



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

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Docket Management System  
U. S. Department of Transportation  
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Regarding Docket Number: OST-2006-23985

The undersigned members of the Consortium for Citizens with Disabilities (CCD) appreciate the opportunity to comment on the Department of Transportation's (DOT) notice of proposed rulemaking regarding Americans with Disabilities Act (ADA) regulations. We strongly believe that the ADA has been working effectively to increase transportation options for people with disabilities since its passage in 1990. We look forward to working with the Department of Transportation to clarify their ADA regulations so that the existing commitment to accessible transportation is maintained. What follows are CCD's recommendations in response to DOT's proposed rule and request for comments on accessibility questions.

**Part 27 Nondiscrimination on the Basis of Disability in Programs or Activities  
Receiving Federal Financial Assistance and Part 37 Transportation Services for  
Individuals with Disabilities (ADA)**

**27.7 Discrimination Prohibited and DOT 37.5 (g)**

*Proposed Change:* The DOT's proposed regulation requires that all public entities providing designated public transportation must make reasonable modifications to policies and practices where needed to avoid discrimination on the basis of disability or to provide program accessibility to services.

*Comment:* CCD strongly supports the proposed technical clarifications regarding the inclusion of the reasonable modification provision. In a transportation context, the provision addresses situations such as the following:

- If there is a no-eating policy on the subway train, the transit agency must allow a modification of the policy in the case of a woman with diabetes who needs to eat on a particular schedule.

- A situation where the wheelchair user and the wheelchair were within the specifications for the lift to use but were heavier than the common wheelchair standard, and the transit agency had a policy that prohibits transporting anyone using a device larger than the common wheelchair standard it would be reasonable to expect to that the transit agency would modify that policy.
- On the bus, if there is a policy that bus drivers may stop only at designated bus stops, there may occasionally be a barrier at a bus stop (e.g. construction, snow drifts) that blocks use by passengers with disabilities. In such a case, where it would not be unduly burdensome or dangerous, it would be appropriate for the bus to move a short distance from the stop to pick up a passenger using a wheelchair at a place where the passenger could readily board.
- On the bus, if there is a policy that bus drivers may not touch bus fare money, the policy must be modified in the case of a man with a disability who is unable to physically deposit his fare into the fare box and requests assistance from the driver to help deposit the money. Were the transit agency to refuse to modify the policy and subsequently deny transportation to the man because he couldn't physically deposit his bus fare, this would be a violation of the "modification of policy" requirement.

DOT notes that the requirement is not absolute -- if modifying the policy or practice would result in an undue burden or fundamental alteration of transit agency services, the modification need *not* be made, and the head of the agency can make a written determination to that effect (though the agency would be required to make an alternative modification of policy, practice, or procedure that would not result in an undue burden, fundamental alteration, or direct threat).

DOT also emphasizes that it is adding this provision in the context of its financial assistance relationship with transit agencies. DOT notes that there is language in the FTA Master Agreement that requires recipients to acknowledge the possibility of new federal regulations even after the execution of the Agreement.

DOT's proposal discusses how its recent ADA paratransit guidance on "Origin-to-Destination Service," posted at [http://www.fta.dot.gov/14531\\_17514\\_ENG\\_HTML.htm](http://www.fta.dot.gov/14531_17514_ENG_HTML.htm) in September 2005, is an example of the modification of policy requirement. That guidance stated that an agency providing ADA paratransit under a "curb-to-curb" policy – that is, under a policy that paratransit drivers will wait at the curb for passengers rather than going to the door to assist them – may occasionally need to provide service beyond that point, if necessary to ensure that the individual can reach his or her destination. Examples include:

- If a physical barrier such as sidewalk construction or snow prevents a passenger from getting to the vehicle, the service provider must offer assistance beyond the curb – not necessarily to all passengers, but to this particular passenger.

- A rider who uses oxygen, who wishes to stay on his main oxygen supply until the last moment so he doesn't use up his portable supply while waiting at the curb, and who doesn't have a window in his apartment making it possible to see the vehicle arrive, may need the driver to come to the door.

