

12. AMERICANS WITH DISABILITIES ACT (ADA) - GENERAL

PURPOSE OF THIS REVIEW AREA

Titles II and III of the Americans with Disabilities Act of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

As part of the Master Agreement, the Recipient must comply with the following federal prohibitions against discrimination based on disability:

(1) Federal laws, including:

(i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;

(ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., which requires that accessible facilities and services be made available to individuals with disabilities:

(A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but

(B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer.”

QUESTIONS TO BE EXAMINED

1. Does the recipient track, resolve, and respond to ADA-related complaints, and publicize the complaint process?
2. Do all bus and rail vehicles acquired for use in fixed-route service by public entities since the last Comprehensive Review meet the accessibility requirements of 49 CFR Part 38?
3. Do all vehicles used in fixed-route service provided under contract or other arrangement or relationship, including microtransit and commuter bus service, meet the requirements under 49 CFR Part 38?
4. Since the last Comprehensive Review, if vehicles were acquired for demand-response service to the general public (or a segment of the general public defined by characteristics such as age, disability or income), other than for complementary paratransit service meeting requirements of Subpart F of 49 CFR Part 37, were the requirements of 49 CFR Part 37.77 met?
5. If the recipient has engaged the services of a taxi company, transportation network company, or other private entity to operate demand-response service, on its behalf or in conjunction with its services, including microtransit, mobility on demand, or services provided using autonomous vehicles, are all vehicles accessible, or can equivalent service be documented per 49 CFR §37.77(c)(1)-(7)?
6. Are facilities for providing public transportation that were constructed since the last Comprehensive Review, or transit stops within the public right of way established since January 17, 2025, readily accessible to and usable by individuals with disabilities, according to the DOT standards for transportation facilities or public rights of way?

7. Are facilities that were altered since the last Comprehensive Review, or transit stops within the public right of way established since January 17, 2025, readily accessible to and usable by individuals with disabilities, according to the DOT standards for transportation facilities or public rights of way?
8. Does the recipient follow ADA provision of service requirements?
9. Does the recipient ensure that accessibility equipment is maintained in operative condition, and that individuals who rely on accessible equipment are accommodated when that equipment is inoperative?
10. Is route-deviation service open to the general public?
11. Is rail service accessible to and usable by persons with disabilities?
12. Is ferry service accessible to and usable by persons with disabilities?
13. Does the recipient monitor service provided under contract or other arrangement or relationship, or service provided by another public entity on the recipient's behalf, for compliance with the U.S. Department of Transportation (US DOT) ADA regulations?
14. Does the recipient monitor service provided by subrecipients for compliance with the US DOT ADA regulations?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Procedures for receiving and processing ADA complaints, including complaints for services provided by another entity
- ADA complaint form
- ADA complaint record retention procedures, if written
- Driver handbooks/operating and training manuals/ADA-related service bulletins
- Sample internal service provision monitoring materials, such as surveys, checklists, interview forms, etc.
- ADA reasonable modification procedures, if written
- Riders' guides, including paratransit guides. (Often information for general compliance issues, such as service animal accommodation or wheelchairs, is only found in paratransit information even though it is not specific to paratransit.)
- List of new facilities constructed or facilities altered since the last review
- Recipient's signage standards, if any
- Current certification of equivalent service and supporting analysis, if inaccessible vehicles have been employed in demand-responsive service of any kind; the Operational analysis must examine trip data and qualitative summaries for all service criteria outlined in 49 CFR 37.77(c)
- Copies of any contracts, agreements, or other terms of service with private entities such as TNCs or taxi operators for the provision of demand responsive service of any kind
- Current certification of equivalent service and supporting operational analysis, if private entities such as TNCs or taxi services have been employed in demand-responsive service of any kind. The Operational analysis must examine trip data and qualitative summaries for all service criteria outlined in 49 CFR 37.77(c)
- Procedures and tools for oversight of ADA provision of service requirements outlined in 49 CFR 37.161-37.173, including required reports, questionnaires, and checklists.
- Samples of completed oversight tools such as completed check lists, meeting minutes, reports, or summaries, and in particular, evidence of responsiveness to issues identified in operational analysis (if applicable)
- Driver training requirements, materials, and procedures to ensure that service is provided in compliance with DOT ADA regulations governing accommodation of service animals, boarding assistance, and other general nondiscrimination requirements outlined in 49 CFR 37.161-37.173

