



CIVIL RIGHTS EDUCATION
AND ENFORCEMENT CENTER

January 29, 2024

U.S. Department of Transportation
Docket Operations
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE.
Washington, D.C. 20590

Re: Petition for exemption from 14 C.F.R. §§ 382.27(b)(3), 75, and 79
Submitted By: Elizabeth Schoen, Sherry Gomes, and Will Simpson, blind individuals; and the National Federation of the Blind (“NFB”), on behalf of its members, including Elizabeth Schoen, Sherry Gomes, and Will Simpson, representing a class of all blind individuals traveling in the United States.

Pursuant to 49 C.F.R. § 5.3(a)(2) and 49 U.S.C. § 44701(f), Elizabeth Schoen, Sherry Gomes, and Will Simpson, who are all blind guide dog users, and the National Federation of the Blind, on behalf of its members, including Elizabeth Schoen, Sherry Gomes, and Will Simpson, petition the Federal Aviation Administration, through the Department of Transportation (“DOT”), for the following exemption on behalf of a class of all blind individuals on flights within, departing from, or arriving in the United States:

Beginning one hundred and twenty days from the date of this petition and continuing indefinitely, all blind passengers seeking to travel by air with a guide dog service animal shall be exempt from the provisions of 14 C.F.R. §§ 382.27(b)(3), 75, and 79(a)(4).

This exemption is necessary as a reasonable modification, pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, to ensure meaningful access to

DOT-funded and regulated air travel by blind passengers who use guide dogs. Blind passengers who are unable to independently access the U.S. Department of Transportation Service Animal Air Transportation Form identified in 14 C.F.R. § 382.75(a) or the DOT Service Animal Relief Attestation Form identified in 14 C.F.R. § 382.75(b) (collectively "DOT Forms"), either in print or electronic form, are being dissuaded from air travel and are even being denied passage on flights for which they have purchased tickets. They are suffering that discrimination because they are unable to complete and submit the DOT Forms independently in advance, and because the current regulations do not require air carriers to assist passengers like them in completing and submitting DOT forms in advance.

Elizabeth Schoen, a blind college student, was not permitted to fly from Minneapolis to Boston in April 2023 because she was unable to complete and submit DOT Forms online. Ms. Schoen was obviously blind, and her guide dog was performing an obvious service of guiding her, but airline staff did not allow her to fly because she had not submitted DOT Forms in advance of her flight.

Sherry Gomes has attempted to complete the DOT Forms, but was unable to do so without the assistance of a sighted person. Because she cannot independently complete the DOT Forms now required by airlines, she is afraid of being turned away or being otherwise mistreated at the airport because she uses a guide dog. She therefore no longer travels by air despite a desire to do so in order to visit friends and attend conferences.

Will Simpson booked travel online in advance for Thanksgiving 2023. During the reservation process, he was not informed as to how to indicate he would be

traveling with his guide dog. After speaking with the air carrier's staff by online chat, he was informed that his guide dog was known to the airline, and he would be able to travel. Instead, he was denied at the airport because he had not previously completed the DOT Form, and was only able to travel after arguing with the air carrier's airport staff for over an hour.

Reasons for and benefits of exemption

This petition seeks an exemption from those sections of 14 C.F.R. Part 382 which allow air carriers to condition a passenger's travel with a service animal on completion and submission of DOT Forms. The exemption is needed because, although certain blind travelers may not be able to complete the forms, or submit them in advance, the regulation does not require airlines to accommodate their disability. In fact, airlines are expressly permitted to refuse to provide such accommodations, as 14 C.F.R. §79(a)(4) specifically states that an airline "may deny transport to a service animal ... [if t]he passenger with a disability seeking to travel with a service animal in the cabin of the aircraft does not provide completed current [DOT Forms] to the carrier when requested to do so." *Id.* Petitioner Schoen was denied permission to fly, by the private airline relying on that regulation, because she did not complete the form on-line 48 hours prior to her flight, and the airline did not allow her to submit alternative verification that her service animal is a trained guide dog. This discriminatory denial of access is expressly permitted by the regulation, but it violates Section 504 of the Rehabilitation Act.

Other sections of the ACAA regulations demonstrate DOT's awareness that individuals with disabilities may need air carriers to provide them with assistance to

ensure meaningful access to air carrier services offered through electronic technology. For example, air carriers “must assist prospective passengers who indicate that they are unable to use [the air carrier’s] Web site due to a disability and contact [the air carrier] through other channels (e.g., by telephone or at the ticket counter).” 14 C.F.R. § 382.43(c)(4). That requirement is in addition to a separate requirement that air carriers’ websites must be accessible. 14 C.F.R. §§ 382.43(c)(1)-(3). It goes on to require air carriers to disclose and allow booking of web-based discount fares through those other channels, and to waive any fees normally associated with use of those other channels. 14 C.F.R. §§ 382.43(c)(4)(i)-(ii).