But DOT emphasizes that such assistance would not need to be provided if it creates an undue burden, fundamental alteration, or direct threat. For example, transit providers would *not* be required to:

- Provide personal [attendant] services
- Go beyond the doorway to assist a passenger
- Leave vehicles unattended for lengthy periods of time
- Lose the ability to keep their vehicles under constant visual observation
- Take any actions that would present a direct threat to safety

Such activities would, according to DOT, “come under the heading of ‘fundamental alteration’ or ‘undue burden.’”

CCD is concerned that there is a basic misunderstanding by some transit providers regarding their coverage by the DOJ regulation. It should be made clear that this requirement applies to transit agencies. Adding it to the DOT regulation would achieve that end.

In CCD's view, the impact on transit agencies would not be significant. For example, in the area of origin-to-destination paratransit service, many systems, possibly as many as 50%, have door-to-door policies at the current time, with no record of safety or insurance problems. Such agencies have worked out the operational issues involved and come to the conclusion that door-to-door service is not operationally burdensome.

It should also be noted that some individuals with disabilities cannot use ADA paratransit service without minimal assistance beyond the vehicle. These individuals, who also cannot use the fixed route service, are exactly those whom ADA paratransit is intended to serve.

Further, virtually all transit agencies have general liability insurance in addition to their automobile (vehicle) liability policy, and that general policy covers the driver beyond the curb. Thus, following DOT's guidance will not increase insurance costs.

Moreover, the vast majority of drivers in curb-to-curb paratransit systems say they provide door-to-door assistance when it is needed, out of basic decency and also for practical reasons. Transit agencies with curb-to-curb policies are probably at more risk now by having practices that differ from their policies and by not having policies on issues such as when the driver can leave the vehicle, can the driver lose sight of the vehicle, and what does effective control of the vehicle mean. Arguably, agencies are more at risk for something to go wrong if they maintain the pretense of a curb-to-curb policy when many drivers are actually performing a modified door-to-door service. Furthermore, general effectiveness is not increased if drivers must wait until a rider notices that the vehicle has arrived or watch someone struggle rather

than assist the person. Transit agencies as well as their passengers would be better served by explicitly including the occasional additional needed service.

We also note that in most ADA paratransit eligibility applications, there's a question about whether or not the applicant can wait 10 or 15 minutes for a fixed route bus without a bench or a shelter. If applicants can not, they are deemed paratransit eligible. It is inconsistent to say that this condition confers eligibility and then to require the same individuals to wait 30 minutes at the curb during the on-time window that is usually applied in ADA paratransit for a vehicle to arrive.

Similarly, we do not expect other areas of transit agency operations to be unduly burdened by the addition of a modification of policy requirement. All other organizations covered by the ADA – employers, state and local governments, public accommodations, and private transportation providers – are covered by this requirement or a comparable one in every service, program, and activity that they engage in. We see no reason why public transit agencies should be exempt from this basic tenet of disability rights law.

### **37.3 Definition of Direct Threat**

*Proposed Change:* DOT has proposed adding a definition of direct threat.

*Comment:* The proposed definition of “direct threat” is consistent with the definition set out in the ADA statute and DOJ ADA Title II regulations. “The term ‘direct threat’ means a significant risk to the health or safety of others than cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.” (ADA Section 302(b)(3)).

The preamble to the proposed regulation explains that “the direct threat provision is not intended to permit restrictions that are aimed solely at protecting people with disabilities themselves. Moreover, a finding of direct threat must be based on evidence, not merely on speculation or apprehension about the possibility of a safety problem.” [71 FR 9763 (Feb 27, 2006)] We recommend that this clarification with additional amplifications set out in the preamble to the DOJ ADA Title II regulations [56 FR 35701 (July 26, 1991)] be included in the preamble to final regulation and that DOT issue specific ADA guidance that includes these clarifications.