- Analysis of complaints received over the last three years related to DOT ADA regulations governing accommodation of service animals, boarding assistance, and other general nondiscrimination requirements outlined in 49 CFR 37.161-37.173
- Procedures and tools pertaining to regular and frequent checks of accessibility equipment for vehicles and facilities to ensure operability

Recipient Follow-up

- Sample vehicle specifications/information on annunciators
- Documentation of structural impracticality
- Documentation of disproportionality regarding alterations to the path of travel to a facility if alterations were made to a primary function area
- Internal bulletins
- Lift/ramp specifications for the fleet
- Sample requests for reasonable modification of policies and procedures
- Sample ADA-related complaint records
- Sample contract or other agreement, or terms of other relationships (including, but not limited to, awards, subawards, or cooperative agreements) with private entity to be visited that operates fixed-route or demand-response service, including microtransit and commuter bus

ADA-GEN1. Does the recipient track, resolve, and respond to ADA-related complaints, and publicize the complaint process?

BASIC REQUIREMENT

Recipients must track, resolve, and respond to ADA-related complaints.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Recipients are required to have procedures for addressing ADA complaints that incorporate appropriate due process standards and provide for prompt and equitable resolution. Recipients must advertise the process for filing an ADA-related complaint through means such as websites and communicate a response promptly to any individual filing a complaint. The recipient is not required to respond to all complaints in writing, but rather must ensure the response can be documented internally. Recipients must retain copies of ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years. A recipient may retain complaints or copies of complaints for five years in lieu of a summary. A recipient can use the same process for accepting and investigating ADA and Title VI complaints; however, ADA complaints must be categorized distinctly in internal and external communications. An agency may elect to have one "Discrimination Complaint Form," for example, that covers both Title VI and ADA, but the form must clearly distinguish the two statutes and identify whether a complaint involves a Title VI or ADA issue.

INDICATORS OF COMPLIANCE

- Is there a process for addressing ADA complaints?*
- How does the recipient identify ADA complaints?*

- c. *Is the process for filing a disability-related complaint advertised to the public, such as on the recipient's website?*
- d. *Are the complaint procedures accessible to and usable by individuals with disabilities?*
- e. *Do the procedures provide for the prompt and equitable resolution of complaints, including a procedure for responding to complaints and tracking the responses?*
- f. *Does the recipient retain ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website to determine if the ADA complaint process is posted. Request and review the ADA complaint procedures and review the website rider guide and pamphlets for information on filing an ADA complaint.

Evaluate whether an individual, after viewing the publicly available materials, would know how to file a disability-related complaint. To be sufficiently advertised, the complaint-filing instructions should clearly apply to all types of services, including fixed route, and therefore not be solely posted on a paratransit webpage or in other paratransit material. Review the ADA complaint procedures and determine if the procedures are available in accessible formats upon request.

Determine if the ADA complaint procedures specify time requirements for research and response, provide for promptly responding to any individual filing an ADA complaint, retaining and documentation of the response.

If the recipient combines its collection or tracking of different types of complaints (e.g. ADA, Title VI, etc.) within one system or with a common form, determine if it can clearly distinguish and appropriately resolve ADA complaints from other types of complaints. Ensure that the system or form mentions ADA and/or disability specifically so that a complainant will understand that the process includes ADA issues.

Onsite, review a sample of ADA complaint records to determine if research and response were timely, the response was documented, and if the reason for the response was provided to the individual filing a complaint. Review the ADA complaint procedures and record retention procedures for ADA complaints. Review ADA complaint files and logs to ensure that the recipient retains copies of ADA-related complaints for at least one year and a summary of all ADA-related complaints or complaints themselves for at least five years.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have an ADA complaint process; it does not provide information to the public on how to file an ADA complaint; the information is not available in accessible formats when requested; it cannot distinguish ADA complaints from other types of complaints; or its procedures do not provide prompt response or documentation of the response to any individual filing a complaint, including the reason for the response.

