

Americans with Disabilities Act (ADA)

Updates for Transit Providers

- 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 full enter a vehicle, 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.
 - “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 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
 - 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”.

Related topic not addressed that may be addressed at a future date:

- “Other Powered Mobility Devices (OPMDs)”
 - DOT has not adopted Department of Justice’s (DOJ) regulations concerning the use of OPMDs, which include devices such as Segways. The text of the §35.137 is as follows:

- a) *Use of wheelchairs and manually-powered mobility aids.* A public entity shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.
- b)
1. *Use of other power-driven mobility devices.* A public entity shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the public entity can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the public entity has adopted pursuant to § 35.130(h).
 2. *Assessment factors.* In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (b)(1) of this section, a public entity shall consider –
 - i. The type, size, weight, dimensions, and speed of the device;
 - ii. The facility’s volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
 - iii. The facility’s design and operational characteristics (*e.g.*, whether its service program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);
 - iv. Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
 - v. Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with the Federal land management laws and regulations.
- c)
1. *Inquiry about disability.* A public entity shall not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual’s disability.
 2. *Inquiry into use of other power-driven mobility device.* A public entity may ask a person using an other power-driven mobility device to provide a credible assurance that the mobility device is required because of a person’s disability. A public entity that permits the use of an other power-driven mobility device by an individual with a mobility disability shall accept the presentation of a valid, State-issued, disability parking placard or card, or the State-issued proof of disability as a credible assurance that the use of the other power-driven mobility device is for the individual’s mobility disability. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, a public entity shall accept as a credible assurance a verbal representation, not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability. A “valid” disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance’s requirements for disability placards or cards.
- o DOT Guidance for Segways and other power-driven mobility devices:
- Segway (two wheeled device) does not fall under the definition for wheelchair as stated above.
 - However, § 37.165(g) requires transit providers to “permit individuals with disabilities who do not use wheelchairs” to use a vehicle’s lift or ramp to enter the vehicle. Under this provision, a person using a Segway should be permitted on a lift just as a person with a walker, cane or other device would.
 - If in doubt, refer to § 35.137 (c)(2) above for guidance. **You cannot ask the individual about the nature or extent of their disability. You can ask for the credible assurance that the device is a mobility aid.**
 - **If the device does not safely fit on a vehicle, you are not required to carry the device.**

- **If you are thinking about making a determination based on safety, please discuss with WYDOT and the FTA prior to making any decisions as this determination must be based on “legitimate safety requirements” and “direct threat” as outlined in the information above.**