



May 27, 2022

Mr. John E. Putnam  
Deputy General Counsel  
Office of the Secretary  
U.S. Department of Transportation  
1200 New Jersey Ave. SE  
Washington, DC 20590

**RE: DOT-OST-2021-0137, RIN 2105-AE89 - Department of  
Transportation Notice of Proposed Rule Making (NPRM) --  
Accessible Lavatories on Single-Aisle Aircraft: Part 2**

Dear Mr. Putnam:

The National Disability Rights Network (NDRN) is the non-profit membership association of Protection and Advocacy (P&A) agencies that are located in all 50 States, the District of Columbia, Puerto Rico, and the United States Territories. In addition, there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A Network comprises the nation's largest provider of legally-based advocacy services for persons with disabilities, including advocacy on accessible transportation to ensure people with disabilities who want to live in the community can do so.

Air travel is a critical mode of transportation around the United States and the world. However, if aircraft are not accessible for people with disabilities, they will be denied the ability to use this more efficient mode of

transportation to travel for business, pleasure, or medical appointments. Because of this, NDRN has been involved in making air travel accessible for people with disabilities by working on the Air Carrier Access Act (ACAA) from its first introduction. In fact, I was involved in the first negotiated rulemaking in 1988 after the passage of the ACAA in October of 1986. I was also involved in the most recent negotiated rulemaking that occurred in 2016. Finally, other NDRN staff are or have also been on the ACAA Advisory Committee.

In looking over the information sought by the Department, we feel capable of addressing many of the requests, but others we feel are outside our areas of expertise, so we will not answer those questions or requests.

#### A. General

The Department currently requires airlines to ensure that at least one lavatory on twin-aisle aircraft is accessible. To what extent do accessible lavatories on twin-aisle aircraft meet the needs of passengers with disabilities, particularly passengers with mobility impairments?

**RESPONSE:** The actual usability and accessibility of the accessible lavatories in existing twin-aisle aircraft is a mixed bag. Some accessible lavatories are usable by a person with a mobility disability, but the designs of others, NDRN has heard, create barriers to accessibility. NDRN believes the proposed regulatory language referencing what a 95th percentile male should be able to do in an accessible lavatory on a single- aisle aircraft will better ensure an accessible design rather than relying on any reference to the designs of existing accessible lavatories on twin-aisle aircraft.

Are accessible lavatories on twin-aisle aircraft large enough to accommodate an assistant to assist the passenger with transfers between the OBW and the toilet?

**RESPONSE:** NDRN's understanding is that not all existing accessible lavatories on twin-aisle aircraft are large enough to accommodate an assistant to assist passengers with transfers between the On Board Wheelchair (OBW) and the toilet and back onto the OBW.

To what extent are lavatories meeting the size parameters of this proposal already available for installation on single-aisle aircraft?

**RESPONSE:** NDRN is not aware of any lavatories that meet the size parameters of this proposal currently available for installation.

To the extent that such lavatories are available on the market but are not being installed, what are the market forces driving this decision?

**RESPONSE:** NDRN believes that the airlines' fears about the loss of revenue from seats that potentially must be removed to permit the installation of a larger lavatory when flights are full is the force driving decisions to not install an accessible lavatory.

What are the future trends for voluntary adoption of larger lavatories in single-aisle aircraft, particularly given demographic trends tending toward an aging population?

**RESPONSE:** NDRN believes the demographic trend of a larger aging population supports larger accessible lavatories that are accessible to passengers with mobility disabilities.

However, only certain airlines have chosen the slightly larger SpaceFlex V.1 lavatories because the SpaceFlex V.1 permits those airlines that are not concerned about a loss of galley space to ADD a row of 6 seats.

Other airlines have ordered the Bombardier C-Series aircraft, now known as the Airbus A220, which were designed from the outset with a Person with Reduced Mobility (PRM) lavatory. This design does not result in any loss of seats or galley space.