DEFICIENCY CODE ADA-GEN1-1: Insufficient ADA complaint process

SUGGESTED CORRECTIVE ACTION 1: Submit an ADA complaint process.

SUGGESTED CORRECTIVE ACTION 2: Submit information for the public on filing an ADA complaint and documentation that the information has been made available to the public.

SUGGESTED CORRECTIVE ACTION 3: Submit the accessible formats provided to the public in making the ADA complaint procedures accessible to and usable by individuals with disabilities.

SUGGESTED CORRECTIVE ACTION 4: Submit ADA complaint procedures that require a prompt response to the individual filing the complaint.

SUGGESTED CORRECTIVE ACTION 5: Submit ADA complaint procedures that provide for documentation of the response to the individual filing the complaint, including the reason for the response.

The recipient is deficient if it does not maintain complaints for at least one year and a summary of all ADA-related complaints or the complaints themselves for at least five years.

DEFICIENCY CODE ADA-GEN1-2: Insufficient ADA complaint record retention

SUGGESTED CORRECTIVE ACTION: Submit a procedure for retaining copies of ADA complaints for at least one year and summaries of ADA complaints or the complaints themselves for at least five years.

GOVERNING DIRECTIVE

49 CFR 27.121(b) Compliance information

(b) *Compliance reports.* Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years. Each recipient shall keep such other records and submit to the responsible Departmental official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Department official may prescribe. In the case in which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report.

49 CFR 37.17 Designation of responsible employee and adoption of complaint procedures.

(a) *Designation of responsible employee.* Each public or private entity subject to this part shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of complaint procedures.* An entity shall adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part and 49 CFR parts 27, 38 and 39. The procedures shall meet the following requirements:

(1) The process for filing a complaint, must be sufficiently advertised to the public, such as on the entity's Web site;

(2) The procedures must be accessible to and usable by individuals with disabilities;

(3) The entity must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant and must ensure that it has documented its response.

ADA-GEN2. Do all bus and rail vehicles acquired for use in fixed-route service by public entities since the last Comprehensive Review meet the accessibility requirements of 49 CFR Part 38?

BASIC REQUIREMENT

All new bus or rail vehicles purchased or leased for use in fixed-route service by public entities must be readily accessible to and usable by individuals with disabilities, including those who use wheelchairs. Used bus or rail vehicles purchased or leased for use in fixed-route service by public entities must be accessible, with a good faith efforts exception. Remanufactured vehicles must be accessible to the maximum extent feasible, with an engineering exception.

APPLICABILITY

Recipients that provide fixed-route service

DETAILED EXPLANATION FOR REVIEWER

All new bus and rail vehicles purchased or leased by public entities operating fixed-route service must be accessible and must comply with the standards found in 49 CFR Part 38 of the US DOT ADA regulations. Recipients must comply with the requirements, as must all contractors and subrecipients.

All used bus and rail vehicles must be accessible. Inaccessible used bus and rail vehicles may only be purchased or leased if, after making demonstrated good faith efforts to obtain an accessible vehicle, the entity is unable to do so. Good faith efforts are defined in 49 CFR 37.73(c) and 37.81(c) as including at least the following steps:

- An initial solicitation or documented communication for used vehicles specifying that all used vehicles are to be lift equipped or otherwise accessible to and usable by individuals with disabilities
- A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers
- Advertising in trade publications and contacting trade associations

The entity must keep records documenting good faith efforts for three years.

Remanufactured vehicles must be made accessible to the maximum extent feasible. It is considered feasible to remanufacture a vehicle so that it is accessible, unless an engineering analysis demonstrates that including accessibility features would have a significant adverse effect on the structural integrity of the vehicle. Specific standards for the various types of transit vehicles are established by 49 CFR Part-38.

