



DEPARTMENT OF TRANSPORTATION

4910-9X

Office of the Secretary

14 CFR Part 382

[Docket No. DOT-OST-2019-0180]

RIN 2105-AE88

Accessible Lavatories on Single-Aisle Aircraft: Part 1

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Transportation (Department or DOT) is seeking comment in this Notice of Proposed Rulemaking (NPRM) on proposed amendments to the Department's disability regulation. This NPRM proposes specific measures for improving accessibility of lavatories on single-aisle aircraft for passengers with disabilities. These improvements include changes to the interior of the lavatory, additional services that airlines would provide with respect to lavatory access, training requirements, and improvements to the aircraft's onboard wheelchair.

DATES: Comments should be filed by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by docket number DOT-OST-2019-0180 by any of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov> and follow the online instructions for submitting comments.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251

Instructions: You must include the agency name and docket number DOT-OST-2019-0180 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone can search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (65 FR 19477-78), or you may visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>, or to the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Robert Gorman, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, D.C., 20590, 202-366-9342, 202-366-7152 (fax), robert.gorman@dot.gov (e-mail). You may also contact Blane Workie, Assistant General

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SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

The Air Carrier Access Act (ACAA), 49 U.S.C. 41705, prohibits discrimination in airline service on the basis of disability by U.S. and foreign air carriers. However, it does not specify how U.S. and foreign air carriers must act to avoid such discrimination or how the Department should regulate with respect to these issues. The Department's authority to regulate nondiscrimination in airline service is found in the ACAA in conjunction with its rulemaking authority under 49 U.S.C. 40113, which states that the Department may take action that it considers necessary to carry out this part, including prescribing regulations. The Department, through reasonable interpretation of its statutory authority, has issued regulations that require carriers to provide nondiscriminatory service to individuals with disabilities. In issuing regulations implementing the ACAA, the Department's general regulatory approach is to issue regulations that are reasonable, straightforward, clear, and designed to minimize burdens consistent with safety and access to air travel.

B. Need for a Rulemaking

Single-aisle aircraft are increasingly being used by airlines for long-haul flights. At present, there is no requirement that airlines provide accessible lavatories on single-aisle aircraft. The inability to use the lavatory on long flights can present significant challenges to passengers with disabilities, and poses a deterrent for some passengers with disabilities to traveling by air.

C. History of Regulations Governing Accessible Lavatories on Aircraft

The Air Carrier Access Act (ACAA), enacted in 1986, prohibits discrimination on the basis of disability in air travel.¹ In 1988, the Department conducted a regulatory negotiation to develop ACAA regulations. The regulatory negotiation included representatives of the airline industry, the disability community, and other stakeholders.² In March 1990, the Department issued final ACAA regulations, found at 14 CFR Part 382.

The 1990 ACAA rule required twin-aisle aircraft to have at least one accessible lavatory, if lavatories were installed on the aircraft. In the context of twin-aisle aircraft, an accessible lavatory is one that: (1) permits a qualified individual with a disability to enter, maneuver as necessary to use all lavatory facilities, and leave, by means of the aircraft's onboard wheelchair (OBW);³ (2) affords privacy to persons using the OBW equivalent to that afforded ambulatory users; and (3) provides door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments.⁴

In the preamble to the 1990 ACAA rule, the Department stated that by requiring accessible lavatories on aircraft with more than one aisle, the result would be “new aircraft with

¹ 49 U.S.C. 41705.

² 53 FR 23,574, 23,574 (June 22, 1988).

³ An OBW is a wheelchair that is used to transport a passenger with a disability between the aircraft seat and the lavatory, and is stowed onboard the aircraft itself. An OBW should not be confused with an aisle chair, which is used for enplaning and deplaning. Aisle chairs transport passengers between the jetbridge and the passenger's seat on the aircraft. Aisle chairs are generally kept in the airport, rather than on the aircraft itself.

⁴ 14 CFR 382.63(a). The rule does not expressly require the lavatory to be large enough to permit a passenger to enter the lavatory with a personal care attendant who can help the individual transfer from the onboard wheelchair to and from the toilet seat (a “dependent transfer”). It is our general understanding, however, that accessible lavatories on twin-aisle aircraft are generally large enough to permit a dependent transfer.

the greatest passenger capacities, and which make the longest flights, having a lavatory that handicapped persons can readily use.”⁵ At the time, the Department declined to require accessible lavatories on single-aisle aircraft. Accessible lavatories on single-aisle aircraft were optional, but not mandatory.⁶

The Department noted airlines’ concerns that providing accessible lavatories on single-aisle aircraft may require airlines to remove seats in order to install a lavatory of sufficient size to meet the accessibility standards of the existing rule. The Department found that those “cost and feasibility concerns” were “worth serious consideration,”⁷ and ultimately decided at the time that it was unable to “obtain sufficient information to make a sound decision” on whether requiring accessible lavatories on single-aisle aircraft would impose an undue burden on airlines.⁸ The Department announced its intention to issue an advance notice of proposed rulemaking (ANPRM) to seek comment on the issue.⁹ In 1992, the Department convened an advisory committee to study this issue. The Committee issued a report that discussed various lavatory designs, along with potential associated costs.¹⁰

The 1990 ACAA rule also set standards for the availability and design of OBWs. The rule generally requires airlines to provide OBWs in two circumstances: (1) if the aircraft has an accessible lavatory; or (2) on the request of a passenger with a disability, even if the aircraft does

⁵ 55 FR 8008, 8021 (March 6, 1990).

⁶ 14 CFR 382.63(b).

⁷ 55 FR 8008, 8021.

⁸ Id.

⁹ Id.

¹⁰ See attachment at <https://www.regulations.gov/document?D=DOT-OST-2015-0246-0194>.

not have an accessible lavatory.¹¹ The rule also sets basic standards for OBW design, including elements such as footrests, movable armrests, adequate restraint systems, handles, and wheel locks.¹² The rule provides that the OBW must be designed to be compatible with the aisle width, maneuvering space, and seat height of the aircraft on which it is used, and must be easily pushed, pulled, and turned within the aircraft by airline personnel.¹³

As originally enacted, the ACAA covered only U.S. air carriers. However, on April 5, 2000, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR-21”), which, among other things, amended the ACAA to include foreign carriers.¹⁴ In response to the AIR-21 requirements, the Department on May 18, 2000, issued a notice of its intent to investigate complaints against foreign carriers according to the amended provisions of the ACAA. The notice also announced the Department’s plan to initiate a rulemaking modifying Part 382 to cover foreign carriers. On November 4, 2004, the Department issued a notice of proposed rulemaking (NPRM) announcing its intention to apply the ACAA rule to foreign carriers.¹⁵

During the process of amending Part 382 to apply to foreign carriers, the Department received many comments expressing the view that the existing requirements concerning

¹¹ The rule limits this requirement to aircraft with a design seat capacity of more than 60 passenger seats, with certain exceptions for specific types of smaller aircraft. 14 CFR 382.65(a). There are two limitations to the rule that airlines must provide OBWs on request when the lavatory itself is not accessible. First, the basis of the passenger’s request must be that the passenger can use an inaccessible lavatory, but cannot reach it without the use of an OBW. Second, airlines may require passengers to provide up to 48 hours’ advance notice to provide this service. 14 CFR 382.65(b).

