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Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave. SE, West Building Ground Floor, Room W12-140
Washington, DC 20590-0001

ASAN Comments Re: “Traveling by Air with Service Animals,” Docket No. DOT-OST-2018-0068, RIN No. 2105-AE63

The Autistic Self Advocacy Network¹ appreciates the opportunity to comment on the Department of Transportation’s proposed rule,² which revises Air Carrier Access Act (ACAA) regulations to exclude emotional support animals (ESAs) from recognition as service animals. The proposed rule additionally clarifies the law as it pertains to breed restrictions and what air carriers may request of people with disabilities who bring service animals onboard a flight.³ ASAN supports the clarifications on breed restrictions and the rule’s requirement that psychiatric service animals be treated in the same manner as other service animals. ASAN opposes the provisions of the proposed rule pertaining to ESAs, limiting service animals to dogs, and the attestation and check-in requirements.

Service animals play many critical roles in the lives of autistic people and are often necessary for our full integration into the community at large. Autism-specific service dogs, for example, are trained to support autistic children and adults. These dogs help their handlers learn to read social cues (as the dog’s cues are simpler and more explicit), improve motor skills, act as supplementary supervision for younger children, ease the high anxiety of their autistic handlers, and sometimes even are trained to “ground” their owners when they are having a meltdown or experiencing sensory overload.⁴ Autistic people are also more likely than non-autistic people to have co-occurring psychiatric disabilities,

¹ The Autistic Self Advocacy Network (ASAN), a 501(c)(3), non-profit organization, is the nation’s leading self-advocacy organization by and for autistic people ourselves. For more information on ASAN, you can visit our website at: <http://www.autisticadvocacy.org>.

² *Traveling by Air with Service Animals*, 85 Fed. Reg. 6448, 6448-6449 (proposed Feb. 5, 2020)(to be codified at 14 C.F.R. § 382).

³ 85 Fed. Reg. at 6449.

⁴ See, e.g., *About Us*, Autism Service Dogs of America, <https://www.autismservicedogsofamerica.org/> (last visited Mar. 26, 2020); *Autism*, Pawsitivity Service Dogs, <https://www.pawsitivityservicedogs.com/autism> (last visited Mar. 26, 2020).

particularly anxiety disorders and depression.⁵ Psychiatric service animals - animals trained to perform a specific task which assists a person with a psychiatric disability in overcoming difficulties related to their disability⁶ - are therefore also of particular benefit to us. Emotional Support Animals (ESAs) can assist with sensory regulation, anxiety, and provide a focus for social communication.⁷ Without the calming effect of the emotional support animal, some autistic people and other people with mental disabilities may be unable to board the plane at all. Although ESAs are traditionally not brought to public accommodations, autistic people who are traveling or moving across country may be unable to function without the assistance of an ESA for several days or weeks; therefore, inability to travel with an ESA may result in our inability to travel at all.

ASAN requests that DOT rescind their proposed rule and replace it with one that is more consistent with the needs of *all* people with disabilities who utilize service animals and emotional support animals in their daily lives. ASAN provides its basis for this request and its opinions in the comments that follow.

The ACAA's standards for the presence of service animals and ESAs on commercial aircraft are necessarily different from the standards present in the Americans with Disabilities Act (ADA). The two standards should not be altered to match one another.

The Americans with Disabilities Act (ADA) is intended to allow people with disabilities to “fully participate in all aspects of society,” including among other things “employment, housing ... education, transportation... recreation ... health services, voting, and access to public services.”⁸ The ADA applies not just to a select few locations but to all State and local governments, parks, restaurants, grocery stores, and many other programs and locations

⁵ Jessica Wright, “Depression common among men with autism, study finds,” Spectrum News (August 24, 2015), <https://www.spectrumnews.org/news/depression-common-among-men-with-autism-study-finds/>; Luigi Mazzone et. al., *Psychiatric comorbidities in asperger syndrome and high functioning autism: diagnostic challenges*, 11 *Annals of General Psychiatry* 1, 5-8 (2012) (finding that, based on a systematic review of relevant scientific studies, autistic people were more likely to have many mental health disabilities); Ovsanna T. Leyfer et al., *Comorbid Psychiatric Disorders in Children with Autism: Interview Development and Rates of Disorders*, 36 *J. Autism & Dev. Disord.* 849, 855 (2006) (finding that 72 percent of the autistic children in the study had an additional psychiatric disability).

