

Facilitator Draft Issue List

Facilitators Note: The issue list that follows is the same issue list that we agreed on in earlier meetings, and the positions taken on the issues are in the language of the interest groups advancing those respective positions. However, I have taken the liberty of re-ordering the issues slightly – e.g. moving the species issue up to the first spot – to facilitate orderly discussion.

- 1. Should the rule designate eligible species for service animals (SA) and/or emotional support animals (ESA) and, if so, what species should be allowed in each category? Should the rule allow certain species to travel as service animals subject to certain restrictions (such as remaining contained during flight)?**

Advocate Proposal [“AP”]

Service animals are restricted to dogs.

A person with a disability traveling with a miniature horse trained for disability mitigation and to behave in public has similar access as such a person with a service animal. However, this access is subject to case-by-case evaluation, no different from existing ACAA and DOJ/ADA regulations (see the full proposal for details on this and many other points).

Capuchin monkeys for residential disability mitigation are allowed when kept in carriers.

Please note: During the August 10 SAWG Call, an advocate participating in the working group raised retaining cats in the definition of service animal, as they may be used for early detection of approaching epileptic seizures.

ESAs also must fit in carriers unless they are dogs that meet standards of behavior to travel outside the carrier. ESA species are not further restricted beyond those restrictions already in place (no exotics, etc.).

Industry Position [“IP”]

- 2. (a) Should disability mitigation training for the animal be required as a condition of access?**

[AP]

A service animal is trained to do work or perform a task to mitigate a person’s disability on the flight or at the destination.

An emotional support animal is used to mitigate a person’s disability on the flight or at the destination. It need not be trained to do work or perform a task to mitigate a person’s disability.

Capuchin monkeys must be trained for disability mitigation but are restricted to carriers while traveling.

[IP]

- (b) Should public access training for the animal be required as a condition of access?**

[AP]

Service animals must be trained to behave properly in a public setting and are expected to comport to the behavior standard, which includes:

- being housetrained
- generally controlled via some form of tether when reasonable (a disability or disability assistance may justifiably prohibit the use of a harness, leash, or other tether at a given time)
- not being disruptive or destructive
- not acting aggressively or otherwise creating a threat to health or safety
- not being placed on a seat (on the user's lap is acceptable for disability mitigation)
- not unduly encroaching on another passenger's space without permission
- always remaining under control of the handler

Emotional support animals -- with the exception of dogs trained to behave in a public setting -- must remain in a carrier unless performing disability mitigation. Emotional support animals traveling in carriers may be removed from the carrier during the flight in order to provide disability mitigation. In that circumstance, the animal must be tethered to and under control of the handler and comport with the standards listed above.

[IP]

- 3. Should the rule distinguish between psychiatric service animals and other service animals? If so, what are the practical implications of that distinction?**

[AP]

No. The characteristic difference between a psychiatric service animal and any other type of service animal is the type of disability mitigated, not whether they must be trained or behave. Consequently, separating psychiatric service animal users from other service animal users is straightforwardly discrimination on the basis of disability.

[IP]

- 4. Should the rule preserve a distinct emotional support animal (ESA) category? If so, what are the practical implications of that distinction?**

[AP]

Yes. An ESA is an animal that:

- is used to mitigate a person's disability on the flight or at the destination (e.g., its presence reduces the likelihood or effects of a panic attack)
- need not be trained to do work or perform a task to mitigate a person's disability
- is either (1) a dog that is trained to behave properly in public settings or (2) is either not a dog or not so trained. If (1), the dog has access in the same manner as a service animal, but is not trained to do work or perform a task to mitigate a person's disability (or it would be a service

animal, not an ESA). If (2), the animal must be transported in a carrier.

The ESA category splits into two distinct treatments based on species and training. If a dog is trained to behave properly in public settings, it would be allowed outside of a carrier with a person with a disability. Such an ESA would be expected to comport to the behavior standard above, just like a service animal.

Other animals that are of species currently allowed would also still be allowed with a person with a disability, but would be restricted to a carrier. This would functionally prohibit animals of many larger, non-canine species. The animal may be removed from the carrier during the flight in order to provide disability mitigation. In that circumstance, the animal must be tethered to and under control of the handler, comporting to the behavior standard above.

