

Policy Blueprint: Improving the Passenger Airline Experience

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Introduction

Flying has become increasingly miserable. For passengers, the combination of smaller seats, high prices, few choices, junk fees, and flight connections—with the possibility of delays and cancellations—has made the experience increasingly frustrating. In this policy blueprint, we propose policies that set minimum seat sizes for all passengers, make it easier for parents to travel safely with infants, ensure that strollers are accepted as carry-ons, and enable persons in wheelchairs to sit in their chairs on the plane. Together these proposals would make flying less miserable, safer, and more convenient for passengers.

This policy blueprint builds on a previous VPA whitepaper, *How to Fix Flying: A New Approach to Regulating the Airline Industry*, by VPA director Ganesh Sitaraman and William McGee of the American Economic Liberties Project,¹ and on WHY FLYING IS MISERABLE: AND HOW TO FIX IT, by Ganesh Sitaraman.² Those works offer a history of airline regulation and deregulation, identify a wide range of contemporary problems with air travel—include market structure, geographic inequality, and other issues—and suggest solutions to addressing those problems. This blueprint focuses more narrowly, and deeply, on reforms to improve the airline passenger experience.

Addressing Shrinking Seat Size

Over the past several decades, airlines have shrunk the size of economy class seats on domestic flights. In particular, seat pitch—the distance from a plane seat to the seat in front or behind it—has shrunk considerably since the 1980's.³

¹ William J. McGee & Ganesh Sitaraman, *How to Fix Flying: A New Approach to Regulating the Airline Industry*, Vanderbilt Policy Accelerator (Jan. 2024), <https://cdn.vanderbilt.edu/vu-sub/wp-content/uploads/sites/281/2024/01/26143159/20240124-AELP-airlines-final.pdf>.

² Ganesh Sitaraman, *WHY FLYING IS MISERABLE: AND HOW TO FIX IT* (2023).

³ See William J. McGee, *Shrinking Economy Airline Seats Are Dangerous for Passengers, According to an Aviation Expert*, *Condé Nast Traveller* (Dec. 24, 2022), <https://www.cntraveler.com/story/airline-seat->

sizes are uncomfortable and unsafe for passengers, and can cause in-cabin conflicts between passengers.⁴

Both Congress and the Department of Transportation (DOT) have tried—and failed—to address small seat sizes in recent years. When Congress reauthorized the Federal Aviation Administration (FAA) in 2018, it directed the FAA to establish within a year “minimum dimensions for passenger seats . . . that are necessary for the safety of passengers.”⁵ By 2021, well past the statutory deadline, the FAA had studied the effect of small seat sizes on airplane evacuation times during simulated emergencies and concluded that “evacuations at a narrow seat pitch are safe for virtually all (99%) of the able-bodied population.”⁶ However, the study provided “useful, but not necessarily definitive information” regarding the safety of current seat sizes because the study did not include “children, individuals over 60, and individuals with disabilities.”⁷ In the 2024 FAA Reauthorization, Congress directed the FAA to initiate a rulemaking to set minimum seat dimensions for the purpose of safety.⁸ However, the new directive does not direct the FAA to take comfort into account,⁹ lets the FAA take no action if it chooses,¹⁰ and may still run into the problem of insufficient evidence linking seat sizes and safety.¹¹

[sizes-safety-risks-op-ed](#) (“The Big Four domestic carriers—American, Delta, Southwest, and United—have lost anywhere from 2 inches to 5 inches in legroom pitch.”).

⁴ See *FlyersRights Files Minimum Seat Rulemaking with the FAA*, FlyersRights (Oct. 7, 2022), <https://flyersrights.org/f/flyersrights-files-minimum-seat-rulemaking-with-the-faa> (citing risks to “emergency evacuations” and “fatal deep vein thrombosis,” inadequate room for “the brace position in crash landings” as health problems stemming from small seat sizes).

⁵ FAA Reauthorization Act of 2018, Pub. L. No. 115-254, § 577, 132 Stat. 3186, 3394 (2018).