⁶ *Psychiatric Service Dogs*, National Service Animal Registry, <https://www.nsarco.com/qualify-psychiatric-service-dog.html> (last visited Mar. 27, 2020).

⁷ See Lisa Jo Rudy, *Animal and Pet Therapies for Autism*, VeryWellHealth <https://www.verywellhealth.com/animal-pet-therapies-for-autism-4174509> (last updated Feb. 10, 2020).

⁸ Americans with Disabilities Act, 42 U.S.C. § 12101(a).

available to the general public.⁹ The ADA must, therefore be broadly applicable to a variety of different contexts.

By contrast, the Air Carrier Access Act applies only to air carriers and by extension the airplanes that they use to provide air transportation.¹⁰ Its regulations pertain to the specific circumstances of air travel.¹¹ Previous 2010 ADA rulemakings by DOJ state that the standards for accessibility under the ADA and the standards under the ACAA are different and may be applied differently “... because of the nature of the covered entity or activity, or because of distinctions between the statutes” (emphasis added.)¹² In situations in which there is a material difference between the contexts in which the ADA is applied and the contexts in which the ACAA is applied, it would be improper to adopt the exact same standard.

Nonetheless, this is exactly what the proposed rule, by adopting the ADA’s service animal definition without modification for the specific contexts in which people travel by air, would do.¹³ For the most part, individuals entering their local community in the ordinary contexts covered by Titles II and III of the ADA (shopping trips, restaurants, movies, etc.) may not expect to be gone for more than a few hours. It may be, for example, reasonable for a person with a disability to briefly go to a restaurant without their Emotional Support Animal (ESA). The ACAA applies to circumstances that may be quite different. For example, it would be entirely unreasonable for a person not to bring their ESA or therapy animal when traveling by air to move across the country or to stay with family for several weeks. Transporting the ESA in the plane’s cargo hold would typically be associated with higher fees and may endanger the life of an animal that is critical to the mental health of the traveler. Moreover, travelers traveling without an ESA in the cabin may experience such overwhelming anxiety and overstimulation that air travel is effectively impossible.¹⁴

⁹ 42 U.S.C. § 12132 (discrimination by a “public entity”); 42 U.S.C. § 12181(7) (definition of a “place of public accommodation under Title III of the ADA); 42 U.S.C. § 12182 (prohibitions against discrimination in Title III of the ADA).

¹⁰ 49 U.S. Code § 41705 (Air Carrier Access Act).

¹¹ See 14 C.F.R. § 382 *et. seq.* (regulations pertaining to the Air Carrier Access Act and disability describing circumstances which are highly specific to air travel, such as seating accommodations, how to properly store wheelchairs, physical accessibility of aircraft, etc.).

¹² Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. 56236, 56240 (proposed Sept. 15, 2010)(codified at 28 C.F.R § 36).

¹³ 85 Fed. Reg. at 6449 (ADA definition); 28 C.F.R. §35.104 (ADA Title II); 28 C.F.R. § 36.104(ADA Title III); 85 Fed. Reg. at 6474 (proposed rule’s new definition).

¹⁴ 14 C.F.R. § 382.11(3) (“You must not exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, except where specifically permitted by this Part”).

The restriction on ESAs is unnecessary and would not solve the problems listed as justification for the restriction.

DOT provides three primary reasons for restricting ESAs: (1) increasing numbers of individuals attempting to pass off their pets as service animals or ESAs, along with accompanying fraudulent doctor's notes or training certifications; (2) attempts to refer to unusual or exotic species of animals as service animals or ESAs; (3) misbehavior by service animals or ESAs including defecating and biting.¹⁵ However, the proposed rule would resolve none of these issues and some are already addressed by existing regulations, making the rule unnecessary.