¹² 14 CFR 382.65(c).

¹³ 14 CFR 382.65(c).

¹⁴ Pub. L. No. 106-181, § 707(c), 114 Stat. 61, 158 (2000).

¹⁵ 69 FR 64364.

accessible lavatories were inadequate. Commenters at that time stated that accessible lavatories should be required in all aircraft, including single-aisle aircraft. The Department acknowledged that single-aisle aircraft sometimes make lengthy flights, and that providing accessible lavatories on single-aisle aircraft would be a significant improvement in airline service for passengers with disabilities. However, the Department ultimately declined to impose a requirement for accessible lavatories on single-aisle aircraft, given concerns that the “revenue loss and other cost impacts” could be too great.¹⁶

On May 13, 2008, the Department published a final rule amending Part 382 to cover foreign air carriers.¹⁷ The 2008 final rule requires foreign air carriers operating twin-aisle aircraft to provide accessible lavatories with respect to new aircraft that were ordered after May 13, 2009, or which were delivered after May 13, 2010.¹⁸ For U.S. carriers, the requirement applies to aircraft that were initially ordered after April 5, 1990, or which were delivered after April 1992.

D. DOT ACCESS Advisory Committee

1. Formation and History of Committee

On December 7, 2015, the Department issued a Federal Register document indicating that it was exploring the feasibility of conducting a negotiated rulemaking with respect to six

¹⁶ 73 FR 27614, 27625; available at https://www.transportation.gov/sites/dot.gov/files/docs/Part%20382-2008_1.pdf.

¹⁷ 73 FR 27614.

¹⁸ 14 CFR 382.63(d). The rule also extended the OBW requirements to foreign air carriers. 14 CFR 382.65(d).

accessibility issues, including accessibility of lavatories on single-aisle aircraft.¹⁹ As part of this process, the Department hired a neutral facilitator to assist the Department in determining whether any or all of the six issues would be appropriate for a negotiated rulemaking. The facilitator found that the following three issues would be appropriate for a negotiated rulemaking: (1) whether to require accessible in-flight entertainment and strengthen accessibility requirements for other in-flight communications; (2) whether to require an accessible lavatory on new single-aisle aircraft over a certain size; and (3) whether to amend the definition of “service animals” that may accompany passengers with a disability on a flight.²⁰

The Department established and appointed members to the Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee or Committee) to negotiate and develop proposed regulations addressing accessible in-flight entertainment, accessible lavatories, and service animals.²¹ The Committee comprised members representing various stakeholders including the Department, airlines, flight attendants, cross-disability advocacy groups, consumer groups, academic or non-profit institutions having technical expertise in accessibility research and development, and aircraft manufacturers.²² The Committee formed separate subgroups of stakeholders to study and vote on the three topics, depending on the stakeholders’ areas of interest and expertise. During the first meeting, the Department informed stakeholders that if

¹⁹ 80 FR 75953. The six issues were: (1) accessibility of in-flight entertainment; (2) supplemental medical oxygen; (3) service animals; (4) accessible lavatories on single-aisle aircraft; (5) seating accommodations; and (6) carrier reporting of disability service requests. *Id.*

²⁰ 81 FR 20265; see also <https://www.regulations.gov/document?D=DOT-OST-2015-0246-0092>.

²¹ 81 FR 26178.

²² A full list of ACCESS Advisory Committee members and other information on the Committee may be found at <https://www.transportation.gov/access-advisory-committee>.

they came to a consensus on the terms of a proposed rule, the Department would exercise good faith efforts to implement that consensus to the extent possible.²³ The ACCESS Advisory Committee gathered data, conducted meetings and site visits, and engaged in negotiations from May 2016 through November 2016.

2. Information Gathering

The ACCESS Advisory Committee gathered information concerning the benefits of improving the accessibility of lavatories on single-aisle aircraft. The Committee learned that single-aisle aircraft were being increasingly used for longer-haul flights, on which accessible lavatories were not available.²⁴

Paralyzed Veterans of America (PVA) presented survey data showing that for a majority of respondents, the inability to use a lavatory would be reason enough to choose not to fly.²⁵ PVA reported that some passengers with disabilities choose to fly shorter routes, go to the lavatory before entering the aircraft, or dehydrate themselves before flying to alleviate the need to use the lavatory on the aircraft.²⁶ More than 500 of 725 respondents to PVA's survey indicated that the biggest hindrance was the size and space/design of the lavatory itself.²⁷ A majority of survey respondents also indicated that an OBW would be necessary to reach the

²³ Under the ground rules of the Committee, consensus was defined as “no more than two negative votes in each issue area”, with abstentions not counting as negative votes. <https://www.transportation.gov/office-general-counsel/negotiated-regulations/access-committee-ground-rules>

²⁴ <https://www.transportation.gov/sites/dot.gov/files/docs/Minutes%20-%201st%20Plenary%20Meeting.pdf>. More recent data shows similar trends. Figure 1 of the Preliminary Regulatory Impact Analysis indicates that in 1997, narrow-body aircraft accounted for slightly over 60% of departing flights of 2000-2499 miles; by 2018, that figure had risen to 90%. Narrow-body aircraft accounted for only 40% of departing flights of 2000-2499 miles in 1997; by 2018, that figure rose to approximately 75%.

²⁵ https://www.transportation.gov/sites/dot.gov/files/docs/3a.P4.Lav_Advocate%20Survey%20Results.v2.pdf

²⁶ *Id.* at 4.

²⁷ *Id.* at 3.

lavatory.²⁸ Survey respondents noted a number of issues with current OBWs, including lack of access to an OBW, not knowing that OBWs are available, inability to transfer from the OBW to the toilet, and the narrowness of the aisle in relation to the OBW.²⁹

3. Developments in Accessible Lavatory Design and OBW Design

The ACCESS Advisory Committee proceedings provided an opportunity for manufacturers to demonstrate improvements to the accessibility of lavatories on single-aisle aircraft. For example, at the first meeting on May 17-18, 2016, Airbus presented information about its SpaceFlex lavatories. During normal operation, they function as two lavatories, separated by a dividing wall. On request, however, the dividing wall can be removed by a flight attendant, creating a single large space for the passenger and an assistant to enter and use the facilities.³⁰ SpaceFlex lavatories are installed in the rear section of the aircraft against the back wall, in the area that is often used for galley space (where drinks, meals, snacks, and service carts are stowed). DOT has learned that some low-cost airlines that do not use significant galley space operate some aircraft with SpaceFlex lavatories. DOT has also learned that certain Airbus aircraft currently in operation have SpaceFlex lavatories installed as well.

Bombardier, Inc., a Canadian aircraft manufacturer, presented information about the accessibility features of its single-aisle C series aircraft. Bombardier explained that C-series lavatories were designed to allow passengers with reduced mobility the ability to transfer

²⁸ Id.

²⁹ Id. at 3.

