

CARRIER RESPONSE TO REVISED SERVICE ANIMAL PROPOSAL

31 August, 2016, revised 8 September

In response to the disability advocates' recent proposal dated 26 August (an addendum to the original proposal dated 21 July), the carriers respond as follows.

1. Support for the decision tree passenger generated documentation concept

The foreign carriers do not, at this point, support the decision tree concept for the reason that it would rely on passenger generated documentation rather than third party documentation. Additionally, a domestic carrier which is a member of the Service Animal Working Group but not a voting member of the ACCESS Committee does not support the decision tree concept, for the same reason.

The foreign carriers and the domestic carrier are willing to further explore, analyze, and evaluate the decision tree concept and any specific decision tree based proposal, in the interests of candor and good faith we want to apprise the disability advocates that three carriers are not, at this point, on board with the wholly passenger-generated documentation concept.

2. Mandatory versus voluntary submission of documentation

For the reasons discussed extensively at the last plenary session, the carriers can support the idea of mandatory documentation (Option 1 from the disability advocates' original proposal document dated 21 July, 2016) but cannot support a voluntary approach. In the carriers' opinion, a voluntary approach would undermine the entire objective of the documentation submission concept.

With regard to the advocates inquiry whether, in return for a disability advocates' agreement to make documentation submission mandatory the carriers would agree that under no circumstances would carriers seek additional documentation, the carrier response is that they cannot agree to such an unqualified commitment. The carriers would be happy to discuss, however, with the advocates and the DOT, the circumstances and limits under which carriers would be allowed to seek documentation over and above the passenger generated decision tree documentation. The carriers note that under the current ACAA regulations, carriers may require passengers traveling with non PSA/ESA service animals to submit third party documentation if the passenger's verbal assurance

is deemed not to be credible. Thus, the current regulatory scheme provides an exception to the general rule that carriers cannot require documentation for non-ESA/ PSA service animals. A similar approach under the decision tree concept, which would allow carriers to require third party documentation when there is a reasonable concern that the passenger provided documentation is not credible, would be subject to a reasonability standard. If a carrier were to seek such third party documentation as a matter of course, or arbitrarily/ capriciously, the carriers would be subject to enforcement action by DOT. Carriers would thus have to be able to articulate a reasonable basis any time they sought third party documentation .

The carriers would also like to address the following sentence from pages 14-15 of the advocates' 26 August proposal addendum:

Proponents hope this position would satisfy the strong desire of some with disabilities to travel freely without disclosing whether they have a disability.

The carriers are puzzled by this statement, given that, by necessity, it is only passengers with a disability who may avail themselves of the rights and protections afforded by the ACAA. The idea that a passenger could obtain disability related rights without having to disclose that he or she is a person with a disability, and thus entitled to such rights, makes no sense. Indeed, the disability advocates' own 21 July proposal would require passengers traveling with ESAs and service animals to expressly disclose and affirm they have a disability – see pages 7 and 9 of the 21 July advocates' proposal.

In response to suggestions by advocates that passengers seeking to travel with pets use the same decision tree process used by passengers traveling with service animals, the carriers' position is that it should be up to each carrier as to whether it incorporates pets into its decision tree. Some carriers do not allow pets to travel so the issue is moot with regard to them. Carriers that do allow pets may not want to include pets in a decision tree process, but in any event anyone seeking to travel with a pet will, by necessity, have to provide to the carrier relevant information related to the pet, and will of course have to pay the applicable pet fee.

3. Emotional Support Animals (“ESAs”)

In the response paper the carriers shared with the disability advocates on July 29, the carriers expressed their view regarding including ESAs in a new regulatory scheme. The carrier view continues to be that, consistent with the

Americans with Disabilities Act and foreign jurisdictions, ESAs should not be recognized in the Air Carrier Access Act context.

4. Species Restriction

The advocates original proposal dated 21 July limited service animal species to dogs, capuchin monkey (which would remain in carrier throughout flight) and, under certain circumstances, miniature horses. The carriers have agreed to and support that service animal species restriction proposal. The disability advocates have since added a proposal that cats be added to the allowed service animal species. The carriers acknowledge that a service animal advocate has, since the advocates' original proposal dated 21 July, suggested that cats provide disability mitigation related to seizure alert, but that information has been limited. At this point, the carriers cannot agree to the addition of cats to the species originally proposed by the disability advocates.

