



May 27, 2022

*Submitted via regulations.gov*

John E. Putnam  
Deputy General Counsel  
Department of Transportation

**Re: Proposed Rulemaking on Accessible Lavatories on Single-Aisle Aircraft: Part 2, DOT-OST-2021-0137**

Dear Mr. Putnam:

The undersigned members of the Consortium for Constituents with Disabilities (CCD) Transportation Task Force submit the following comment to the Department of Transportation (DOT) in response to the proposed rule, "Accessible Lavatories on Single-Aisle Aircraft: Part 2," RIN 2105-AE89. We are grateful for the Department's efforts to address lavatory accessibility for all passengers with disabilities during air travel.

CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance.

The Proposed Rule meets a critical need to provide accessible lavatories on single-aisle aircraft. Given the severity of the need and the DOT's delay in publishing this Proposed Rule, we encourage DOT to shorten the extended implementation timelines agreed to in 2016. During the negotiate rulemaking the disability community originally proposed a ten-year implementation period. **Given the six-year delay in promulgating the Proposed Rule from the deadlines for compliance, we urge DOT to mandate a five-year implementation period.** In addition, DOT should reject any arguments for delay of implementation of the Proposed Rule based on cost or design because the costs of further delay outweigh any implementation costs. Given the already significant delay, **DOT should include an obligation to retrofit aircraft by requiring accessible lavatories be installed in all single-aisle aircraft that are taken out of service for any other changes to the cabin.**

**There is a Critical Need for Accessible Lavatories on Single-Aisle Aircraft**

As the Department observes, the top eight U.S. domestic carriers largely consist of single-aisle aircraft.<sup>1</sup> There is still no federal requirement that these aircrafts have an accessible lavatory to

accommodate individuals with mobility impairments. In 2019 only 4.5% of their combined single-aisle aircraft fleet had accessible lavatories.<sup>2</sup> Four of these carriers had no accessible lavatories in their single-aisle aircraft fleet at all.<sup>3</sup> The Proposed Rule remedies this failing by requiring airlines to ensure that *at least one* lavatory on either existing or newly built single-aisle aircraft with 125 or more passenger seats is large enough to permit a passenger with a disability (with the help of an assistant, if necessary) to approach, enter, and maneuver within the aircraft lavatory, as necessary, to use all lavatory facilities, and leave by means of the aircraft's on-board wheelchair ("OBW").<sup>4</sup>

There is an urgent need for such a requirement. More than 25 million Americans with mobility issues may require accommodations when flying and stand to benefit from improved lavatory accessibility.<sup>5</sup> These numbers will likely become greater as the U.S. population ages.<sup>6</sup> Many of these individuals rely on air travel for work, recreation, and to visit family and friends.

Lack of an accessible lavatory during a flight is uncomfortable, stressful, and can be psychologically damaging. Travelers who require accessible lavatories are forced to avoid bladder relief or bowel movements during their time on an airplane, which can last three to five hours or more.

Traveling on a long-haul flight without access to a lavatory also risks physical harm. Holding bladder and bowel movements for an extended period of time can result in a urinary tract infection. The National Institute of Aging recommends that individuals should use the lavatory every 3-4 hours at a minimum because failing to do so can weaken the bladder muscles and make a bladder infection more likely.<sup>7</sup>

Lack of accessible lavatories causes economic harm as well. Individuals often opt to avoid air travel and take a more time-consuming means of transportation or opt to not travel at all.

Disability and veterans' advocacy organizations conducted an informal online survey in the fall of 2021.<sup>8</sup> The survey gathered information on how to improve air travel for individuals with disabilities, including specific questions about barriers that exist when traveling by air.<sup>9</sup> Over 56% of the nearly 1,230 respondents stated their decision to travel by air depended on accessibility of the aircraft's lavatory.<sup>10,11</sup>

### **The Department Should Shorten the Proposed Rule's Extended Implementation Times and Require Retrofitting When Aircraft are Taken Out of Service as a Matter of Equity**

Accessible lavatory technology is available from aircraft manufacturers, but "carriers do not choose to acquire this option for their single-aisle aircraft."<sup>12</sup> Carriers have made it clear that they will not provide accessible lavatories voluntarily. Finalizing this rulemaking promptly is necessary to make those aircraft accessible to travelers with mobility impairments. The Proposed Rule would require that the expanded lavatory sizes be implemented on qualifying aircraft: (1) that were initially ordered 18 years after the effective date of the final rule implementing the negotiated rulemaking agreement; or (2) that were delivered 20 years after the effective date of such a final rule; or (3) for which an application for a new type-certificate is

filed after 1 year from the effective date of the final rule. These terms are consistent with those agreed to in the negotiated rulemaking six years ago, yet they do not meet the urgent needs of travelers with disabilities.