³⁰ <https://www.transportation.gov/sites/dot.gov/files/docs/Airbus%20Presentation%20on%20Lav.pdf>. This is the version of SpaceFlex known as “V1.” Airbus also produces a “SpaceFlex V2,” which does not increase the size of the lavatory, but provides a transfer seat to assist passengers in transitioning from the OBW to the aircraft toilet seat. To the Department’s knowledge, no U.S. carrier uses the SpaceFlex V2.

independently from the OBW to the toilet seat with the lavatory door closed.³¹ Bombardier explained that accessible lavatories were a design feature of the aircraft from its inception,³² and that “clean sheet” designs can take up to 20 years to produce. The Bombardier C series is now majority-owned by Airbus, and is known as the Airbus A220; seating capacity ranges from 100 to 160.³³ The accessibility lavatory feature of the Airbus 220 is optional.

The ACCESS Advisory Committee also learned about an innovative OBW design developed by researchers at the University of Hamburg in Germany. The cantilevered design of the “Hamburg Chair” allows it to enter the lavatory and be positioned over the toilet lid. The benefit of this design is that a passenger does not have to stand up out of the chair and make a transfer to the toilet. Instead, the passenger can enter the lavatory, use the facilities in privacy, and exit the lavatory without standing up.³⁴ Representatives of the University of Hamburg explained that the design was a prototype and had not been put into mass production. Members of the ACCESS Advisory Committee generally noted that the Hamburg Chair design was promising to the extent that it would allow greater accessibility to the lavatory for passengers with reduced mobility. They noted that even if the passenger could not use the toilet itself, the passenger could use the Hamburg Chair to enter the lavatory and perform other personal hygiene

³¹https://www.transportation.gov/sites/dot.gov/files/docs/P3.Lav_.2.Block_.Bombardier%20Presentation.v2.2016.07.11.pdf

³² <https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/aviation-consumer-protection/285871/july-meeting-minutes.pdf>

³³ <https://www.airbus.com/content/dam/corporate-topics/publications/backgrounders/Backgrounder-Airbus-Commercial-Aircraft-A220-Facts-and-Figures-EN.pdf>

³⁴ https://www.transportation.gov/sites/dot.gov/files/docs/3a.P4.Lav_.2016%20OBW%20v3.0.pdf. The Hamburg Chair has an optional removable seat panel. With this feature, a passenger could lift the toilet seat lid, position the chair over the toilet, then remove the seat panel on the chair so that the passenger can use the toilet without leaving the chair. Members of the ACCESS Advisory Committee also expressed hygiene concerns with this feature.

functions with privacy. Some ACCESS Advisory Committee members did raise hygiene concerns about the dual function of the chair.

4. Development of Tier System

During the course of the ACCESS Advisory Committee's negotiations, stakeholders recognized that there were various ways to improve accessibility of lavatories, with varying costs and timelines for implementation. For example, the lavatory interior could be upgraded to include features such as accessible handles, faucets, and call buttons. These improvements, which would not require increasing the floor dimensions ("footprint") of the lavatory itself, became known as "Tier 1" improvements.

The stakeholders also discussed various accessibility options that would increase the footprint of the lavatory, but not to the full size of a twin-aisle aircraft lavatory. Finally, the stakeholders discussed the highest tier of accessibility: expansion of lavatories to have the footprint (and accessibility features) of lavatories on twin-aisle aircraft.

Airlines took the position that lavatories with larger footprints would take up space that could otherwise be filled by a row of seats. Airlines and manufacturers argued that airlines would lose considerable revenue from increasing the footprint of the lavatory and losing this potential row of seats.³⁵

5. Consensus and Production of Term Sheet

³⁵ Airlines and manufacturers calculated that costs in the form of lost revenue could be as high as \$33.3 billion. https://www.transportation.gov/sites/dot.gov/files/docs/3a.OEM_.Airline%20Accessible%20Lav.Position.8.15.16..pdf.

On November 22, 2016, the ACCESS Advisory Committee reached consensus on proposed new regulations to improve the accessibility of lavatories on single-aisle aircraft and to improve the accessibility of in-flight entertainment.³⁶ The Committee drafted an Agreed Term Sheet for each issue. The accessible lavatory Term Sheet states that the standards would apply to new single-aisle aircraft. The agreement does not call for retrofitting of existing aircraft, but it does call for airlines to comply with the new standards if they replace lavatories on older aircraft.³⁷ The agreement included provisions for both short-term and long-term accessibility improvements.

a. Short-term improvements

Under the ACCESS Advisory Committee’s agreement, short-term improvements include Tier 1 improvements and improvements to the OBW design. Short-term improvements would be required on new single-aisle aircraft delivered 3 years after the effective date of the final rule.³⁸ Airlines operating aircraft with 60 or more passenger seats³⁹ would be required to: (1) train flight attendants to proficiency with respect to transfers to and from the OBW, and with respect

³⁶ <https://www.transportation.gov/office-general-counsel/negotiated-regulations/final-resolution-access-committee>. Of the 27 total Committee members, 19 were voting members on the issue of accessible lavatories. Voting in favor of the agreement were United Airlines, the National Disability Rights Network, the National Air Carrier Association, JetBlue Airways, a subject matter expert from Oregon State University, the Association of Flight Attendants – CWA, the International Air Transport Association, WestJet, Delta Air Lines, Paralyzed Veterans of America, Frontier Airlines, Airbus, the American Council of the Blind, the Regional Airlines Association, and DOT. Boeing and Lufthansa voted to abstain, while the National Council on Independent Living voted against the agreement.

³⁷ As with the current rule, accessible lavatories would not be required if the airline chooses not to install any lavatories on the aircraft. In practice, however, airlines generally choose to install at least one lavatory onboard aircraft.

³⁸ The proposed rule text refers to “all new single-aisle aircraft” above a specific seating capacity that are “delivered” on or after a certain date. This phrasing makes clear that the proposed rule is not limited to newly-certificated aircraft models. Instead, it also applies to newly-manufactured aircraft of existing models.

³⁹ All references to seat capacity in the Term Sheet are references to FAA-certified maximum seat capacities.

to accessibility features of the lavatory and the OBW; (2) publish lavatory accessibility information and provide it on request; and (3) remove the International Symbol of Accessibility from lavatories that are not capable of facilitating a seated independent transfer. Aircraft with 125 or more passenger seats would be required to have at least one lavatory with a number of accessibility features, including accessible door locks, flush handles, call buttons, faucets, and assist handles.

Single-aisle aircraft with 125 or more passenger seats would also be required to include an OBW meeting the Department's new standards. The term sheet itself did not specify the standards for a new OBW, other than: (1) it permits passage in the aircraft aisle; (2) it fits within an available certificated OBW stowage space; and (3) it accomplishes its functions without requiring modification to the interior arrangement of the aircraft or the lavatory. The Term Sheet called on the Department to develop OBW standards in consultation with stakeholders, and to publish those standards in a proposed rule. The Term Sheet indicated that standards for an over-the-toilet design OBW should be established, if feasible.

b. *Long-term improvements*

Under the terms of the agreement, long-term improvements would be required on new single-aisle aircraft, with 125 or more passenger seats, that were initially ordered 18 years after the effective date of the final rule or delivered 20 years after the effective date of the final rule. Such aircraft would be required to include at least one lavatory of sufficient size to permit a qualified individual with a disability to perform a seated independent and dependent transfer from the OBW to and from the toilet within a closed space that affords to persons using the OBW privacy equivalent to that afforded ambulatory users. The lavatory would also include the interior accessibility improvements found in Tier 1.

