

Questions and Answers Concerning Wheelchairs and Bus and Rail Service

DEPARTMENT OF TRANSPORTATION DISABILITY LAW GUIDANCE

General

What is a “wheelchair”?

- Section 37.3 of the DOT regulations implementing the Americans with Disabilities Act of 1990 (ADA) (49 CFR Parts 27, 37, and 38) defines a “wheelchair” as 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.

Is an electric scooter a wheelchair?

- Yes, provided that the electric scooter meets the definition of “wheelchair” in Section 37.3 of the DOT ADA regulations.

Some wheelchairs weigh more than 600 pounds when occupied, and the design load of the lifts on our vehicles is 800 pounds. Is a transportation operator required to carry these “overweight” wheelchairs?

- Yes. Transportation operators must carry a wheelchair and occupant if the lift and vehicle can physically accommodate them. If a lift has the minimum design load of 600 pounds, there is no requirement for an agency to transport a heavier occupied device. However, if the vehicle lift has a design load of 800 pounds, the agency would need to transport an 800-pound wheelchair/passenger combination, but not a combination exceeding 800 pounds. An operator may deny transportation if carrying the wheelchair and its occupant would be inconsistent with legitimate safety requirements, as when, for example, the wheelchair is so large it would block an aisle or would interfere with the safe evacuation of passengers in an emergency.

Is a transportation operator required to procure vehicles with lifts that have a design load of more than 600 pounds?

- No. 49 CFR Part 38 continues to require that lifts have a minimum design load of 600 pounds and that the lift platform accommodate a wheelchair measuring 30 inches by 48 inches. However, if a transportation operator procures vehicles with lifts that have a design load of more than 600 pounds, or the platform and vehicle will accommodate a wheelchair that exceeds the dimension of 30 inches by 48 inches, the operator must carry the wheelchair and its occupant.*

Are transportation operators required to retrofit their vehicles to accommodate larger and heavier wheelchairs?

- No. 49 CFR Part 38 continues to require that lifts have a minimum design load of 600 pounds and the lift platform accommodates a wheelchair measuring 30 inches by 48 inches.

The National Highway Traffic Safety Administration's (NHTSA) motor vehicle safety regulations require that a wheelchair lift be tested to withstand a 600-pound load. If the manufacturer states that the design load is 800 pounds, can the transportation operator limit actual use to 600 pounds for safety reasons?

- No. The NHTSA safety standards and the DOT ADA regulations were designed to complement each other. The manufacturer's design load represents the amount of weight that the lift is capable of supporting. The 600-pound test required under NHTSA's Federal Motor Vehicle Safety Standards (FMVSS) represents the minimum design load specified under 49 CFR Part 38. FMVSS does not limit the capacity of the lift.

Section 38.23(b)(1) requires a safety factor of six times the design load for working parts and three times the design load for nonworking parts. Given the requirement for safety factors of 3x and 6x the design load (depending upon the component), a lift with a 600 lb. design load should not be straining to the point of failure until the load approaches 1,800 lbs. (3 x 600).

If the lift manufacturer specifies that wheelchairs must face away from the vehicle when using the lift, are transportation operators required to permit passengers to board facing the vehicle?

- Yes. 49 CFR Part 38 specifies that a lift must permit both inboard and outboard facing of wheelchair users. A lift that requires passengers to face a specific direction does not comply with the regulations.

What kinds of services must transportation personnel provide?

- Because safe and nondiscriminatory transportation is the responsibility of the transportation operator, Section 37.173 of the DOT ADA regulations requires operators to train their personnel to properly assist and treat individuals with disabilities with sensitivity, and to operate vehicles and equipment safely. This includes training personnel to use the accessibility equipment and to accommodate the different types of wheelchairs.

Attendant-type services (e.g., manually lifting or transferring passengers to seats and carrying personal baggage or suitcases (except where provided to nondisabled passengers)) are not required. However, assistance with boarding and disembarking, including pushing a manual wheelchair up a particularly steep ramp, is required.

Does a wheelchair need brakes in order to use the transportation service?

