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Chartered by the Congress of the United States

PETITION FOR RULEMAKING

Petitioner Paralyzed Veterans of American (“PVA”)¹ hereby petitions the Department of Transportation (the “Department”) pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 553(e), to initiate a rulemaking proceeding to implement standards and requirements for boarding and deplaning airline passengers with mobility disabilities, in accordance with the mandate by Congress to “review, and if necessary revise,” regulations regarding the boarding and deplaning process “to ensure that passengers with disabilities ... receive dignified, timely, and effective assistance at airports and on aircraft from trained personnel.” FAA Reauthorization Act of 2018, Pub. L. No. 115-254 § 440, 132 Stat. 3347 (2018). As discussed further below, PVA specifically requests that the Department address issues related to the transfer of passengers into and out of aisle chairs, the duty of air carriers to maintain information about issues that occur during the boarding and deplaning process, and an air carrier’s duties in the event that they damage, lose, or otherwise mishandle a wheelchair or other assistive device.

BACKGROUND

The Air Carrier Access Act (“ACAA”) of 1986, 49 U.S.C. § 41705, prohibits air carriers from discriminating against passengers with disabilities. The Department is charged with implementing the ACAA, and is, thus, under a continuing obligation to ensure that airlines are not discriminating against persons with disabilities. To that end, the Department has published numerous regulations setting forth standards that airlines must follow regarding a variety of issues related to mobility disabilities, as well as other categories of disabilities.

However, to date, the Department has failed to adequately regulate how airlines must board and deplane passengers with mobility disabilities. The Department’s regulations on the subject (1) require that air carriers provide boarding and deplaning assistance, 14 C.F.R. § 382.101, (2) prohibit air carriers from hand-carrying passengers with disabilities on and off the plane, *id.*, and (3) prohibit air carriers from leaving passengers with disabilities unattended in an aisle chair for longer than thirty minutes, *id.* § 382.103. Aside from those requirements, air carriers are generally free to handle the boarding and deplaning process as they see fit.

The lack of additional requirements has resulted in inconsistent and often inadequate policies and practices and years of suffering by passengers with disabilities. In 2017, airline passengers filed over 34,000 disability-related complaints. For passengers with paraplegia or quadriplegia, some of the most common complaints involved the boarding and deplaning process.² Passengers report being dropped or otherwise improperly transferred into and out of their wheelchairs, the boarding and deplaning aisle chairs, and their seats, and are often forced to sit for long periods of times in ill-fitting and non-ergonomic

¹ PVA thanks Karianne Jones and Democracy Forward Foundation for their help in putting together this petition.

² *Implementation of the FAA Reauthorization Act of 2018: Hearing Before the Subcomm. On Aviation of the H. Comm. On Transportation and Infrastructure*, 116th Cong. 3 (2019) (statement of David Zurfluh, Nat’l President, PVA) available at <https://www.congress.gov/116/meeting/house/109978/witnesses/HHRG-116-PW05-Wstate-ZurfluhD-20190926.pdf>.

aisle chairs—all of which can cause serious and sometimes fatal injury.³ Moreover, airlines often return passengers' wheelchairs in damaged condition.⁴ That, in turn, forces passengers to wait for lengthy periods of time in the ill-fitting aisle chairs or standard airport wheelchairs while a temporary, and often similarly ill-fitting, replacement chair is found—again subjecting passengers to the risk of serious injury. Indeed, just recently, a disability rights activist, Engracia Figueroa, died as the result of injuries she incurred when she was forced to sit in an airport chair, similar to an aisle chair, for five hours and then use a temporary chair for months—all because an airline had damaged her wheelchair during travel.⁵

Recognizing the continued severity of the problem, Congress specifically directed the Department to “review and, if necessary, revise” its regulations “to ensure that passengers with disabilities who request assistance while traveling in air transportation,” including “requests for assistance in boarding or deplaning an aircraft,” “receive dignified, timely, and effective assistance at airports and on aircraft from trained personnel,” FAA Reauthorization Act of 2018, § 440, 132 Stat. at 3347.

