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Washington, DC 20548

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August 15, 2023

The Honorable Maria Cantwell  
Chair  
The Honorable Ted Cruz  
Ranking Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Sam Graves  
Chairman  
The Honorable Rick Larsen  
Ranking Member  
Committee on Transportation and Infrastructure  
House of Representatives

Subject: *Department of Transportation, Office of the Secretary: Accessible Lavatories on Single-Aisle Aircraft*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Transportation, Office of the Secretary (DOT) titled "Accessible Lavatories on Single-Aisle Aircraft" (RIN: 2105-AE89). We received the rule on August 2, 2023. It was published in the *Federal Register* as a final rule on August 1, 2023. 88 Fed. Reg. 50020. The effective date is October 2, 2023.

According to DOT, it is issuing a final rule to amend its Air Carrier Access Act regulation to improve the accessibility of lavatories on single-aisle aircraft. See Pub. L. No. 99-435, 100 Stat. 1080 (Oct. 2, 1986). DOT stated that this final rule is intended to ensure that our air transportation system is safe and accessible to individuals with disabilities.

Enclosed is our assessment of DOT's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Robert M. Gorman  
Senior Trial Attorney  
Department of Transportation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF TRANSPORTATION,  
OFFICE OF THE SECRETARY  
TITLED  
“ACCESSIBLE LAVATORIES ON SINGLE-AISLE AIRCRAFT”  
(RIN: 2105-AE89)

(i) Cost-benefit analysis

The Department of Transportation, Office of the Secretary (DOT) provided an economic analysis for this final rule. DOT estimates the benefits over 2023 through 2067 to be \$1 billion at a 3 percent discount rate or \$571 million at a 7 percent discount rate. DOT stated that the loss of three passenger seats per aircraft results in societal costs that include lost producer surplus due to the reduction in the number of passengers transported and the value of lost consumption. DOT also stated that there also are resource costs due to manufacturing and designing improved lavatories and on-board wheelchairs as well as for flight attendant training. DOT estimates the cost analyzed over 2023 through 2067, to be \$459 million at a 3 percent discount rate or \$228 million at a 7 percent discount rate. DOT noted that the rule also could result in a transfer from passengers to airlines due to airlines increasing airfares in response to the reduced supply of seats. Lastly, DOT stated that the annualized transfers estimated for the primary analysis are \$2.2 billion at a 3 percent discount rate or \$1.1 billion at a 7 percent discount rate.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

DOT certified that this final rule will not have a significant impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

DOT stated that the final rule is unlikely to result in annual expenditures by state, local, or tribal governments of \$165 million (\$100 million, adjusted for inflation) or more. However, DOT estimated that the final rule could result in costs to the airline industry that may exceed \$165 million annually.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On January 2, 2020, DOT published a notice of proposed rulemaking (NPRM) relating to short-term improvements. 85 Fed. Reg. 27 (NPRM Part 1). DOT stated that it received 336 comments on NPRM Part 1 during the original comment period. On December 16, 2021, DOT and the Architectural Transportation Barriers and Compliance Board held a joint public meeting. DOT stated, as a result of the public meeting, it reopened the comment period for NPRM Part 1. DOT noted that it received 12 comments from individuals and stakeholders

during this period. On March 28, 2022, the Department issued an NPRM regarding long-term accessibility improvements. 87 Fed. Reg. 17215 (NPRM Part 2). DOT addressed comments from NPRM Parts 1 and 2 and the public meeting throughout the section-by-section analysis of the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

DOT stated that it has not yet published a notice of the proposed information collection because the information will not be required until three years after the effective date of the final rule.

Statutory authorization for the rule

DOT promulgated this final rule pursuant to sections 41702, 41705, 41712, and 41310 of title 49, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

DOT determined that this final rule is economically significant under the Order, as amended, and noted that it was submitted to the Office of Management and Budget for review.

Executive Order No. 13132 (Federalism)

DOT stated that this final rule does not include any provision that imposes substantial direct compliance costs on state and local governments or preempts state law. DOT explained that states are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. § 41713. Therefore, according to DOT, the consultation and funding requirements of Executive Order 13132 do not apply.