

DOT FINAL RULE ON TRANSPORTATION FOR INDIVIDUALS WITH DISABILITIES AT INTERCITY, COMMUTER, AND HIGH-SPEED RAIL PLATFORMS; MISCELLANEOUS AMENDMENTS

- Rail station requirements apply only to new or altered commuter, intercity and high-speed station platforms; no retrofitting is required
- Where no track through station is shared with freight, full-length level-entry boarding is required
- Where track through station is shared with freight, a passenger railroad must meet performance standard:
 - Passengers with disabilities, including wheelchair users, can access each accessible train car that other passengers can access
 - If it cannot provide full-length level-entry boarding at such a station, a passenger railroad can choose to meet performance standard through use of car-borne lifts, station-based lifts, or mini-high platforms (with multiple stops if needed).
 - Railroad must provide plan to FTA or FRA explaining how its chosen means of meeting performance standard will work. FTA and/or FRA will evaluate the proposed plan and may approve, disapprove, or modify it.
 - If a railroad chooses to use station-based lifts or mini-high platforms, it will also have to submit a comparison of that approach with car-borne lifts, with respect to capital and life-cycle costs as well as service quality to persons with disabilities
 - This comparison is not used for purposes of approving railroad's plan
- The term "common wheelchair" has been removed
 - This concept was originally developed to provide a set of parameters for designers and manufacturers to use in the process of designing and building accessible vehicles and equipment
 - Original DOT ADA regulation created an operational use of this design concept, saying that transportation operators were required to transport "common wheelchairs."
 - Over time, transit operators began to apply this concept to exclude wheelchairs that did not fit into the common wheelchair weight and dimension "envelope" regardless of whether their vehicles and equipment could accommodate them
 - A Federal court decision said that transit operators could do so, given the wording of the DOT regulation.
 - The rule removes the operational role of the "common wheelchair" envelope. Transit providers must carry a wheelchair and occupant if the lift and vehicle can physically accommodate them, unless doing so is inconsistent with legitimate safety requirements
 - "Legitimate safety requirements" includes such circumstances as a wheelchair of such size that it would block an aisle, or would be too large to fully enter a railcar, would block the vestibule, or would interfere with the safe evacuation of passengers in an emergency

- This does not apply to securement; a transit provider cannot impose a limitation on the transportation of wheelchairs and other mobility aids based on the inability of the securement system to secure the device to the satisfaction of the transportation provider. It would be inconsistent with this rule to allow transportation providers to deny service to people who use wheelchairs just because particular devices may be problematic from a securement point of view. This is consistent with the rule before this last revision.
 - “Legitimate safety requirements” must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities or about the devices they use for mobility purposes
 - Design parameters for vehicles and equipment remain within the jurisdiction of the U.S. Access Board, which has the statutory authority to develop standards for accessibility under the ADA, which by law, the USDOT must adopt as its minimum standards
- The definition of “wheelchair” has been refined
 - The reference to “three- or four-wheeled devices” has been changed to “three- or *more* wheeled devices”
 - This change has been made in light of advances in wheelchair design, with many power wheelchairs now having more than four wheels; these should not be excluded from the definition of “wheelchair” solely on the basis of having a larger number of wheels
- Direct Threat
 - The Rule adds “direct threat” to the definitions in 49 C.F.R. § 37.3.
 - “Direct threat” is defined as “a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.”
 - This definition is consistent with the DOJ’s regulations, and focuses solely on whether an individual poses a significant threat to *others*; it does not include threats to self
- Disability Law Coordinating Council (DLCC)
 - The Rule codifies the long-standing internal DOT mechanism for issuing guidance on disability issues.
 - The DLCC consists of representatives from the Office of the Secretary, Federal Transit Administration, Federal Highway Administration, Federal Aviation Administration, Federal Motor Carrier Safety Administration, National Highway Traffic Safety Administration, and the Federal Railroad Administration.
 - Pursuant to 49 C.F.R. § 37.15, only written interpretations and guidance developed and issued by the DLCC, and approved by the DOT General Counsel, constitute the official position of the Department and its operating administrations.
- Missed trips and denials (paratransit)
 - When a transit system is unable to provide one leg of a multi-legged trip, and the passenger is therefore unable to take any of the requested trips, all of those trips must be recorded as denials.

- o When a denied or missed trip makes a subsequent requested trip impossible, two opportunities to travel have been lost from the point of view of the passenger.
- o To count denials otherwise would understate the performance deficit of the operator.
- o This is a codification of a longstanding DOT position
- o The Department will issue guidance shortly
- Not addressed in Final Rule:
 - o Reasonable modification
 - In order to avoid delaying issuance of this Rule, the Department has deferred issuance of a final reasonable modification rule at this time.
 - The Department is continuing to work towards a final rule on this subject.
 - The 2005 DLCC guidance concerning interpreting the “origin-to-destination” requirement for ADA paratransit remains in place.
 - The Department will rely on this interpretation in implementing and enforcing the origin-to-destination requirement of Part 37
 - This application of the origin-to-destination service requirement of the existing rule is not dependent on the ultimate disposition of the NPRM’s reasonable modification proposal.
 - o Service animals
 - No change has been made to the definition of “service animal;” existing DOT definitions continue in effect.
 - Therefore, entities covered by this Rule should not change their policies on the basis of the DOJ Final Rule (issued September 15, 2010 and effective March 15, 2011) (75 FR 56163).
 - The Department will consider whether, in the future, to propose changes to Part 37 to parallel the new DOJ definitions
 - o “Other Powered Mobility Devices (OPMDs)”
 - DOT has not adopted DOJ’s regulations concerning the use of OPMDs, which include devices such as Segways.
 - DOJ’s approach is not dissimilar to that adopted by DOT in its 2005 guidance concerning the use of Segways as mobility aids aboard transportation vehicles
 - DOT will place updated guidance on its website concerning the use of Segways in transportation vehicles and facilities