The carrier requirements for provision and acceptance of the DOT Forms also demonstrate DOT’s understanding that some passengers with disabilities and service animals may not be able to use the electronic DOT Forms, notwithstanding their accessibility to other passengers. DOT’s regulations require carriers to make accessible electronic DOT Forms available on their websites, but also require them to provide paper copies of the forms upon request. 14 C.F.R. § 382.75(e). Those regulations similarly require airlines who demand advance submission of DOT Forms to not only accept them electronically, but also by hard copy. 14 C.F.R. § 382.75(f). The requirement for paper copies to be sent and accepted by mail demonstrates DOT’s recognition that some persons with disabilities who use service animals may not have access to and the skills necessary to use technology to obtain and submit electronic DOT Forms. Despite this demonstrated awareness, and the understanding shown by the telephone-ticketing requirement that accessible technology is not a panacea, the DOT failed to require non-technological alternative access for blind passengers unable to

complete the DOT Forms. That failure is inexcusable considering that guide dogs are the prototypical service animal.

As discussed below, many blind guide-dog users cannot independently complete DOT Forms. Because air carriers are not required to assist such passengers in completing and submitting those forms, those blind passengers face significant obstacle that impede their access to air travel. The exemption sought herein will eliminate airlines' ability to condition travel on submitting DOT Forms that those blind passengers cannot independently complete due to their blindness. By removing that obstacle, the exemption will ensure that all blind passengers who use guide dogs will have meaningful access to air travel.

The exemption is necessary because the DOT cannot provide any other immediate remedy to address the barriers to air travel posed by the DOT Forms. The DOT is responsible for remedying those barriers because it alone bears responsibility for the DOT Forms and their shortcomings; and for failing to ensure air carriers' provision of assistance to blind passengers in completing and submitting those forms where such assistance is necessary due to their disability.

The public benefits when people with disabilities have meaningful access to air travel, and when the government does not impose barriers to such meaningful access for specific groups of persons with disabilities. The public also benefits when government agencies do not violate laws such as Section 504 of the Rehabilitation Act. The exemption is consistent with the Congressional charge that the "Federal Government play[] a leadership role in promoting ... and in assisting States and providers of services in fulfilling the aspirations of such individuals with disabilities for ...

independent living...” 29 U.S.C. § 701. Without the exemption, the regulation violates 29 U.S.C. § 794’s mandate that “[n]o otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency...*” (*Id.* Emphasis added.) The DOT actively regulates and provides funding to the airlines. By promulgating the regulation, DOT created and bears direct responsibility for its adverse impact on blind people who rely on guide dogs.

There is no evidence to suggest that this exemption will negatively affect public safety. Guide dogs have a long record of safe travel, having been trained and used in the U.S. for more than ninety-five years. “History of Guide Dogs,” International Guide Dog Federation (available at <https://www.igdf.org.uk/guide-dogs/history-of-guide-dogs/> (last accessed Jan 24, 2024)). The NPRM supporting the regulation acknowledges that “dogs are the most common animal species used to assist individuals with their disabilities, both on and off aircraft, and that dogs have both the temperament and ability to do work and perform tasks while behaving appropriately in a public setting and while being surrounded by a large group of people.” (Traveling by Air With Service Animals, 85 FR 79742-01). Guide dogs receive structured socialization and behavior training not only by professional trainers as part of their several months of guide training (See “Standard 5: Dog Training and Behaviour,” *Standards*, International Guide Dog Federation, October 5, 2023 (available on request from enquiries@igdf.org.uk)), but also by their volunteer puppy-raisers during the year

leading up to that training. See, *E.g.*, “Puppy Raising Manual,” Guide Dogs for the Blind (available at <https://www.guidedogs.com/uploads/files/Puppy-Raising-Manual/Puppy-Raising-Manual-COMBINED.pdf>).

Likewise, concerns about “fake” service animals don’t apply to guide dogs. The DOT has never received a complaint that a passenger fraudulently represented themselves as a blind person using a guide dog, nor has it received an assertion by any airline that a passenger has fraudulently completed DOT Forms indicating as Such. An individual is unlikely to attempt to pass off a pet or emotional support animal as a guide dog, as opposed to passing it off as another type of service animal for a less-obvious disability. Were they to make such an attempt, it would be readily apparent that the dog is not actually guiding the passenger, or that the passenger is not blind, or both.