### **37.5 Nondiscrimination**

*Proposed Change:* As discussed above the DOT’s proposed regulation requires that all public entities providing designated public transportation must make reasonable modifications to policies and practices where needed to avoid discrimination on the basis of disability or to provide accessibility to services.

*Comment:* CCD strongly supports the proposed technical clarifications regarding the inclusion of the reasonable modification provision. In addition, CCD recommends that DOT incorporate by reference all of the specific categories of discrimination set out in § 35.130 (General prohibitions against discrimination) in DOJ ADA Title II regulations. Several

important types of discrimination are listed in the DOJ regulations. For example, the DOJ ADA Title II regulations specify that a public entity may not directly or through contractual, licensing, or other arrangements utilize criteria or methods of administration that have the purpose or effect of subjecting individuals to discrimination on the basis of disability. A few important examples of the DOJ ADA Title II regulations definition of discrimination include denying a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards, denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service, or otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving the aid, benefit or service.

Because *Melton v. DART* held that the DOJ ADA Title II regulations do not apply to paratransit or public transportation operations, these specific categories of discrimination are not clearly incorporated in the DOT regulations – although they certainly were intended to be included when DOT initially issued its regulations, i.e., these provisions were meant to apply to public entities providing transportation services. Without an incorporation by reference to all of DOJ’s ADA Title II regulation § 35.130, DOT’s definition of discrimination is incomplete.

DOT’s intent to include the ADA Title II definitions of discrimination set out in the DOJ regulations is clearly recognized in the preamble to the proposed regulations. According to DOT, when it drafted part 37, it assumed that Section 37.21(c) of the DOT regulations would incorporate the DOJ provisions.[71 FR 9762 (February 27, 2006)] Nonetheless, the 5th Circuit held in *Melton v. DART* (2004) that DOJ ADA Title II regulations do not cover paratransit operations and other public transportation. Stated differently, if DOT expects a public entity providing public transportation to be covered by the rules set out in Title II of the ADA, it must explicitly incorporate by reference those ADA rules it considers applicable.

The preamble to the DOJ regulations published on July 26, 1991 explains DOJ’s intent to make public transportation entities subject to the general nondiscrimination provisions. It states “Paragraph (b) of § 35.102 explains that to the extent that the public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the Act, they are subject to the regulation of the Department of Transportation at 49 CFR part 37, and are not covered by this part. The Department of Transportation’s ADA regulation established specific requirements for construction of transportation facilities and acquisition of vehicles. **Matters not covered by subtitle B, such as the provision of auxiliary aids, are covered by this rule.**” [56 FR 35695 (July 26, 1991)] (emphasis added)

In sum, CCD recommends incorporating by reference § 35.130(a)-(b) and that it use § 37.5(f) as a model (this section of the DOT regulations applicable to private entities incorporates by reference relevant provisions in the DOJ ADA Title III regulations applicable to public accommodations).

**37.5(g) and 37.169(c)**

*Proposed Change:* The DOT proposed regulations specify that a public entity shall “**give priority to** those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting that is **reasonably achievable.**”

*Comment:* In lieu of the language proposed by the DOT, CCD recommends that DOT adopt the language set out in the DOJ ADA Title II regulations § 35.130(d) which specifies that “A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” The “give priority to” language adds inappropriate words of limitation and is inconsistent with the approach taken in the DOJ regulations which place the burden of proof on the public entity to demonstrate why it cannot provide services in the most integrated setting.

**37.5 – new subsection prohibiting discrimination by association**

*Proposed Change:* The DOT regulations fail to explicitly prohibit discrimination on the basis of association, which is a category of discrimination prohibited under the ADA. Title II § 35.130(g): “a public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.”

*Comment:* CCD strongly recommends the addition of such a provision to the final rule. Because the DOJ regulations do not apply, according to *Melton v. DART*, to paratransit or public transportation operations, it is not clear whether this prohibition would apply. Thus, a person could be excluded from transportation services simply for working at a clinic serving persons who have AIDS or are HIV positive, volunteering at a psychiatric facility, or visiting relatives in a rehabilitation center/nursing home.

