

March 2, 2020

Ms. Blane Workie  
Assistant General Counsel, Office of Aviation Enforcement and Proceedings  
U.S. Department of Transportation  
1200 New Jersey Ave, SE  
Washington, DC 20590

Re: DOT-OST-2019-0180

Dear Ms. Workie,

The undersigned organizations submit the following comments in response to the notice of proposed rulemaking (NPRM) published by the Department of Transportation (Department) concerning Accessible Lavatories on Single-Aisle Aircraft: Part 1. The notice was officially published for comment on January 2, 2020.

The ability to physically access an aircraft lavatory inflight is an opportunity that most air travelers take for granted. For people with disabilities, including those who use wheelchairs, service animals, and/or require the assistance of another individual, lavatory access on the vast majority of single-aisle aircraft is simply not feasible due primarily to space limitations in the lavatory. Consequently, these travelers are often forced to dehydrate themselves prior to a flight, take several connecting flights, or simply forego air travel altogether and drive to their destination in order to avoid or reduce the likelihood of needing to use a lavatory inflight. A January 2020 Government Accountability Office (GAO) report on the accessibility of U.S. aircraft lavatories for people with disabilities who have limited mobility found that although accessible lavatories are available, “carriers do not often choose to acquire them.”<sup>1</sup>

In 2016, the Department’s Accessible Air Transportation (ACCESS) Advisory Committee conducted a negotiated rulemaking that addressed whether to require accessible lavatories on single-aisle aircraft of a certain size.<sup>2</sup> After six months of negotiations, the ACCESS Committee voted on October 14, 2016, to approve a set of terms that when fully implemented would require accessible lavatories on single-aisle aircraft with 125 or more Federal Aviation Administration (FAA) maximum certified passenger seats.<sup>3</sup> The members of the ACCESS Committee, which included air carriers, air carrier trade associations, aircraft manufacturers, and disability community representatives agreed that implementation would be phased in over two decades.<sup>4</sup> In the short-term or Tier I phase, air carriers would be required to take steps to improve

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<sup>1</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, AVIATION CONSUMER PROTECTION: FEW U.S. AIRCRAFT HAVE LAVATORIES DESIGNED TO ACCOMMODATE PASSENGERS WITH REDUCED MOBILITY 14(2020), <https://www.gao.gov/products/gao-20-258>.

<sup>2</sup> Nondiscrimination on the Basis of Disability in Air Travel; Establishment of a Negotiated Rulemaking Committee, 81 Fed. Reg. 20,265 (Apr. 7, 2016): <https://www.federalregister.gov/documents/2016/04/07/2016-08062/nondiscrimination-on-the-basis-of-disability-in-air-travel-establishment-of-a-negotiated-rulemaking>.

<sup>3</sup> Resolution of the U.S. Department of Transportation Access Committee 3-6(Nov. 22, 2016), <https://www.transportation.gov/sites/dot.gov/files/docs/ACCESS%20Committee%20Final%20Resolution.11.21.16.pdf>.

<sup>4</sup> *Id.* at 3.

accessibility in lavatories without expanding the physical foot print of the lavatory.<sup>5</sup> In the long-term or Tier III phase, air carriers would be required to have a fully accessible lavatory on single-aisle aircraft with 125 or more seats of a size similar to those required on twin-aisle aircraft.<sup>6</sup> Such a lavatory would accommodate a passenger with a disability using an onboard wheelchair behind a closed door.<sup>7</sup> Members of the committee also agreed that the Department should propose new standards for onboard wheelchairs.<sup>8</sup>

During the first meeting of the ACCESS Committee, the members developed the ground rules for the negotiation.<sup>9</sup> For its part, the Department agreed that if it supported the Committee's proposal in any issue area that it would "use the Term Sheet and any associated recommended regulations as the basis for the Notice of Proposed Rulemaking to the maximum extent possible."<sup>10</sup> Despite agreement of the committee members and the Department on a proposal that would ultimately require fully accessible lavatories on single-aisle lavatories, the Department has yet to move forward with publishing an NPRM on the long-term accessibility requirements. This is not only extremely disappointing, but also a failure of the regulatory process if the agreement of the regulated entity and the beneficiary is not sufficient to propel forward a process that has been decades in the making. Although the accessibility features required in the short-term or Tier I requirements will benefit people with disabilities, true accessibility for all passengers with disabilities will only be realized when the long-term requirements for lavatories are fully realized.

