



May 25, 2022

U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**Re: Notice of Proposed Rulemaking for Accessible Lavatories on Single-Aisle Aircraft (DOT-OST-2021-0137)**

Dear Secretary Buttigieg,

In service of the neuromuscular disease (NMD) patient community, the Muscular Dystrophy Association (MDA) thanks the Department of Transportation (DOT or “Department”) for the opportunity to comment on the Department’s Notice of Proposed Rulemaking for Accessible Lavatories on Single-Aisle Aircraft (DOT-OST-2021-0137), which would require accessible lavatories on single-aisle aircraft to accommodate travelers with disabilities. We are grateful for the Department’s efforts to improve air travel for individuals with disabilities.

MDA is the nation’s leading nonprofit organization dedicated to transforming the lives of individuals living with neuromuscular diseases through innovations in science and innovations in care. MDA fulfills its mission by funding biomedical research, providing access to expert clinical care and support through its national MDA Care Center Network, and by championing public policies and programs that benefit those we serve, including removing barriers to improve access to education, employment, travel, and leisure. Since inception, MDA has invested more than \$1 billion in research grants to accelerate treatments and cures for neuromuscular disorders, making MDA the largest source of neuromuscular disease research funding in the U.S. outside of the federal government.

Neuromuscular diseases are diseases that affect individuals’ muscles, limbs, and mobility, and often leads to reliance on a wheelchair. This often presents obstacles to comfortable and safe air travel by individuals with disabilities. In a recent survey on accessible air travel, 63 percent of respondents cited inaccessible lavatories as a reason not to fly. Many people with disabilities who have had to travel by air reported having to dehydrate themselves prior to travel so that they wouldn’t need to use the lavatory during their flight. In some cases, they also reported soiling themselves during flight, leading to unnecessary embarrassment and humiliation. No individual should have to engage in unhealthy practices like dehydration to travel by air. The inability to fly can lead many individuals with neuromuscular diseases to delay seeking healthcare or decline

to participate in clinical trials that could lead to life-changing drugs and therapies for neuromuscular diseases.

## **Background**

When DOT issued regulations (14 CFR part 382) pursuant to the Air Carrier Access Act (49 U.S.C. 41705) in 1990, single-aisle aircraft were not required to have accessible lavatories. Furthermore, the original 1990 regulations did not apply to international carriers. However, over time, the range of single-aisle aircraft has increased significantly, and single-aisle aircraft are routinely used for long-haul flights. The Department has updated part 382 numerous times since 1990, and eventually applied the regulations to all flights by domestic and foreign carriers doing business in the United States.

This is the first time the Department has addressed the need for accessible lavatories on single-aisle aircraft. Numerous attempts to require accessible lavatories as part of legislation reauthorizing the Federal Aviation Act had failed, leading to negotiated rulemaking in 2016 between passenger advocacy groups, the airline industry, and the DOT, resulting in this proposed rule requiring single-aisle aircraft with capacity for 125 passengers or more to have an accessible bathroom and onboard wheelchair for passengers with disabilities—a welcome and much-needed development.

## **Proposed Rule**

The Department's Notice of Proposed Rulemaking for Accessible Lavatories on Single-Aisle Aircraft (DOT-OST-2021-0137) would require single-aisle aircraft with a seating capacity of 125 or more be equipped with a bathroom that could accommodate a qualified individual equal in size to a male in the 95<sup>th</sup> percentile. Additionally, the rule would require that the lavatory also be large enough to accommodate a companion/assistant to approach, enter, and maneuver within as necessary to assist the qualified individual. This could be done by means of the aircraft's on-board wheelchair. All of this is intended to be able to be done in a closed space that affords privacy equivalent to that afforded to ambulatory users. Lastly, the rule requires the lavatory to have accessibility features such as grab bars, attendant call buttons, tactile temperature controls for faucets, and appropriate clearance for the on-board wheelchair.

MDA applauds this Notice of Proposed Rulemaking as a significant and long-overdue improvement on the accessibility of air travel for individuals with disabilities.