**37.167(f) Communication**

*Proposed Change:* The DOT regulations state “The entity shall make available to individuals with disabilities adequate information concerning transportation services. This obligation includes making adequate communications capacity available, through accessible formats and technology, to enable users to obtain information and schedule service.”

*Comment:* CCD agrees with the main thrust of this regulation. However, it is necessary to include specific guidance on how to meet this requirement. The specific DOJ regulations that DOT had intended to apply to public transportation entities include specific requirements regarding communication accessibility. [DOJ ADA Title II regulations § 35.160 (General provisions, including provision of auxiliary aids and services), § 35.161 (Telecommunication devices for the deaf), § 35.162 (Telephone emergency services) and § 35.163 (Information and signage)]. CCD recommends that these provisions be incorporated by reference. Examples of what this requires in the transit context, include:

- If a transit agency distributes a bus or train schedule in print form, it must be provided in an alternate format usable by a person with a visual impairment, such as via the telephone or in a digital form, upon request as appropriate.

- If a transit agency holds a public hearing and an individual who is deaf requests a sign language interpreter, it must be provided, upon request as appropriate.

Transit agencies that use electronic messages as signs or destination alerts must ensure that the timing, duration and speed of the message text be designed to allow people with cognitive or memory impairments to have the time to recognize and respond to the messages.

Transit agencies that have electronic information available to the public on-line should make every effort to ensure that the information provided is made available in a text-based format, (such as a word document or 508 or WCAG 1.0 conformant HTML format) so that the information can be accessible to individuals with disabilities utilizing screen reader software or other assistive technology.

DOT should require transit agencies' websites to be accessible and usable by people with disabilities. For example: if a website is designed to enable a user to schedule trips on-line, that function should be able to be utilized by people with disabilities using screen readers and other assistive technology. CCD recommends that transit agencies periodically review web content for accessibility and usability by people with disabilities.

Suggestions enhancing website access for people with disabilities include:

- Color coding web based information to encourage ease of use by people with cognitive impairments.
- Limiting non-essential graphical content on websites.
- Providing phone numbers to the transit agency so that people could get the information via phone if they were not able to access the electronic information. For example, it is important to provide toll free phone lines with transit scheduling information.

### **37.41 Construction of transportation facilities by public entities**

*Proposed Change:* DOT's proposal would require level entry boarding at new commuter and intercity rail stations from a fully accessible high platform, with a ramp or bridgeplate if necessary, making it possible for everyone to board any accessible train car. The proposal would avoid, if at all possible, the use of mini-high platforms to provide disability access to the train on commuter rail, allowing mini-highs only as a very last resort.

DOT currently requires level entry boarding, with a vertical gap between the car entrance and the platform of no more than 5/8 inches, and a horizontal gap of no more than 3 inches. Where it is not operationally or structurally feasible to meet these gap requirements, alternate solutions are allowed, but level entry boarding is preferred, as it is the accessibility solution that provides service in the most integrated setting.

However, the Federal Railroad Administration (FRA) has established that, on intercity and commuter rail systems, these current gap requirements are unrealistic. DOT is thus proposing new platform design requirements for newly built commuter and intercity rail facilities. If the

current gap requirements must be exceeded, there may be a horizontal gap up to 10 or 13 inches (depending on the type of railroad track) that would be accessed by a bridge plate or ramp to facilitate independent boarding by passengers with disabilities who cannot step across the platform gap. The wider gap will be needed, in some cases, to allow for necessary railroad clearances. Any vertical gap would need to be bridged by a bridge plate or ramp with a 1:8 slope or less, under a 50% passenger load. Bridge plates would need to connect the platform with each accessible car.

Only if the rail system determines (with the concurrence of the FRA and FTA) that meeting the above requirements is not operationally or structurally feasible could the rail system use an approach other than level entry boarding, such as mini-high platforms or lifts. Even in such cases, the rail system would be required to ensure that access is provided to each accessible car on the train.