PVA acknowledges that the Department established an advisory committee that examined and made recommendations regarding Section 440 of the FAA Reauthorization Act,⁶ and invited PVA to sit as a member on that Committee, as well as on a subcommittee related to the training of air carrier personnel. The Committee, however, did not address all the issues related to boarding and deplaning that can affect the health, safety, and dignity of passengers with mobility disabilities during air travel. Accordingly, PVA asks the Department, as part of its ongoing effort to comply with Section 440 of the FAA Reauthorization Act, to implement the following:

- (1) Mandate that carriers assign specific airline personnel who are highly trained in how to board and deplane passengers with significant mobility disabilities and provide them with properly maintained equipment to assist in the boarding and deplaning process;
- (2) Mandate that carriers not transfer passengers to aisle chairs until they are ready to board, or, upon arrival, until the carrier is ready to immediately transfer the passenger from the aisle chair to the passenger's wheelchair;
- (3) Establish a standardized reporting process for air carriers to follow when an issue occurs in the boarding and deplaning process—regardless of whether a customer makes a complaint to the airline—including by specifying what information the airline must report or track and requiring the air carrier to make the reports publicly available;

³ See U.S. Access Board, *Guidelines for Aircraft Boarding Chairs*, <https://www.access-board.gov/research/human/guidelines-aircraft/#contents>.

⁴ In 2019, air carriers reported mishandling or damaging 10,548 wheelchairs and scooters. *The Airline Passenger Experience: What It Is and What It Can Be: Hearing Before the Subcomm. On Aviation of the H. Comm. On Transportation and Infrastructure*, 116th Cong. 3 (2020) (statement of Lee Page, Senior Assoc. Advoc. Director, PVA), available at <https://transportation.house.gov/imo/media/doc/Testimony%20-%20Page.pdf>.

⁵ Bethany Dawson, *A disability activist died from body sores associated with the loss of her \$30,000 wheelchair that was 'destroyed' during a United Airlines flight, advocacy group claims*, Business Insider (Nov. 6, 2021), <https://www.businessinsider.com/disability-activist-died-after-united-airlines-destroyed-30k-wheelchair-2021-11>.

⁶ Charter of the Air Carrier Access Act Advisory Comm., U.S. Dep't of Transp. (Sept. 28, 2021), available at <https://www.transportation.gov/sites/dot.gov/files/2021-10/2021%20ACAA%20Advisory%20Committee%20Charter.pdf>.

- (4) Establish a timeline for air carriers to adhere to when replacing a wheelchair or other assistive device or providing compensation for the damage of such, as well as requiring air carriers to provide adequate interim accommodations; and
- (5) Clarify that Department regulations require airlines to return all wheelchairs and other assistive devices in the condition in which they were received.

STATEMENT OF INTEREST

Paralyzed Veterans of America is a congressionally chartered veterans service organization founded in 1946. PVA is dedicated to helping veterans who have spinal cord injuries and disorders secure quality healthcare, earned benefits, and civil rights. PVA has long advocated for accessible air travel.

Many of PVA's members have experienced difficulties during the boarding and deplaning process. For example, in January 2019, a PVA member was improperly transferred from his personal wheelchair into an aisle chair by an inadequately trained airline employee. The employee dropped the member and fractured his tailbone, leading to a life-threatening infection that hospitalized him for months.⁷ After leaving the hospital, the member tried to take action against the airline, but was told that he had waited too long to file his complaint.⁸

In October 2019, a PVA member was hand-carried off of an airplane. Although there was no emergency requiring it, she was informed that allowing individuals to carry her off was the only way for her to deplane. She reluctantly agreed even though she expressed her discomfort with the process.⁹ While she was being carried from the aircraft, she was afraid that they would drop her and could feel the struggle of those attempting to assist her.