5. Timing of submission of service animal documentation

The carriers originally suggested that documentation be submitted at the time of ticketing, but have since concluded that is not feasible given the variety of distribution channels through which airline tickets can be sold. Additionally, the advocates objected to a requirement that submission occur as part of the ticketing process and noted that could cause problems where the person booking travel is not the disabled passenger (e.g., an employer booking travel for an employee). Accordingly, the carriers can agree to an approach where, rather than submitting the required service animal documentation at time of ticketing, such submission is made after ticketing is completed, provided that it is furnished to the carrier 12 hours or more before time of travel. The only circumstances in which the required documentation would be allowed to be provided closer than 12 hour before time of travel would be when ticketing occurs fewer than 12 hours prior to the time of travel.

The carriers cannot agree to a regulatory scheme like the current approach of 14 CFR 382.117(e) and 382.27(c), as informed by the Department of Transportation's FAQ related to 382.27(c), under which carriers may, in certain circumstances, require documentation to be provided 48 hours in advance, but

are nonetheless required to allow travel under certain circumstances even if a passenger fails to meet the 48 hour requirement. The carriers view the FAQ exception to 382.27(c) as undermining the objective of the regulation. Allowing the completion and submission of the required documentation at the airport would undermine the agreed objective that passengers, particularly those considering falsely claiming to be disabled, to read, affirm, and submit the required documentation **before** arriving at the airport.

The airlines have every interest and incentive to make passengers planning to travel with service animals aware of the requirement to submit the required documentation no later than 12 hours before flight. In addition to including that service animal documentation submission information on carrier websites, carriers would also include a reminder on ticket receipts and check in reminders.

6. Automated submission of required documentation

The carriers do not view inaccessibility of websites for people with disabilities to be an impediment to automated submission of required documentation, as carrier websites are required to meet accessibility standards per 14 CFR 382.43. Accessing documentation forms should not be a problem for disabled passenger in light of that regulation.

Carriers could agree to accept documentation by fax if a particular passenger affirmed an inability to submit the documentation online.

Submission of the required service animal documentation would be required for each flight (just as acknowledgment of hazardous goods restriction is required for each flight). The carriers acknowledge that the disability advocates have raised concerns that requiring submission for each flight would be unnecessarily burdensome for some disabled passengers. Given that the exact details of how the first submission would work have not been fleshed out, the carriers note that at this point it is an unknown precisely how burdensome re-submission would be. The carriers commit to exploring reasonable means to minimize the burden of re-submission (including but not limited to storing of information already submitted) once the exact details of the initial submission process are determined.

7. Multiple service animals

The carriers can agree to the disability advocates' 26 August proposal that a passenger seeking to travel with more than one service animal may be required to provide "reasonable justification" to the airline as to the need to do so. Some fleshing out of the parameters of "reasonable justification" would be necessary.

The carriers propose a limit of two service animals for any single passenger, which is a minor modification of the DOT's current policy that a single passenger is limited to three service animals.

8. Weight and size information

The advocates' original proposal dated 21 July envisioned (at page 7) a scenario under which some passengers would be required to provide weight and size information. Inexplicably, the disability advocates' 26 August proposal objects to any requirement for passenger to provide weight and size information. The carriers are puzzled by this change of position that is not accompanied by any explanation.

The carriers' point of view is that having passengers provide weight and size information is useful to both carriers and passengers, given that such information might allow a carrier to recognize a situation where there may be issues accommodating a large animal and to act proactively to address that situation, and thus avoid an accommodation problem that might otherwise arise.

Having said that, the carriers are fine with the idea that providing such information be optional, but the carriers would want to include language encouraging passengers to provide such information and suggesting that doing so might help eliminate issues that might otherwise arise. An alternative might be that carriers ask passengers to voluntarily provide such information only if an animal exceeds a certain size/ weight.