The ESA restriction would not prevent fraud. Airlines can already require that passengers with ESAs provide recent documentation from a licensed medical professional that the person requires an ESA.¹⁶ There is no reason to believe that passengers who were willing to provide fraudulent documentation of an ESA would not, going forward, simply fraudulently misrepresent their ESA as a service animal instead.

The ESA restriction also would have minimal effect on passengers attempting to bring exotic pets onboard the aircraft. Air carriers are already never required to allow sufficiently unusual service animals - such as snakes, rodents, and spiders - onboard the aircraft.¹⁷ It is reasonable to assume this would also apply to highly unusual pets such as peacocks or ducks even though they are not listed. An air carrier must allow certain trained animals used as service animals onboard only on an individualized basis, once it has been determined that they are not too large, too heavy, not disruptive, and that they do not present a significant safety or health threat.¹⁸ These rules cover most of the situations in which passengers would bring aboard service animals or ESAs as well as fraudulent animals.

It is additionally unlikely that the ESA restriction would have any impact on biting or defecation by onboard animals. There is no evidence that the biting or defecating animals are less likely to be dogs or that they are more likely to be ESAs. Indeed, since reports of these incidents are largely from specific complaints only available to specific air carriers, or they are anecdotal, there is no way to verify the numbers at all.¹⁹ ASAN does not

¹⁵ 85 Fed. Reg. at 6449-51.

¹⁶ *Service Animals and Emotional Support Animals*, ADA National Network (2014), <https://adata.org/guide/service-animals-and-emotional-support-animals>.

¹⁷ 14 C.F.R. § 382.117 (f). ("You are never required to accommodate certain unusual service animals (*e.g.*, snakes, other reptiles, ferrets, rodents, and spiders) as service animals in the cabin").

¹⁸ 4 C.F.R. § 382.117§ (g).

¹⁹ See 84 Fed. Reg. at 6450 ("Airlines have reported increases in the number of behavior-related service animal incidents on aircraft, including urinating, defecating, and biting").

believe it is sound to ban a class of support animals on the basis of rumors and negative press about ESAs.

DOT should not impose species restrictions on protected service animals.

The proposed rule would allow air carriers to only permit dogs onboard their aircraft despite the existence of other types of trained service animals, including one class of animal - miniature horses - which are acknowledged specifically as similar to service animals by the ADA.²⁰ This proposal is arbitrary and inconsistent with DOT's stated goals. Although DOT claims to be harmonizing its regulations with regulations implementing Title III of the ADA, the proposed rule is actually more restrictive than Title III, which allows people with disabilities to use miniature horses instead on an individualized basis.²¹ Moreover, many of the justifications for restricting species in Title III contexts do not apply to aircraft.

Limiting service animals to dogs discriminates against and disadvantages whole classes of people with disabilities who must use other types of service animals. Some individuals are allergic to dogs and yet are unable to travel by aircraft, or navigate the community at their destination, without the support of their trained service animal.²² These individuals, under the effect of the proposed rule, would be effectively prohibited from traveling by air.

Finally, the limitation is unnecessary in order to achieve DOT's goals, such as eliminating unusual animals on aircraft, preventing biting, and preventing fraud. As noted above, unusual animals already need not be allowed on aircraft. DOT has not cited any data suggesting that cats, miniature horses, or other service animals other than dogs are disproportionately fraudulent or are disproportionately likely to misbehave, defecate, or pose a direct threat on aircraft.

²⁰ 85 Fed. Reg. at 6452, 6474 (defining service animal as "a dog" under the ACAA); *Miniature Horses as Service Animals*, U.S. Service Animals, <https://usserviceanimals.org/blog/miniature-horses-as-service-animals/> (last visited Mar. 30, 2020); *Helping Hands Monkey Helpers for the Disabled*, United Spinal Association, <https://spinalcord.org/disability-products-services/helping-hands-monkey-helpers-for-the-disabled/> (last visited Mar. 30, 2020).

²¹ 85 Fed. Reg. at 6454, 6458; 28 C.F.R. § 36.302(c)(9). While as the proposed rule notes, the miniature horses are not referred to as service animals in the regulations, 24 C.F.R. § 36.302 nonetheless states that regulations "which apply to service animals, shall also apply to miniature horses" and that a "miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability" may be allowed into public spaces as a reasonable modification. The miniature horse in this situation, therefore, retains some of the same privileges as other service animals under the ADA.