NDRN is aware of some airlines specifically not choosing to order aircraft with PRM lavatories that were offered by Bombardier. For example, Delta did not choose the PRM lavatory for its orders for CRJ-900 with the Atmosphere interior. <https://runwaygirlnetwork.com/2018/07/bombardiers-atmosphere-cabin-looks-great-shame-about-the-delta-seats/>

In fact, some airlines have in recent years opted for even narrower lavatories to gain an extra row of seats when combined with slim line seats and reduced seat pitch. See photo of newer narrow restroom [3-ALCI LAV Internal baseline Update.jpg \(3600x2025\) \(beaerospace.com\)](#)

NDRN wants to make clear that it only supports the currently proposed regulation that provides that an accessible lavatory be of sufficient size to permit both a 95th percentile male to approach, enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's OBW, in a closed space that affords privacy equivalent to that afforded to ambulatory users. The proposed regulation also requires the accessible lavatory be of sufficient size to permit a 95th percentile male to assist in transfers between the toilet and the OBW in a closed space that affords privacy equivalent to that afforded to ambulatory users. NDRN believes that the final regulation must contain both requirements of the proposed regulation.

Would airlines benefit from advertising (or otherwise indicating) that their aircraft have accessible lavatories?

**RESPONSE:** NDRN believes that airlines with the SpaceFlex V.1 lavatories or the Bombardier-designed PRM lavatory would gain market share by advertising that fact. An example would be advertising the availability of these planes in connection with events such as wheelchair sporting events or conventions of people with disabilities who are wheelchair users.

However, we want to be clear that the SpaceFlex V.1 lavatories and the Bombardier-designed PRM lavatories provide a limited degree of increased accessibility only for those wheelchair using passengers who can independently transfer within the tight spaces of the SpaceFlex V.1 or the Bombardier-designed PRM lavatory.

Are carriers able to distinguish themselves in the marketplace based on the availability of accessible lavatories?

**RESPONSE:** NDRN believes air carriers could distinguish themselves in the marketplace based on the availability of the SpaceFlex V.1 or the

Bombardier designed PRM lavatories but the air carriers have for many years not provided that information to the public. In fact, the existence of these somewhat accessible lavatories is probably one of the best kept secrets in air travel

For many years, the airlines that have SpaceFlex V.1 or the Bombardier designed PRM lavatories have failed to post information about the availability of accessible lavatories on their websites. The airlines have apparently also not shared that information with third party sites such as Seat Guru, a website that provides information about the seating accommodations on various airlines aircraft.

None of the seat maps for the U.S. carriers with SpaceFlex V.1 lavatories indicate that they may be accessible for passengers who are able to transfer independently:

[https://www.seatguru.com/airlines/Frontier\\_Airlines/Frontier\\_Airbus\\_A321.php](https://www.seatguru.com/airlines/Frontier_Airlines/Frontier_Airbus_A321.php)

[https://www.seatguru.com/airlines/Frontier\\_Airlines/Frontier\\_Airlines\\_Airbus\\_A320neo.php](https://www.seatguru.com/airlines/Frontier_Airlines/Frontier_Airlines_Airbus_A320neo.php)

[https://www.seatguru.com/airlines/Spirit\\_Airlines/Spirit\\_Airlines\\_Airbus\\_A321\\_V2.php](https://www.seatguru.com/airlines/Spirit_Airlines/Spirit_Airlines_Airbus_A321_V2.php)

[https://www.seatguru.com/airlines/Spirit\\_Airlines/Spirit\\_Airlines\\_NK\\_Airbus\\_A320neo\\_A.php](https://www.seatguru.com/airlines/Spirit_Airlines/Spirit_Airlines_NK_Airbus_A320neo_A.php)

[https://www.seatguru.com/airlines/Spirit\\_Airlines/Spirit\\_Airlines\\_Airbus\\_A320\\_V2.php](https://www.seatguru.com/airlines/Spirit_Airlines/Spirit_Airlines_Airbus_A320_V2.php)

Similarly, the Bombardier-designed PRM lavatories on the seat maps of Delta Airlines that fly the Airbus A220 do not indicate the lavatories may be accessible for passengers able to transfer independently:

[https://www.seatguru.com/airlines/Delta\\_Airlines/Delta\\_Airlines\\_DL\\_Airbus\\_A220-100.php](https://www.seatguru.com/airlines/Delta_Airlines/Delta_Airlines_DL_Airbus_A220-100.php)

Finally, the Seat Guru website did not have a seat map for the Jet Blue A220 when checked earlier today.

