

DOT Issues Rule on Aircraft Lavatory Accessibility for Passengers with Disabilities

On July 26, 2023 (the 33rd anniversary of the signing of the Americans with Disabilities Act), the U.S. Department of Transportation (DOT) released a final rule that amends the agency's air travel disability accommodation regulations at 14 C.F.R. Part 382 to require lavatories on most single-aisle commercial aircraft operated to, from, or within the United States to be more accessible for passengers with disabilities (the Final Rule).¹

Background

Although DOT has long required accessible lavatories on twin-aisle commercial aircraft operated by U.S. airlines or, in the case of non-U.S. airlines, operated to or from the United States, no such requirement has applied to single-aisle aircraft. Meanwhile, the percentage of U.S. flights with a stage length of between 1,500 and 3,000 miles operated with single-aisle aircraft has increased from less than 40 percent in 1991 to 86 percent in 2021.

In an effort to improve the air travel environment for individuals with disabilities, DOT in 2016 established the Advisory Committee on Accessible Air Transportation (ACCESS Committee) to negotiate and develop recommendations on various issues, including improved lavatory accessibility on single-aisle aircraft. While the ACCESS Committee, which consisted of stakeholders including disability rights advocates, airlines, flight attendants, and aircraft manufacturers, was unable to reach consensus on all the issues it was tasked to address, it did reach consensus on short-term and long-term lavatory accessibility recommendations, which were released in November 2016.

DOT thereafter decided that the most appropriate course of action to implement the ACCESS Committee's recommendations was to conduct two separate accessible lavatory rulemakings — one for short-term improvements and one for long-term improvements. Along these lines, DOT in January 2020 issued a notice of proposed rulemaking (NPRM) relating to short-term accessibility improvements² and in March 2022 issued an NPRM regarding long-term accessibility improvements.³

The Final Rule combines and adopts, with modification, DOT's proposed short-term and long-term regulatory actions. The requirements, which apply to U.S. airlines and, with respect to flights that begin or end in the United States, non-U.S. airlines, are summarized below:

Requirements

- **Lavatory Interiors and OBW Improvements:** *New* single-aisle aircraft certificated with a maximum capacity of 125 or more seats and delivered beginning three years after the Final Rule's effective date, must feature:
 - at least one lavatory with interior features that meet certain criteria, including but not limited to grab bars, accessible controls, and minimum obstructions for the passage of an on-board wheelchair (OBW);
 - visual barriers, to be provided upon request to passengers who, due to space limitations, must use the lavatory with the door open; and
 - OBWs that meet specified performance criteria for transferring passengers to and from their seats as well as for entering and maneuvering within the lavatory.⁴
- **Training, Information, and Signage:** Operators of single-aisle aircraft certificated with a maximum capacity of 60 or more seats must, beginning three years after the Final Rule's effectiveness:



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- provide specialized OBW training to airline personnel;
- maintain lavatory accessibility information on their public-facing websites;
- display the International Symbol of Accessibility (ISA) on lavatories capable of accommodating seated independent transfers and remove the ISA from lavatories that lack such capability; and
- develop procedures for handling sharps and bio-waste and inform passengers of those procedures on request.

So long as an airline operates at least one aircraft certificated for 60 or more seats, the above training, information, and signage requirements apply across its entire U.S. fleet, *i.e.*, the requirements are not limited to only its aircraft certificated for 60 or more seats.

- **Expanded Lavatory Size:** *New* single-aisle commercial aircraft certificated with a maximum capacity of 125 or more seats and ordered beginning 10 years after, or delivered beginning 12 years after, the Final Rule's effective date, or for which a new type certificate is filed by the manufacturer one year after the Final Rule's effective date, must be equipped with at least one lavatory large enough for a person with a disability and an attendant (each equivalent in size to a 95th percentile male) to enter, maneuver within, and leave the lavatory by means of an OBW. In 2016, the ACCESS Committee had recommended such expanded lavatories for aircraft ordered 18 years after or aircraft delivered 20 years after any final regulation issued by DOT.

Conclusion

The airline industry and manufacturers have generally been supportive of regulatory efforts to expand lavatory accessibility on single-aisle commercial aircraft, going back to at least the establishment of the ACCESS Committee under the Obama administration. To be certain, the required expansion in lavatory size will increase costs for airlines and potentially consumers if fares increase to compensate for the inevitable removal of seats to make way for larger lavatories. However, the Final Rule, which takes effect 60 days after its publication in the Federal Register (which is expected in the coming days) will improve aircraft accessibility for individuals with disabilities who, for many years, have experienced discomfort onboard single-aisle aircraft due to an inability to use existing lavatories.

¹ The final rule has yet to be published in the Federal Register.

² 85 Fed. Reg. 27 (January 2, 2020), available at: <https://www.federalregister.gov/documents/2020/01/02/2019-27631/accessible-lavatories-on-single-aisle-aircraft-part-1>.

³ 87 Fed. Reg. 17215 (Mar. 28, 2022), available at: <https://www.federalregister.gov/documents/2022/03/28/2022-05869/accessible-lavatories-on-single-aisle-aircraft-part-2>.

⁴ DOT states that if this is not possible in the short term when lavatories are not required to be expanded beyond current measures, airlines must provide a visual barrier upon request.