E. Congressional Directive

In July 2016, while the ACCESS Advisory Committee was working on the regulatory negotiation, Congress enacted the FAA Extension, Safety, and Security Act of 2016 (FAA Act of 2016).⁴⁰ This statute directed the Department to issue a supplemental NPRM by July 15, 2017, on the issue of accessible lavatories on single-aisle aircraft.⁴¹

F. Conducting Lavatory Rulemakings in Two Phases

In June 2019, the Department announced that it had determined that the most appropriate course of action was to conduct two separate accessible lavatory rulemakings: (1) this NPRM, covering short-term accessibility improvements; and (2) an ANPRM titled “Accessible Lavatories on Single-Aisle Aircraft: Part 2,” covering long-term accessibility improvements.⁴² The Department reasoned that it was necessary to gather additional data on the costs and benefits of long-term improvements. The Department also determined that an NPRM on accessible lavatories would be expedited if the complex and more costly long-term improvements were not included at this time. Information on the ANPRM can be found at Docket DOT-OST-2019-0181, RIN 2105-AE89.

G. OBW Design Process

⁴⁰ Pub. L. No. 114-190, 130 Stat. 615, § 2108.

⁴¹ The FAA Act of 2016 directed the Department to issue the supplemental NPRM “referenced in the Secretary’s Report on Significant Rulemakings, dated June 15, 2015, and assigned Regulation Identification Number [RIN] 2105-AE12.” Pub. L. No. 114-190, 130 Stat. 615, § 2108. At the time that the FAA Act of 2016 was enacted, one of the topics within RIN 2105-AE12 was “whether carriers should be required to provide accessible lavatories on certain new single-aisle aircraft.” See <https://cms.dot.gov/regulations/2015-significant-rulemaking-archive> (entry for June 2015). In other words, the direction was for the Department to issue a supplemental NPRM on whether carriers should be required to provide accessible lavatories on certain new single-aisle aircraft.

⁴² The Department’s NPRM on accessible lavatories was originally located at RIN 2105-AE32, which also addressed accessible in-flight entertainment. The Department eventually determined that the in-flight entertainment NPRM would proceed separately at RIN 2105-AE32, while the accessible lavatory rulemaking proceeded at RINs 2105-AE88 (this NPRM) and 2105-AE89 (the ANPRM).

As noted above, the ACCESS Committee’s Term Sheet called for the Department to consult with stakeholders on OBW design improvements. The Department determined that the most appropriate method for developing initial OBW design standards was to seek the assistance of the Architectural and Transportation Barriers Compliance Board (Access Board).⁴³ The Access Board is a Federal agency that specializes in producing accessibility guidelines and standards for the built environment, transportation systems, and technology. On August 20, 2019, the Access Board published “Proposed Advisory Guidelines for Aircraft Onboard Wheelchairs,” and sought public comment.⁴⁴

As the Access Board explains, its Advisory Guidelines are not mandatory. Instead, they are intended to “serve as technical assistance for covered air carriers, providing one example of how covered air carriers might satisfy the performance standard for onboard wheelchairs established by DOT in its forthcoming rulemaking.”⁴⁵ The Department has considered the Access Board’s proposed technical standards, along with the public comments in the Access Board’s docket, when developing the OBW performance standards found in this NPRM. The Department’s performance standards set the essential required features of the OBW, while allowing flexibility in how manufacturers meet those standards. Airlines may, if they wish, use the Access Board’s more specific technical standards as a guide for complying with the Department’s more generalized performance standards. However, airlines would not be required

⁴³ <https://www.access-board.gov/>.

⁴⁴ <https://www.federalregister.gov/documents/2019/08/20/2019-17873/advisory-guidelines-for-aircraft-onboard-wheelchairs>. The Access Board’s Docket for OBW standards is found at <https://www.regulations.gov/docket?D=ATBCB-2019-0002>. The Access Board held a public hearing on these advisory guidelines on September 12, 2019.

⁴⁵ 84 FR 43100, 43101 (August 20, 2019).

to use the Access Board's technical specifications in order to comply with the performance standards; airlines may choose to adopt alternative specifications for the OBW provided that those specifications achieve a level of accessibility consistent with the performance standards found in the Department's regulations.

II. Proposed Rule

The proposed accessibility improvements in this NPRM generally track the Tier 1 provisions in the ACCESS Advisory Committee's Term Sheet (relating to accessible interior features, training and information requirements, and OBW improvements). This NPRM does not propose expanding the size of the lavatory to provide a level of accessibility equivalent to that found on twin-aisle aircraft. That issue will be addressed in the related ANPRM.

A. Improvements to Lavatory Interiors

The first set of proposed improvements in this NPRM relate to the accessibility features of the lavatory itself. These improvements, found in proposed § 382.63(f), would apply to lavatories on new aircraft with an FAA-certificated maximum capacity of 125 seats or more. The Department is tentatively of the view that because aircraft with fewer than 125 seats tend to be shorter-haul aircraft, with shorter flight times, it may not be cost-beneficial to require interior improvements to lavatories on those aircraft. The Department seeks comment on this issue.

First, the proposed rule would require grab bars to be installed and positioned as required to meet the needs of individuals with disabilities. We note that the ACCESS Advisory Committee's Term Sheet provided that the pull handles must meet the needs of

individuals with disabilities *and* must support a minimum of 250 pounds.⁴⁶ The proposed rule does not include a weight-support minimum threshold. We are tentatively of the view that setting a specific weight threshold would be unduly prescriptive,⁴⁷ and that grab bars must necessarily support significant weight in order to adequately meet the needs of individuals with disabilities. The Department seeks comment on whether this general performance standard provides sufficient guidance to airlines and lavatory manufacturers. The Department seeks comment on whether a weight-support minimum threshold is necessary, and if so, what that threshold would be. We specifically seek comment on whether or not the grab bar weight-support standards in other lavatory environments (e.g., airports, trains, and restaurants) are transferable to the environment of an aircraft lavatory, and if so, how. We also seek comment on the costs and benefits of setting any specific threshold.

Next, the proposed rule would require that lavatory faucets have controls with tactile information concerning temperature. Alternatively, airlines may comply with this requirement by ensuring that lavatory water temperature is adjusted to eliminate the risk of scalding for all passengers. The rule would also require that automatic or hand-operated faucets shall dispense water for a minimum of five seconds for each application or while the

⁴⁶ Term Sheet 2b.

⁴⁷ In 2018, the Department issued guidance regarding its own rulemaking procedures. The guidance provides, in relevant part, that regulations should be technologically neutral and should set performance objectives. <https://www.transportation.gov/sites/dot.gov/files/docs/regulations/328561/dot-order-21006-rulemaking-process-signed-122018.pdf>, section 6(e).

hand is below the faucet.⁴⁸ The Department seeks comment on whether this last requirement is necessary, and the costs and benefits of including such a provision.