Finally, there are an estimated 500,000 working service animals of any type in the United States. See <https://share.america.gov/service-dogs-save-lives/>. According to the International Guide Dog Federation, a member organization of guide dog training programs, there are only between 20,000 and 23,000 guide dogs in service worldwide at any given time. See <https://www.igdf.org.uk/about-us/facts-and-figures/>. Of those, only an estimated 10,000 are in use as working guide dogs in the United States. See, <https://www.guidingeyes.org/guide-dogs-101/>. As those estimated 10,000 guide dogs represent a mere two percent (2%) of the service animals in the United States, the regulatory requirements related to DOT Forms will still apply to ninety-eight percent of service animals and their users once this exemption is granted.

Fundamental barriers to the DOT Forms

The DOT Forms were intended to be accessible to passengers with disabilities,

including blind passengers. However, as a practical matter the DOT Forms are only accessible to blind passengers who have access to and skills to use both necessary technology and the internet. This is because, the regulations only require carriers to make accessible electronic DOT Forms available on their websites and to accept completed forms electronically. Since paper is inaccessible to blind passengers absent the assistance of carrier staff, and since there is no provision requiring airlines to provide such assistance in person or by telephone, only the website offers them the possibility of access to the forms, and only electronic submission offers them the opportunity to access and submit forms in advance. These both require internet access, and both require access to and the skills to use the technology necessary to read and complete the DOT Forms. That technology is not available to all blind passengers.

“Fillable” PDF forms such as the DOT Forms can only be completed with the aid of screen reading software on personal computers running Microsoft’s Windows or Apple’s macOS operating systems. *See* Declaration of Karl Belanger, attached as Appendix A. While it is possible for a blind person to *read* accessible PDF documents – including the DOT Forms – on other types of devices using screen reading software, it is not possible for a blind person to independently enter information on PDF documents and forms using screen reading software on mobile devices, tablets, or ChromeBooks, whether those devices are made by Apple, Google, Samsung, Amazon, or another manufacturer. *Id.* This is because manufacturers and developers have not yet built the capability to enter information on PDFs non-visually using screen reading software when using those devices. This is true even if the fillable PDF forms are otherwise accessible and can be completed non-visually using a personal

computer running Windows or macOS. *Id.* Obviously, a blind person cannot independently obtain electronic DOT Forms from DOT or carrier websites without internet access. They can neither independently mark up a PDF using visual marking tools, nor independently complete paper DOT Forms by manually writing on them. As previously explained, the only technology that currently offers them the possibility to independently complete and submit DOT Forms is a personal computer. Courts have held that being able to access a governmental program or service independently

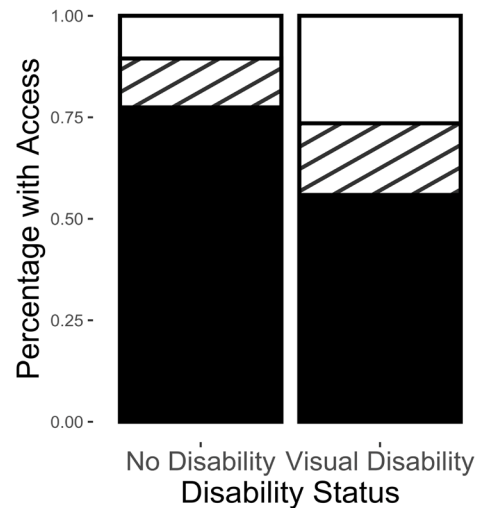


Figure 1. Percentage of people with access to the internet (hashmarks) and internet and computer (solid black) separated by visual impairment status

is essential to meaningful access under the Rehabilitation Act. *Nat'l Fed. Of the Blind v. Lamone*, 813 F.3d 494 (4th Cir. 2016). According to data from the latest American Community Survey ("ACS") by the U.S. Census, only 56.1% of blind Americans have access to both a computer and the internet at home. *See* Declaration of Marlie Elia, attached as Appendix C. Accordingly, at least 43.9% of blind Americans entirely lack meaningful access to the DOT Forms. *Id.*

This is not a speculative concern. As the following data shows, a large percentage of blind guide dog users currently experience barriers to using the DOT Forms, even if they have access to the internet. This data demonstrates the need for the exemption sought in this petition.