On the other hand, the seat map for the Airbus A220 used by the airline Swiss does show an International Symbol of Accessibility (the blue & white wheelchair symbol) for the PRM lavatory on its aircraft: [SeatGuru Seat Map SWISS](#)

A recent search of the websites of U.S. carriers do reflect a little movement towards providing some information about the SpaceFlex V.1 and Bombardier-designed PRM accessible lavatories.

The Jet Blue Airlines website does have fairly detailed accessible lavatory information including dimensions. The website does make clear most of the lavatories are not wheelchair accessible, but it does give additional information about the wheelchair accessibility of the lavatory in its Airbus A220 aircraft using an OBW: [Restroom Info | JetBlue](#)

Spirit Airlines website now has information that some of its aircraft have Spaceflex V-1 lavatories though it is found on the section of its website titled: [Do I have to purchase a seat assignment? · Spirit Support](#)

Delta Airlines website states that its larger aircraft have accessible lavatories but makes no mention of the PRM lavatories on its Airbus A220 aircraft and requires potential passengers to **call** for more information: [Wheelchair Services \(delta.com\)](#)

NDRN was unable to find any information on Frontier's website about the availability of a SpaceFlex V.1 lavatory on any of its aircraft.

If a carrier does have aircraft in its fleet with accessible lavatories, how would passengers with disabilities know or ensure that their specific flight is being operated using an aircraft equipped with an accessible lavatory?

**RESPONSE:** There is currently no way for a passenger with disabilities to know if a specific flight is scheduled to be on an aircraft with a SpaceFlex V.1 or the Bombardier-designed PRM lavatory. More importantly, because of the chance of an aircraft change at the last minute, there is always a possibility that a flight scheduled to be operated by an aircraft with a SpaceFlex V.1 or the Bombardier-designed PRM lavatory will be changed to an aircraft without those lavatories.

This will also continue to be true for multiple years after the adoption of a Final Regulation that would require the installation of a lavatory of sufficient size to accommodate a 95th percentile male and a 95th percentile male assistant because airlines will be operating aircraft with and without the accessible lavatories for an estimated 45 years.

NDRN does not have expertise on the aircraft assigning systems of the air carriers, but we believe the NPRM needs to include provisions to inform passengers in real time, whether the individual aircraft assigned to each flight segment does or does not have a SpaceFlex V.1 or the Bombardier designed PRM lavatory or some other partially accessible lavatory in the near term and a fully accessible lavatory after this NPRM is finalized as a Final Regulation and goes into effect. Such a system should also be able to advise the passenger if there was a last minute aircraft change from an aircraft with an accessible lavatory to an aircraft without an accessible one.

Passengers with disabilities who cannot make a last minute change in their travel plans will still need to continue to make their plans on the assumption that an accessible restroom is not going to be available until all the aircraft in an airline's fleet have fully accessible lavatories.

Are other innovative accessible lavatory options, not discussed in this NPRM, being developed?

**RESPONSE:** NDRN is not aware of any innovative accessible lavatory options.

For example, could a side-by-side aisle-facing lavatory design (such as is found on the Boeing 737-900ER) be adapted (such as by including movable walls) to provide the desired level of accessibility while also preserving both existing galley space and total seating capacity?

**RESPONSE:** NDRN is not familiar with this lavatory design so we have no comment on the benefits or problems with this design.

## B. Time Frame for Adoption

Are these extended implementation timeframes in the NPRM appropriate or necessary? Why or why not?

**RESPONSE:** The long time frame was in part based on the belief by the airlines and aircraft manufacturers that to provide accessible lavatories large enough to accommodate a 95th percentile male with a disability and a 95th percentile male assistant to assist the passenger with transfers between the OBW and the toilet would require a new “clean sheet” design aircraft.