⁶ David B. Weed, Melissa S. Beben, David J. Ruppel, Kelly J. Guinn & Susan M. Jay, *Effects of Airplane Cabin Interiors on Egress I: Assessment of Anthropometrics, Seat Pitch, and Seat Width on Egress* 43 (Jan. 2021), https://www.faa.gov/sites/faa.gov/files/2022-04/Effects_of_Airplane_Cabin_Interiors_on_Egress_I.pdf.

⁷ Letters from Steve Dickson, Administrator, Fed. Aviation Admin. (Mar. 31, 2022), <https://www.faa.gov/sites/faa.gov/files/2022-03/PL-115-254-Sec-337-Aircraft-Cabin-Evacuation-Standards.pdf>.

⁸ FAA Reauthorization Act of 2024, Pub. L. No. 118-63, § 519(1) (2024).

⁹ *Id.*

¹⁰ See *id.* § 519(2) (“[I]f the Administrator decides not to pursue the rulemaking . . . the Administrator shall brief appropriate committees of Congress on the justification of such decision.”).

¹¹ See, e.g., *In Re: Flyers Rights Education Fund, Inc.*, 61 F.4th 166, 169 (D.C. Cir. 2023) (“[T]he FAA Reauthorization Act speaks only of seat-size regulations that ‘are necessary for the safety of passengers,’ and on the record before us, the necessity of those regulations is neither clear nor indisputable.”).

Proposal

To address shrinking seat sizes, Congress should simply direct the FAA to establish minimum seat sizes, and it should not tether that directive solely to safety, to particular studies, or to other authorities that the DOT can cite to justify further inaction. To do so, Congress could adopt the following provision, modified from the text of the Federal Authorization Act of 2018,¹² and added to 49 U.S.C. Chapter 417 Subchapter I:

49 U.S. Code § 41727 -*Minimum dimensions for seat sizes.*
Not later than 1 year after the date of enactment of this Act and after providing notice and an opportunity for comment, the Federal Aviation Administration shall issue regulations that establish minimum dimensions for passenger seats on aircraft operated by air carriers in interstate air transportation or intrastate air transportation, including minimums for seat pitch, width, and length, that ensure the comfort and safety of passengers, crew, and the in-cabin experience. To determine what minimum sizes are comfortable, the FAA should consider data on the physical dimensions of Americans (e.g. height, weight), the degree to which seats can lean backwards; access and convenience for infants in approved child restraint systems, children, individuals over 60, and individuals; and any other factors the Secretary of Transportation deems relevant.

In the meantime, DOT should explore its authority to promulgate a rule, pursuant to its mandate to provide for “safe *and adequate* interstate air transportation,”¹³ that specifies minimum seat sizes. The rule would be added to 14 C.F.R. Part 125¹⁴ Subpart E.¹⁵

¹² See FAA Reauthorization Act of 2018, Pub. L. No. 115-254, § 577, 132 Stat. 3186, 3394 (2018).

¹³ 49 U.S.C. § 41702. DOT has previously relied on the statutory term “adequate” to govern the quality and kind of service provided. See, e.g., *Diefenthal v. C. A. B.*, 681 F.2d 1039, 1047–48 (5th Cir. 1982) (upholding smoking bans as an exercise of the power to ensure “adequate” service). See also *Use of Electronic Cigarettes on Aircraft*, 81 Fed. Reg. 11415, 11420 (2016) (also relying on the “adequate” prong to regulate electronic cigarettes).

¹⁴ This Part is titled “Aircraft Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6,000 Pounds or More; and Rules Governing Persons on Board Such Aircraft.”

¹⁵ This subsection is titled “Special Airworthiness Requirements.”

Ensuring Safe and Affordable Travel with Infants

Passengers flying with infants are forced to pick between traveling with their infant in their lap, which is free but unsafe, and paying full-price for an extra seat for their infant's child restraint system (CRS), such as an FAA-approved car seat, a prospect that is safe but may be cost-prohibitive.

