



ADA Audio Conference Series December 10, 2019

The Air Carrier Access Act (ACAA) and Travelers with Disabilities: Travel by Air with Service Animal

This session is scheduled to begin at
2:00pm Eastern Time

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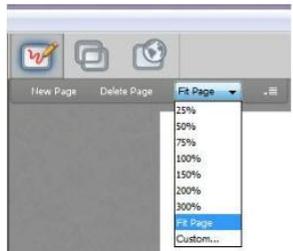
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GREAT LAKES ADA PRESENTATION:
The Air Carrier Access Act (ACAA) and Travelers with Disabilities:
Travel by Air with Service Animal
December 10, 2019



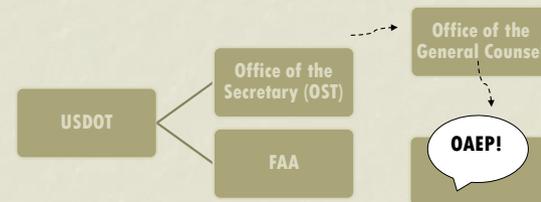
U.S. Department of Transportation
Office of Aviation Enforcement and
Proceedings

Robert Gorman, Senior Attorney

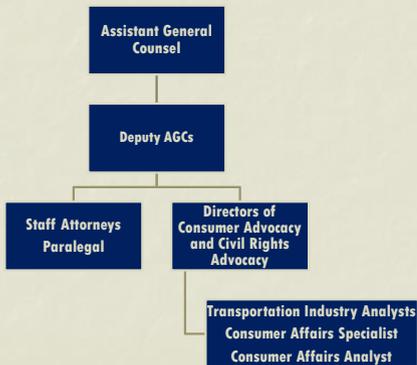


What is the Office of Aviation Enforcement and Proceedings ("OAEP" or "Enforcement Office")?

Simplified Structure



Office Structure



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Office of Aviation Enforcement and Proceedings

- **Subject Areas:**
 - Aviation consumer protection, civil rights (disability and discrimination), competition
- **Practice Areas:**
 - enforcement, rulemaking, guidance, outreach (e.g. industry and public communications), complaint handling

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Office of Aviation Enforcement and Proceedings

- Web site: www.transportation.gov/airconsumer
- Helpful travel information
 - Flying with a Disability
 - How to File a Consumer Complaint
 - Bumping
 - Tarmac Delays
 - Flight Delays and Cancellations
- Complaint portal

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Notable Statutory Authorities

- 49 U.S.C.:
 - **40127/41705** (prohibition on discrimination, Air Carrier Access Act)
 - **41712** (prohibition on unfair and deceptive practices)
 - **46301** (authority to issue civil penalties)
- Other interesting statutes: 41113/41313 (Family Assistance), 41703 (Cabotage)

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A Sampling of Our Regulations



Part 234 – Airline Service Quality Reports

Part 250 – Oversales

Part 254 – Domestic Baggage Liability

Part 259 – Enhanced Protections for Airline Passengers

Part 295 – Air Charter Brokers

Part 380 – Public Charters

Part 382 – Nondiscrimination on the Basis of Disability in Air Travel

Part 399 – Statements of General Policy

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How does DOT become aware of problems?

- **Consumer Complaints**
- **Airport Inspections**
- **On-site Airline HQ Inspections**
- **Formal complaints**
- **Complaints from Competitors and Other Entities**
- **Media Reports**
- **Coordination with other Offices/Agencies (BTS, X, FAA, etc.)**



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Transportation.gov
U.S. Department of Transportation

Home » Resources » For Individuals » Aviation Consumer Protection » File a consumer complaint

Air Travel Complaint - Comment Form

Please use this form for all consumer and civil rights complaints.

Need more information?
Learn more about [submitting an air travel complaint](#).

Items marked with * are required.

Personal Information:

I am: *

Contact Information:

Address:

City: State:

Zip Code: Home Phone:

Either Email Address or Daytime Phone is required.

Email Address: Verify Email Address:

Daytime Phone:

Would you like a copy of this submission sent to your email?
 Yes No

Complaint/Comment Information:

Airline/Company: (If not listed or not applicable select "OTHER")

Flight Date (if applicable): (Date Format: mm/dd/yyyy)

Flight Itinerary (if applicable): (Cities / Flight Number)

Description of Problem/Inquiry /Comment:

(Chars left: 3000)

Attach a file (Optional):

File Name: (Please click the "Browse" button to select the file and click "Upload File" button.)
 No file selected.

Permissions:

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How do we typically bring about compliance?