NDRN believes that a new “clean sheet” design single aisle aircraft would start with an assumption of an accessible lavatory large enough to accommodate a person with a disability and an assistant as a requirement for the aircraft fuselage design, similar to the need to provide space for the cockpit, a certain number of exit doors depending on the number of passengers and additional requirements other than seat and galley space. In such a “clean sheet” design, the accessible restroom will be part of the design of the fuselage of the aircraft so that there will be no issue with “lost” seats or “lost” galley space.

The Proposed Rule would require that the expanded lavatory sizes be implemented on qualifying aircraft: (1) that were initially ordered 18 years after the effective date of the final rule implementing the negotiated rulemaking agreement; or (2) that were delivered 20 years after the effective date of such a final rule; or (3) for which an application for a new type-certificate is filed after 1 year from the effective date of the final rule. These terms are consistent with those agreed to in the negotiated rulemaking six years ago.

The Department first proposed conducting a negotiated rulemaking concerning accommodations for air travelers with disabilities regarding several issues, including accessible lavatories in 2015. In May 2016, the Department established the Advisory Committee on Accessible Air Transportation to negotiate and develop a proposed rule. Its members included NDRN, other disability rights organizations, and representatives of major airlines and aircraft manufacturers. During the first meeting, and as noted in the Committee’s Ground Rules, the Department informed the



Advisory Committee that if it came to a consensus on the terms of the proposed rule, the Department “*would act in good faith to issue a proposed rule that reflects those terms as closely as possible.*”

From May 2016 to November 2016, the Advisory Committee met six times. Paralyzed Veterans of America (PVA) was the designated disability leader for accessible lavatories. PVA worked diligently with the facilitators and other Advisory Committee members, including disability advocates, air carriers, and original equipment manufacturers (“OEMs”) to reach consensus on accessible lavatory requirements, including the time frame for implementation. After extensive negotiations, the members of the Committee reached a compromise on implementation times. While NDRN and other disability advocate members had pushed for a ten-year implementation deadline, we ultimately agreed to the longer timeframes for implementation (aircraft ordered 18 years after the effective date of any final rule or delivered 20 years after that same date) to ensure that the rulemaking proceeded. NDRN agreed to the lengthy implementation timeframe determining it was better to have a date certain for access rather than continuing to dispute whether or not lavatories should even be accessible.

During this time, NDRN and the other Advisory Committee members had reason to expect that a Proposed Rule would be published almost immediately after the Advisory Committee finalized its recommendations. Indeed, in July 2016, during the height of the negotiations, Congress enacted the FAA Extension, Safety, and Security Act of 2016 (“FAA Act of 2016”), which directed the Department to move forward with the rulemaking within one year. The Committee adopted its final resolution in November 2016. But the Department did not move forward with the rulemaking as required by Congress. Instead, it delayed the process and moved the accessible lavatories rulemaking to its Spring 2018 long-term agenda. Its Fall 2018 regulatory agenda then removed the rulemaking entirely.

In November 2018, PVA filed a lawsuit challenging the Department’s unlawful delay in promulgating this accessible lavatory rule. Specifically, this suit requested the Court to order the Department to comply with its statutory authority to issue the rulemaking on accessible lavatories. In June 2019, the Department announced that it would move forward with a rulemaking on more limited accessibility issues, but would only request additional information on lavatory size, despite its earlier commitments to

the contrary. It was not until the current Proposed Rule, published nearly six years after the Advisory Committee's consensus recommendation, that the Department met its obligation to move forward with the lavatory accessibility rulemaking.

Specifically, we note that the negotiated rulemaking took place five years ago, in 2016. At that time, the Department expressed its intent to expeditiously issue an NPRM reflecting the stakeholders' Term Sheet. The Term Sheet itself contains compliance dates that are tied to the date that the Department issues a final rule. As discussed below, this unreasonable delay directly impacts the implementation timelines.

How should the Department take into account the lapse of time between the Term Sheet and this NPRM when drafting its final rule?

**RESPONSE:** None of the entities involved in the negotiated rulemaking could have foreseen such an excessive delay, and all should have reasonably expected the compliance deadlines to have begun running several years ago. But as the Department observes, the negotiated rulemaking term sheet ties compliance dates to any final rule.