Next, the proposed rule would require attendant call buttons and door locks to be accessible to an individual seated in the lavatory.⁴⁹ We seek comment on whether to further define “accessible” with respect to call buttons and door locks. For example, we seek comment on whether they should be discernible through the sense of touch and/or through specific means of communication such as braille, or whether airlines should be permitted to develop their own methods of providing accessibility.

Next, the proposed rule would require that lavatory controls and dispensers must be discernible through the sense of touch. This rulemaking would also require operable parts of the lavatory to be operable with one hand and not require tight pinching, grasping, or twisting of the wrist.

We are of the view that the term “operable parts” includes, but is not limited to, call buttons, door locks, faucets, lavatory controls, and dispensers. We also seek comment on whether the Department should specify the maximum force required to activate operable parts; for example, whether the force should not exceed 5 pounds (2.2N), an accessibility standard applied under the Americans with Disabilities Act (ADA) or whether the proposed performance standard is sufficient to ensure accessibility.

⁴⁸ See Term Sheet 2c.

⁴⁹ The Term Sheet had separate provisions for call buttons and for door locks. Specifically, the Term Sheet provided that “call buttons shall be provided in the lavatory and accessible to an individual seated on the toilet,” while “the door lock must be accessible by a 5th percentile female seated on the OBW, if any, within the lavatory compartment.” Term Sheet, sections 2e, 2i. The proposed rule simplifies and consolidates those two provisions. While we believe that both of these provisions are adequately reflected in the rule as currently phrased, we seek comment on whether the proposed rule should more explicitly track the provisions of the Term Sheet.

Such requirements would apply if those accessible operable parts are reasonably available and certificated for the applicable aircraft type.⁵⁰ We seek comment on the availability of accessible controls and other lavatory parts that are operable by passengers with disabilities, along with the costs and benefits of requiring such accessible controls.

The Department proposes to require the lavatory door sill to provide minimum obstruction for the passage of an OBW, consistent with applicable safety regulations.⁵¹ The Department recognizes that door sills must prevent the spillage of water into the aircraft cabin. On the other hand, during site visits to inspect aircraft lavatories at various airports, members of the ACCESS Advisory Committee’s Lavatory Working Group found that a steep door sill can be a significant barrier for the entry of an OBW. This provision is intended to promote accessibility without compromising safety. We seek comment on whether the term “minimum obstruction” should be further defined and if so, what that definition should be.

Next, recognizing that adequate toe clearance is necessary to permit the OBW to maneuver into and out of the lavatory, the proposed rule would require airlines not to reduce toe clearance below the current specifications of the lavatory. The Department understands “toe clearance” to mean the space between the lavatory floor and the lower edge of the sink or other fixtures of the lavatory. The Department seeks comment on this proposed provision and on whether the term “toe clearance” should be specifically defined. If so, should the

⁵⁰ This paragraph represents a consolidation of Term Sheet provisions 2f and 2l. We believe that the proposed rule as currently phrased adequately reflects these two provisions. We also note that section 2f of the Term Sheet would separately require “information regarding location and use of all other lavatory controls and dispensers to be made available through informational cards on request, verbally through flight attendants, online, or by phone and TTY where those services are ordinarily provided.” In our view, this provision is adequately reflected in proposed § 382.63(h), relating to training and information. We seek comment on whether the rule should more explicitly track the provisions of the Term Sheet in these respects.

⁵¹ See Term Sheet 2g.

adequate toe clearance of a lavatory be defined in relation to the foot supports of the OBW that is installed on the specific aircraft containing that lavatory?

Finally, the proposed rule would require airlines to provide a visual barrier, on request, for passengers with disabilities who may require the use of the lavatory but who cannot do so with the door closed. The purpose of the visual barrier is to afford passengers with disabilities a level of privacy equivalent to that afforded to ambulatory users.⁵² We seek comment on the means by which this proposed visual barrier may be installed and operated in an efficient and cost-effective manner, consistent with the privacy interests of passengers entering and using the lavatory.

The Department seeks comment on the costs and benefits of these features. The Department seeks comment on any additional features that may improve the accessibility of lavatories on single-aisle aircraft without expanding the footprint of the lavatory itself.⁵³ The Department also seeks comment and data on the extent to which the footprint of aircraft lavatories on single-aisle aircraft has been reduced in recent years, and the effect that any such reduction has on accessibility for passengers with disabilities. While the Department is not proposing to require in this NPRM that lavatory footprints be *expanded* to any particular size, the Department is considering whether to prohibit the footprint of lavatories from being further *reduced* from current measurements, on the ground that further reduction would

⁵² See Term Sheet 2k.

⁵³ Section 2a of the Term Sheet included a provision that the lavatory's toilet seat height must be between 17 and 19 inches. The Department has declined to include this provision on the ground that it is unduly prescriptive. We are also tentatively of the view that the seat height requirement was included to ensure that the height of the toilet seat, aircraft seat, and OBW seat were all reasonably consistent. In our view, the more effective and flexible approach to this issue is to require the OBW to be compatible with the both the height of the toilet seat and the height of the aircraft passenger seat. That issue is addressed in the OBW section below.

adversely impact accessibility.⁵⁴ The Department seeks comment on the costs and benefits of any such proposal.

B. Retrofitting

Retrofitting of lavatories is addressed in proposed § 382.63(g). The proposed rule reflects the provisions of the ACCESS Advisory Committee's Term Sheet. Retrofitting of lavatories on aircraft currently in service would not be required under the proposed rule; however, if an airline replaces a lavatory 3 years or more after the effective date of the rule, the proposed rule would require the airline to install a lavatory that meets the new requirements. Under this paragraph, a lavatory is not considered replaced if it is removed for specified maintenance, safety checks, or any other action that results in returning the same lavatory into service. For retrofitted lavatories, there would be no requirement to install a visual barrier if doing so would obstruct the visibility of exit signs.

C. Training and Information

New proposed training and information requirements are found in § 382.63(h). These requirements largely reflect the provisions of the Committee's Term Sheet. They apply to airlines operating aircraft with an FAA-certificated maximum capacity of greater than 60 seats (i.e., airlines that do not qualify as small businesses under 14 CFR 399.73). The training and information requirements would apply to the airlines' operations generally, not to the operation of any specific aircraft. Consistent with the Term Sheet, these provisions would apply three years after the effective date of the final rule.

⁵⁴ The Department notes that under 14 CFR 382.71, airlines are already required to ensure that any replacement or refurbishing of an aircraft cabin or its elements does not reduce the accessibility of that element to a level below that specified for new aircraft in Part 382. This existing requirement arguably does not apply to the footprint of lavatories on single-aisle aircraft, because Part 382 does not currently specify any minimum footprint for lavatories on single-aisle aircraft.

First, the proposed rule would require airlines to train flight attendants to proficiency on proper procedures for providing assistance to qualified individuals with disabilities to and from the lavatory from the aircraft seat.⁵⁵ Such training would include hands-on training on the retrieval, assembly, stowage, and use of the aircraft's OBW, and training regarding the accessibility features of the lavatory.⁵⁶ Consistent with the Term Sheet, the proposed rule would require such training on an annual basis. The Department expects that both initial and annual hands-on training will be required for airline and contractor employees to gain proficiency in providing this assistance, in light of factors such as the various OBW designs that may be supplied to various aircraft, and the frequency of OBW use. The Department seeks comment on whether annual training is necessary, or whether a different frequency of training would be more appropriate.