- Direct Communications with Carrier
- Industry Notices and Guidance
- Warning Letters and Letters of Correction
- Enforcement Action
 - Consent Orders
 - Formal Adjudication

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Alaska Airlines, American Airlines, Southwest Airlines, and United Airlines Fined for Providing Inaccurate Information about Bumping Compensation, Baggage Liability

WASHINGTON – The U.S. Department of Transportation (DOT) today fined Alaska Airlines, American Airlines, Southwest Airlines, and United Airlines for providing inaccurate information to passengers about how much compensation they could potentially receive for being denied boarding against their will, or “bumped” on oversold flights, and for lost, damaged, or delayed baggage. Alaska Airlines was fined \$45,000, American Airlines was fined \$45,000, Southwest Airlines was fined \$40,000, and United Airlines was fined \$35,000. The airlines were also ordered to cease and desist from future similar violations.

“We are committed to ensuring that air travelers know the rules and have accurate information about compensation when they are bumped from flights and for lost, damaged, or delayed baggage,” said U.S. Transportation Secretary Anthony Foxx.

Under DOT rules, passengers are eligible for compensation when they are involuntarily bumped from an oversold flight, the amount of which varies based on several factors including the planned arrival time of the substitute transportation arranged (or offered to be arranged), air carriers must immediately provide passengers who are involuntarily bumped from a flight with a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carrier’s boarding priority rules and criteria. Carriers must also provide the statement to any person upon request at all airport ticket selling positions, and at all boarding locations being used by the carrier.

DOT rules also prohibit U.S. airlines from limiting their liability for direct or consequential monetary damages that are reasonable, actual, and verifiable resulting from the loss of, damage to, or delay in delivering a passenger’s baggage in domestic transportation to an amount less than \$3,500. Carriers must provide passengers with proper notice of the baggage liability limit on or with their tickets.

These consent orders are the result of an unprecedented series of inspections, “Task Force Lightning,” conducted at airports nationwide by the Department’s Office of Aviation Enforcement and Proceedings. During these inspections, the Department found that Alaska Airlines, American Airlines, Southwest Airlines, and United Airlines failed to provide passengers with the required notices or provided notices that were incomplete, outdated, or contained inaccurate information.

The consent orders are available at www.regulations.gov, docket number DOT-OST-2016-0002.

###

Updated: Monday, August 29, 2016

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DOT fines 4 airlines for compensation information

By Associated Press
Published: 8:54 a.m. ET Aug. 29, 2016. Updated 9:44 a.m. ET Aug. 29, 2016

The U.S. Department of Transportation (DOT) today fined Alaska Airlines, American Airlines, Southwest Airlines, and United Airlines for providing inaccurate information to passengers about how much compensation they could potentially receive for being denied boarding against their will, or “bumped” on oversold flights, and for lost, damaged, or delayed baggage. Alaska Airlines was fined \$45,000, American Airlines was fined \$45,000, Southwest Airlines was fined \$40,000, and United Airlines was fined \$35,000. The airlines were also ordered to cease and desist from future similar violations.

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Outcomes



- reduction in tarmac delays
- more transparency in fare advertising
- accessible air travel – kiosks, improved wheelchair assistance
- ensuring passengers receive refunds
- responses to consumer complaints
- Better information to passengers (delay status, changes, waivers of fees, baggage and ancillary fees, changes in frequent flyer policies, signage)

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www.transportation.gov/airconsumer

Air Travel Consumer Report is a monthly publication with statistics:

- Delayed and canceled flights, Mishandled baggage, Oversales, Consumer complaints to DOT, Security complaints to TSA, Loss, injury or death of pets



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www.transportation.gov/airconsumer

Other Publications:

- *Fly-Rights*
- *Tell It To The Judge*
- **Disability Training Materials and Helpful Information**



ADA vs. ACAA

Americans with Disabilities Act (ADA)

- **Places of public accommodation**
 - **Hotels**
 - **Restaurants**
 - **Airports**
- **Enforced by USDOJ**

ADA vs. ACAA

Air Carrier Access Act (ACAA)

- **Air transportation**
 - **On aircraft (seating, assistive devices, service animals)**
 - **Reservations/information**
 - **Traversing airport (wheelchair service)**
- **Enforced by DOT; rules are directed at airlines**

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ADA vs. ACAA

ADA definition of service animal

- **Dog***
- **Individually trained to perform task or function**
- **Emotional support animals (ESAs) NOT recognized**

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ADA vs. ACAA

ACAA definition of service animal

- **US carriers required to recognize service animals regardless of species**
 - **Exception: Airlines may ban “certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, spiders)”**
 - **Foreign carriers are only required to accept dogs**
- **ESAs ARE recognized as service animals**

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ADA vs. ACAA

ADA Regulations - documentation

- **Places of public accommodation may NOT ask for medical or other documentation**

