



# Kansas RTAP Fact Sheet

A Service of The University of Kansas Transportation Center for Rural Transit Providers

## New Changes to DOT's ADA Regulations

By Anne Lowder

**T**he Americans with Disability Act (ADA) was enacted in 1990 based on Congressional findings that discrimination against individuals with disabilities was a major social concern. The underlying purpose of the ADA was "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." ADA regulations have made a clear and significant difference in creating mobility for persons with disabilities.

About a year ago the U.S. Department of Transportation issued final rule changes to its ADA regulations, namely 49 CFR Parts 37 and 38. These are regulations affecting transportation services for individuals with disabilities. This article will outline some of these new rules. Changes that concern transit include a new definition for "wheelchair" and other powered mobility devices, and new language on direct threat, service animals, trip denials, and origin to destination service. <http://www.fta.dot.gov/documents/2011-23576.pdf>

### Definition of wheelchair and other powered mobility devices

One significant change in the regulations is the U.S. DOT's definition of a wheelchair with respect to providing transportation service. The original definition, which, by the way, is still in effect for *designing* a transit vehicle's lift and securement area, relies on physical parameters to define a "common"

wheelchair." The measurements are 30 inches wide by 48 inches in length and weighing no more than 600 pounds including the passenger. These provide a set of consistent parameters for designing and building accessible vehicles and equipment.

However, some transit operators were using these physical parameters as a means to exclude non-conforming wheelchairs from boarding their vehicles. Examples from Department of Justice cases include a passenger being denied transportation because her wheelchair's foot rest exceeded the physical parameters of the common wheelchair definition, even though the chair would fit on the vehicle. Another person, who had ridden on a particular transit vehicle for years with no problems, was denied transportation one day by a driver because the combined weight of the passenger and his chair exceeded the 600 pound weight limit in the definition.

The U.S. DOT has noted a proliferation of different types of mobility devices, including some that do not meet their original definition of a wheelchair. To stem the practice of denying service, if a transportation provider has a vehicle and equipment that meets or exceeds the Access Board's guidelines for accommodating wheelchairs, and the vehicle and equipment can, in fact, safely accommodate a given wheelchair or mobility device, the provider cannot refuse to transport the device and its user.

Specifically, regarding transportation



*The new DOT regulations have a revised definition for wheelchair with regard to providing rides. The DOT definition for service animal remains the same.*

operations, the Final Rule deletes the "common wheelchair" standard for operating a vehicle and deletes the sentence referencing "common wheelchair" from the Part 37 definition of wheelchair, as well as from Section 37.165(b) and the Appendix D explanatory text. The DOT definition of a wheelchair with regard to providing

service is now more general:

*"A Wheelchair is a mobility aid belonging to any class of three -or more- wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered."* <http://www.fta.dot.gov/documents/2011-23576.pdf>

One caveat: A transportation provider is not required to carry a wheelchair if, in fact, the lift or vehicle is truly unable to accommodate the wheelchair and its user, consistent with legitimate safety requirements.

### **What are legitimate safety requirements?**

"Legitimate safety requirements" in the new rule include such circumstances as mobility devices so large they would block an aisle or would interfere with the safe evacuation of passengers in an emergency.

Legitimate safety requirements must be based on actual risks. For instance, a transit provider cannot say: "Mr. Smith, that chair is oversized and might break my lift so for 'legitimate safety reasons' we are going to deny your trip." In this situation it cannot be determined by looking at the chair that it will break the lift. The transit provider has speculated and generalized about the individual's device that they use for mobility purposes. There are no documented facts that this particular device would break the lift. If you deny an individual or their mobility device, it needs to be based on facts that can be documented—(i.e. the lift did break or the chair did block the aisle). Documentation and pictures should be attached. It is important to remember that the transportation provider bears the

burden of proof of demonstrating denial of a wheelchair is based on a legitimate safety requirement.

It is also important to remember that the term "legitimate safety requirements" does not apply to the securement of the wheelchair. 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.

For instance, a Kansas rider has a homemade mobility device from parts obtained from a local hardware store (glued PVC pipe, coasters, etc.). The driver wants to deny the mobility device because securement is not possible. Under both the old rule and new rule the mobility device cannot be denied due to securement difficulties.

### **Can Segways be denied?**

By the U.S. DOT's definition, a Segway is not a wheelchair. The U.S. DOT recognizes the Segway under a category created by the Department of Justice (DOJ) in its recently-issued ADA rules. The DOJ created a category of "other power-driven mobility devices" (OPMDs). A Segway, when used by a person with a disability as a mobility device, is part of the broad class of mobility aids covered by Part 37 (similar to canes and walkers).