INDICATOR OF COMPLIANCE

- a. *Do all new bus and rail vehicles purchased or leased over the past three years by public entities operating fixed-route service appear to comply with the standards found in 49 CFR Part 38 of the US DOT ADA regulations based on review of the elements below?*

Bus Accessibility Checklist	Yes, No, or Not Applicable
Priority seating designated	-
Wheelchair location signage	-
Lift, ramp or level-change mechanism	-
Lift platforms have handrails	-
Ramps have 2"-high edge barriers	-
Securement locations and devices: At least two for vehicles >22' (one of which may be rear-facing w/padded barrier)	-
At least one for vehicles ≤22' (may face forward, or rearward with padded barrier)	-
Seat belt and shoulder harness for each securement location	-
Stop request controls within securement area	-
Public address system, if >22' and used in multiple-stop, fixed-route service	-

Rail Car Accessibility Checklist	Yes, No, or Not Applicable
Priority seating designated	-
Minimum clear space of 30"x 48" for each of two wheelchair locations (do not have to be specifically designated as wheelchair locations and may overlap space for standees)	-
Public address system (for commuter rail, alternative systems or devices which provide equivalent access are also permitted)	-
Lift, ramp or bridge plate if platform to railcar gap exceeds 3" horizontal and/or +/- 5/8" vertical (not required on vehicle if wayside devices provided)	-
2" high edge barriers on ramps and bridge plates (unless recipient possesses certification of equivalent facilitation issued to that recipient by the FTA Administrator)	-
For light rail vehicles operating on city streets or other areas where level boarding is not practicable, lifts or ramps compliant with 49 CFR Part 38 must be provided to enable persons with disabilities, including those who use wheelchairs, to board from such locations	-

- b. *For used vehicles acquired or leased that do not meet accessibility standards under 49 CFR Part 38, did the recipient's good faith efforts meet the requirements of 49 CFR 37.73(c), 37.81(c) or 37.87(c)?*

- c. *For remanufactured vehicles that do not meet accessibility standards under 49 CFR Part 38, does the recipient possess the results of an engineering analysis demonstrating that meeting a specific standard would have a significant adverse effect on the structural integrity of the vehicle? Were all other standards met?*

INSTRUCTIONS FOR REVIEWER

Review the list of procurements obtained under the Procurement area of the review to determine whether new vehicles were purchased or leased since the last Comprehensive Review. Onsite, review procurement files to determine if accessible vehicles were specified. During the tour of the facility, check for inaccessible vehicles. Using the vehicle accessibility checklists, visually observe at least one new bus and rail car for ADA accessibility features.

Review awards in TrAMS to determine whether used or remanufactured vehicles were acquired or leased or if any existing vehicles were remanufactured since the last Comprehensive Review. Onsite, discuss each instance in which an inaccessible used vehicle was acquired or remanufactured. For any purchase or lease of an inaccessible vehicle, review the supporting documentation, including documentation of good-faith efforts consistent with 49 CFR 37.73(c), 37.81(c) or 37.87(c) to obtain an accessible vehicle. For remanufactured vehicles, review the engineering analysis supporting significant adverse effects on the structural integrity of the vehicle. During the tour of the facility, check for inaccessible vehicles.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it purchased or leased inaccessible new vehicles for use by public entities in fixed-route service.

DEFICIENCY CODE ADA-GEN2-1: New vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit documentation showing that the newly acquired noncompliant vehicles were taken out of fixed-route service. Before placing them back in fixed-route service, submit documentation demonstrating that the vehicles have been made compliant with the standards contained in 49 CFR Part 38.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that it has canceled the lease for inaccessible vehicles.

The recipient is deficient if it purchased or leased inaccessible used vehicles for use by public entities in fixed-route service and cannot demonstrate that good faith efforts consistent with 49 CFR 37.73(c), 37.81(c) or 37.87(c) were made to obtain accessible vehicles.

DEFICIENCY CODE ADA-GEN2-2: Used vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence of good faith efforts consistent with 49 CFR 37.73(c), 37.81(c) or 37.87(c), or evidence that it has ceased use of inaccessible used vehicles acquired since the last Comprehensive Review for fixed-route service. Before placing the vehicles back in service, the recipient must submit documentation that it has made the vehicles accessible.

The recipient is deficient if it has remanufactured vehicles, or purchased or leased remanufactured vehicles that were not made readily accessible to persons with disabilities, including those who use wheelchairs, according to the standards contained in 49 CFR Part 38, and did not document an engineering analysis demonstrating a significant adverse impact on the structural integrity of the vehicle.