The Department first proposed conducting a negotiated rulemaking concerning accommodations for air travelers with disabilities regarding several issues, including accessible lavatories in 2015.<sup>13</sup> In May 2016, the Department established the Advisory Committee on Accessible Air Transportation to negotiate and develop a proposed rule.<sup>14</sup>

The disability Advisory Committee members had reason to expect that a Proposed Rule would be published almost immediately after the Advisory Committee finalized its recommendations. The Committee adopted its final resolution in November 2016,<sup>15</sup> but the Department did not move forward with the rulemaking as required by Congress. Its Fall 2018 regulatory agenda removed the rulemaking entirely. In June 2019, the Department announced that it would move forward with a rulemaking on more limited accessibility issues, but would only request additional information on lavatory size, despite its earlier commitments to the contrary.<sup>16</sup> It was not until the current Proposed Rule, published nearly six years after the Advisory Committee's consensus recommendation, that the Department met its obligation to move forward with the lavatory accessibility rulemaking.

As noted in the DOT proposed rule, airlines and aircraft manufacturers that participated in the ACCESS Advisory Committee did not provide a thorough explanation for why implementation must be delayed to the extent proposed. Under the current implementation dates of the rule, it would take approximately 25 years for one-quarter of all qualifying aircraft to be deployed with accessible features, 30 years for half of all qualifying aircraft, and 45 years for essentially all qualifying aircraft to have the accessibility features described in this NPRM. This time frame for ensuring safety and dignity for mobility impaired travelers is unacceptable.

The Department should exercise its authority. Given the severity of the need and the DOT's delay in publishing this Proposed Rule, we encourage DOT to shorten the extended implementation timelines agreed to in 2016. During the negotiate rulemaking the disability community originally proposed a ten-year implementation period. Given the six-year delay in promulgating the Proposed Rule from the deadlines for compliance, we urge DOT to mandate a five-year implantation period. Doing so is necessary to meet the Department's accessibility obligations to air travelers with disabilities. As the Department observes, it is "the affirmative responsibility of the Federal Government to advance equity, civil rights, and equal opportunity for all individuals, including individuals with disabilities."<sup>17</sup>

In addition to significantly shortening the time frame DOT should require retrofitting and installation of accessible lavatories that meet the agreed-upon standards on all covered single-aisle aircraft that are taken out of service for any other modifications to the cabin. Airlines currently take aircraft out of service for the purpose of installing new seats or luggage bins, but access to the lavatory for all passengers is as important, if not more, as additional space for luggage.

## **The Proposed Rule's Requirements Improve Accessibility of Lavatories**

The Proposed Rule's requirements as to lavatory size meet these accessibility needs. The Proposed Rule is consistent with the consensus recommendations regarding retrofitting of the aircraft, requirements for new aircraft, and specifications for OBW. The design will increase the footprint of the lavatory on single-aisle aircraft to permit a passenger with a disability (with the help of an assistant, if necessary) to approach, enter, and maneuver within the aircraft lavatory, as necessary, to use all lavatory facilities and leave by means of the aircraft's OBW.

## **The Department Should Not Delay the Implementation of the Proposed Rule in Response to Cost or Design Concerns Raised by Airlines or Aircraft Manufacturers**

During the negotiated rulemaking, airlines and aircraft manufacturers advocated for extended compliance deadlines based on their claimed costs of implementation. We are concerned that they will do the same in response to the Proposed Rule. The Department should reject any such arguments, which are based on potential revenue loss, and instead shorten compliance deadlines, as discussed above. Under no circumstances should the Department further delay the proposed extended compliance dates.

DOT should not extend compliance dates in response to complaints by airlines about the general state of the air travel industry. Airlines for America recently reported that the airline industry is steadily improving especially as to domestic air travel (which is most relevant to single aisle aircraft).<sup>18</sup> And, of course, the airlines received massive financial support from the government during COVID-19 pandemic,<sup>19</sup> more than any other industry impacted by COVID-19.<sup>20</sup>

### **Responses to the Additional DOT Questions:**

#### **a. Should the Department Adopt a Different Tiered or Phased Model for Implementation?**

The final rule should not further delay complete implementation, given the urgent need for accessibility. The Department should not adopt different implementation requirements for different sizes of carriers or aircrafts, aircrafts used for longer routes or aircrafts used for routes that are busier than others. This type of different treatment would burden passengers because they would have to determine which flight routes or aircrafts have accessible lavatories. Inconsistent application of the accessible lavatory requirement within an airline's fleet is problematic because substitutions in airplanes, if a flight is delayed, changed, or canceled, will leave passengers without an accessible lavatory. Without assurance that the airplane will be accessible, passengers will be obliged to go through the onerous and dangerous precautions discussed above.