The Department's recently published NPRM for short-term accessibility generally aligns with the requirements agreed to as part of the negotiated rulemaking in 2016; thus, our comments will focus on the specific questions posed by the Department.

### *Improvement to Lavatory Interiors*

The interior improvements to the lavatory in proposed § 382.63(f) apply to aircraft with an FAA-certificated maximum capacity of 125 seats or more. We are pleased that the Department is seeking comment, however, about whether these proposed improvements would be helpful to passengers with disabilities who are able to physically access lavatories on aircraft with fewer than 125 seats. We hope that the Department will fully consider this possibility as the safety and dignity of passengers should be its top concern.

In reviewing the specific requirements of proposed § 382.63(f), we are concerned about the regulation's reliance on performance standards. We believe that providing general performance standards for accessibility features on aircraft has made it difficult to ascertain whether or not given features meet requirements of the ACAA, particularly when they do not meet the needs of

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<sup>5</sup> *Id.* at 3-6.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 5.

<sup>9</sup> First Meeting of the DOT ACCESS Advisory Committee 7-10(May 17-18, 2016),

<https://www.transportation.gov/sites/dot.gov/files/docs/Minutes%20-%201st%20Plenary%20Meeting.pdf>.

<sup>10</sup> *Id.* at 9.

passengers with disabilities. Amtrak<sup>11</sup> and commuter rail systems<sup>12</sup> are required to abide by specific requirements for onboard lavatory access under the Americans with Disabilities Act. The requirements outlined in the Department's regulations for rail systems include the minimum clear floor area,<sup>13</sup> the height of the water closet (toilet),<sup>14</sup> grab bars,<sup>15</sup> faucets and flush control requirements,<sup>16</sup> and doorway clear opening width requirements and door latches and hardware.<sup>17</sup> If specific lavatory requirements can be successfully implemented on cross-country passenger trains, then we believe that there should be no difficulty in implementing these requirements in commercial passenger air travel. Furthermore, it is important to remember that the long-term improvement of a fully accessible lavatory would rely on the requirements specified in Tier I for door locks, accessible call buttons, assist handles, faucets and other controls (if any), and dispensers (if any).<sup>18</sup>

We particularly oppose the decision of the Department to ignore the requirement in the Term Sheet to establish a toilet seat height. Instead, the Department has proposed in § 382.65(e)(4) that the onboard wheelchair height should align with the passenger seat. If the passenger seat and the toilet seat are of differing heights, then we fail to see how aligning the onboard wheelchair to the passenger seat will ensure the safe transfer of an individual with a disability during each phase of the process. Also, the passenger seat provides at least some padding if it is a different height than the onboard wheelchair. Of the three, the toilet seat is the only one with no padding and presents the most danger to a passenger with compromised skin if the transfer must be completed from an ill-aligned onboard wheelchair. Furthermore, the height of the toilet might be critical to individuals with disabilities who will not be using the onboard wheelchair to access the lavatory but for whom the height of the toilet would be problematic.

Finally, we support a requirement for the Department to prohibit the footprint of lavatories from being further reduced. News articles discuss the plight of even non-disabled passengers to safely access onboard lavatories.<sup>19</sup> Flight attendants have also complained about the impacts of limited space in lavatories.<sup>20</sup> Although the current lavatories do not generally meet the needs of passengers who use mobility devices, require assistance in the restroom, or use service animals, we believe that implementing a requirement preserving the current footprint would at least meet the spirit of 14 CFR § 382.71.

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<sup>11</sup> 49 CFR §38.123.

<sup>12</sup> 49 CFR §38.107.

<sup>13</sup> § 38.107 (a)(1) and § 38.123 (a)(1).

<sup>14</sup> § 38.107 (a)(2) and § 38.123 (a)(2).

<sup>15</sup> § 38.107 (a)(3) and § 38.123 (a)(3).

<sup>16</sup> § 38.107 (a)(4) and § 38.123 (a)(4).

<sup>17</sup> § 38.107 (a)(5) and § 38.123 (a)(5).

<sup>18</sup> Resolution, *supra* note 3, at 6.