Transportation providers may establish their own general policies regarding Segways and other devices, just as they do with pets or bicycles. However, when a device is being used as a mobility device by a person with a mobility-related disability, the transportation provider must permit the person and his or her device onto

the vehicle. This is comparable to the situation in which a transportation provider that has a general policy that does not permit pets to enter, but must permit a person with a disability to bring a service animal into a vehicle.

### **What is a "direct threat?"**

The U.S. DOT term "direct threat" in 49 C.F.R. Part 37.3 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."

The definition of direct threat came about through cases heard by the U.S. Department of Justice. One such case had to do with three-wheeled scooters. The complainant had been denied transportation because the scooter was considered a "direct threat." The ruling was that the transit provider must carry such mobility devices, noting the absence of information in the record that would support a finding that carrying non-traditional wheelchairs would constitute a "direct threat" to the safety of others. Again, documented facts are key. For more information, see [http://www.fta.dot.gov/12325\\_4118.html](http://www.fta.dot.gov/12325_4118.html).

The new U.S. DOT definition is consistent with the DOJ's safety regulations, and is centered on whether an individual poses a significant threat to others; it does not include threats to self.

### **DOJ change to the definition of service animal does not affect transit**

In 2011, the U.S. Department of Justice (DOJ) amended its definition of a service animal. The DOJ now defines a service animal as any guide dog or trained miniature horse, subject to certain

## **One ADA, Two Departments: DOJ and DOT**

**A**DA standards govern the construction and alteration of places of public accommodation, commercial facilities, and state and local government facilities. **The Department of Justice (DOJ)** maintains ADA standards that apply to all ADA facilities except transportation facilities, which are subject to similar (but not identical) standards issued by the **Department of Transportation (DOT)**.

For more information on each set of regulations:

- U.S. DOJ 2010 ADA Standards for Accessible Design. [http://www.ada.gov/2010ADAstandards\\_index.htm](http://www.ada.gov/2010ADAstandards_index.htm)
- U.S. DOT Federal Transit Administration American with Disabilities Act. <http://fta.dot.gov/civilrights/12325.html>

limitations, trained to provide assistance to an individual with a disability. The previous DOJ rule defined “service animal” as “any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability.”

Since this inclusive regulation was first issued in 1991, the DOJ has faced a trend towards the use of wild, exotic, or unusual species, many of which are untrained, as service animals. Thus, after a series of public hearings, the DOJ narrowed its definition of service to dogs and miniature horses. [http://www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm)

For transit operators, though, there is no change in how you define service animals because you operate under regulations of the Department of Transportation. The DOT, in the future, might parallel the DOJ ruling, but at this time it has not. The definition of service animal found in 49 CFR 37.3 of the DOT ADA regulations has not changed and is not limited to a particular kind of animal.

### Counting trip denials and missed trips

Regarding counting trip denials and missed trips, the US DOT is emphasizing the importance for a standardized way of counting. Trip denials and missed trips should be calculated on the same basis nationwide to permit better program evaluation and comparisons across transit providers.

In some cases, counting trip denials is simple. For example, a passenger asks for a one-way trip from point A to point B and is told that ride is unavailable. The trip is considered denied because the provider declined to schedule a rider who was eligible.

However, in the case of requests for round trips or multiple-leg trips, the situation is less straightforward. Suppose a passenger asks for a round trip from point A to point B and back to point A, or asks for a trip from point A to point B to point C, with a return to point A. If the first leg of the trip is denied or missed, the passenger can't get to point B. Clearly, at least one trip—from point A to point B—has been denied or missed, but the DOT also considers that all legs of the

## A Quick View of the US DOT's ADA Rule Changes

**Previous U.S. DOT definition of a “Common Wheelchair”**  
Any manual or powered three or four wheel device that does not exceed 30 inches in width by 48 inches in length and no more than 600 pounds. The device is usable indoors and is designed as a mobility impairment aid.

**New U.S. DOT definition of “Wheelchair”**  
Wheelchair means a mobility aid belonging to any class of three - or more - wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered.

**New: the term “ Direct Threat”**  
A public transit entity is not required to provide services if the individual or mobility device poses a direct threat to safety, “direct threat” meaning:

- A significant risk to the health or safety of others.
- Cannot be eliminated by a modification of policies, practices or procedures.
- Cannot be presumed; there must be objective evidence.