Under current DOT regulations, passengers are permitted to travel with an infant in their laps.¹⁶ However, this rule contradicts advice from the National Transportation Safety Board,¹⁷ flight attendant unions,¹⁸ pediatrician organizations,¹⁹ aviation safety experts,²⁰ and even the FAA: "The safest place for your child under the age of two on a US airplane is in an approved child restraint system (CRS) or device, not in your lap."²¹ The findings of a 2019 study analyzing records of in-flight medical events between January 2009 and January 2014 show that lap infants were involved in 2,017 medical events, comprising 16.5% of pediatric medical events, or 1.8% of all medical events.²²

Even though infants are permitted to travel in CRSs, DOT regulations require that CRSs be secured to a separate seat.²³ Regulations do not mandate reduced fares for such seats, nor do domestic airlines seem to offer reduced fares as a matter of

¹⁶ 14 C.F.R. § 121.311(b)(1).

¹⁷ *Safety Alert: Child Passenger Safety on Aircraft*, National Transportation Safety Board, <https://www.nts.gov/Advocacy/safety-alerts/Documents/SA-015.pdf> (Dec. 2015). The National Transportation Safety Board is the independent federal agency responsible for investigating transportation accidents.

¹⁸ See, e.g., Patricia A. Friend, *Written Submission, NTSB Child Passenger Safety Forum*, Association of Flight Attendants-CWA Air Safety, Health and Security Department (Dec. 9, 2010), http://ashsd.afacwa.org/docs/CRSForum9Dec2010_Friend_Written.pdf.

¹⁹ See, e.g., American Academy of Pediatrics, Committee on Injury and Poison Prevention, *Restraint Use on Aircraft*, 108 *Pediatrics* 1218 (2001).

²⁰ *Child Restraint Systems and Airline Travel*, Aerospace Medical Association (Jul. 3, 2013), <https://www.asma.org/asma/media/asma/Travel-Publications/Child-Restraint-Systems-and-Airline-Travel-3-July-2013.pdf>.

²¹ *Flying with Children*, Federal Aviation Administration (Sept. 8, 2023), www.faa.gov/travelers/fly_children.

²² Paulo M. Alves et. al, *In-Flight Injuries Involving Children on Commercial Airline Flights*, 35 *Pediatric Emergency Care* 687 (2019). It is notable that the National Transportation Safety Board collects data on "aircraft accidents," 49 C.F.R. § 830.2, but does not collect information about the age of passengers injured in aircraft accidents. Additionally, for a passenger injury to be considered an "aircraft accident," the person must have suffered "death or serious injury"; NTSB's data would not reflect minor injuries. *Id.* It is therefore difficult to find comprehensive, reliable data on in-flight infant injuries.

²³ 14 C.F.R. § 121.311(b)(2).

practice.²⁴ Passengers traveling with infants therefore face the difficult decision of choosing between free travel and safety for their children.

Proposal

To address the potentially high cost of seats for infants, passengers should have the option of purchasing an adjacent economy airline seat for an infant in a CRS for only a nominal fee, similar to child-fares that exist in other areas of the economy. Congress could pass a law that requires airline operators to offer passengers the option of purchasing a seat for an infant in a CRS for \$50, adjusted for inflation and rounded to the closest \$5 every three years. The starting price could be set anywhere, but we suggest \$50 as an affordable rate. The text would amend 49 U.S.C. Chapter 417 Subchapter I.

49 U.S. Code § 41728 - *Infant seat fare limit.*

(a) A covered air carrier shall not charge more than \$50 for a seat intended to be occupied by a child under the age of two using a child restraint system.

(b) The Federal Aviation Administration will review the infant seat fare limit prescribed in subsection (a) every three years. The Administration will use the Consumer Price Index for All Urban Consumers as of July of each review year to calculate the revised infant seat fare limit amount. The Administration will use the following formula: $\$50 \times (a/b)$ rounded to the nearest \$5, where a = July CPI-U of year of current adjustment and b = the CPI-U figure in March 2024 when the inflation adjustment provision was added to this part.²⁵

²⁴ See, e.g., *Fares & Discounts*, <https://www.delta.com/us/en/booking-information/fare-classes-and-tickets/fares-and-discounts> (last accessed Mar. 21, 2024) (“Delta does not offer discounted-infant or -child fares for travel within the U.S.”).