- No. The DOT ADA regulations' definition of a wheelchair does not include a requirement for brakes or any other equipment. A transportation operator may not deny transportation to a wheelchair user because the device does not have brakes or the user does not choose to set the brakes.

Can an operator refuse to carry a person with a disability, especially a person using an electric scooter that meets the definition of a “wheelchair,” because of higher insurance rates or liability concerns?

- No. Section 37.5(g) of the DOT ADA regulations prohibits an operator from denying service to an individual with a disability because its insurance company conditions coverage or rates on the absence of individuals with disabilities or persons who use wheelchairs.

Can an operator require a person to transfer from a wheelchair to a vehicle seat?

- No. Section 37.165(e) of the DOT ADA regulations allows persons who use wheelchairs to transfer to a vehicle seat, if one is available. Such a move is the rider’s decision and the operator cannot force a rider to transfer to a vehicle seat, although the operator can suggest a transfer in a non-coercive way.

Securement

May a transit operator require that wheelchairs be secured in buses and vans?

- Yes, if the transit operator has established such a policy, and the vehicle is required to be equipped with a securement system by 49 CFR Part 38. Section 37.165(c)(3) of the DOT ADA regulations allows a transit operator to establish a policy that requires all riders to have their wheelchairs secured while aboard a transit bus or van. Therefore, the operator may decline to provide service to a rider who refuses to allow his or her wheelchair to be secured.

Alternatively, transit operators may adopt a policy that allows wheelchairs to ride unsecured. If the rider wishes his or her wheelchair to be secured, however, the operator’s personnel must provide the requested assistance.

The regulations do not require that rail vehicles be equipped with securement devices; if securement devices are nonetheless provided, their use is optional and at the rider’s discretion.

What kinds of securement equipment must be provided in buses and vans?

- Section 38.23(d) of the DOT ADA regulations requires all ADA-compliant buses and vans to have a two-part securement system, one to secure the wheelchair, and a seat belt and shoulder harness for the wheelchair user. Section 38.23(a) requires vehicles over 22 feet in length to have enough securement locations and devices to secure two wheelchairs, while vehicles 22 feet and under must be able to accommodate at least one wheelchair.

May a transit operator deny boarding to a rider whose wheelchair is difficult to secure?

- No. If the transit operator has a policy that requires securement, or if a rider asks that the wheelchair be secured, Section 37.165(f) of the DOT ADA regulations requires transit personnel to use their best efforts to secure the device. Section 37.165(d) states that

transit operators cannot refuse to accommodate a wheelchair because the device cannot be secured to the driver's satisfaction. Given the diversity of wheelchairs, transit operators should consult with the owner of the wheelchair to determine the best means of securement.

Does a wheelchair user have to use the seat belt and shoulder harness?

- Under the broad nondiscrimination provisions in Section 37.5 of the DOT ADA regulations, a transit operator is not permitted to mandate the use by wheelchair users of seat belts and shoulder harnesses, unless the operator mandates the use of these devices by all passengers, including those sitting in vehicle seats. For example, on fixed route buses, if none of the other passengers are required to wear shoulder belts then neither can the person in the mobility device be required to do so.

Transit operators may establish a policy that requires the seat belt and shoulder harness to be used by all riders, including those who use wheelchairs as well as those who use vehicle seats, if seat belts and shoulder harnesses are provided at all seating locations. In some cases, state law could require an operator to adopt such a policy.

When developing seat-belt-use policies, it must be stressed that Section 38.23(d)(7) prohibits the use of the seat belt and shoulder harness in lieu of securing the wheelchair itself. If the passenger's wheelchair cannot be secured, or cannot be secured adequately to the satisfaction of both passenger and transit personnel, the seat belt and shoulder harness must not be used.

Many state seat belt laws also contain provisions exempting certain types of vehicles (such as buses and taxis) from compliance, as well as exceptions for persons who cannot use a seat belt for medical reasons. Any seat-belt-use policy established by a transit operator should reflect such provisions.

- This guidance has been approved through the Department of Transportation's Disability Law Coordinating Council as representing the official views of the Department on this matter.
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