**Definition of “Service Animal”**  
The Department of Justice (DOJ) Final Rule (effective March 15, 2011) changed the definition of service animal to any dog or miniature horse that is individually trained to perform tasks for an individual with a disability. The previous DOJ rule was less restrictive and allowed other types of animals as service animals. However, the DOT has not adopted the new DOJ definition. The existing, less restrictive definition for service animal continues in effect for transit entities.

trip are considered denied or missed. <http://www.ada.gov/briefs/rochesbr.pdf>

### Origin-to-destination service

The U.S. DOT does not define paratransit service as “curb-to-curb” or “door-to-door.” It allows transit agencies to establish whether, or in what circumstances, they will provide door-to-door service or curb-to-curb service. Instead, DOT uses the term “origin-to-destination” to define complementary paratransit service. The term was deliberately chosen to ensure that eligible passengers can actually get from their point or origin to their destination using the paratransit service.

In cases where the local planning process has established curb-to-curb service as the basic paratransit service mode, to meet this origin-to-destination requirement, service may need to be provided to some individuals, or at some locations, in a way that goes beyond curb-to-curb.

For instance, the nature of a particular individual's disability or adverse weather conditions may prevent her from negotiating the distance from the door of her home to the curb. Or a physical barrier (e.g., sidewalk construction) may prevent a passenger from traveling between the curb and the door of his destination point. In these and similar situations, to ensure that service is actually provided “from the user's point of origin to his or her destination point,” the service provider may need to offer individual physical assistance beyond the curb. [http://www.fta.dot.gov/12325\\_3891.html](http://www.fta.dot.gov/12325_3891.html)

Two common questions about origin-to-destination service:

**Are there limitations on the right to origin-to-destination service?** In its origin-to-destination guidance, the DOT made it clear that this type of service is not an unlimited right. For example, drivers will not have to provide services that exceed “door-to-door” service (e.g.,

**U**nder Part 37.167(d) of the DOT ADA regulations, transit entities are required to permit service animals to accompany individuals with disabilities in vehicles and facilities. Service animals are trained to perform tasks for people with disabilities, such as guiding people who are blind or who have low vision, alerting people who are deaf, pulling wheelchairs, alerting a person who is having a seizure, or performing other special tasks. Service animals are working animals and not pets.

A transit operator may ask if an animal is a service animal or what tasks the animal has been trained to perform, but cannot require special ID cards or harnesses for the animal or ask about a person's disability. Other passengers' allergies and fear of animals are not valid reasons for denying access or refusing transportation to people with service animals.

go beyond the doorway into a building to assist a passenger).

An example would be for a passenger that lives in an apartment building and needs special assistance. Does the driver need to provide door-to-door service by entering the apartment building and going down hall to the apartment? The answer is no, as long as there is a written policy and it is followed consistently. If the passenger needs more assistance, they will need a personal attendant. Drivers will not have to leave their vehicles unattended or have their vehicles be out of their direct line of sight for lengthy periods of time. [http://www.fta.dot.gov/12325\\_3891.html](http://www.fta.dot.gov/12325_3891.html)

***Is advance notice necessary for the right to origin-to-destination service?***

DOT guidance states that is reasonable for the transit provider to ask for advance notice from the passenger of need for

this assistance. In the case of a passenger who seeks this assistance on a regular basis, this notice could be provided as part of the application process for paratransit eligibility, or at the time that a change in circumstances made regular provision of assistance necessary. In the case of a passenger who seeks this assistance on an occasional basis, asking for advance notice at the time of reservation for the trip would be reasonable and consistent with the next-day service requirement of the ADA. If a passenger did not provide this notice, though, the DOT states that the transit provider would still need to make a best effort to provide the needed assistance.

**Conclusion**

As always, it is each transit agency's responsibility to read and be familiar with the complete ADA regulations, including

these revisions.

To read the full text of the regulatory changes identified in the Federal Register, Vol. 76, No.181, visit the Federal Transit Administration's website at [http://www.fta.dot.gov/12874\\_2360.html](http://www.fta.dot.gov/12874_2360.html).

If you have additional questions, contact your KDOT program consultant and visit the FTA Civil Rights webpage at [http://fta.dot.gov/civil\\_rights.html](http://fta.dot.gov/civil_rights.html). ●

Reprinted from the January 2013 issue of the *Kansas TransReporter*, a publication of the Kansas Rural Transit Assistance Program (RTAP) at the Kansas University Transportation Center.

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