DOT is not proposing any change to its current requirements for rapid rail (e.g. subways) and light rail (e.g. streetcars), only for intercity and commuter rail.

*Response:* CCD fully agrees with this approach. CCD is also pleased that the proposed changes do not alter existing deadlines for complying with the requirements. The affected entities have been given ample time to make their stations accessible and we would not support any further extensions.

Mini-high platforms are a very poor form of access in a commuter rail context. They put a person with a disability out of the general public way, sometimes out in the rain or snow. Even worse, they necessitate that the train move in small increments to align its cars, one by one, with the mini-high platform (also known as double stopping), which is very difficult and time-consuming, and yet which must be done on a permanent basis if mini-high platforms are allowed. The only way to avoid double-stopping would be to confine people with disabilities to only one car on the train, although the ADA properly requires access to all accessible cars. Thus, the use of mini-high platforms would necessitate either the long-term operationally onerous practice of double-stopping, or would institutionalize a permanent segregated solution in which, no matter how many accessible cars are present, people who cannot walk up the steps would be limited to one car on the train.

Thus, high-level accessible platforms, with bridge plates if necessary, are the only proper solution, particularly in new construction. Bridge plates are acceptable, given the wider gaps that may often be unavoidable in commuter and intercity rail systems. Similarly, the 1:8 slope is probably the best possible solution for the vertical gap, given the context in commuter and intercity rail facilities where, even in newly constructed stations, the bridge plate must be readily portable and function with a variety of existing rail cars up to 30 years old with varying floor heights.

DOT has asked whether the requirements for alterations of pre-existing commuter and intercity rail facilities should meet the same standards as in new construction. CCD's view is that, like in other parts of the ADA, altered rail stations should meet the new construction standards to the maximum extent feasible. In the occasional case where the standards cannot

be fully met, the alterations should be required to comply as closely as possible. As in the context of alterations to buildings, cost should not be a factor in determining maximum extent feasible.

DOT also mentions that sometimes difficulties in providing level-entry boarding from a fully accessible high platform stems from disagreements between commuter rail authorities and freight railroads whose track the commuter railroads use. DOT has asked whether its current regulatory section requiring cooperation between commuter and intercity station owners and the parties attempting to implement the ADA will suffice to address this problem, or whether additional language is needed. In CCD's view, additional language is necessary. The existing provision addresses the owners of intercity and commuter rail stations, but what about the owner of the railroad itself, such as a freight railroad company like CSX or Union Pacific, which is not also the owner of an intercity or commuter rail station? This additional class of entities needs to be included in a requirement for cooperation.

### **37.15 Interpretations and Guidance**

*Suggestion:* CCD suggests that the interpretations from the preamble of the proposed regulations should be included in a new DOT technical assistance guide. By publishing a new guide, much of the confusion surrounding the regulations would be easily explained. The extensive comments to the docket suggest that there may be significant misunderstanding in the transit industry about these regulations.

*Proposed Change:* DOT proposes to add a provision to its regulation that DOT's Disability Law Coordinating Council (DLCC) would coordinate DOT guidance and interpretations on disability-related matters. The DLCC is functioning currently under a 2003 memorandum from Secretary Norman Mineta. The DLCC ensures consistent interpretations among all of DOT's modal administrations including FTA, FRA, etc.

*Response:* CCD supports the DLCC approach to guidance and interpretations of disability civil rights laws including the ADA, Section 504, and the Air Carrier Access Act. The presence of a department-wide coordination mechanism such as the DLCC ensures that knowledge and experience from all parts of the agency will be brought to bear on important questions of disability civil rights law. Requiring interpretations of disability rights laws to go through the DLCC helps ensure that a consistent department-wide high standard is brought to bear on all-important questions of disability civil rights law guidance and interpretation.