Nevertheless, the Department should exercise its authority, to subtract the nearly six-year delay in promulgating the Proposed Rule from the 18 and 20 year time frames agreed to by the Advisory Committee. Doing so is necessary to meet the Department's accessibility obligations to air travelers with disabilities. As the Department observes, it is "the affirmative responsibility of the Federal Government to advance equity, civil rights, and equal opportunity for all individuals, including individuals with disabilities."

Air carriers and aircraft manufacturers can hardly complain about a shortened time frame. Many major carriers and both Boeing and Airbus participated in the negotiated rulemaking and agreed to compliance deadlines that should have gone into effect years ago. They have been on notice since 2016 that an expanded lavatory size was coming, and they have had the intervening years to prepare to come into compliance. Considering the excess delays in publishing the Proposed Rule, NDRN encourages the Department to reassess its obligations to ensure a more equitable timeframe for implementation. The millions of individuals with mobility issues stand to benefit.

Are there alternative timeframes that could yield benefits sooner without imposing an undue burden?

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

There is good reason to believe that the potential revenue loss predicted by airlines during the negotiated rulemaking was too high. That revenue loss assumed the increased lavatory size would take up space usually filled by a row of three seats. This is likely an overestimation for a couple of reasons. First, of course, it assumes that every seat will be filled by a passenger---an assumption that is inconsistent with any argument by airlines about reduced demand for travel.

It also fails to take into consideration that the low cost carriers gained six seats by selecting the Spaceflex V.1 lavatories for many of the aircraft in its current fleets.

Second, as the Department discusses, and as the Government Accountability Office (GAO) has described in detail, several alternate accessible designs exist, one of which makes use of space currently allocated to galleys rather than seats.

As DOT observes, carriers with the largest percentage of accessible lavatories in their fleets tend to be low-cost carriers with fewer requirements for galley space. Low cost and ultra-low-cost carriers compete effectively with traditional flagship carriers, despite this limited galley service. These include Frontier Airlines and Spirit Airlines, which compete primarily based on cost. Indeed, these carriers continue to lead U.S. airlines in capacity growth despite their higher percentage of accessible lavatories. And Delta Airlines acknowledged that its biggest competition in domestic operations is pricing from lower-cost carriers. The success of these low and ultra-low

cost airlines over recent years strongly suggests that robust galley services are not essential for airlines to succeed in the current market.

Nor should DOT extend compliance dates in response to complaints by airlines about the general state of the air travel industry. Airlines for America recently reported that the airline industry is steadily improving especially as to domestic air travel (which is most relevant to single aisle aircraft). And, of course, the airlines received massive financial support from the government during COVID-19 pandemic, more than any other industry impacted by COVID-19.

Are new type-certificated single-aisle aircraft currently being developed that would include lavatories of the size equivalent to that proposed here (i.e., lavatories that are large enough to permit a passenger with a disability to approach, enter, and maneuver within the aircraft lavatory with the help of an assistant if needed)?

**RESPONSE:** NDRN is not aware of any single-aisle aircraft currently being developed that would include lavatories of the size equivalent to that proposed here. There is a commercial single aisle passenger aircraft in development, the Russian Irkut MC-21 that has a 4 meter, 6 centimeter wide fuselage which is 11 cm (4.3 in) wider than the Airbus A320 and 27 cm (11 in) wider than the Boeing 737. The slightly wider fuselage might make providing an accessible lavatory on the MC-21 slightly less challenging, but NDRN has no information about what lavatory design the MC-21 has.

If so, when and how would such aircraft be placed into service?

**RESPONSE:** NDRN has no knowledge on the timing of placing these aircraft in service.

What share of the total commercial aircraft fleet and available seat miles would be represented by such aircraft at different points in the future?

**RESPONSE:** Because of the sanctions placed on Russia as a result of its war against Ukraine, NDRN believes the Irkut MC-21 will not enter the U.S.

market for many years, if ever.