[IP]

5. **Should the rule allow carriers to require documentation and, if so, what documentation and under what circumstances? What requirements should the rule impose to prevent fraud in the documentation process?**

[AP]

Airlines could use a mechanism like a “decision tree” at the point of ticket purchase. This decision tree would have the individual specify the type of animal with which the person is traveling, and would educate that person as to the rights and responsibilities of traveling with that animal. The advocates are not in agreement as to whether the decision tree should be required or voluntary. The advocate proposal does not contemplate the need for third-party documentation.

[IP]

6. **Should permissible documentation requirements differ according to the disability of the passenger? (See Issues 2 and 3 above.)**

[AP]

No.

[IP]

7. **Under what circumstances, if any, should the rule allow the carrier to require advance notice of a passenger’s intention to travel with a service animal? How much notice, if any, may be required?**

[AP]

The completion of the decision tree would provide advance notice to the carrier. The advocate’s proposal contemplates no additional advance notice beyond completion of the decision tree.

[IP]

8. Should the rule offer additional guidance given as to how to assess the animal's behavior?

[AP]

The behavior standard is in the decision tree of the full proposal, transparent to passengers seeking accommodation, and includes:

- being housetrained
- generally controlled via some form of tether when reasonable (a disability or disability assistance may justifiably prohibit the use of a harness, leash, or other tether at a given time)
- not being disruptive or destructive
- not acting aggressively or otherwise creating a threat to health or safety
- not being placed on a seat (on the user's lap is acceptable for disability mitigation)
- not unduly encroaching on another passenger's space without permission
- always remaining under control of the handler

The advocates highly encourage airline personnel training, seeking input as to what details are reasonable.

[IP]

9. Under what circumstances, if any, should the rule allow a carrier to require that the service animal be controlled by a tether or harness?

[AP]

Generally, a service animal (or canine ESA trained to behave properly in public) must always be tethered to and under control of the handler, unless this interferes with active disability mitigation, in which case the handler must otherwise maintain control.

ESAs that aren't dogs trained to behave properly in public must remain in carriers unless needed for in-flight disability mitigation. In that circumstance, the ESA may be placed on the user's lap (not the seat) and must remain tethered to the handler and under control.

[IP]

10. Should the rule allow airlines to deny passengers boarding if their animal is ineligible?

[AP]

Not on the basis of the animal being ineligible. While airlines must still accept an otherwise travel-eligible passenger, airlines are not required to arrange for local transport or boarding of the passenger's denied animal.

[IP]

11. Should the rule specify procedures for challenging eligibility determinations by the airline, and if so, what should they be?

[AP]

Complaint resolution officers (CROs) are responsible for handling any initial round of eligibility determination challenges, and must do so in a timely and otherwise reasonable manner.

[IP]

12. (a) Should the rule specify a limit on the number of service animals that may be brought on board by any passenger?

[AP]

A passenger requesting accommodation to travel with more than two service animals, ESAs, or a combination of these can be required to provide reasonable justification to the airline as to why each animal is needed for disability mitigation on the flight or at the destination.

[IP]

(b) Should the rule specify a limit on the total number of animals that may travel as service animals on a given flight?

[AP]

Airlines may not restrict the total number of service animals or ESAs per flight, as this would functionally be placing a limit on the number of passengers with disabilities per flight. There are general regulations in place that cover any unusual situation that would threaten the health or safety of passengers based on the total number of service animals or ESAs on a flight.

[IP]

13. (a) Under what circumstances, if any, should the rule include within the definition of “service animal” an animal training to be a service animal, that is traveling with an individual with a disability?

[AP]

If a dog or miniature horse is trained to behave properly in public settings, but is still in training to perform disability mitigation, a person with a disability can fly with the animal for the purpose of training the animal on the flight or at the destination. This animal would be known as a "service animal in training". The service animal in training is required to comport to the behavior standard.

[IP]

(b) Should the rule require access for service animals that are being transported by an individual with a disability solely for the purpose of delivering the animal to another person with a disability?

[AP]

See the answer to question 13(a).

[IP]

- 14. How should the rule address the (possibly conflicting) (a) service animal requirements and/or (b) animal quarantine requirements of jurisdictions outside Continental US?**

Reserved for later discussion

- 15. Should the rule no longer hold US carriers responsible when its foreign code-share partners deny transportation to animals that are not service dogs?**

Reserved for later discussion