In December 2019, a PVA employee was put into an aisle chair that did not accommodate his needs. The footrest was too small and his feet kept falling off the aisle chair as he was being brought into and out of the airplane. Moreover, the seat straps were not sufficient to keep him in a secure seated position. As a result, his hip and lower backside hit every armrest all the way back to his assigned seat. At his seat, the personnel tried to lift him up over the fixed armrest and into his seat but they were not strong enough. This resulted in his being dropped onto the armrest as he slid into the seat.¹⁰

And in March 2018, a PVA member was dropped when airline personnel were not paying attention while transferring him from the aisle chair to his wheelchair. Thankfully, he was not injured and needed no medical care.

Other stories abound.¹¹ PVA thus has a keen interest in the Department regulating the boarding and deplaning process in the manner herein presented.

⁷ PVA, *Air travel inhumane and dangerous for many people with disabilities 35 years after law mandated accessibility* (Nov. 17, 2021), <https://pva.org/news-and-media-center/recent-news/air-travel-inhumane-35-years-after-aca/>.

⁸ Joseph Shapiro & Allison Mollenkamp, *Despite calls to improve, air travel is still a nightmare for many with disabilities*, NPR (Nov. 9, 2021), <https://www.npr.org/2021/11/09/1049814332/despite-calls-to-improve-air-travel-is-still-a-nightmare-for-many-with-disabilit>.

⁹ *The Airline Passenger Experience*, *supra* n. 4 at 3.

¹⁰ *Id.*

¹¹ PVA, *Share your Story*, <https://air-access.org/> (last accessed Feb. 11, 2022); PVA, *An Inside Look at Air Travel for People Who Use Wheelchairs*, YouTube (Oct. 6, 2021), <https://youtu.be/-zWa4D-a5cU>.

REQUESTS

In accordance with its general rulemaking authority, in addition to the specific direction by Congress in the FAA Reauthorization Act that the Department “review, and if necessary, revise” its regulations regarding, among other things, “requests for assistance in boarding or deplaning an aircraft,” PVA makes the following requests:

A. Passengers should be assisted by only certain highly trained airline personnel with proper equipment.

The Department should mandate that carriers assign specific, specially trained airline personnel to assist passengers who must use an aisle chair in the boarding and deplaning process. These personnel must receive specialized, hands on training in how to safely assist passengers with significant mobility impairments and the use of all boarding and deplaning equipment. Furthermore, airlines must equip these teams with transfer kits that include slings, slide boards, and other devices to assist passengers with disabilities as well as ensuring that they have access to well-maintained aisle chairs and other boarding and deplaning devices.

Without such a mandate, passengers with significant disabilities are often being physically lifted from their chair to an aisle chair by personnel with improper training in how to do this safely. The result is that passengers are dropped, contorted, bumped, or otherwise mishandled—all causing potentially serious injuries. As David Zurfluh, Immediate Past President of PVA, has explained: “It is unconscionable to think that someone with a spinal cord injury or disorder should be assisted in multiple transfers to board and subsequently deplane an aircraft without having been properly educated about how to assist them.”¹² The Department must act to stop this practice.

B. Passengers should not be moved until the airline is ready to transfer them out of the aisle chair.

The Department currently prohibits air carriers from leaving a passenger unattended in an aisle chair for longer than thirty minutes. 14 C.F.R. § 382.103. But *any* time in an aisle chair puts passengers at risk of injury, given how small, ill-fitting, and non-ergonomic the aisle chairs are. Moreover, using an aisle chair often leaves passengers feeling dehumanized and trapped since they are strapped to the device and unable to propel it independently.

The Department should therefore require an air carrier not transfer a passenger into an aisle chair until it is ready to seat the passenger (boarding) or transfer the passenger back into their personal wheelchair (deplaning), unless that passenger specifically requests to be transferred at an earlier time.