²² Bill Bostock, *An American Airlines passenger took her adorable miniature service horse on a flight from Chicago to Omaha*, <https://www.businessinsider.com/american-airlines-passenger-takes-horse-service-animal-flight-2019-9>.

Miniature horses should be protected service animals. The proposed rule justifies its proposed exclusion of miniature horses because of “size limitations on aircraft.”²³ However, some people with disabilities have successfully and unobtrusively traveled by air with one of these animals,²⁴ making DOT’s justification flimsy at best. Miniature horse users have made a significant investment in a service animal in reliance on DOJ regulations implementing Title III; without the ability to board an aircraft with their animal, these passengers will effectively be barred from travel. Size limitations could be successfully addressed through a more limited rule, without a blanket restriction on miniature horses as service animals on aircraft.

Other trained animals, such as cats, should be recognized as service animals. Some individuals have disabilities that would make it impossible to care for a dog but not impossible to care for another common household animal, such as a cat. For example, many people with disabilities - including autistic people - have impaired executive functioning, which makes it difficult to perform routine chores and tasks.²⁵ Dogs tend to be higher-maintenance animals,²⁶ such that it may be possible for an individual to care for another animal but not a dog. One of our community members, for example, uses a cat who is trained to detect seizures, as epilepsy commonly co-occurs with autism. This community member has executive functioning deficits and a living situation that would make it impossible for them to care for a dog. By limiting service animals solely to dogs, such individuals are effectively barred from air travel.

ASAN urges DOT to reconsider this element of the proposed rule and to instead evaluate service animals not based on arbitrary standards and biases in favor of dogs but on an individualized, case-by-case basis, at the very least.

²³ 85 Fed. Reg. at 6454.

²⁴ Heather Murphy, *The Completely Reasonable Reason People are Flying with Mini Horses*, N.Y. Times, Aug. 17, 2019, <https://www.nytimes.com/2019/08/17/travel/mini-horse-service-plane.html>; Bill Bostock, *An American Airlines passenger took her adorable miniature service horse on a flight from Chicago to Omaha*, Business Insider (Sept. 3, 2019, 5:39AM), <https://www.businessinsider.com/american-airlines-passenger-takes-horse-service-animal-flight-2019-9>.

²⁵ There are many classes of individuals with disabilities who are impacted by executive functioning related difficulties but see, e.g., Eleni A. Demetriou, Marilena M. DeMayo, Adam J. Guestella, *Executive Function in Autism Spectrum Disorder: History, Theoretical Models, Empirical Findings, and Potential as an Endophenotype*, Psychiatry, Nov. 2019, at 2-7, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6859507/> (published online); Julia Bascom, Gregory Wallace, Opinion column, *Why intelligence scores do not predict success for autistic adults*, Spectrum (Nov. 28, 2017), <https://www.spectrumnews.org/opinion/viewpoint/intelligence-scores-not-predict-success-autistic-adults/>; *Executive Function and Executive Function Disorder*, WebMD, <https://www.webmd.com/add-adhd/executive-function#1> (last visited Mar. 31, 2020) (ADHD).

²⁶ *Cat vs. Dog: Which is the Best for Me?* Hill’s (Oct. 30, 2019), <https://www.hillspet.com/pet-care/new-pet-parent/choosing-between-dogs-and-cats>.

ASAN opposes the additional attestation and check-in requirements because they may be burdensome or impossible for individuals with disabilities.

The proposed rule would require people with disabilities to complete three attestations: a Behavior and Training attestation, a Relief attestation, and a health form.²⁷ Additionally, the proposed rule would allow an air carrier to require that a person with a disability be checked in with their service animal an hour before other passengers check in, as long as the air carrier designates a specific location and imposes similar requirements on pets.²⁸

ASAN opposes both requirements. Our concerns regarding the attestation forms were first raised at the ACCESS advisory committee meeting in April 2016 and have not been resolved.²⁹ Our first concern is that while the forms must be made available on air carrier websites, there is no indication that they can be filled out electronically.³⁰ The forms as provided in the proposed rule are also not screen reader accessible, although the rule states they must be offered in “an accessible format.”³¹ Printed materials, regardless of availability, would be inaccessible to blind and visually impaired passengers. If the forms were not readable by a screen reader and could not be filled out and submitted electronically, this may require passengers to complete all or part of their check-in in person. This would reduce the accessibility of air transportation, as many people with disabilities actually *require* online check-in order to ensure that they are sitting next to their support person.

