

DOT Rulemaking Update — Accessible Lavatories on Single-Aisle Aircraft: Part 2 (April 2022)

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The U.S. Department of Transportation (“DOT”) recently announced¹ a proposed rule intended to improve accessibility of lavatories on single-aisle aircraft. DOT’s Notice of Proposed Rulemaking (NPRM), published on March 28, 2022, would (among other things) require, for the first time, that single aisle aircraft with 125 or more passenger seats be equipped with at least one lavatory 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.”² Comments to the NPRM are due by May 27, 2022.

Background

14 C.F.R. § 382.63 already requires aircraft with more than one aisle to be equipped with at least one accessible lavatory.³ The regulation provides that “accessibility” consists of “sufficient space for a person with a disability to enter, maneuver, and leave using the on-board wheelchair.” DOT’s NPRM arises out of a negotiated rulemaking process, in which the Advisory Committee on Accessible Air Transportation (the “Committee”), comprised of government, industry, and disability group stakeholders, reviewed industry presentations and data as well as information provided by disability groups concerning the challenges



The firm’s practice encompasses virtually every aspect of aviation law, including advising domestic and foreign airlines on compliance with DOT’s regulations and policies concerning passengers with disabilities and equipment compliance. For further information regarding the matters discussed in this article, please contact either of the following attorneys:

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faced by passengers with disabilities. The NPRM includes the Committee's long-term recommendations.

Justification

Among other things, the NPRM notes that single-aisle aircraft are increasingly being used by airlines for longer flights because of improved range. According to DOT, the percentage of flights between 1,500 and 3,000 miles flown by single-aisle aircraft has increased from 77% in 1997 to 89% in 2018.

NPRM Proposals

The NPRM's requirements would apply to single-aisle aircraft with an FAA-certificated maximum seating capacity of 125 or more seats. In other words, DOT will not look to the number of seats of a given aircraft configuration, but rather its original certification basis. The rule, if finalized, will be effective almost immediately, but its requirements will have an extended horizon: it will apply to aircraft ordered 18 years after the effective date of the final rule; delivered 20 years after the effective date of the final rule; or to a new type-certificated design filed with the FAA or a foreign carrier's aviation safety authority more than one year after the effective date of the final rule.

The NPRM proposes that the lavatory would need to be large enough to permit a personal assistant to assist the passenger (i.e., to facilitate a transfer between the on-board wheelchair and toilet), by requiring sufficient closed space to permit an assisted transfer with privacy equivalent to that given to ambulatory passengers. DOT clarifies that the "closed space" requirement is not a requirement that the lavatory be large enough to accommodate both the passenger and assistant with the door closed, but rather that the wheelchair transfer take place within a "closed space" with "privacy equivalent to that afforded ambulatory users."

The NPRM also requires lavatories to have certain accessible interior features, such as grab bars, tactile water temperature information (or anti-scald measures), minimum faucet operation times, attendant call buttons and door locks, lavatory controls and dispensers operable through sense of touch, minimally obstructive door sills, and no decrease in toe clearance. The accessible features mirror the features in a previous notice of proposed rulemaking, Accessible Lavatories on Single-Aisle Aircraft: Part 1,⁴ which, among other things, would impose requirements for accessibility features to be added to existing lavatories when such lavatories are retrofitted or upgraded.

DOT further seeks comment (including costs, benefits, and feasibility) about its proposal to increase the lavatory footprint "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

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wheelchair” with the door closed. Currently the proposed requirement for both the passenger and the assistant is set to the size of a male in the 95th percentile, and DOT queries if this is an appropriate standard, and if so, whether the standard is large enough. As an alternative, DOT seeks comment (concerning timing of implementation, costs, benefits, and so on) on sizing the lavatory so that a statistically large male could (alone) enter the lavatory with the onboard wheelchair, transfer to the toilet, use all facilities, and exit.

Finally, the NPRM DOT solicits information concerning several related topics, such as whether existing lavatories in twin-aisle aircraft meet the needs of passenger with mobility impairments.

Key Takeaways

Carriers are advised to carefully review the NPRM and to provide responsive and detailed comments to both DOT’s substantive proposals and its numerous requests for information. The NPRM may help dictate the physical characteristics of single aisle aircraft and lavatories for decades to come. Carriers should coordinate comments with counsel to ensure clarity and responsiveness.

¹ <https://www.transportation.gov/briefing-room/us-department-transportation-announces-proposed-rule-improve-accessibility-lavatories>

² 87 Fed. Reg. 17215, 17215 (March 28, 2022).

³ For foreign carriers, this requirement applies to new aircraft initially ordered after May 13, 2009 or which are delivered after May 13, 2010. For U.S. carriers, this requirement applies to new aircraft that were initially ordered after April 5, 1990, or which were delivered after April 5, 1992.

⁴ 85 Fed. Reg. 27 (January 2, 2020).