Do any new type-certificated single-aisle aircraft include lavatories that would not be large enough to accommodate an assistant but large enough to permit a passenger equivalent in size to a 95th percentile male to enter the lavatory using the OBW, transfer between the OBW and the toilet, use all facilities within a closed space that affords privacy equivalent to that afforded to ambulatory users, and exit using the OBW?

**RESPONSE:** Yes, as discussed above, the side-by-side folding wall Airbus Spaceflex V. 1 lavatory does come very close to permitting a passenger equivalent to the 95th percentile male to enter the lavatory using the OBW, transfer between the OBW and the toilet and use all facilities with a closed space that affords equivalent privacy and exit using the OBW.

The Person with Reduced Mobility (PRM) lavatory in the Bombardier CS100/CS300 now the Airbus A220 may also come close to permitting a passenger equivalent to the 95th percentile male to enter the lavatory using the OBW, transfer between the OBW and the toilet and use all facilities with a closed space that affords equivalent privacy and exit using the OBW. However, NDRN has not had any staff or consultants use the Bombardier designed PRM lavatory so our assessment is based on Bombardier's presentation during the negotiated rulemaking process.

Bombardier also designed a PRM lavatory as part of its Atmosphere interior for its CRJ-900 aircraft, see: <https://www.flightglobal.com/analysis/analysis-bombardier-innovates-with-crj900-cabin/131773.article>, but we have no additional information about this lavatory so NDRN cannot say if that lavatory could accommodate a 95th percentile male.

Do lavatories of this size already exist in the marketplace?

**RESPONSE:** As noted above the Spaceflex V.1 lavatory probably meets the standard and exists in Frontier, Spirit and 10 Alaska Airlines aircraft (obtained when Alaska merged with Virgin America Airlines).

Also as noted above, the Bombardier-designed PRM lavatory in the now

Airbus A220 fleet of Delta Airlines as well as Jet Blue Airlines A220s may meet the unassisted 95th percentile male passenger requirement.

What is a realistic timeframe for implementation of this alternative for a lavatory that would not accommodate an assistant?

**RESPONSE:** NDRN firmly opposes this alternative of a lavatory that is not large enough to accommodate both a 95th percentile male and a 95th percentile male assistant because it does not meet the needs of many people with disabilities.

A major factor in NDRN's decision to support the 18 and 20 year timeframe was that the airlines and aircraft manufacturers insisted that time frame was needed to produce a new "clean sheet" aircraft that could provide a lavatory large enough to accommodate passenger and an assistant to help in transfers.

If it is feasible to install lavatories that are large enough to accommodate a person with a disability unassisted on an earlier schedule than lavatories that are large enough to accommodate a person with a disability assisted and unassisted, would that be more beneficial to persons with disabilities? Why or why not?

**RESPONSE:** NDRN does believe it is feasible to install lavatories large enough to accommodate a person with a disability unassisted on an earlier schedule because the SpaceFlex V.1 or the Bombardier-designed PRM lavatory have been installed in current single aisle aircraft.

However, NDRN opposes any change in the Proposed Regulation that would not continue to mandate a lavatory of sufficient space to accommodate both a 95th percentile male and a 95th percentile male assistant.

NDRN believes since the airlines and aircraft manufacturers agreed in the Negotiated Rulemaking for a lavatory large enough to accommodate a 95th percentile male and a 95th percentile male assistant based on the longer timeline, that what the Final Rule should provide this because the size is needed by many people with disabilities.

Should the Department adopt a different tiered or phased model for implementation?

**RESPONSE:** No. The proposed rule only requires new aircraft ordered or delivered after a certain date to include a fully accessible lavatory, so the availability of fully accessible lavatories on the entire fleet of single aisle aircraft will likely take 45 years as noted in the NPRM. No additional tiered or phased models are needed.

For example, should the Department require tiered implementation of accessibility standards for different sizes of carriers, different sizes of aircraft, aircraft used for longer routes or aircraft used for routes that are busier than others?

**RESPONSE:** No. All airlines should have to comply with the rule for new ordered aircraft beginning with the effective date of the rule.

Should implementation of accessibility standards be phased in or should requirements be scoped based on the scheduled flight time?