Our second concern with the attestation forms is that the forms as depicted are cognitively inaccessible. A person with an intellectual and developmental disability traveling with a service animal may be unable to understand the complex language used on the attestation forms.³² Accessibility is more than just readability for people with physical disabilities. It also includes the steps necessary to ensure that people with reading and intellectual disabilities can understand what they are attesting to. To do otherwise is to discriminate between classes of people with disabilities arbitrarily. ASAN recommends that DOL familiarize itself at least with federal plain language standards.³³

ASAN tested the readability of the sample attestation forms by entering example sentences into the Hemingway editor, which measures the “reading level” of written materials.³⁴ Each

²⁷ 85 Fed. Reg. at 6452, 6475.

²⁸ 85 Fed. Reg. at 6475.

²⁹ 85 Fed. Reg. at 6451.

³⁰ 85 Fed. Reg. at 6475.

³¹ *Id.*

³² 85 Fed. Reg. at 6466, 6468.

³³ General Services Administration, [Plainlanguage.gov](http://www.plainlanguage.gov) (website), (last visited Apr. 1, 2020).

³⁴ Hemingway App, <http://www.hemingwayapp.com/>

checkbox of the behavior attestation³⁵ form was measured as “post-graduate” level reading. Additionally, the final checkbox is so poorly worded that it could easily be read by a person with a cognitive or developmental disability as an admission that they are making a false statement and therefore committing fraud, rather than an acknowledgment that making false statements, in general, would constitute fraud.³⁶ Although a nondisabled person would ordinarily understand that, in context, this sentence is unlikely to be an admission that the undersigned has committed fraud, autism and other developmental disabilities can make inferences from context very difficult.³⁷

ASAN has two concerns with respect to the check-in requirements. The first concern is that it may be unfeasible for a passenger to arrive to check in an hour earlier than all other passengers. A passenger’s flight may be canceled or rescheduled abruptly, which would make arrival an hour early impossible. It may also be difficult for individuals with cognitive disabilities, due to executive functioning difficulties, to meet this requirement. The second concern is that the proposed rule allows the air carrier to designate any location in the airport as the early check-in location for people with service animals.³⁸ The location could be far away from the check-in stations for all other passengers. For individuals who already have difficulty moving and navigating the airport due to disability, this may make check-in extremely difficult.

We support the proposed rule’s provisions regarding breed restrictions and psychiatric service animals.

ASAN supports the proposed rule’s clarification that airlines may not discriminate against certain breeds of service dog. We also support the move to harmonize the requirements for psychiatric service animals with the requirements for other service animals. The heightened requirements for psychiatric service animals in the existing regulations cause unnecessary confusion and burden on travelers, including passengers with intellectual, developmental, neurological, or other non-apparent disabilities who may not know whether their animal will be treated as a standard service animal or a “psychiatric” service animal by airline staff.

ASAN urges DOL to rescind the proposed rule, which will have a myriad of impacts on people with disabilities who use service animals, therapy animals, and ESAs to travel. If

³⁵ 85 Fed. Reg. at 6466.

³⁶ Id. (“I understand that I am committing fraud by knowingly making false statements to secure disability accommodations provided under regulations of the U.S. Department of Transportation.”).

³⁷ See, e.g., Sandra Baez and Agustin Ibanez, *The effects of context processing on social cognition impairments in adults with Asperger’s syndrome*, 8 *Frontiers in Neuroscience* 270 (2014).

³⁸ 85 Fed. Reg. at 6475.

finalized as is, it will have a significant chilling effect on our inclusion in the broader community. For more information on ASAN's positions on air travel, please contact Sam Crane, our Director of Legal and Public Policy, at scrane@autisticadvocacy.org.