

Note: Public Transportation must follow US DOT ADA regulations (NOT DOJ)

No Change to US DOT ADA Regulations for Service Animals and Mobility Devices

FTA has become aware of various inquiries from transit operators and members of the public concerning “new ADA regulations” that went into effect on March 15. Of particular interest have been various provisions relating to service animals and how “wheelchair” is defined.

Please be advised that the U.S. Department of Transportation has issued no changes to its ADA regulations, which cover transportation provided by both the private and public sector.

The cause of any confusion has been a Final Rule issued several months ago by the U.S. Department of Justice (DOJ), which made a number of changes to their ADA regulations that went into effect on March 15, 2011. While the purpose of DOJ’s revisions was to adopt the 2004 accessibility standards (which DOT did in 2006), they also contained language amending provisions for service animals and introduced a new distinction between “wheelchairs” and “other powered mobility devices” or OMPDs.

These changes to DOJ’s regs do not affect the DOT ADA regulations, which cover transportation (both public and privately-operated). The DOJ regs do not compel transit operators to make any changes to their service animal policies or the manner in which they regard mobility devices, nor should transit operators elect to make any changes on this basis. In fact, because the DOT and DOJ regulations now read differently in this regard, changes to accommodate DOJ regulations could result in a grantee being out of compliance with the DOT ADA regulations.

Any amendments to the DOT ADA regulations would be announced in the customary manner – through publication of rulemaking documents in the Federal Register, with an effective date. Unless and until such documents are published, the DOT regulations remain unchanged.

Last updated: Thursday, February 27, 2020

FTA Circular 4710.1 Chapter 2 – General Requirements

2.6 Service Animals

Requirement

“The entity shall permit service animals to accompany individuals with disabilities in vehicles and facilities” ([§ 37.167\(d\)](#)).

Discussion

Per [§ 37.3](#), a service animal is:

[A]ny 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.

The Department of Justice (DOJ) narrowed the definition of a service animal in amendments to its ADA regulations in 2010,⁶ but the DOT ADA regulations were unaffected. Accordingly, public transit providers must follow the DOT definition in [§ 37.3](#) when assessing whether to accommodate a particular animal. While most service animals are dogs, DOT’s definition recognizes the possibility of other animals.

Service animals are animals that are “individually trained to work or perform tasks.” This training can be by an organization or by an individual, including the individual with a disability. Transit agencies are not required to transport animals that have not been individually trained to perform specific work or tasks. If an animal’s only function were to provide emotional support or comfort for the rider, for example, that animal would not fall under the regulatory training-based definition of a service animal. Simply providing comfort is something that an animal does passively, by its nature or through the perception of the owner. However, the ADA regulations do not prohibit a transit agency from choosing to accommodate pets and comfort animals, which would be a local decision. (See FTA response to [Complaint 15-0117](#) for an example of how FTA has addressed the issue of defining what constitutes a service animal.)

It is important that local policies and practices recognize that some persons with hidden disabilities do use animals that meet the regulatory definition of a service animal. This would include, for example, animals that are trained to alert individuals with seizure disorders to an oncoming seizure or respond to a seizure and animals that are trained to remind persons with depression to take their medication.

Transit agencies cannot have a policy requiring riders to provide documentation for their service animal before boarding a bus or train or entering a facility, but personnel may ask riders two questions: (1) is the animal a service animal required because of a disability? and (2) what work or task has the animal been trained to perform?

The following guidance also applies to service animals:

- Transit agencies may refuse to transport service animals that are deemed to pose a direct threat to the health or safety of drivers or other riders, create a seriously disruptive atmosphere, or are otherwise not under the rider’s control. For example, a rider with a service dog is responsible for

ensuring the dog does not bite the driver or other riders. Conversely, a dog that barks occasionally would likely not be considered out of the owner's control.

- A passenger's request that the driver take charge of a service animal may be denied. Caring for a service animal is the responsibility of the passenger or a PCA. (See [Appendix E](#) to Part 37, Example 15.)
- Section 37.167(d) does not prescribe limits on the number of service animals that accompany riders on a single trip. Different service animals may provide different services to a rider during trips or at the rider's destination.
- On complementary paratransit or other demand responsive services, transit agencies may ask riders for notification of their intent to ride with a service animal in order to help ensure adequate space is available for the animal. (An optional good practice is to keep such information in riders' files.)
- Other riders' or agency personnel's allergies to dogs or other animals would not be grounds for denying service to a person accompanied by a service animal. The regulations explicitly state that service animals must be allowed to accompany individuals on vehicles and in facilities. Encountering a service animal in the transit or other environment is an expected part of being in public.

⁶ See DOJ's ["Frequently Asked Questions about Service Animals and the ADA"](#) (July 20, 2015) for additional guidance on service animals. Transit providers are reminded, however, that the definition of a service animal in this FAQ does not apply to their services and some of the guidance is not applicable to the transit environment. 2-18 FTA C 4710.1 Chapter 2 – General Requirements

U.S. Department of Justice

Civil Rights Division

Disability Rights Section

[Frequently Asked Questions](#)
[about Service Animals and the ADA](#)

Q27: What does under control mean? Do service animals have to be on a leash? Do they have to be quiet and not bark?

A: The ADA requires that service animals be under the control of the handler at all times. In most instances, the handler will be the individual with a disability or a third party who accompanies the individual with a disability. In the school (K-12) context and in similar settings, the school or similar entity may need to provide some assistance to enable a particular student to handle his or her service animal. **The service animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal's work or the person's disability prevents use of these devices. In that case, the person must use voice, signal, or other effective means to maintain control of the animal.** For example, a person who uses a wheelchair may use a long, retractable leash to allow her service animal to pick up or retrieve items. She may not allow the dog to wander away from her and must maintain control of the dog, even if it is retrieving an item at a distance from her. **Or, a returning veteran who has PTSD and has great difficulty entering unfamiliar spaces may have a dog that is trained to enter a space, check to see that no threats are there, and come back and signal that it is safe to enter. The dog must be off leash to do its job, but may be leashed at other times.** Under control also means that a service animal should not be allowed to bark repeatedly in a lecture hall, theater, library, or other quiet place. However, if a dog barks just once, or barks because someone has provoked it, this would not mean that the dog is out of control.

Revised Sample ADA Plan – Section 9

9. Service Animals

A service animal is any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability. The definition does not include animals whose sole purpose is to provide “emotional support.” (see policy on transporting pets) In order to ride **Transit System Name** Transit or Paratransit:

- The animal should be on a leash/harness, unless commanded and controlled through other means; in a container, remain under control of the owner, and behave appropriately.
- The animal must remain at your feet or on your lap. It may not sit on a vehicle seat.
- The animal must not be aggressive toward people or other animals. (49 CFR 37.167 (d))
- The operator may question the passenger 1) about the animal being a service animal required because of a disability 2) what work or task has the animal been trained to perform.