<sup>19</sup> Small Bathrooms on Planes Pose Challenges for Passengers, N.Y. Times, Dec. 23, 2016, <https://www.nytimes.com/2016/12/23/travel/smaller-airplane-bathrooms-challenges-for-passengers.html> and Smaller Airplane Bathrooms? That Really Stinks, L.A. Times, Sept. 5, 2019, <https://www.latimes.com/travel/story/2019-09-04/fly-guy-small-stinky-bathrooms>.

<sup>20</sup> American Airlines Flight Attendants Complaint About the Tiny Bathrooms on the 737 MAX, L.A. Times, Jan. 20, 2018, <https://www.latimes.com/business/la-fi-travel-briefcase-737-max-20180120-story.html>.

## *Training and Information*

Comprehensive training for flight attendants is critical to ensuring that passengers are aware of the accessibility features, if any, of onboard lavatories and how the lavatories may be accessed, including through the use of an onboard wheelchair. Questions whether an onboard lavatory is accessible are often met with a simple “no.” No further information is often disseminated about the features of the lavatory or the presence of an onboard wheelchair.

We support annual training of flight attendants about assisting passengers with disabilities to and from the lavatory. We are pleased that § 382.63 (h)(1) requires that training must “include hands-on training on the retrieval, assembly, stowage and use of the aircraft’s onboard wheelchair, and regarding the accessibility features of the lavatory.” Hands-on training is crucial to ensuring competency in assisting in the transfer and movement of a person with a significant disability. We request, however, that the regulatory language specifically require training on “any assembly or modifications to accessibility features.”<sup>21</sup> According to the January 2020 GAO report, U.S. carriers had 136 Space Flex 1 lavatories in their fleets as of November 2019.<sup>22</sup> These lavatories require reconfiguration in order to be accessible. In the past, flight attendants were not always trained on this process. We want to ensure that it is clear that they must be regularly trained on any needed assembly so that passengers can use the few accessible lavatories currently in fleets.

We also support the requirement for air carriers to put information about accessible lavatories on their websites and to make information available in printed or electronic form on the aircraft. We believe that such information should also be affirmatively sent to passengers with disabilities who self-identify as a passenger who uses a mobility device or a service animal. Once finalized in regulation, we also believe that information about accessible lavatories should be included in the Bill of Rights authorized in Section 434 of the FAA Reauthorization Act of 2018 (Public Law 115-254).

Lastly, we support the requirement for air carriers to remove the international symbol of accessibility (ISA) from new and in-service lavatories that are not capable of facilitating a seated independent transfer from the onboard wheelchair to the toilet seat without the use of a personal attendant to assist the passenger. Removing these symbols from lavatories that do not meet any commonly understood level of accessibility will ensure that passengers have appropriate expectations for the features available in lavatories. Furthermore, we believe the definition provided in the rule about the meaning of a “seated independent transfer” is accurate.

## *Onboard Wheelchair Standards*

Current onboard wheelchairs are precarious at best and unsafe at worst. We hope the Department will seriously consider applying new onboard wheelchair requirements to aircraft with fewer than 125 seats as a matter of passenger safety. Passengers who need an onboard wheelchair to safely access a lavatory should not be required to use equipment that does not meet specific standards.

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<sup>21</sup> Resolution, *supra* note 3, at 3.

<sup>22</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 1, at 15.

During the 2016 negotiated rulemaking, participants had the opportunity to learn about the “Hamburg Chair,” which is a prototype over-the-toilet onboard wheelchair. The over-toilet design would allow such an onboard wheelchair to at least slide over the toilet in an inaccessible lavatory and provide the user with some privacy, behind a closed door, to accomplish non-toileting tasks. We support the option for the onboard wheelchair to “be maneuverable in a backward orientation to permit positioning over the toilet lid without protruding into the clear space needed to close the lavatory door.” We understand the use of the term “lid” means that the standard functions of the toilet would be unavailable to the user of this device, but believe that “closed” should be added to §382.65(e)(3).

We do not believe, however, that the “Hamburg Chair” is a substitute for a fully accessible lavatory. We also dispute the Department’s belief that such an over-the-toilet onboard wheelchair would “substantially improve accessibility” for passengers currently unable to access a standard lavatory on a single-aisle aircraft. As discussed in the negotiated rulemaking, we agree that the design will provide the individual with privacy, but for *non-toileting tasks*. The vast majority of all lavatory users need to address toileting tasks. Passengers with disabilities are no different. Thus, for passengers with disabilities who need an onboard wheelchair to access the lavatory, the over-the-toilet design will only present marginal improvement. Therefore, a fully accessible lavatory will still be required to provide these passengers with the dignity afforded to other passengers.