### **DOT Request for Comment on Other Issues**

#### **DOT #1. Applicability to Bus Rapid Transit**

DOT asks whether there are additions needed to parts 37 and 38 concerning Bus Rapid Transit to make sure that this new mode of transit is accessible to people with disabilities. CCD agrees with the consensus of the attendees at the recent DOT sponsored forum on BRT and Accessibility that any regulatory needs can be largely met by drawing from existing bus

and/or rail regulations. However, it was recommended that to provide clarity the DOT should provide guidance on which elements of the bus regulations and which elements of the rail regulations apply to BRT systems. Additionally, guidance was suggested that clearly indicates when the bus or the rail regulations apply, since locally-determined variations within the BRT characteristics (such as vehicles operating in mixed-flow lanes with other traffic or on exclusive transitways) can alter whether BRT operates more like a bus or more like rail.

Some of the areas where more guidance is particularly needed include:

- ***Ramp Design/Deployment***
- *Platform Design - Vertical and Horizontal Gaps -*
- ***Wheelchair Securement – Number and Location***
- ***Running Way Treatment / Markings***
- ***Interior Configuration / Circulation Door***
- *Precision Docking*
- *Passenger Information / Signage and Displays*
- ***Signal Priority***
- Access to Stations

## **DOT #2. Additions to Key Stations**

DOT asks whether transit agencies should have the responsibility to identify additional key stations as circumstances change, such as when a station becomes a major destination point due to new development like the building of a stadium or convention center. CCD recommends that all stations be accessible to all people with disabilities. DOT, the transit industry and stakeholders should begin planning to achieve this goal. Appropriate deadlines should be established. One key consideration in developing a plan to achieve full accessibility is the urgency in addressing significant safety issues such as the lack of detectable warnings in many stations.

In addition transit must meet its ongoing responsibility to add key stations when they meet the established criteria. Toward that end, CCD supports the inclusion of regulatory provisions calling for a regular evaluation of transit stations for the purpose of designating more stations as ‘key stations’.

Additionally, this evaluation should include a review of transit route additions as well as altered routes that serve a particular station, which could increase the number of passengers utilizing the station. As conditions change over time the designation of key stations should be legally required to respond to these changes.

In addition to considering the criteria in title 49, sec. 37.47 (b) (1-5) for designating stations as key, the department should also consider adding the following criteria:

- Community and neighborhood revitalization and growth initiatives in the surrounding area of the station.
- Proximity to a significant number of multi-unit residential buildings.
- Proximity to locations serving veterans.
- Proximity to major employment centers.
- Stations with significant safety and accessibility complaints.

#### **DOT #4. Non-Amtrak Intercity Rail**

DOT asks if changes to the regulation are needed to provide access to intercity rail service provided by entities other than Amtrak. In CCD's view, it is important that DOT clarify that non-Amtrak intercity rail systems are covered under the general ADA provisions for designated or specified transportation. These systems are not exempt. We note that a process for coverage exists in Part 38, the vehicle guidelines, Subpart H which states that requirements for any type of rail not already listed shall be determined by DOT in consultation with the U.S. Access Board.

#### **DOT #5. Publicly Funded Demand Response Systems and Used Vehicles**

DOT asks whether operators of publicly funded demand response systems should, like fixed route operators, be required to make good faith efforts to find accessible vehicles when acquiring used vehicles. The answer is definitely yes. CCD urges DOT to include a requirement that public and private providers of transportation services find accessible used vehicles for both fixed route and demand responsive systems. Each of these transportation systems rely on used vehicles, and the lack of a requirement to procure accessible used vehicles has meant that many such systems provide no access. For example, many agencies and companies providing social service transportation, taxi service, and airport shuttle service rely on used vehicles and should be required to procure accessible vehicles if such are available, or to provide accessible service to some degree.

Furthermore, private companies that do not acquire vehicles but work with a group of drivers who each own their own vehicles and function as independent contractors should also be required to provide some level of accessible service. The DOT regulation could classify this arrangement as leasing of used vehicles. Absent a requirement regarding accessible used vehicles, even large, long-established companies are failing to provide accessible services. Providers wishing to operate a transportation service should acquire, or make thorough good faith efforts to obtain, accessible vehicles, or provide an equivalent service via contract with another provider.