²⁵ This language mirrors the language in regulations that direct the DOT to adjust the domestic baggage liability amount for inflation. See 14 C.F.R. § 254.6.

Making it Easier to Fly with a Stroller

Airlines are required, by statute, to provide passengers traveling with a child in a stroller the ability to check the stroller in at the departure gate.²⁶ But for parents, carrying-on a stroller is both more convenient and less risky than checking it. Carrying-on a stroller means that parents neither have to wait for it, nor risk that it is damaged or lost in transit. Indeed, multiple companies produce travel-appropriate strollers that, when collapsed, fit within the carry-on size of most aircraft.²⁷

Despite the convenience of carrying on a stroller, neither statutes nor regulations dictate whether airlines are required to allow passengers to carry-on strollers—and the airlines themselves do not clearly allow carry-on-sized strollers to be carried-on. All four major domestic airlines, American, Delta, Southwest, and United, allow passengers to check in one stroller free of charge for every child they are traveling with, without having the stroller counted towards the baggage allowance.²⁸ United is the only carrier that explicitly allows passengers to bring strollers as carry-on;²⁹ the other major airlines do not clearly indicate whether strollers are permitted as carry-ons.³⁰

When checking-in strollers, damage is also an ever-present possibility. Department of Transportation (“DOT”) regulations prevent airlines from completely eliminating liability for “the disappearance of, damage to, or delay in delivery of a

²⁶ See 49 U.S.C. § 41726(a). See also *id.* § 41726(b) (providing an exception where “the size or weight of the stroller poses a safety or security risk”).

²⁷ See, e.g., YOYO2, Babyzen, <https://www.babyzen.com/pages/yoyo2-stroller-birth> (“Folded cabin baggage dimensions.”).

²⁸ See, e.g., *Traveling with Little Ones: The Logistics*, Southwest Airlines, <https://community.southwest.com/t5/Knowledge-Base/Traveling-with-Little-Ones-The-Logistics/tap/91231/highlight/true> (“Customers with children are allowed to check one stroller and one car seat without charge.”).

²⁹ See *Traveling with children*, United Airlines, <https://www.united.com/en/us/fly/travel/accessibility-and-assistance/traveling-with-children.html> (allowing as additional, free carry-on baggage “compact folding stroller[s] that meets carry-on bag size guidelines when collapsed”).

³⁰ See, e.g., *Traveling with children*, American Airlines, <https://www.aa.com/i18n/travel-info/special-assistance/traveling-children.jsp> (“Strollers over 20 lbs / 9 kgs must be checked at the ticket counter All other strollers should be checked at the gate before boarding.”); *Children & Infant Items*, Delta Air Lines, <https://www.delta.com/us/en/baggage/special-items/children-infant-items> (stating only that customers “can easily check [strollers]” before going through security or at the gate); Southwest Airlines, *supra* note 15 (stating only that customers can check strollers in). One of us called Delta and Southwest and were told, however, by customer service that the airline would permit strollers to be carried-on, assuming they met the size requirements.

passenger's personal property,"³¹ but the regulations do not seem to prevent airlines from wholly disclaiming liability for certain items, including for strollers.³² While United is the only carrier that explicitly disclaims liability for damage to strollers,³³ the carriage contract terms for the other three airlines are arguably capacious enough that those airlines can similarly disclaim liability as well.³⁴

Y = Yes, ? = Maybe, N = No

Stroller Policy	American	Delta	Southwest	United
Complimentary check-in	Y	Y	Y	Y
Airline liable for damage	?	?	?	N
Allowed as carry-on	?	?	?	Y

Table 1: Airline stroller policies.

Proposals

To improve the passenger travel experience, passengers should be permitted to bring strollers on board without having the strollers count toward the carry-on baggage allowance, so long as the strollers comply with the carry-on size that airlines require for in-cabin luggage. Congress could enact this policy by amending 49 U.S.C. § 41726(a) to read as follows:

(a) IN GENERAL.—

Except as provided in subsection (b), if a stroller is being used by a passenger to transport a child traveling on the same flight as the

³¹ 14 C.F.R. § 254.4.