Notwithstanding the over-the-toilet design, the U.S. Access Board’s Advisory Guidelines<sup>23</sup> provide several needed improvements in onboard wheelchair standards. We believe that the Department should adopt them rather than allow air carriers to use what would likely be inferior onboard wheelchairs in the name of innovation. Otherwise, it will be nearly impossible to determine whether or not an air carrier’s onboard wheelchair meets the Department’s minimal guidance. For example, how does the Department plan to judge what constitutes “adequate back support” in § 382.65(e)(8)? Without a metric by which to evaluate “adequate,” passengers with disabilities will be forced to contend with primarily inaccessible lavatories and unsafe transportation to access them.

We believe it is important that the onboard wheelchair provide trunk support to passengers with disabilities. Many people with spinal cord injury resulting in paraplegia or quadriplegia do not have trunk support or muscle strength throughout their body. Proper back support will add stability in the seated position for the passenger with a disability while being transported to and from the lavatory.

Consequently, the proposed requirements for the seat and backrest/back support must be strengthened. First, we believe that the Department should further define § 382.65(e)(7) to follow more closely the draft voluntary guidelines developed by the Access Board. Specifically, § 382.65(e)(7) should be modified to read “The onboard wheelchair must be free of sharp or abrasive components. The seat must be a solid surface that is padded or cushioned. The backrest must also be padded or cushioned.” We also believe that § 382.65(e)(8) should be modified to

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<sup>23</sup> Draft Advisory Guidelines for Aircraft Onboard Wheelchairs, U.S. Access Board, <https://www.access-board.gov/onboard/onboard-guidelines>.

require specific height and size requirements in line with proposed 206 and 207 in the Access Board's Advisory Guidelines.<sup>24</sup>

Under the terms of the negotiated rulemaking, it was assumed that the onboard wheelchair design would comply with one of the certified locations on an aircraft that can hold such a device. We understand that there are several locations on an aircraft where an onboard wheelchair can be safely stowed. Would § 382.65(f) allow an air carrier to use only its existing, preferred stowage location, or would an air carrier be required to consider additional FAA approved locations on a given aircraft to stow the onboard wheelchair? Disability advocates were led to believe during the negotiated rulemaking that adequate stowage opportunities already exist on an aircraft. If that is not the case, then providing safe transport via an appropriate onboard wheelchair, regardless of the onboard wheelchair stowage space limitations, should be the Department's primary concern.

We also agree that air carriers should not be held responsible for the failure of a third-party to manufacture an onboard wheelchair as it pertains to the over-the-toilet requirement. This idea is merely a prototype. However, there should be a higher standard required for showing reasonable efforts to procure compliant onboard wheelchairs as it relates to the other requirements. Thus, we believe that § 382.65(g) should be modified to require a higher level of proof for failure to meet the requirements beyond the over-the-toilet function.

Lastly, the Department seeks comment on the requirement of a movable aisle seat armrest to facilitate an accessible transfer from the onboard wheelchair depending on the passenger's disability. We disagree with the Department's determination that existing rules related to movable armrests (14 CFR 382.61 and §§ 382.81-87) are sufficient. We are concerned that despite regulatory requirements, movable armrests are not appropriately dispersed throughout all classes of services.

Thank you for the opportunity to provide comments on this important matter. If you have any questions, please contact Heather Ansley, Associate Executive Director of Government Relations, with Paralyzed Veterans of America (PVA), at 202-416-7794 or by email at [heathera@pva.org](mailto:heathera@pva.org) or Lee Page, Senior Associate Advocacy Director, with PVA at 202-416-7694 or by email at [leep@pva.org](mailto:leep@pva.org).

Sincerely,

Access Living of Metropolitan Chicago  
American Association of People with Disabilities  
The Arc of the United States  
Autistic Self Advocacy Network  
Bazelon Center for Mental Health Law  
Christopher & Dana Reeve Foundation  
Disability Rights Education & Defense Fund (DREDF)  
Epilepsy Foundation  
Muscular Dystrophy Association

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<sup>24</sup> *Id.*

The National Council on Independent Living  
National Disability Rights Network  
National Multiple Sclerosis Society  
Paralyzed Veterans of America  
United Spinal Association