**b. Should the Department Adopt Alternative Performance-Based Standards, Such as Requiring Only a Certain Percentage of a Carrier's Flights Between City-Pairs to Have Accessible Lavatories?**

We do not support an alternative performance-based approach such as requiring only a certain percentage of a carrier's flights between city-pairs to have accessible lavatories. Passengers who need an accessible lavatory cannot always be flexible in their travel dates and times, so for situations where there is an aircraft change or cancellation – the individual may still be forced to delay bodily needs on the flight. All larger single-aisle planes should have accessible lavatories to protect passengers and meet the Department's equity obligations.

**c. If It Is Feasible to Install Lavatories that Are Large Enough to Accommodate a Person with a Disability Unassisted on An Earlier Schedule than Lavatories that Are Large Enough to Accommodate a Person with a Disability Assisted and Unassisted, Would that Be More Beneficial to Persons With Disabilities? Why or Why Not?**

The current time frame for fully accessible lavatories on larger single-aisle aircraft is decades long. The Advisory Committee initially considered multiple phases prior to full accessibility and ultimately narrowed them to two tiers, short-term and long-term. The Department should ensure complete implementation in the Proposed Rule. Airlines have been aware since at least 2016 that they need to move toward providing fully accessible lavatories on larger single-aisle aircraft. There is no reason to delay lavatory access further.

**Conclusion**

Lack of accessible lavatories poses significant difficulties and risks for individuals with disabilities. While we fully support the Department's effort to provide accessible lavatories for individuals with disabilities, we believe any further delay to the implementation of this Proposed Rule is unreasonable. The disability community has waited over 30 years for accessible flights, and did not expect a delay in implementing the compromises agreed to in 2016. We encourage the Department to proceed with finalizing the Proposed Rule so that all individuals can travel with dignity and safety.

Thank you for the opportunity to provide comments. Should you have any questions, please contact Carol Tyson at [ctyson@dredf.org](mailto:ctyson@dredf.org).

Sincerely,

American Council of the Blind  
American Foundation for the Blind  
Autistic Women & Nonbinary Network  
Christopher & Dana Reeve Foundation  
Cure SMA

Disability Rights Education & Defense Fund  
The Amputee Coalition  
The Arc of the United States  
The Epilepsy Foundation

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<sup>1</sup> 87 Fed. Reg. at 17,219.

<sup>2</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> pg. 14.

<sup>3</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>. Pg. 14.

<sup>4</sup> *Id.* at 17224-25.

<sup>5</sup> *Id.* at 17,215-16.

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

<sup>7</sup> The National Institute of Aging is an institution part of the U.S. National Institutes of Health, helps the federal government in conducting and supporting research on the aging and health of older individuals. <https://www.nia.nih.gov/health/15-tips-keep-your-bladder-healthy>.

<sup>8</sup> Air Travel Feature for June 2022, at 1.

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

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

<sup>11</sup> The Government Accountability Office (GAO) identified similar concerns in a recent comprehensive report on "Aviation Consumer Protection, Few U.S. Aircraft Have Lavatories Designed to Accommodate Passengers with Reduced Mobility". Although the GAO report provides important evidence of the kinds of concerns that passengers with disabilities face, we note that the absolute number of complaints identified in the GAO Report is almost certainly too low because many passengers understand that there is limited utility to complaining about inaccessible lavatories when that inaccessibility does not violate any requirements.

<sup>12</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>13</sup> See 80 Fed. Reg. 75,953, 75,953 (Dec. 7, 2015).

<sup>14</sup> 81 Fed. Reg. 26,178 (May 2, 2016).

<sup>15</sup> ACCESS Committee, Resolution of the U.S. Department of Transportation ACCESS Committee (Nov. 22, 2016), available at [https://www.transportation.gov/office-general-counsel/negotiated-regulations/final-resolution-access-committee\\_docs/ACCESS%20Committee%20Final%20Resolution.11.21.16.pdf](https://www.transportation.gov/office-general-counsel/negotiated-regulations/final-resolution-access-committee_docs/ACCESS%20Committee%20Final%20Resolution.11.21.16.pdf).

<sup>16</sup> July 5th Status Report. <https://democracyforward.org/wp-content/uploads/2018/12/Motion-to-Lift-Stay-AS-FILED.pdf> <https://pva.org/wp-content/uploads/2021/09/20190705-PVA-Gov-status-rpt.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> <https://www.airlines.org/dataset/impact-of-covid19-data-updates/>.

<sup>19</sup> <https://oig.treasury.gov/cares-act>.

<sup>20</sup> <https://www.nytimes.com/2021/03/16/business/dealbook/airline-bailouts.html>.