individuals may also have difficulty filling out the form due to an intellectual or developmental disability. Of course, this is also a reason the airline should provide help. But instead of having specific litmus tests to determine whether someone is worthy of an airline's help with the form, we propose that *the only factor should be that the person requests help*. This would eliminate any friction from a process the airline may otherwise choose to set up to determine whether someone who asks for help deserves it.

This may seem minor and one may optimistically think no airline official would set up a help-worthiness test that would cause problems. But we have seen that where DOT leaves room for airlines to restrict our community's travel in unanticipated ways, some will squeeze into the gray area. When they do, it is our community members who must shoulder the burden for years until it can be resolved.

4. *No special carve-outs based on disability type or training source*

Some organizations are making claims and requests that are strikingly disconnected from the basics of ensuring disability rights. Since the 2016 Negotiated Rulemaking, we have made it clear that what matters most for service dog air travel is whether the individual service dog handler understands the training and behavior expectations, and the team is able to meet those expectations at time of travel. Requests for special treatment based on disability type or where a dog was trained have no place in this.

As in our previous section, anyone who has trouble filling out the form because of a technology barrier or other difficulty should qualify for airline assistance with the form. In fact, anyone who requests assistance with this should be presumed to merit the assistance, without need for a test of merit. Not only is there no need to carve out a special disability type, but discriminating based on disability type would violate the basic ACA tenet of not discriminating on the basis of disability.

There are also requests that handlers of service dogs trained by particular programs should be exempt from the form, either through DOT's specification or through an airline's option. We adamantly oppose enshrining this way of thinking.

To the experienced teams in our community, it is quite apparent that dogs from even the best programs can have behavior challenges, in the same manner that any owner-trained dog can. Dog are not robots and many handlers are not well-versed in retraining fading good behaviors or training out developing undesirable behaviors. We have seen the disqualifying behaviors on the form in multiple service dogs from respected programs, yet the handler either did not think the behavior was a problem or was not even aware of the behavior (both issues have happened both in those who are and are not blind or low-vision handlers).

Having a dog (or ID) from a program does not in itself attest that the handler understands the training and behavior requirements at the center of our consideration. It

makes no sense to allow a service dog's provenance to override the need for the handler to understand their responsibilities regarding their dog's behavior during the actual air travel (not signing the form potentially gives a handler license to claim one wasn't aware of or liable for the requirements). One might even argue that the form is especially necessary when one has not had the experience required to train one's own dog, though we want airlines to treat handlers equally.

So as much as we'd like to think program training guarantees perfect behavior from dog and handler in perpetuity, believing this would be favoring enthusiastic marketing over the reality that dogs and humans can exhibit a variety of behavior regardless of our hopes and histories.

This makes it clear that *DOT* should not enact a system whereby some programs' teams are exempt from attesting to their responsibilities, as this would assume merely having a dog from a program is somehow equivalent to the handler attesting to their understanding of what's on the form. Also, though, *DOT* should explicitly disallow *airlines* from accepting certain dogs' provenances as equivalent to completing the form.

We are aware that airlines are not mandated to require the form of service dog handlers. However, for airlines that use the form at all, they must avoid discriminating against some types of service dog handlers by requiring it only of *some* service dog handlers. If *DOT* were to permit airlines to accept some form of service dog ID in lieu of the form, this would enable airlines to have greater access barriers for those not able or willing to provide such an ID.

Further, at least one organization is now requesting a government-run database of service dog users. Mindful of the serious history of eugenics and other discrimination at home and abroad, we remain opposed to any government database of disabled people that is not absolutely required. While we look favorably upon the current employees of the Office of Aviation Consumer Protection, we can never assume our political situation is immune to repeating what has come before.

5. *Airlines must clarify exactly how they send and receive hard copies*

For instruction #8, we greatly appreciate *DOT* clarifying that airlines must accept a hard copy of the form. However, we worry that unless *DOT* instructs airlines to clarify for passengers exactly where they should request and submit a hard copy (a place where the airline will appropriately process it), this will not be an option that works in practice. Airlines must not be allowed to receive hard copies at a general address that functions as an administrative black hole, or make consumers jump through hoops to request the form.

6. *"Work" has a separate meaning and should not be dropped*

DOT seems to have dropped "work" from the standard "work or tasks" phrasing in formal service animal policy. We remind *DOT* that there are reasons to include not just "task", but "work or task" on the form and instructions section C.

One of the historical reasons why the "work or task" terminology is retained, rather than merely specifying tasks, involves part of the community seeking to cut out a term they

thought covered (only) psychiatric service dogs. While this unfriendly mission was bumbling and unreasoned, and anyone who currently pushes this may be unaware of the history, it is a sore point for those of us who have lived through it.

Apart from the history and the fact that “work or task” is part of multiple federal service animal definitions (including in DOT’s ACAA regulations), there’s a theoretical framework that justifies using the full phrase. We have articles on this, but a synopsis is as follows.

In our community's jargon, "work" involves the dog's trained recognition and response to changes in the person or their environment, whereas a "task" involves the dog recognizing and responding to an intentional cue from the handler. Each is important, and the examples in the instructions include both work and tasks.

We imagine DOT means no slight to the history, definitions, or theoretical framework, and merely sought to either save space or follow those who prefer only to use “task”. We ask that DOT kindly reinstate the full phrasing everywhere it applies.

7. Include a "same as above" box for second trainer

We appreciate the separate sections for work or task training and public access training, for the purpose of ensuring prospective passengers understand both manners in which their dogs must be trained in order to be considered service animals. For many handlers, the same party trained the dog for both of these aspects—whether it's a program or the handler.

DOT should consider including an option to check a box indicating "Trainer information same as above". This simple addition can systematically relieve bits of aggravation, especially in those who don't understand that the trainers may differ.

8. Consistent capitalization of terms needed

As a friendly editing recommendation for the instructions, use consistent capitalization for terms such as "Service Animal Handler".

9. The work or task question must be disallowed as a de facto part of the form

We reiterate the following, which still applies, from the field-entered prelude to our January 11, 2024 PDF comment on the first round of DOT’s OMB reinstatement:

“[...] we also remind DOT about the improper practice of some airlines through a contractor whereby they de facto create a new form question by requiring a written response in advance to the question of what the service animal's work or task is.

“The problem here is not only that they're adding to the form in a manner contrary to DOT regulations, but that they're creating a wholesale method for denial through false positives when the work/task question was supposed to be for spot-checks. We maintain that the regulations are plenty clear enough for DOT to stop this practice, as

the regulations state that airlines may not have a form beyond DOT's and the work/task question is discussed in a separate section where everything else is clearly intended to be an individualized procedure if there is an in-person issue. We see only one reasonable interpretation, irrespective of airlines' desire to push beyond the regulatory boundaries and maximize the documentation burden (and chance of being turned away) on disabled customers.

“DOT must choose between following both the spirit and letter of the law, or capitulating to airlines' overreach and unduly closing the door to travel for some in our community.”
(<https://www.regulations.gov/comment/DOT-OST-2018-0068-32444>)

Sincerely,



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