



**AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION**

August 18, 2008

U.S. Department of Justice
Disability Rights Section, Civil Rights Division
1425 New York Avenue, NW, Suite 4039
Washington, DC 20005

RE: Department Of Justice Docket No. CRT-2008-0016 and CRT-2008-0015

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comment on the Department of Justice's (DOJ) proposed updates to Title 28, Code of Federal Regulations Parts 35 and 36, announced June 17, 2008, at 73 FR 34466 and 34508.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including transit systems; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

Specific Issues

It is imperative that the final rules that flow from these rulemakings create optimal access standards that maximize opportunities for our riders with disabilities within the limited resources available to facility owners and operators. The costs of compliance, in many cases, practically preclude later correction if the final rules fail to meet this goal. To facilitate this, we believe DOJ should engage in subsequent rounds of investigation and public comment where, for instance, the responses to one of the many questions posed in the Notice of Proposed Rulemakings (NPRM) leads DOJ to alter its position on a matter. Given the stakes, substantial investments of facility owners and access to those facilities by persons with disabilities, DOJ is obligated to "get it right the first time."

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Vital to this optimization are consistency, clarity, and predictability. Public transportation agencies, like other facility owners and operators, must be able to readily ascertain the requirements and that cannot be accomplished absent clear, objective criteria. That clarity will ensure consistent application across the nation and predictability for persons with disabilities.

DOJ Should Implement its Proposed Safe Harbor Provisions

Obviously, facilities cannot be transformed immediately to conform to new standards. Accepting this practical reality and the need for predictability, we fully support the safe harbor provisions of the proposed regulations. We believe the safe harbor provisions properly maintain the minimum, existing standards, while facilities evolve to the new. This is consistent with the concept of program accessibility discussed in the preamble and presents a reasonably achievable means of improving accessibility.

Powered Mobility Devices Should be Subject to Reasonable Limitations

The issues surrounding mobility devices are clearly among the most difficult in these rulemakings. While we fully support the goal of universal access, there are mobility devices that are clearly inappropriate under particular circumstances. As an example, internal combustion engines are clearly incompatible with facility interiors. In keeping with this premise, we encourage DOJ to work with the various federal agencies that provide mobility devices to persons with disabilities to ensure those devices are consistent with the person's lifestyle and the accessibility rules that affect that lifestyle. Facility (as well as vehicle) owners should not be held responsible for accommodating devices that exceed the sizes dictated by the regulatory clearances and other limitations. This becomes particularly important when considering public transportation. Public transit facilities and vehicles are, by their very nature, more constrained than most facilities and require smaller mobility devices.

The size, speed, situational danger (to both the person with disabilities and others in the facility), and motive power of any mobility device must be reasonable to allow access to public facilities. Additionally, we caution that reasonable modifications for individuals should not be available for any device or type of device that is allowed to be categorically excluded from facilities under the DOJ criteria.

Finally, although public transportation vehicles and facilities are not subject to most of the proposed regulations, we believe it is imperative that DOJ coordinate issues surrounding mobility devices with its counterparts at the US Access Board and US Department of Transportation to ensure the standards are consistent to the greatest practical extent.

Employee Work Areas Should Not be Addressed in These Regulations

Despite DOJ's explanation (at 73 FR 36966) that not *all* circulation paths in non-exempt employee work areas need be accessible, it is still unclear how a facility owner would determine how many accessible circulation paths must be available. This lack of criteria or guidance is contrary to

the tenets of consistency, clarity, and predictability and would likely spawn unnecessary confusion and litigation. The proposed appendix should be deleted from the final rule. All issues related to workplace accessibility should remain in regulations promulgated under Title I of the ADA rather than these proposed Title III regulations.

Public Transportation Facilities Should be Clearly and Unambiguously Excluded

One additional issue is that of joint use facilities. Public transportation providers often include auxiliary services (e.g., food outlets, and other services) in transportation facilities. We believe DOJ should affirmatively declare that these transportation facilities are subject only to 49 CFR Part 37 and not the final versions of these proposed rules.

We appreciate the opportunity to assist DOJ in its efforts to ensure accessibility in government and public use facilities. For additional information, please contact James LaRusch of my staff at 202-496-4808 or jlarsch@apta.com.

Sincerely yours,

A handwritten signature in black ink that reads "William W. Millar". The signature is written in a cursive, flowing style.

William W. Millar
President

WWM/rk