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ADA vs. ACAA

ACAA Regulations - documentation

- **Airlines MAY ask for medical documentation:**
 - **ESAs and Psychiatric Service Animals (PSAs) ONLY**
 - **Contents set out by rule (382.117(e))**
 - **48 hours before flight (382.27(c)(8))**
 - **Also, airlines may require check-in 1 hour ahead of regular check-in for ESAs/PSAs**

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ADA vs. ACAA

ADA – Direct threat

- **Public accommodations may refuse a service animal if it poses a direct threat to the health or safety of others**
- **This determination must be made on individualized, case-by-case basis (e.g., aggressive behavior)**

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ADA vs. ACAA

ACAA – Direct threat

- Airlines may refuse a service animal if it poses a direct threat to the health or safety of others (or would cause significant disruption in cabin service)
- Rule is not clear on how airlines make this determination

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Air Travel: Pet vs. Service Animal

- **Pets:**
 - Pet fee
 - Crated
 - May travel in cargo

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Air Travel: Pet vs. Service Animal

- **Service Animal:**
 - Travel with no charge
 - Travel in cabin/without crate
 - On lap if small enough

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Rising Problems?



- **Proliferation of online sales**
 - Vests, harnesses, “registration,” certificates
- **Airlines report increases in fraud**
- **Airlines report increases in biting, barking, other improper behaviors**
- **Effects on legitimate service animal users**

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Airline Response

- **Species restrictions**
- **Number restrictions**
- **Requiring additional documentation (vaccination, training, behavior)**

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DOT Response

- **Interim Statement of Enforcement Priorities Regarding Service Animals (published May 23, 2018)**
 - **Expressed interpretation of Enforcement Office on these and other service animal topics**
 - **Sought comment from public and stakeholders**

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Restrictions Imposed by Airlines After Interim Enforcement Notice

- Breed (e.g., banning “pit bull type” dogs)
- Age
- Weight
- Flight length (e.g., banning ESAs on flights over 8 hours)
- Requiring Use of airline’s own medical form

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DOT Response

- [Final Statement of Enforcement Priorities Regarding Service Animals](#) (published August 21, 2019) (“Final Statement”)

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Final Statement – Guiding Principles

- Document is **guidance**: represents Enforcement Office's interpretation of **existing** rule
- Not legally binding (the regulation is)
- Intended to provide clarity: identifies where rule is clear, and where it is not (or silent)

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Final Statement – Guiding Principles

- Enforcement efforts focused on clear violations having the potential to adversely impact largest number of individuals
- “Department is committed to ensuring that air transportation system is safe and accessible for everyone.”

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Final Statement – Highlights

- **Species:** Focus on ensuring that dogs, cats, and miniature horses are accepted for transport
 - What about rabbits, birds, etc.?
- **Breed:** Airlines may not categorically ban specific breeds

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Final Statement – Highlights

- **Number:** Focus on ensuring that passengers may travel with one ESA and (if necessary) two task-trained service animals
- **Weight:** Airlines may not categorically ban animals over a certain weight (must be case-by-case)

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Final Statement – Highlights

- **Age:** “clearly too young to be trained to behave in public”
- **Flight Length:** Airlines may not categorically ban service animals on long flights (asking for documentation for flights over 8 hours is OK)

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Final Statement – Highlights

- **Paraphernalia:** Airlines may still ask questions of passenger, even if animal has vest (if disability is not clear)
- **Lobby check-in:** Airlines may ask ESA/PSA users to check in at the lobby before proceeding to gate
- **Advance notice:** OK for ESA/PSA users only

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Final Statement – Highlights

- **Containment/movement restrictions: handled on case-by-case basis**
- **Documentation:**
 - **Airlines MAY ask for documentation relating to an animal's vaccination, training, or behavior, IF it is reasonable to believe it will assist in determining direct threat**
 - **Monitoring this issue**
 - **Airlines MAY NOT insist on their own medical forms**

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New Rules on Horizon

- **May 23, 2018: Advance Notice of Proposed Rulemaking (ANPRM)**
 - **Seeks comment on how to revise existing rule**
 - **Continue to recognize ESAs as service animals?**
 - **Species/number**
 - **Containment**
 - **Documentation AND MORE**
 - **45 day comment period; 4500 comments!**

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New Rules on Horizon

- **Notice of Proposed Rulemaking (NPRM) coming soon**
 - **Additional comment period**
 - **DOT analyzes comments**
 - **Final Rule**

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New Rules on Horizon

- www.transportation.gov/airconsumer/latest-news
- www.regulations.gov; **DOT-OST-2018-0068**

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Questions

- You May Type and Submit questions in the Chat Area Text Box or press Control-M and enter text in the Chat Area

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**Thank you for participating in today's
ADA-Audio Conference Session**

Next Session: January 21, 2020
"Employment First and the Americans with
Disabilities Act (ADA)"

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