Second, the Department proposes to require airlines to provide information on their web sites and upon request regarding the accessibility features of the lavatory.⁵⁷ The purpose of this proposed requirement is to provide passengers with accurate information about the types of

⁵⁵ Airlines are already required to train their personnel to proficiency on the airline's procedures concerning the provision of air travel to passengers with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability. 14 CFR 382.141(a)(1)(ii).

⁵⁶ The Term Sheet states: "You must train flight attendants to proficiency on an annual basis to provide assistance in transporting qualified individuals with disabilities to and from the lavatory from the aircraft seat, including hands-on training on the use of any new DOT-required on-board wheelchair, and with respect to any assembly or modifications to the accessibility features of the lavatory or on-board wheelchair." The proposed rule is broader than the Term Sheet to the extent that it clarifies training must be provided on the retrieval and stowage of the OBW, along with its assembly and use. The proposed rule does not implement the Term Sheet to the extent that it suggests that flight attendants must be trained with respect to any "assembly or modifications" of the lavatory's accessibility features. Such a provision would be, in our view, both unclear and unnecessary. In our view, it is appropriate to generally mandate that flight attendants are trained on the accessibility features of the lavatory. We solicit comment on whether the training requirements should track the Term Sheet more closely or should be otherwise modified.

⁵⁷ Term Sheet 1(b).

accessibility features that will be available on the aircraft, so that passengers may plan their flights appropriately.

Third, the Department proposes to require airlines to remove the International Symbol of Accessibility from new and in-service aircraft that are equipped with lavatories that are not capable of facilitating a seated independent transfer (i.e., a transfer from an OBW to the toilet seat without requiring the use of an assistant).⁵⁸ During the ACCESS Advisory Committee's deliberations, advocates noted that the symbol appeared on certain lavatories where it was unclear what features, if any, made the lavatory accessible. This proposed rule would provide greater consistency regarding the use of the symbol.

Finally, the Department proposes to require airlines to develop and, on request, inform passengers about their procedures for disposing of sharps and bio-waste. It is reasonable to expect that as lavatories on single aisle aircraft become more accessible, they may be used increasingly as a location where passengers with disabilities may perform personal functions which require the disposal of sharps and bio-waste. The proposed rule does not require any specific type of disposal procedures, however (e.g., a sharps disposal box installed within the lavatory).⁵⁹

D. OBW Standards

⁵⁸ Removal of the international symbol is the only proposed rule that would apply to existing in-service lavatories, and to lavatories on aircraft with and FAA-certificated maximum capacity of fewer than 125 seats. The Term Sheet uses the term "seated independent transfer" without further defining the term. We believe that the definition provided in the rule text accurately reflects the meaning of "seated independent transfer," but we seek comment on that issue.

⁵⁹ This provision is based on paragraph 2h of the Term Sheet. The Term Sheet placed the sharps/biowaste provision within the section of the agreement relating to the lavatory interior. In our view it is most appropriately seen as a provision relating to information and training.

The Department's proposed performance standards for new OBWs are found in § 382.65(h). The standards found in the NPRM describe the expected performance of the OBW, while allowing manufacturers to find efficient and innovative means for meeting those performance expectations. At the same time, the proposed rule states that airlines may use the Access Board's advisory guidelines for technical assistance in furnishing an OBW that meets the Department's performance standards. In this way, the Department intends to encourage innovation while also providing a specific example of how to comply with the proposed rule.

Under the proposed rule, OBWs meeting the new standards must be installed on new single-aisle aircraft with an FAA-certificated maximum capacity of 125 seats or more that enter service 3 years after the effective date of the final rule.⁶⁰ The Department seeks comment on whether aircraft with fewer than 125 seats tend to be used for shorter-haul flights, and whether or not such aircraft should be excluded from the new OBW requirements.

The proposed rule would require the OBW design to enable the OBW to completely enter the lavatory in a backward orientation. Specifically, the rule would require the OBW to fit over the closed toilet lid in a manner that permits the lavatory door to close completely. It is anticipated that the attendant would push the OBW backward into the lavatory by means of handles on the front of the OBW. After the OBW is situated over the closed toilet lid, the door would be closed and the passenger would be able to perform non-toileting lavatory functions in privacy. It is the tentative view of the Department that these OBW features would substantially

⁶⁰ See Term Sheet 4A.

improve accessibility for passengers who, at present, cannot enter the lavatory from existing OBWs.

The proposed rule would also require that the OBW design enable it at a minimum to partially enter the lavatory in a forward orientation. The purpose of this provision is to facilitate a stand-and-pivot maneuver from the OBW to the toilet seat, for passengers who are able to do so. With a stand-and-pivot maneuver, the passenger would partially enter the lavatory by means of the OBW, stand up, and pivot 180 degrees to reach the toilet seat. Grab bars and/or visual barriers may be necessary to complete a stand-and-pivot. We seek comment on the ways that an OBW can be best designed to facilitate forward entry and a stand-and-pivot maneuver.

The next set of proposed rules relates to safety. In drafting these proposed performance standards, the Department considered the features that the Access Board has identified as necessary to ensure passenger safety. The proposed rule would require that the height of the OBW seat must align with the height of the aircraft seat to the maximum extent practicable, in order to permit a safe transfer between the OBW and the aircraft seat.⁶¹ The rule would require the wheels of the OBW to lock in the direction of travel, in order to avoid contact with aircraft seats and other obstructions as it moves down the aisle. Any other moving parts of the onboard wheelchair would need to be capable of being secured such that they do not move while the occupied onboard wheelchair is being maneuvered. The wheels would also be required to lock in place so as to provide stability during transfers. When

⁶¹ Depending on the nature and extent of the passenger's disability, it may be necessary for the passenger's seat to have a movable aisle armrest. The Department believes that its existing rules relating to movable aisle armrests (14 CFR 382.61 and 382.81-87) are sufficient to ensure that passengers who require a movable aisle armrest are accommodated; however, the Department seeks comment on this issue.

occupied for use, the onboard wheelchair would be required to not tip or fall in any direction under normal operating conditions.

The OBW would be required to have a padded seat and backrest, in order to preserve skin integrity, and to prevent spasticity and injury. We specifically seek comment on whether the proposed rule text adequately conveys the degree of back support and seat support necessary to properly accommodate passengers with disabilities, and if not, whether additional standards should be specified. For example, should the text further indicate that the seat and backrest must be “firm” or “solid?”

The rule would also require the OBW to be free of sharp or abrasive components. The OBW would also be required to have arm supports that are sufficient to facilitate transfers; arm supports that are repositionable to permit unobstructed transfers between the OBW and the aircraft seat; torso and leg restraints to ensure stability and prevent injury; as well as a unitary foot support that would provide adequate clearance over the lavatory threshold and also allow for an unobstructed transfer between the OBW and the lavatory. Under the proposed rule, restraints must be operable by the passenger in order to permit the passenger the option to adjust the restraints unassisted. Finally, the rule would require the OBW to have instructions prominently displayed for proper use.