³² See, e.g., *Contract of Carriage Document* at Rule 28.K.3.ad, United Airlines (Feb. 16, 2024), <https://www.united.com/en/us/fly/contract-of-carriage.html> (disclaiming liability for “the loss of, damage to, or delay to” “strollers”).

³³ United Airlines, *supra* note 15.

³⁴ See, e.g., *Contract of Carriage: U.S.* at Rule 17.B.2, Delta Airlines (“Delta is not liable . . . for wear and tear resulting from ordinary handling of baggage.”), <https://www.delta.com/us/en/legal/contract-of-carriage-dgr>. At the very least, passengers would need to go through a claims process to receive any compensation. See, e.g., *Baggage Claim Form*, Delta Airlines, <https://www.delta.com/bags/claimLanding.action>.

passenger, a covered air carrier shall not deny the passenger the ability to:

- (i) check the stroller at the departure gate; or
- (ii) bring the stroller on board without having the stroller count toward the carry-on baggage allowance, provided that the dimensions of the stroller, or of the collapsed stroller, meet the carry-on baggage requirements of the covered carrier.

DOT should also add a row or section to its Customer Service Dashboard,³⁵ without waiting for Congress to act, to track which airlines allow passengers to bring strollers on board without having the strollers count towards the carry-on baggage allowance.

To ensure that passengers are adequately compensated for mishandling of checked in strollers, airlines should be prohibited from disclaiming liability. Congress could enact this policy by adding the following provision to 49 U.S.C. § 41726:

(d) STROLLER LIABILITY FOR COVERED CARRIERS.—

(i) When checking a stroller at the departure gate pursuant to subsection (a), a covered carrier is required to affix to the stroller a tag that states the following: “If the stroller is damaged, delayed, or lost in transit, you are entitled to up to \$500 compensation, based on the retail price of your stroller.”

(ii) Every three years, the Federal Aviation Administration will prescribe a new stroller liability limit amount which shall apply in lieu of the amount contained in subsection (d)(i). The Administration will use the Consumer Price Index for All Urban Consumers as of July of each review year to calculate the revised stroller liability limit amount. The Administration will use the following formula: $\$500 \times (a/b)$ rounded to the nearest \$5, where $a =$ July CPI-U of year of current adjustment and $b =$ the CPI-U figure in March 2024 when the inflation adjustment provision was added to this part.

Alternatively, DOT could promulgate a rule that updates 14 C.F.R. § 254.4, the carrier baggage liability regulation, to read as follows:

³⁵ *Airline Customer Service Dashboard*, Department of Transportation, <https://www.transportation.gov/airconsumer/airline-customer-service-dashboard>.

CFR § 254.4 - *Carrier Liability*.

(a) On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than \$3,800 for each passenger.

(b) STROLLER LIABILITY.

(i) When checking a stroller at the departure gate pursuant to 49 U.S.C. § 41726(a), a covered carrier is required to affix to the stroller a tag that states the following: "If the stroller is lost, delayed, or damaged, you are entitled to compensation based on the retail price of your stroller."

(ii) Every three years, the Federal Aviation Administration will prescribe a new stroller liability limit amount which shall apply in lieu of the amount contained in subsection (b)(i). The Administration will use the Consumer Price Index for All Urban Consumers as of July of each review year to calculate the revised stroller liability limit amount. The Administration will use the following formula: $\$500 \times (a/b)$ rounded to the nearest \$5, where a = July CPI-U of year of current adjustment and b = the CPI-U figure in March 2024 when the inflation adjustment provision was added to this part.

Strengthening protections for wheelchair and assistive device users

Wheelchair users have long argued that existing statutes and regulations do not provide them with adequate protections, and that passenger injuries and damage to wheelchairs are commonplace.³⁶ Moreover, the current system is fundamentally flawed in that it does not give users the option of traveling via their own wheelchairs. For wheelchair users, a broken wheelchair is not just expensive and inconvenient to replace. It means an inability to get around independently—including immediately upon arrival to their destination.

³⁶ See, e.g., *Take Back Our Air Travel Rights*, United Spinal Association, https://unitedspinal.org/pdf_advocacy/ROCH2023_Issue_Paper_Air_Travel_Rights.pdf.

