

## Service Animals and Ski Areas

On March 15, 2011, newly revised DOJ regulations (28 C.F.R. § 35.136) go into effect regarding the use of service animals by disabled individuals. Requirements for service animals apply to state and local government facilities and lands open to the public under Title II of the ADA and to “public accommodations” under Title III, which includes any facility open to the public, regardless of land ownership. These rules do not apply to private clubs that are not open to the public. The new regulations address the use of dogs as service animals. They also address the use of miniature horses, which are not included in the definition of “service animal,” yet may be used by disabled individuals unless they are precluded by virtue of one of the four factors listed in (i) below.

The requirements for allowing the use of dogs as service animals differ from those regarding “other mobility devices” (see related NSAA posting) in that the entity is not required to conduct and assessment of which areas services animals are permitted or not permitted. The individual is not required to show any documentation that the dog is a service animal nor is the individual to be asked any questions about their disability. Instead, the entity is required to allow the use of these animals (which may require a modification of policies, practices, or procedures) by an individual with a disability unless one of two exceptions are met: (1) The animal is out of control and the animal’s handler does not take effective action to control it; or (2) The animal is not housebroken.

The facility has more flexibility with respect to whether miniature horses are permitted. The facility can consider four different factors in shaping policies, practices or procedures on the use of these animals. In addition to the two factors listed above for dogs, the facility may also consider the size and weight of the horse and if its use would compromise safety requirements. Ski areas may want to consider adopting and posting policies for guests regarding the safety implications of boarding miniature horses on lifts and gondolas.

The major provisions of these regulations are as follows:

**Definition: Service animal** means 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 handler’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. 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.

### **§ 35.136 Service Animals**

**(a) General.** Generally, an entity should modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

**(b) Exceptions.** An entity may ask an individual with a disability to remove a service animal from the premises if--

- (1) The animal is out of control and the animal's handler does not take effective action to control it; or
- (2) The animal is not housebroken.

**(c) If an animal is properly excluded.** If an entity properly excludes a service animal under § 35.136(b), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.

**(d) Animal under handler's control.** A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

**(e) Care or supervision.** An entity is not responsible for the care or supervision of a service animal.

**(f) Inquiries.** An entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. An entity may ask (1) if the animal is required because of a disability and (2) what work or task the animal has been trained to perform.

It is not appropriate to require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, an entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

**(g) Access to areas of an entity.** Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of an entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

**(h) Surcharges.** An entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If an entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

**(i) Miniature horses. (A)** An entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. **(B) Assessment factors.** In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, an entity shall consider--

- (1) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
- (2) Whether the handler has sufficient control of the miniature horse;
- (3) Whether the miniature horse is housebroken; and
- (4) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

**(C) Other requirements.** Paragraphs 35.136 (c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.