Survey of Blind Guide Dog Users, and Extrapolation to Total U.S. Guide Dog-Using Population

The National Association of guide Dog Users ("NAGDU"), a division of the NFB

dedicated to advocacy regarding the rights and responsibilities of guide dog use, conducted an online survey from June through August 2023. *See*, Declaration of Raul Gallegos, attached hereto as Appendix B. That survey, in which 103 respondents participated, provides insight into how blind guide dog users experience air travel and what technology and comfort level they possess for finding and attempting to complete the DOT Forms. *Id.*

It must be said at the outset that the survey undercounts blind persons who do not use technology to access the internet, as nearly all respondents said they did. This makes sense given that the survey was conducted online. Nevertheless, nearly four percent of respondents do not use technology to access electronic documents such as PDFs at all. This and other survey data reflect that even blind individuals, like Mr. Simpson and Mses. Schoen and Gomes, who might otherwise use the internet, nonetheless face technology barriers that prevent them from accessing the kind of electronic documents currently required to fly with their guide dogs.

Despite its small sample size, the NAGDU survey comports with the estimates of the much larger ACS. The ACS data indicates that approximately 73.5% of blind people have access to the internet. Appendix C, Exh. 1. The NAGDU survey data indicates that, of those who do use the internet to access electronic documents like the DOT Forms, approximately 77.6% use a macOS or MS-Windows computer to access PDFs. Appendix B, Exh. 1. Combining those two indications yields an estimated 57% of blind people who have access to both the internet and a personal computer, which comports with the ACS 56.1% estimate of the same. The NAGDU data shows that 22.4% of blind people who use the internet to access electronic documents can only

do so using technology that currently affords them no way to independently complete fillable PDF forms such as the DOT Forms. *Id.*

What devices do you use to access PDFs?

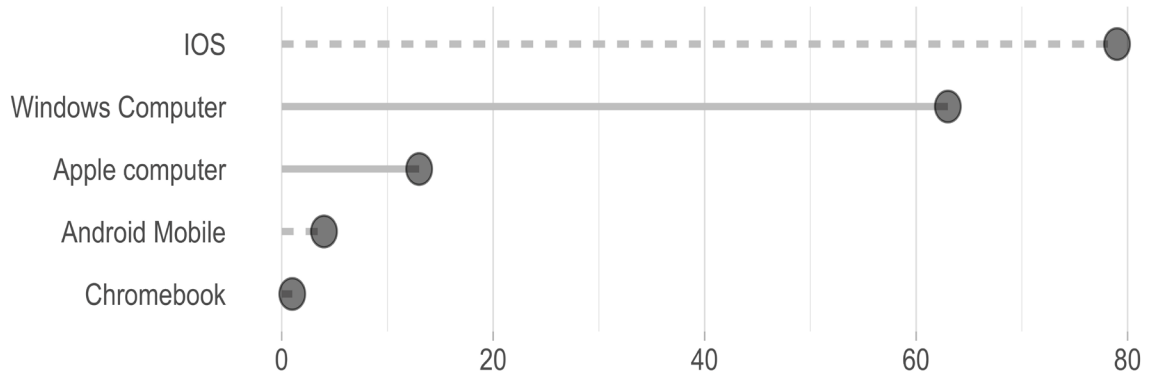


Figure 2. Access on the Internet of Blind Guide Dog Users. 98 participants who report that they use technology to access the internet were asked to specify the devices used to access. Devices which do not have the technical capability of completing a fillable PDF form are excluded from this analysis. Beyond the absolute barriers currently presented by mobile and other non-macOS/MS-Windows technology, respondents encountered additional barriers regarding the DOT Forms that demonstrate the need for an alternative such as carrier assistance. For example, 29.4% were unable to identify what information the forms require a passenger to provide, 52% were unable to independently complete them, and 5.9% were unable to open them at all. *Id.* In fact, only 42.2% of respondents were able to independently fill out DOT Forms. *Id.*