The Air Carrier Access Act (ACAA)³⁷ prohibits airlines from discriminating against individuals on the basis of “a physical or mental impairment that substantially limits one or more major life activities.”³⁸ DOT is required to investigate complaints of ACAA violations, publish disability complaint data, and make available “appropriate technical assistance manuals” to individuals protected by the ACAA.³⁹

DOT has also promulgated regulations that clarify and lay out the airlines’ specific obligations under the ACAA.⁴⁰ Aircraft that fit more than 100 passengers must have priority stowage space for storing at least one typical adult, folding wheelchair.⁴¹ Airlines must allow passengers to bring wheelchairs aboard, provided they can be stowed away in the priority storage space or in other spaces in a manner consistent with other regulations.⁴² Wheelchairs brought on board cannot count toward the carry-on baggage allowance.⁴³ If a wheelchair cannot fit on board, carriers are required to check it in.⁴⁴ Wheelchairs get priority stowage in the baggage compartment.⁴⁵ Wheelchairs must be checked in and returned “as close as possible to the door of the aircraft.”⁴⁶ Importantly, airlines are not allowed to limit their liability for “loss, damage, or delay concerning wheelchairs” in the same way that they can limit their liability for other personal baggage.⁴⁷

However, wheelchair users still face many challenges when flying, partly due to deficiencies in the ACAA and its implementing regulations. As an empirical matter, DOT reporting indicates that wheelchairs are mishandled at a rate of 1.2%—about three times the mishandling rate for baggage.⁴⁸ The United Spinal Association, a non-profit disability rights and veterans service organization, has pointed out that “inadequate training for airline and contractor personnel” and “inaccessible airplanes” cause injuries for passengers in wheelchairs and delays in travel.⁴⁹ “People with disabilities typically

³⁷ 49 U.S.C. § 41705.

³⁸ *Id.* § 41705(a).

³⁹ *Id.* § 41705(c)(4)(B).

⁴⁰ See 14 C.F.R. Part 382. The rest of this section discusses only “wheelchairs” but the same regulations apply to “other mobility devices” and “other assistive devices” as well.

⁴¹ See *id.* § 382.67(a).

⁴² *Id.* § 382.121(a).

⁴³ *Id.* § 382.121(b).

⁴⁴ See *id.* § 382.125(c).

⁴⁵ *Id.* § 382.125(b).

⁴⁶ *Id.* § 382.125(d).

⁴⁷ *Id.* § 382.131. See also *supra* pp. 5–6 (discussing liability rules as applied to strollers).

⁴⁸ *Air Travel Consumer Report*, Department of Transportation 36–39 (Jan. 2024), <https://www.transportation.gov/sites/dot.gov/files/2024-02/January%202024%20ATCR.pdf>.

⁴⁹ *Take Back Our Air Travel Rights*, United Spinal Association, https://unitedspinal.org/pdf_advocacy/ROCH2023_Issue_Paper_Air_Travel_Rights.pdf (further stating

receive little if any compensation for personal injury or damaged property” because the ACAA does not provide for a guaranteed private cause of action.⁵⁰ Furthermore, federal enforcement of the ACAA provisions is limited to administrative action and civil penalties; wheelchair users cannot sue airlines directly when their rights have been violated.⁵¹

DOT recently proposed a new rule that would address many problems with the ACAA.⁵² Among other changes, the proposed rule would make wheelchair mishandling an automatic ACAA violation and would require airlines to replace a damaged device “with a device of equivalent or greater function and safety.”⁵³ Airlines would be required to return delayed devices “within 24 hours of the passenger’s arrival by whatever means possible.”⁵⁴ The rule would also add new training requirements for airline personnel and set new performance standards for on-board wheelchairs on larger aircraft.⁵⁵ These are important changes.