DEFICIENCY CODE ADA-GEN2-3: Remanufactured vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit the engineering analysis showing that making the vehicles accessible would have had a significant adverse effect on the structural integrity of the vehicle, or documentation that it has ceased use of the vehicles in fixed-route service. Before placing the vehicles back in service, submit documentation that it has made the vehicles accessible.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that it has canceled the lease for inaccessible vehicles.

GOVERNING DIRECTIVE

49 CFR 37.71 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems

(a) Each public entity operating a fixed route system making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

49 CFR 37.79 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems

Each public entity operating a rapid or light rail system making a solicitation after August 25, 1990, to purchase or lease a new rapid or light rail vehicle for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

49 CFR 37.85 Purchase or lease of new intercity and commuter rail cars

Amtrak or a commuter authority making a solicitation after August 25, 1990, to purchase or lease a new intercity or commuter rail car for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

49 CFR 37.73 Purchase or lease of used non-rail vehicle by public entities operating fixed-route systems

(c) Good faith efforts shall include at least the following steps:

- (1) The initial solicitation for used vehicles made by the public entity specifying that all used vehicles were to be accessible to and usable by individuals with disabilities, or, if a solicitation is not used, a documented communication so stating;
- (2) A nationwide search for accessible vehicles, involving specific inquiries to manufacturers and other transit providers; and
- (3) Advertising in trade publications and contacting trade associations.

49 CFR 37.81 Purchase or lease of used rail vehicle by public entities operating rapid or light rail systems

(c) Good faith efforts shall include at least the following steps:

- (1) An initial solicitation for used vehicles specifying that all used vehicles are to be lift-equipped and otherwise accessible to and usable by individuals with disabilities, or, if an initial solicitation is not used, a documented communication so stating;

- (2) A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and
- (3) Advertising in trade publications and contacting trade associations.

49 CFR 37.87 Purchase or lease of used intercity and commuter rail cars

(c) Good faith efforts shall include at least the following steps: An initial solicitation for used vehicles specifying that all used vehicles accessible to and usable by individuals with disabilities: A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and advertising in trade publications and contacting trade associations.

49 CFR 37.75 Remanufacture of non-rail vehicles and purchase or lease of remanufactured non-rail vehicles by public entities operating fixed route systems

(a) This section applies to any public entity operating a fixed route system which takes one of the following actions:

- (1) After August 25, 1990, remanufactures a bus or other vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing; or
- (2) Purchases or leases a bus or other vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after August 25, 1990, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) For purposes of this section, it shall be considered feasible to remanufacture a bus or other motor vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by this part would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a fixed route system, any segment of which is included on the National Register of Historic Places, and if making a vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity has only to make (or purchase or lease a remanufactured vehicle with) those modifications to make the vehicle accessible which do not alter the historic character of such vehicle, in consultation with the National Register of Historic Places.

(e) A public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the FTA Administrator for a determination of the historic character of the vehicle. The FTA Administrator shall refer such requests to the National Register of Historic Places, and shall rely on its advice in making determinations of the historic character of the vehicle.

49 CFR 37.83 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems

(a) This section applies to any public entity operating a rapid or light rail system which takes one of the following actions:

- (1) After August 25, 1990, remanufactures a light or rapid rail vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing;

- (2) Purchases or leases a light or rapid rail vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after August 25, 1990, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) For purposes of this section, it shall be considered feasible to remanufacture a rapid or light rail vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that doing so would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a rapid or light rail system any segment of which is included on the National Register of Historic Places and if making a rapid or light rail vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity need only make (or purchase or lease a remanufactured vehicle with) those modifications that do not alter the historic character of such vehicle.

(e) A public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the FTA Administrator for a determination of the historic character of the vehicle. The FTA Administrator shall refer such requests to the National Register of Historic Places and shall rely on its advice in making a determination of the historic character of the vehicle.

49 CFR 37.89 Remanufacture of intercity and commuter rail cars and purchase or lease of remanufactured intercity and commuter rail cars

(a) This section applies to Amtrak or a commuter authority which takes one of the following actions:

- (1) Remanufactures an intercity or commuter rail car so as to extend its useful life for ten years or more;
- (2) Purchases or leases an intercity or commuter rail car which has been remanufactured so as to extend its useful life for ten years or more.