#### **DOT #6. Changes in mobility devices; deviations from "common wheelchairs"**

DOT asks about the use of wheelchairs and other devices that do not fit what the DOT ADA standards describe as a "common wheelchair" (a three- or four-wheeled mobility device that, when occupied, does not exceed 600 pounds or 30 inches in width by 48 inches in length, measures 2 inches above the ground). This is becoming a significant problem as, every year,

more and more mobility devices fall outside this standard. As mobility devices become larger and designs evolve, the ADA standards must adjust. Increasingly individuals are being denied transportation services because their devices do not fall within the description of a “common wheelchair.”

It should be noted that the ADA Accessibility Guidelines (ADAAG) common wheelchair specifications, developed by the U.S. Access Board, was never intended to be a screen for measuring individuals’ mobility devices. It was intended as a performance standard for lift manufacture. To quote Dennis Cannon, Senior Transportation/Facility Accessibility Specialist at the U.S. Access Board, “Part 38 only specifies the vehicle, not the passenger.” Yet it has been widely misapplied, and the situation is spiraling into a significant problem.

There are many facets to this problem. One aspect is devices which truly do not fit within the common wheelchair limits, and their users are denied transportation, even when the vehicle could accommodate them. A second aspect is what CCD terms questionable exclusions. Some transit agencies, in an effort to cut costs, particularly on paratransit, are increasingly refusing to serve individuals because they *interpret* the individual’s mobility device as not fitting within the common wheelchair limits, even in cases where DOT would probably view the device as perfectly acceptable as a common wheelchair. Here are some examples:

- An individual uses a wheelchair which is capable of reclining. The individual never reclines the chair when using the lift or ramp to enter and exit the vehicle. During the ride, the individual reclines due to severe chronic back pain, and has done so for years; there has always been adequate space for this on the agency’s vehicles, even on shared rides. Yet, one day, she is told that, because she reclines during the paratransit ride, she will no longer be accepted for ADA paratransit because, in the reclining position, her wheelchair exceeds the common wheelchair length limit.
- An individual has a fused knee, and uses one elevated footrest to support it. In such a position, the wheelchair exceeds the length limit of the common wheelchair description. The person is denied transportation by the transit agency, though he has ridden with an elevated footrest for some time in the past.
- An individual uses a wheelchair which can recline but he never puts it into that position for any reason. During his ADA paratransit eligibility determination, the transit agency requires him to recline the chair and then measures it. Since in this position, it runs afoul of the common wheelchair envelope, he is denied eligibility. The individual does not file a complaint with FTA due to FTA's announced approach of looking only at the eligibility determination *process* in complaints about denial of paratransit eligibility, rather than the factual reasons for particular denials.
- A woman is buying a scooter and, before purchasing it, she calls the paratransit provider to verify that the dimensions are OK. The Office Manager tells her he is sure something can be worked out. The woman purchases the scooter. Later it is discovered that the scooter is four inches too wide to fit the common wheelchair

envelope. The Paratransit Director has now called the woman and told her the paratransit program can no longer transport her using this scooter.

- Individuals who have been riding on a transit agency's vehicles for years are told that, because of the combined weight of themselves and their mobility devices, or because the length of their footrests is too long, they may no longer ride the system.
- A wheelchair is measured during a paratransit eligibility reassessment and the user is told he is approved "in a different chair" – even though he has always ridden the system using this same wheelchair.

The DOT regulations should require transit agencies to transport all mobility devices that their vehicles can accommodate, unless the individual would occupy space needed by another person with a disability. The transit provider should be obligated to show it has given thorough consideration to whether the person can be transported. If exclusions are permitted, DOT should clarify what exclusions are legal, given the variety of exclusionary practices occurring today, some of which are described above. DOT should also request the Access Board to update their definition of "common wheelchair" in order to be more inclusive of the variety of mobility devices used by people with disabilities.