However, even with the proposed changes, the statutory and regulatory framework contains a fundamental flaw: it forces passengers to leave their wheelchairs for the duration of the flight. Given the option, many users would prefer to fly in their wheelchairs.⁵⁶ Moreover, forcing passengers to leave their wheelchairs poses risks of physical injury.⁵⁷ Unlike other modes of transportation like trains and buses, airplanes have not yet been updated to include the wheelchair securement technology

that the delays result not in “lost time and missed flights but [also in] missed opportunities for people with disabilities”).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Ensuring Safe Accommodations for Air Travelers With Disabilities Using Wheelchairs, 89 Fed. Reg. 17766 (proposed Mar. 12, 2024) (to be codified at 14 C.F.R. pt. 382). *See also*, Department of Transportation, *Secretary Buttigieg Announces Proposed Rule to Ensure Passengers Who Use Wheelchairs Can Fly with Dignity* (Feb. 29, 2024), <https://www.transportation.gov/briefing-room/secretary-buttigieg-announces-proposed-rule-ensure-passengers-who-use-wheelchairs-can>.

⁵³ *Id.* at 17767 tbl.1.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *See* Brittany Johnson Hernandez, *Take to the Skies*, Muscular Dystrophy Association (Nov. 6, 2018) <https://www.mda.org/quest/article/take-skies> (“More than 2/3 indicated they would opt to stay in their wheelchair in flight if given the option.”).

⁵⁷ *See, e.g.*, Amanda Morris, *Embarrassing, Uncomfortable and Risky: What Flying Is Like for Passengers Who Use Wheelchairs*, New York Times (Aug. 8, 2022), <https://www.nytimes.com/2022/08/08/travel/air-travel-wheelchair.html> (describing, in part, the safety risks associated with transferring passengers with disabilities between a wheelchair and a seat); Laken Brooks, *Disability Advocate Engracia Figueroa Died After An Airline Damaged Her Wheelchair*, Forbes (Nov. 8, 2021), <https://www.forbes.com/sites/lakenbrooks/2021/11/08/disability-advocate-engracia-figueroa-died-after-an-airline-damaged-her-wheelchair/>.

necessary to keep wheelchair users safe inflight. In 2021, pursuant to the Federal Aviation Administration Reauthorization Act of 2018,⁵⁸ the U.S. Access Board, the independent federal agency responsible for “developing accessibility guidelines for facilities and transportation systems,”⁵⁹ commissioned a preliminary study on the feasibility of fitting airplanes with wheelchair securement technology.⁶⁰ The resulting 143-page report concluded that it “did not identify any issues in this preliminary assessment of technical feasibility that seem likely to present design and engineering challenges so formidable that they call into question the technical feasibility of an in-cabin wheelchair securement system.”⁶¹ The report also recommended that further studies and research be done. Building on this report, in 2023, FAA “initiated a three-year research roadmap to investigate the feasibility of enabling passengers to stay in their personal wheelchairs while traveling on commercial aircraft.”⁶² Indeed, some airlines have already developed and tested a prototype that will allow for a seat to be converted so a wheelchair user does not have to leave their wheelchair.⁶³ The 2024 FAA Reauthorization directs the Department of Transportation to study the technical and economic feasibility of wheelchair restraint systems but does not require airlines to incorporate such systems into their fleets.⁶⁴

Proposal

Congress should pass a law, or DOT can promulgate a rule, mandating that within 5 years, airlines outfit their fleet with at least one row of convertible seats (2 seats) that are capable of accommodating passengers whose wheelchairs are compatible with convertible seat technology.

A new law would be codified as a new subsection of 49 U.S.C. § 41705.

(d) WHEELCHAIR SECUREMENT TECHNOLOGY

⁵⁸ Pub. L. 115–254, 132 Stat. 3186 (2018).

⁵⁹ *History of the U.S. Access Board*, U.S. Access Board, <https://www.access-board.gov/about/history.html>.

⁶⁰ Committee for a Study on the Feasibility of Wheelchair Restraint Systems in Passenger Aircraft, *Technical Feasibility of a Wheelchair Securement Concept for Airline Travel: A Preliminary Assessment*, U.S. Access Board (2021), <https://www.access-board.gov/files/research/trb-final-report-sept2021.pdf>.

⁶¹ *Id.* at 132.