(b) Intercity and commuter rail cars listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) For purposes of this section, it shall be considered feasible to remanufacture an intercity or commuter rail car so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that remanufacturing the car to be accessible would have a significant adverse effect on the structural integrity of the car.

49 CFR Part 38—Americans with Disabilities Act (ADA) Accessibility Standards for Transportation Vehicles

Subpart B—Buses, Vans and Systems

§38.27 Priority seating signs

(a) Each vehicle shall contain sign(s) which indicate that seats in the front of the vehicle are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them. At least one set of forward-facing seats shall be so designated.

(b) Each securement location shall have a sign designating it as such.

Subpart C—Rapid Rail Vehicles and Systems

§38.55 Priority seating signs

(a) Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them.

Subpart D—Light Rail Vehicles and Systems

§38.75 Priority seating signs

(a) Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them.

(b) Where designated wheelchair or mobility aid seating locations are provided, signs shall indicate the location and advise other passengers of the need to permit wheelchair and mobility aid users to occupy them.

Subpart E—Commuter Rail Cars and Systems

§38.105 Priority seating signs

(a) Each car shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities and that other passengers should make such seats available to those who wish to use them.

ADA-GEN3. Do all vehicles used in fixed-route service provided under contract or other arrangement or relationship, including microtransit and commuter bus service, meet the requirements of 49 CFR Part 38?

BASIC REQUIREMENT

All vehicles used in fixed-route service operated under contract or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement), including those used in fixed-route, microtransit, and commuter bus service, must be readily accessible to and usable by individuals with disabilities, including those who use wheelchairs.

APPLICABILITY

Recipients who enter into any type of contract or other arrangement or relationship, including, but not limited to, a grant, subgrant, or cooperative agreement, for fixed-route service. Note that the DOT ADA regulations apply equally to “pilot” programs or demonstration projects.

DETAILED EXPLANATION FOR REVIEWER

When an entity enters into a contractual or other arrangement (including, but not limited to, an award, subaward, or cooperative agreement) or relationship with a private entity to operate fixed-route service, including microtransit and commuter bus service, all of the vehicles acquired and used in the service must be accessible. The contractor must meet the entity’s obligations as it “stands in the shoes” of the entity and the entity cannot contract away its obligations to provide accessible service.

49 CFR Part 37 subpart H Over-the-Road Buses is specific to private entities and does not govern public entities contracting for fixed-route service. Unlike private over-the-road bus operators, public entities may not require advance notice for accessible vehicles to be made available.

INDICATOR OF COMPLIANCE

- a. *Do all vehicles used in fixed-route service under contract or other arrangement, or relationship meet the requirements of 49 CFR Part 38?*

INSTRUCTIONS FOR REVIEWER

Onsite, review sample contracts, awards, subawards, cooperative agreements, and any other type of arrangement or relationship with another entity for fixed-route service, including commuter bus and microtransit, to identify vehicle accessibility requirements. Review information on service being provided under contract or other arrangement or relationship to determine whether advance notice is necessary for accessible vehicles to be provided.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if the vehicles used by a private entity operating fixed-route service on its behalf or under its banner are not accessible. The recipient is deficient if advance notice is required for accessible vehicles to be made available.

DEFICIENCY CODE ADA-GEN3-1: Contracted service vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit evidence that it has required any private entity operating fixed route services on its behalf or under its banner under any contract or other arrangement or relationship to use accessible equipment for fixed-route service and provided a timeframe for the contractor to be in compliance.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that all vehicles used in fixed route service are accessible, and any requirements for advance notice for accessible vehicles to be made available have been eliminated.

SUGGESTED CORRECTIVE ACTION 3: Submit evidence that services found to be noncompliant have been discontinued.

GOVERNING DIRECTIVE

49 CFR 37.7 Standards for accessible vehicles

(a) For purposes of this part, a vehicle shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the standards set forth in part 38 of this title.

(c) Over-the-road buses acquired by public entities (or by a contractor to a public entity as provided in §37.23 of this part) shall comply with §38.23 and subpart G of part 38 of this title.