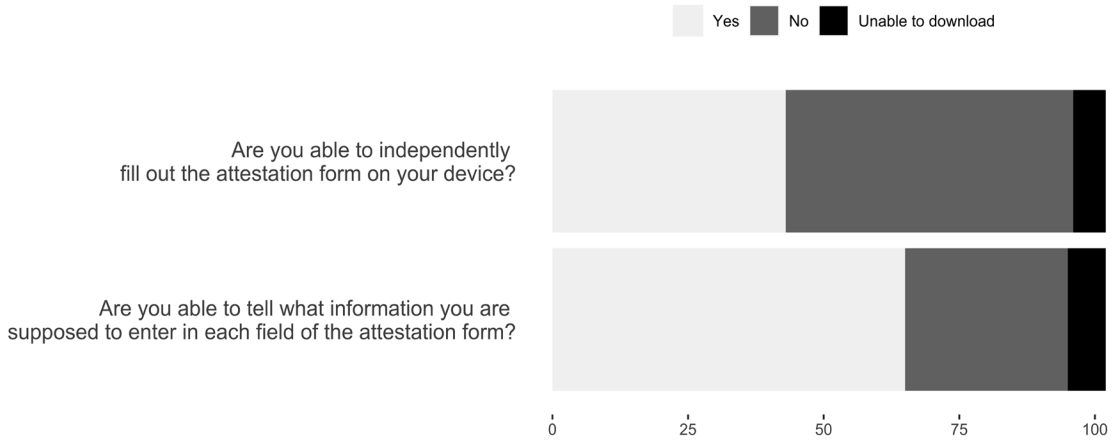


Figure 2 Blind Guide Dog User Form testing results. Blind guide dog users participating in the NAGDU study were asked to download the DOT forms and attempt to complete them. They encountered many difficulties.

As to their air travel experiences, 34.3% of respondents have actually “experienced difficulty flying with a guide dog, such as being harassed by airline staff or being denied a flight due to not following airline pre-flight procedures for bringing a service animal,” and 4.9% of respondents, Have never used a guide dog and are hesitant to do so due to the requirements for flying with a guide dog. *Id.*

Have you experienced difficulty flying with a guide dog?

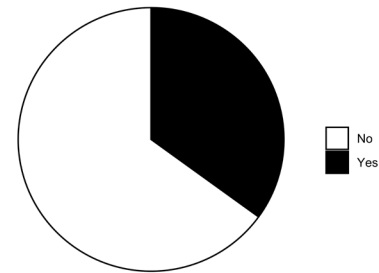


Figure 4. Problems flying with guide dogs. 102 blind guide dog users were asked "Have you experienced difficulty flying with a guide dog, such as being harassed by airline staff or being denied your flight due to not following

As discussed above, there are approximately 10,000 working guide dogs in use in the United States. See, <https://www.guidingeyes.org/guide-dogs-101/>. Based on the ACS, only 73.5% have internet access. The NAGDU survey indicates that of those, only 42.2% are able to independently complete DOT Forms. That means that 69% of guide dog users in the U.S. are currently unable to independently access the DOT

Forms; or six thousand nine hundred American guide dog users who lack meaningful access to the DOT Forms, and to air travel, because of their disability. DOT failed to ensure that blind passengers who use guide dogs would have such meaningful access, despite having demonstrated elsewhere that it understood the need and means to so ensure. As shown above, the petition should be granted.

Jurisdiction of exemption

This exemption will only apply within the jurisdiction of the United States. It will therefore only apply outside of the United States where a flight departs from or arrives in the United States.

Summary for federal register

The provisions of 14 C.F.R. §§ 382.27(b)(3), 75, and 79(a)(4) shall not apply to any blind passenger seeking to travel by air with a guide dog service animal. This means that no air carrier may require such a blind passenger to complete or provide forms as set forth in 14 C.F.R. § 382.75(a) or (b), nor may an air carrier condition transport of such a guide dog service animal on the provision of any such forms.

Respectfully submitted,

s/ Albert Elia _____

Albert Elia D.C. Bar No. 1032028
Civil Rights Education and Enforcement Center
1245 East Colfax Avenue
Suite 400
Denver, CO 80218
303-757-7901
aelia@creeclaw.org

s/ Cynthia L. Rice _____

Cynthia L. Rice
Civil Rights Education and
Enforcement Center
131 Stuart Street
Suite 400
San Francisco, CA 94105

303-551-9389

crice@creeclaw.org

*Attorneys for Elizabeth Schoen, Sherry Gomes,
Will Simpson, and NFB*

CERTIFICATION

I, Mark Riccobono, in my individual capacity and as the President and authorized representative of National Federation of the Blind, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of this petition. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.



MARK RICCOBONO

**INDEX OF APPENDICES TO PETITION FOR EXEMPTION FROM 14 C.F.R. §§
382.27(b)(3), 75, and 79**

Appendix A DECLARATION OF KARL BELANGER

Appendix B DECLARATION OF RAUL GALLEGOS

Appendix C DECLARATION OF MARLIE ELIA







Petition for Exemption from 14 C.F.R. §§ 382.27

Final Audit Report

2024-01-29

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