The Department seeks comment on these features, including their costs, benefits, and necessity. We also seek comment on whether additional features are necessary (for example, whether specific performance standards should be required with respect to minimum load weight), along with their costs and benefits.

Under paragraph (f) of this proposed rule, airlines would not be required to modify aircraft interiors, including lavatories and existing OBW stowage spaces, in order to comply

with these OBW provisions. During negotiations, airlines and aircraft manufacturers expressed concern about the costs of altering the interior spaces of the aircraft to accommodate a newly designed OBW. These provisions reflect those concerns. Like the other improvements to the lavatory interior, the OBW design would not require alteration of the interior space of the lavatory or the aircraft generally.

The Department seeks comment on all aspects of this critical issue of OBW stowage space. Specifically, the Department seeks further data regarding: (1) the folded dimensions of OBWs currently in use on single-aisle aircraft; (2) the locations and dimensions of current OBW stowage spaces; and (3) the feasibility of designing and constructing an OBW that meets the listed performance standards, particularly including the ability to enter the lavatory in a backward orientation, while fitting into the existing OBW stowage space for that aircraft. The Department also seeks comment on an alternative proposal: whether to require OBWs to meet the new performance standards set forth in this NPRM even if stowage space must be expanded to accommodate the OBW. The Department seeks comment on the costs of expanding OBW stowage spaces to meet these performance standards.

Under paragraph (g) of this proposed rule, and in keeping with the ACCESS Advisory Committee's Term Sheet, an airline would not be responsible for the failure of third parties to furnish an OBW that complies with these proposed standards, so long as the airline notifies and substantiates to the Department the efforts it expended to obtain compliant OBWs.. The Department recognizes that, at present, no commercially available OBW exists that permits backward passage into an aircraft lavatory, and that while airlines may seek to procure an OBW that meets the Department's performance standards, airlines do not design or produce OBWs themselves. The Department seeks comment on whether there

should be a deadline for an airline to notify the Department that the airline has expended its efforts to obtain compliant OBWs. If so, how many days after an airline becomes aware of such commercial unavailability (e.g., 30 days) would be appropriate for airlines to notify the Department? The Department also recognizes the uncertainties surrounding the issue of whether OBWs meeting the Department's new standards can fit within existing OBW stowage spaces. The intent of proposed paragraph (g) is to encourage innovation in meeting the proposed standards by affirmatively requiring airlines to engage in reasonable efforts to obtain compliant OBWs from third parties. The Department seeks comment on whether the "reasonable efforts" clause is the most appropriate means of reaching the overarching goal of ensuring that OBWs with the new accessibility features are acquired.

Finally, the proposed rule provides that if an airline replaces an OBW on an aircraft with an FAA-certificated maximum capacity of 125 seats or more three years after the effective date of the rule, then the replacement OBW must comply with DOT's new OBW standards. That provision is reflected in § 382.65(h).

Regulatory Analyses and Notices

- A. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Order 2100.6 (Policies and Procedures for Rulemakings)

This proposed rule is a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), "Regulatory Planning and Review," as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), "Improving Regulation and Regulatory Review." The Department made this determination by finding that, although the economic effects of this proposed regulatory action would not exceed the \$100 million annual threshold defined by E.O.

12866, the proposed rule is significant because of the rule’s substantial public interest in accessible transportation for individuals with disabilities. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget (OMB). This proposed rule is issued consistent with the policies and procedures governing the development and issuance of regulations by the Department found in DOT Order 2100.6, “Policies and Procedures for Rulemakings” (December 20, 2018). This proposed rule is expected to be a regulatory action under Executive Order 13771. Details on the estimated costs of this proposed rule can be found in the rule’s economic analysis.

The Department has conducted a preliminary regulatory impact analysis (PRIA) in support of the NPRM. With respect to accessible lavatories, the total estimated costs and benefits of the proposed rule are as follows:

Table 1: Cost Summary of the Lavatory Accessibility and OBW Provisions

14 CFR	Regulatory Topic	Discounted at 7 percent	Discounted at 3 percent	Annualized 25-year cost	Benefits
§ 382.63	Lavatory Accessibility	\$21,353,264	\$36,522,224	\$1,832,334	Not Quantified
§ 382.65	OBW	\$2,523,364	\$2,621,359	\$216,531	Not Quantified
Total	Total	\$22,876,628	\$39,143,583	\$2,048,866	Not Quantified

Benefits are expected to include ensuring the comfort, privacy, dignity, and civil rights of passengers with disabilities by improving their ability to access the lavatory and its facilities on long flights so as to perform personal functions in privacy. Passengers who are expected to benefit from the proposed rule include passengers currently unable to use lavatories on single-aisle aircraft because of a disability. Passengers with visual impairments will benefit from the requirement that controls be discernible through the sense of touch. Non-ambulatory passengers

are expected to benefit from the safety improvements to the OBW. In general, passengers with disabilities will benefit from the provision requiring airlines to provide accurate information about the accessibility of the aircraft lavatory.

The PRIA provided a cost estimate for proposed § 382.63 (lavatory interiors, retrofitting, and information/training.) The improvements to lavatory interiors are estimated to cost approximately \$1,000 per lavatory (collectively, \$1.7 million discounted at 7% and \$2.9 million discounted at 3%.) By far the largest estimated cost component for § 382.63 is the cost of training flight attendants to proficiency with respect to the operation of the OBW. These costs are estimated at \$19.6 million discounted at 7%, and \$33.6 million discounted at 3%. In general, other costs related to proposed § 382.63 are estimated to be minimal.⁶²

The PRIA also estimated costs for improvements to the OBW. It is important to note that the PRIA estimated the costs of compliance with the Access Board's technical standards, not the costs of compliance with the more generalized performance standards in this NPRM. The PRIA noted certain key uncertainties of its OBW analysis, including but not limited to: (1) the difficulties in comparing the potential benefits of the new OBW design to an existing baseline; (2) whether OBW manufacturers are willing and able to manufacture an OBW with an over-the-toilet design; (3) the ability of any OBW with over-the-toilet positioning to fit within existing FAA stowage spaces; and (4) uncertainties regarding the reasonable weight load for an OBW, given constraints such as the width of the aircraft aisle. Bearing these uncertainties in mind, the PRIA estimates the costs of developing compliant OBWs to be \$2.7 million undiscounted (\$2.5

⁶² The PRIA refers to the information and training measures as appearing within § 382.63(f); they now appear in § 382.63(h). Similarly, the PRIA refers to lavatory interior improvements as appearing within § 382.63(h); they now appear in § 382.63(f).

million discounted at 7% and \$2.6 million discounted at 3%). These costs are largely related to design, and not to manufacturing. The Department's complete PRIA with more details on the economic analysis may be found in the rulemaking docket. The Department seeks comment on all elements of this PRIA.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (i.e., aircraft with up to 60 seats/18,000-pound payload capacity).⁶³ This rule applies only to carriers that operate aircraft with FAA-certificated maximum capacity of more than 60 seats. The Department hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This NPRM does not include any provision that: (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation

⁶³ See 14 CFR 399.73.

Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this NPRM does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. This rule adopts new information collection requirements subject to the PRA. The Department will publish a separate notice in the Federal Register inviting OMB, the general public, and other Federal agencies to comment on the new and revised information collection requirements contained in this document. As prescribed by the PRA, the requirements will not go into effect until OMB has approved them and the Department has published a notice announcing the effective date of the information collection requirements.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes “[a]ctions relating to consumer protection, including regulations.” This rulemaking concerns civil rights protection for individuals with disabilities. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

List of Subjects in 14 CFR Part 382

Lavatories; Single-aisle aircraft; Onboard wheelchairs

For the reasons discussed in the preamble, the Department proposes to amend 14 CFR part 382 as follows:

PART 382-- NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

1. The authority citation for part 382 is revised to read as follows:

Authority: 49 U.S.C. 40113(a); 41702, 41705, 41712, and 41310; FAA Extension, Safety, and Security Act of 2016, section 2108.

Subpart E – Accessibility of Aircraft

2. In § 382.63, add the phrase “not covered in paragraph (f) of this section” after the word “aircraft” in paragraph (b), and add paragraphs (f), (g), and (h) to read as follows:

§ 382.63 What are the requirements for accessible lavatories?

* * * * *

(f) As a carrier, you must ensure that all new single-aisle aircraft that you operate with an FAA-certificated maximum seating capacity of 125 or more that are delivered on or after [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] and on which lavatories are provided shall include at least one lavatory that meets the following specifications:

- (1) Grab bars must be provided and positioned as required to meet the needs of individuals with disabilities.
- (2) Lavatory faucets must have controls with tactile information concerning temperature. Alternatively, carriers may comply with this requirement by ensuring that lavatory water temperature is adjusted to eliminate the risk of scalding for all passengers. Automatic or hand-operated faucets shall dispense water for a minimum of five seconds for each application or while the hand is below the faucet.
- (3) Attendant call buttons and door locks must be accessible to an individual seated within the lavatory.
- (4) Lavatory controls and dispensers must be discernible through the sense of touch. Operable parts within the lavatory must be operable with one hand and must not require tight grasping, pinching, or twisting of the wrist.

- (5) The lavatory door sill must provide minimum obstruction to the passage of the onboard wheelchair across the sill while preventing the leakage of fluids from the lavatory floor and trip hazards during an emergency evacuation.
 - (6) Toe clearance must not be reduced from current measurements.
 - (7) The aircraft must include a visual barrier that must be provided upon request of a passenger with a disability. The barrier must provide passengers with disabilities using the lavatory (with the lavatory door open) a level of privacy substantially equivalent to that provided to ambulatory users.
- (g) You are not required to retrofit cabin interiors of existing single-aisle aircraft to comply with the requirements of paragraph (f) of this section. However, if you replace a lavatory on a single-aisle aircraft after [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], you must replace it with a lavatory complying with the requirements of paragraph (f) of this section. Under this paragraph (g), a lavatory is not considered replaced if it is removed for specified maintenance, safety checks, or any other action that results in returning the same lavatory into service. For retrofit lavatories, there shall be no requirement to install a visual barrier if doing so will obstruct the visibility of exit signs.
- (h) As a carrier operating at least one aircraft with an FAA-certificated maximum seating capacity of 60 or more, you must comply with the following requirements:
- (1) You must train flight attendants to proficiency on an annual basis to provide assistance in transporting qualified individuals with disabilities to and from the lavatory from the aircraft seat. Such training shall include hands-on training on the

retrieval, assembly, stowage, and use of the aircraft's onboard wheelchair, and regarding the accessibility features of the lavatory.

- (2) You must provide information, on request, to qualified individuals with a disability or persons making inquiries on their behalf concerning the accessibility of aircraft lavatories. This information must also be available on the carrier's website, and in printed or electronic form on the aircraft, including picture diagrams of accessibility features in the lavatory and the location and usage of all controls and dispensers.
- (3) You must remove or conceal the International Symbol of Accessibility from new and in-service aircraft equipped with lavatories that are not capable of facilitating a seated independent transfer (i.e., a transfer from an onboard wheelchair to the toilet seat without requiring the use of an assistant).
- (4) You must develop and, upon request, inform passengers of trash disposal procedures and processes for sharps and bio-waste.
- (5) You must comply with the provisions of this paragraph (h) by [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

3. In § 382.65, add paragraphs (e), (f), (g), and (h) as follows:

§ 382.65 What are the requirements concerning on-board wheelchairs?

* * * * *

- (e) As a carrier, you must ensure that all new single-aisle aircraft that you operate with an FAA-certificated maximum seating capacity of 125 or more that are delivered on or after [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] and on which lavatories are provided include an onboard wheelchair meeting the requirements of this section. The Access Board published nonbinding technical

assistance titled, “Advisory Guidelines for Aircraft Onboard Wheelchairs,” for compliance with these requirements.

- (1) The onboard wheelchair must be maneuverable both forward and backward through the aircraft aisle by an attendant.
- (2) The onboard wheelchair must be maneuverable in a forward orientation partially into at least one aircraft lavatory to permit transfer from the onboard wheelchair to the toilet.
- (3) The onboard wheelchair must be maneuverable into the aircraft lavatory in a backward orientation to permit positioning over the toilet lid without protruding into the clear space needed to completely close the lavatory door.
- (4) The height of the onboard wheelchair seat must align with the height of the aircraft seat so as to facilitate a safe transfer between the onboard wheelchair seat and the aircraft seat.
- (5) The onboard wheelchair must have wheels that lock in the direction of travel, and that lock in place so as to permit safe transfers. Any other moving parts of the onboard wheelchair must be capable of being secured such that they do not move while the occupied onboard wheelchair is being maneuvered.
- (6) When occupied for use, the onboard wheelchair shall not tip or fall in any direction under normal operating conditions.
- (7) The onboard wheelchair must have a padded seat and backrest, and must be free of sharp or abrasive components.
- (8) The onboard wheelchair must have arm supports that are sufficiently structurally sound to permit transfers and repositionable so as to allow for unobstructed transfers;

adequate back support; torso and leg restraints that are adequate to prevent injury during transport; and a unitary foot support that provides sufficient clearance to traverse the threshold of the lavatory and is repositionable so as to allow for unobstructed transfer. All restraints must be operable by the passenger.

- (9) The onboard wheelchair must prominently display instructions for proper use.
- (f) You are not required to expand the existing FAA-certificated onboard wheelchair stowage space of the aircraft, or modify the interior arrangement of the lavatory or the aircraft, in order to comply with this section.
- (g) You are not responsible for the failure of third parties to develop and deliver an onboard wheelchair that complies with a requirement set forth in paragraph (e) of this section so long as you notify and demonstrate to the Department at the address cited in §382.159 that an onboard wheelchair meeting that requirement is unavailable despite your reasonable efforts.
- (h) If you replace an onboard wheelchair on aircraft with an FAA-certificated maximum seating capacity of 125 or more after [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], then you must replace it with an onboard wheelchair that meets the standards set forth in paragraph (e) of this section.

Issued this 16th day of December, 2019, in Washington, D.C. under authority delegated in 49 CFR 1.27(n):

Steven G. Bradbury,

General Counsel.

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