Requiring accessible lavatories on single-aisle aircraft will end the use of unhealthy practices like dehydration by air travelers with disabilities whose travel plans require air travel. Almost four decades after the passage of the Air Carrier Access Act, and more than three decades after the passage of the Americans with Disabilities Act (ADA), it is time to ensure that consumers with disabilities can travel by air safely and comfortably. Improving the accessibility of air travel for people with disabilities will allow them to join their families for life's special

moments, enjoy recreation and leisure, and accept employment opportunities that require air travel without having to think about unnecessary barriers to safe, comfortable air travel.

While the rule notes that airlines project that requiring accessible lavatories on single-aisle aircraft will result in the loss of fares totaling some \$33 billion over a 25-year period, it is important to note that the current lack of accessible lavatories leads many consumers with disabilities to not travel by air, suggesting the existence of a large group of new air travelers if aircraft become more accessible. In addition, the NPRM notes that the proposed rule would add an additional \$2.66 to the cost of a ticket by the year 2066. The benefits of improving accessibility for individuals with disabilities far outweigh such a marginal fee. Furthermore, twin-aisle aircraft are already required to have an accessible lavatory, illustrating that requiring accessible lavatories on single-aisle aircraft is both reasonable and feasible.

### **Concerns About the Proposed Timeline**

The Department's Notice of Proposed Rulemaking for Accessible Lavatories on Single-Aisle Aircraft would not require existing aircraft to be retrofitted to meet the new requirements but would only apply to new single-aisle aircraft with a maximum seat capacity of 125 or more that are ordered 18 years from the effective date of the final rule or delivered 20 years from the effective date of the final rule.

While this implementation timeline was agreed to by the parties in the 2016 negotiated rulemaking, this will entail another two decades of waiting, during which individuals with disabilities, and more specifically, individuals with neuromuscular diseases, may have to delay access to care or decline to participate in groundbreaking clinical trials that might lead to new therapies and treatments for neuromuscular diseases. In addition, inaccessible aircraft lead many with disabilities to miss life's milestones with friends and family, such as graduations and weddings, as well as declining jobs that require air travel.

We certainly understand the airlines' need for adequate time to implement new accessibility standards; however, the 18–20-year timeline proposed in the new rule is excessive. In addition, airlines have now known that this rule was in the works for six years, giving them ample time to prepare for the implementation of the rule. We would also expect at least a year, if not longer, to pass between the publication of this NPRM and a final rule. Consequently, we believe any timeline beyond ten years is unjustifiably long and will only further harm those with disabilities. It's worth noting that other structural requirements of new airplanes have been implemented in timeframes of a handful of years let alone anything beyond that.

The Department's Notice of Proposed Rulemaking asks if disability advocates are prepared to accept a shorter implementation timeline in exchange for an accessible lavatory that cannot accommodate an attendant/companion. The answer is no. This would be tantamount to an unacceptable half measure only further delaying access to fully accessible bathrooms for individuals with disabilities who require assistance.

While the NPRM would only apply to new aircraft, we at MDA support efforts to require existing single-aisle aircraft be retrofitted for accessible lavatories as well, which could speed up the timeline.

The Americans with Disabilities Act requires places of public accommodation to be accessible to individuals with disabilities. While the airlines successfully fought to exempt air travel from the accessibility requirements of the ADA, over 32 years have passed. During this time, the airline industry has been bailed out numerous times at taxpayers' expense, including taxpayers whose limited mobility makes air travel all but impossible. Companies that ask for-and accept-taxpayer funds to stay afloat should not be able to continue to delay efforts and regulations to improve the accessibility of air travel.

## **Conclusion**

MDA is committed to ensuring that individuals with neuromuscular diseases and other disabilities can travel on aircraft safely, comfortably, and free from fear of not being able to use the aircraft lavatory during their flight.

We appreciate this opportunity to provide comment on the Department's Notice of Proposed Rulemaking for Accessible Lavatories on Single-Aisle Aircraft. For questions regarding MDA or the above comments, please contact me at 202-519-2963 or [mlewis@mdausa.org](mailto:mlewis@mdausa.org).

Sincerely,

*Michael Lewis*

Michael Lewis  
Director, Disability Policy  
Muscular Dystrophy Association