C. Airline carriers should implement consistent incident reporting practices to be accountable to passengers.

At present, airlines are not required under the ACAA to maintain records about issues that arise during the boarding and deplaning process. Accordingly, passengers with disabilities are often unable to seek recompense—as the complaint process boils down to a he said/she said exchange. Congress has specifically asked the Department to provide “descriptions of protections and responsibilities ... related to ... the right of passengers with disabilities ... to file a complaint with a covered air carrier.”¹³

¹² *Implementation of the FAA Reauthorization Act of 2018*, *supra* n. 2 at 4.

¹³ FAA Reauthorization Act of 2018, § 434, 132 Stat. at 3343.

In accordance with that mandate, and to better hold airlines accountable, the Department should implement standardized reporting practices for all airline carriers to document and track the number of incidents that occur and to allow passengers to seek recourse, including by specifying what information an air carrier must document. It should further require those reports to be made publicly available.

D. The Department should mandate a timeline and process for airlines to abide by after damaging or losing a passenger’s wheelchair or other assistive device.

Airlines report damaging approximately 1.5% of the wheelchairs and scooters they transport in a given year.¹⁴ And although airlines are required to compensate passengers with disabilities for damaging such devices and/or replace them, there is currently no required timeline for doing so. As a result, passengers with disabilities often have to wait months to have their damaged wheelchair repaired or to receive a new chair—spending that time in a broken or temporary, ill-fitting chair that can cause serious injury or death. Indeed, that is what happened to Ms. Figueroa, the disability rights activist who died after an air carrier damaged her personal wheelchair—she was forced to spend months in a temporary wheelchair while waiting for the airline to replace the \$30,000 wheelchair that it had damaged.¹⁵

The Department should mandate that airlines provide compensation for, or a replacement of, a damaged or lost wheelchair or other assistive device within a certain time frame. It should also mandate that airlines provide adequate interim accommodations to passengers with disabilities while they wait for a new wheelchair. And it should mandate that airlines have a protocol in place for what to do when a wheelchair is mishandled to ensure the safety of the passenger.

E. Airlines should be required to return all wheelchairs and other assistive devices in the condition they were received.

Department regulations state that an air carrier “must return wheelchairs, other mobility aids, and other assistive devices to the passenger in the condition in which [it was] received.” 14 C.F.R. 382.129(b). The title of that regulation, however, refers to wheelchairs and other assistive devices that have been disassembled for stowage on the plane. *See id.* In light of air carrier responses to incidents, we are concerned that the duty of the air carrier with regard to a passenger’s wheelchair or other mobility device is not sufficiently clear.

Any reading of the regulation requiring only disassembled wheelchairs to be returned in the manner received would thwart the purpose of the ACAA: allowing air carriers to return wheelchairs and other assistive devices—what have been described as passengers’ “legs”¹⁶—in worse or damaged condition, so long as they had not disassembled for stowage on the plane. The Department should, therefore, issue interpretive guidance and/or engage in additional rulemaking to make clear that 14 C.F.R. § 382.129(b) requires that air carriers return *any* wheelchair or other assistive device in the condition it was received.

CONCLUSION

The current state of air travel poses significant difficulties and risks for passengers with disabilities. As Congress mandated, the Department must review and revise its regulations concerning the boarding and deplaning process.

¹⁴ *The Airline Passenger Experience*, *supra* n. 4 at 4.

¹⁵ Dawson, *supra* n. 5.

¹⁶ Dawson, *supra* n. 5.

Petitioner Paralyzed Veterans of America thus respectfully requests that the Secretary of Transportation initiate a rulemaking proceeding pursuant to the Administrative Procedures Act, 5 U.S.C. § 553(e), to revise 14 C.F.R. §. 382 to include the aforementioned provisions protecting the rights of airline passengers with disabilities. If you would like to discuss this petition, please contact Heather Ansley at HeatherA@pva.org.