⁶² *Safe and Accessible Air Travel*, Department of Transportation, <https://www.transportation.gov/accessibility/priorities/air-travel>.

⁶³ Hannah Sampson, *Delta unveils first wheelchair-friendly seat*, Washington Post (Jun. 6, 2023), <https://www.washingtonpost.com/travel/2023/06/06/delta-wheelchair-seat/>.

⁶⁴ See FAA Reauthorization Act of 2024, Pub. L. No. 118-63, § 544(e) (2024).

Carriers shall, within five years of the enactment of this Act, outfit their fleets with at least one row of convertible seats, where each row contains two seats, that are capable of accommodating passengers with compatible wheelchairs.

DOT and FAA likely do not need new statutory authority to promulgate a rule with a similar directive. The ACAA gives DOT the authority to ensure that air carriers do not discriminate against passengers based on the existence of a “physical or mental impairment.”⁶⁵ Under the Federal Aviation Act, FAA has the authority to “promote safe flight of civil aircraft in air commerce,”⁶⁶ including by prescribing “regulations and minimum standards for cybersecurity and other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.”⁶⁷ Together, these statutes should allow the agencies to mandate changes to carrier fleets for the purposes of ensuring that passengers with disabilities are able to travel safely and conveniently. A rulemaking could result in the addition of a new subpart to 14 C.F.R. Part 382:

Subpart L Wheelchair Securement Technology

⁶⁵ 49 U.S.C. § 41705(a). See *Nondiscrimination on the Basis of Disability in Air Travel*, 73 Fed. Reg. 27614, 27666 (2018) (citing 49 U.S.C. § 41705 as the statutory authority that allowed DOT to promulgate air travel disability nondiscrimination regulations).

⁶⁶ 49 U.S.C. § 44701(a). See *Air Transp. Ass'n of Am., Inc. v. Cuomo*, 520 F.3d 218, 224 (2d Cir. 2008) (“Congress and the Federal Aviation Administration have used [the Federal Aviation Act] to enact rules addressing virtually all areas of air safety.”). See also *High Elevation Airport Operations*, 88 FR 39152, 39161 (2023) (citing 49 U.S.C. § 44701(a) as the statutory authority that permitted the FAA to update regulations regarding when “oxygen dispensing units,” or oxygen masks, must be made available to passengers).

⁶⁷ 49 U.S.C. § 44701(a)(5). See *Use of Supplemental Restraint Systems*, 88 Fed. Reg. 80997, 80998 (citing 49 U.S.C. § 44701(a)(5) as one of the statutory authorities that permitted FAA to regulate the use of certain restraint systems). See also 49 U.S.C. § 44701(a)(1) (giving the FAA the authority the prescribe “minimum standards required in the interest of safety for appliances and for the design, material, construction, quality of work, cybersecurity, and performance of aircraft, aircraft engines, and propellers”); *id.* § 44701(b) (giving the FAA the authority to “prescribe minimum safety standards” for certified air carriers and larger airport operators); *id.* § 44701(d)(1)(A) (instructing the FAA to consider “the duty of an air carrier to provide service with the highest possible degree of safety in the public interest” when prescribing safety regulations); *Oxygen Mask Requirement: Supplemental Oxygen for Emergency Descent and for First Aid; Turbine Engine Powered Airplanes With Pressurized Cabins*, 85 Fed. Reg. 16897, 16898 (2020) (citing 49 U.S.C. § 44701(d)(1)(A) as one of the statutes that permitted the FAA to regulate when pilots were required to use oxygen masks as a matter of safety).

§ 382.161 By when must carriers outfit planes with wheelchair securement technologies?

Carriers have five years from the date this provision was added to this part to outfit their fleets with at least one row of seats, where each row contains two seats, that are capable of accommodating passengers with at least some kinds of wheelchairs.

Conclusion

While flying is currently miserable, it does not have to be this way. Implementing the proposals laid out in this policy blueprint—addressing small seat sizes, making it easier for parents to travel with infants, allowing strollers to be brought aboard as carry-on luggage, and allowing passengers to stay in their wheelchairs during flights—would go a long way toward improving the airline passenger experience.