**RESPONSE:** No. NDRN would suggest as a best practice, airlines should prioritize assigning aircraft with accessible lavatories to longer scheduled flight time.

What are the pros and cons of these various approaches?

NDRN believes that use of lavatories is going to be more prevalent on longer flights so prioritizing accessible lavatories on those flights makes sense.

Is it appropriate to focus implementation of accessibility standards first on the entities that would be least burdened?

**Response:** No, NDRN believes the rule should be uniformly applied to all

airlines.

### C. Applicability

The agreement of the ACCESS Advisory Committee would apply the requirement for an accessible lavatory only to aircraft with maximum seating capacity of 125 seats or more. We seek comment on this recommended standard. Should the threshold for requiring an accessible lavatory be higher or lower than 125 seats?

**Response:** Given NDRN's participation in the negotiated rulemaking, we are bound by the agreement to keep to the 125 threshold.

How would the application of a different threshold affect the potential costs and benefits of the rule?

**Response:** Given the answer above, we have no comment on this question.

The airlines' and manufacturers' analysis also presented information on the percentage of available seat miles (ASMs) on single-aisle aircraft on flights over 2 hours and over 3 hours in duration.

However, the ACCESS Advisory Committee ultimately did not recommend setting a performance-based standard that would limit the applicability of the requirement for an accessible lavatory only to aircraft used on flights with a scheduled duration. It is the Department's understanding from discussions during the ACCESS Advisory Committee proceedings that both airlines and advocates favored the seating-capacity approach over the scheduled-duration approach because the Committee believed that seating-capacity approach provides greater predictability as to when accessible lavatories would be available, particularly in cases of unexpected aircraft swaps.

Therefore, the Department seeks updated comment on this conclusion.

**Response:** NDRN has no updated or additional comments on this issue.



How can the rule be framed to provide the greatest predictability as to when accessible lavatories would be available for disabled passengers?

**Response:** As stated earlier, NDRN suggests that the Final Rule include a provision that airlines provide real time information to passengers about whether the passenger's specific flight is scheduled to be operated by an aircraft with a fully accessible lavatory and to update the passenger in real time of any changes.

As NDRN noted, passengers without flexibility in their schedules will probably still need to plan for the worst case contingency that there will be a last minute change from an aircraft with a fully accessible lavatory to an aircraft without a fully accessible lavatory.

#### D. Economic Information -

The Department seeks information to help it better understand the benefits of the rule, including data that would assist it in quantifying and/or monetizing those benefits.

Relevant information to estimate benefits for people with disabilities includes the number of travelers with disabilities, estimates of latent air travel demand for people who do not currently travel due to inaccessible lavatories, and the associated costs to individuals from practices such as dehydrating or holding bodily functions for extended periods. Other relevant information includes information to quantify benefits for other passengers, who may benefit from having the additional space in accessible lavatories, as well as the public, who may derive value from ensuring that people who need accessible lavatories on flights have them. Data on passenger use of lavatories for flights of varying duration would also be useful.

**Response:** While NDRN is aware of anecdotal information from our staff with disabilities and others, NDRN is not aware of quantifiable information to help answer this question.

In the regulatory analysis, the Department assumed that aircraft

ordered with accessible lavatory features had identical costs to aircraft ordered without accessible lavatories.

The Department seeks information on whether any cost differential exists between the two types of aircraft and how that differential compares with the total cost of new aircraft.

**Response:** NDRN believes any build cost differentials will be negligible.

What are the benefits of basing the size of a lavatory that accommodates a passenger with a disability and an attendant equivalent on the size of a 95th-percentile male?

**Response:** Using the 95th-percentile male with a disability and an attendant equivalent on the 95th-percentile male will accommodate the largest percentage of people with disabilities so that air travel for them will be as accessible as to people without disabilities.

Again, thank you for allowing us to comment on this NPRM. Please contact Claire Stanley, Public Policy Analyst, at [Claire.stanley@ndrn.org](mailto:Claire.stanley@ndrn.org) should you have any questions or concerns with these comments.

Sincerely,



Curtis L. Decker  
Executive Director