Additional information to assist transit agencies in meeting these requirements should be provided through Guidance.

#### **DOT #7 Priority Seating**

DOT asks whether the addition of priority seating requirements to intercity rail and over-the-road buses would be useful. CCD believes that these modes are unique in that they generally include ticketed and reserved seating (though not assigned seating). In these situations, CCD believes that passengers with disabilities, either through pre-boarding or through special seating request, should be able to acquire a seat that will best meet their needs. For some people this will be the front row, for some people this will be a bulkhead, for some people this will be a seat close to the restroom. Transit personnel should be available to assist the person with a disability if, for example, someone else is occupying the seat needed by the person with a disability. This model has worked for the airline industry. This allows maximum flexibility for people with disabilities. In situations where purchasing a ticket does not assure access to a seat and passengers may be in a situation where they ride standing or in some other manner, there is a need for priority seating to meet the needs of riders with disabilities.

It is critical that the information about priority seating be easily available to riders with disabilities when making reservations or purchasing tickets.

#### **DOT #8. Counting of paratransit trips**

DOT seeks comment on how providers of ADA paratransit should count missed or denied trips for statistical purposes. DOT's view is that each individual leg of a journey should be counted as a trip, so that a round trip from home to work, if denied, would count as two

denials. If the transit provider can provide the return trip but not the outbound, and the passenger, as a result, does not go at all, this would also count as two denials, because the outbound denial is the reason the individual cannot go. In the same example, if, by chance, the passenger is able to compensate for the unavailable outbound trip by taking a taxi or getting a ride with a family member and is then able to accept the return trip, then one trip has been taken and only one denied. DOT states that this approach recognizes that a shortage of capacity at one time of day can have a ripple effect that impacts the true availability of passenger service at other times. DOT also points out that treating paratransit trips this way will enable all providers to count successes and failures of service provision in a consistent manner.

CCD agrees with DOT's approach, in order to reflect the reality that, from the perspective of people with disabilities, if an outbound trip is denied, the return, most likely, cannot be taken either, because paratransit riders are generally dependent on their transit agency to provide the outbound trip in most cases. It would also benefit consistency in record keeping to count each leg of the journey as a separate trip. It is CCD's understanding that this is how the industry calculates trips.

CCD is pleased that the department is seeking input on ways to improve accessibility in our transportation system. We appreciate the opportunity to provide comments and to support the language recommended by DOT. We look forward to working with DOT on these critical issues. For more information about our comments please contact the CCD Transportation Task Force co-chairs, Jennifer Dexter, Easter Seals, [jdexter@easterseals.com](mailto:jdexter@easterseals.com), Krista Merritt, American Council of the Blind, [kmerritt@acb.org](mailto:kmerritt@acb.org), or Julie Ward, The Arc of the United States and United Cerebral Palsy, [ward@thedpc.org](mailto:ward@thedpc.org).

On behalf of:

AAMR

ADA Watch

American Association of People with Disabilities

American Council of the Blind

American Foundation for the Blind

American Occupational Therapy Association

American Therapeutic Recreation Association

Association of University Centers on Disabilities

Council of State Administrators of Vocational Rehabilitation

Disability Rights Education and Defense Fund

Easter Seals

Epilepsy Foundation

Helen Keller National Center

Inter/National Association of Business, Industry and Rehabilitation

Learning Disabilities Association of America

National Association for the Advancement of Orthotics and Prosthetics

National Association of Councils on Developmental Disabilities

National Association of State Head Injury Administrators

National Coalition on Deaf-Blindness  
National Disability Rights Network  
National Organization of Social Security Claimants' Representatives  
National Organization on Disability  
National Rehabilitation Association  
NISH  
Paralyzed Veterans of America  
Research Institute for Independent Living  
Spina Bifida Association  
The Arc of the United States  
United Cerebral Palsy  
United Spinal Association