49 CFR 37.23 Service under contract

(a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

ADA-GEN4. Since the last Comprehensive Review, if vehicles were acquired for demand-response service to the general public (or a segment of the general public defined by characteristics such as age, disability, or income), other than for complementary paratransit service meeting the requirements of Subpart F of 49 CFR Part 37, were the requirements of 49 CFR Part 37.77 met?

BASIC REQUIREMENT

Vehicles used in demand-response service are required to be readily accessible to and usable by individuals with disabilities, including those who use wheelchairs; inaccessible vehicles may only be acquired if the entity can demonstrate that the service, when viewed in its entirety, meets the requirements for equivalent service under 49 CFR 37.77(c).

APPLICABILITY

Recipients who provide demand-response service to the general public or open to a segment of the general public defined by characteristics such as age, disability, or income.

DETAILED EXPLANATION FOR REVIEWER

Demand-response service for the general public does not include ADA complementary paratransit service, which is subject to specific requirements. Public entities operating demand-response service for the general public, or open to a segment of the general public defined by characteristics such as age, disability, or income, must purchase or lease accessible vehicles. Inaccessible vehicles can only be acquired upon demonstration that the system, when viewed in its entirety, provides a level of service to persons with disabilities, including persons who use wheelchairs, that is equivalent to the level of service it provides to persons without disabilities. The service for the general public for people with and without disabilities must be provided in the most integrated setting feasible and must be equivalent with respect to response time, fares, geographic service area, hours and days of service, any restrictions or priorities based on trip purpose, availability of information and reservation capability, and any constraints on capacity or service availability. Recipients must ensure that any entity using non-accessible vehicles in demand-response service operated under contract or other arrangement or relationship with the recipient provide equivalent service according to this standard.

Vanpool systems operated by public entities or in which public entities own, purchase or lease the vehicles are subject to equivalent service requirements. A vehicle that an individual with disabilities can use must be made available to and used by a vanpool in which such an individual chooses to participate.

If the recipient has acquired any inaccessible vehicles in the past three years, it must produce an analysis of its services demonstrating that equivalent service is and will continue to be provided to persons with disabilities, including wheelchair users, according to the requirements contained in 49 CFR 37.77(c). This is in addition to, and must support, any certification of equivalent service.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

Modification of Fixed-Route Service

Recipients determine the type of service they offer. There are no ADA concerns with a proposal to move from a fixed-route to a demand-responsive service. However, under DOT ADA regulations at 49 CFR 37.77, all vehicles used in demand-responsive service must be accessible to and usable by persons with disabilities, including wheelchair users, unless equivalent service can be demonstrated according to the specific criteria contained in 49 CFR 37.77(c). In addition, once the recipient completes its move to demand-responsive service, the obligation to provide ADA complementary paratransit service is no longer applicable. For more information on ADA requirements for demand-responsive service, see Chapter 7 of FTA Circular 4710.1.

INDICATOR OF COMPLIANCE

- a. *If the recipient acquired non-accessible equipment for demand-response service the last Comprehensive Review, can the recipient document that equivalent service is and will continue to be provided to persons with disabilities, including wheelchair users, in accordance with the criteria found in 49 CFR 37.77(c)?*
- b. *If inaccessible vehicles are used for demand-responsive service, can the recipient demonstrate that equivalent service is provided?*
- c. *If the recipient transitioned from a fixed-route to demand-responsive service, are all the vehicles used in service accessible?*

INSTRUCTIONS FOR REVIEWER

Review the listing of vehicle procurements to determine whether new vehicles were acquired for demand responsive service since the last Comprehensive Review. Onsite, review procurement files to determine if accessible vehicles were specified. Obtain documentation showing that the recipient monitors its service to ensure that equivalent service is provided. Ask whether an accessible vehicle can be provided on the same basis as an inaccessible vehicle according to the equivalent service standards described in 49 CFR 37.77(c). Ask specifically about response time and fares for accessible vehicles.

In addition to the normal assessment procedures, review the recipient's website or discuss with the FTA regional office to determine if the recipient transitioned from providing fixed-route to demand-responsive service in response to the public health emergency.

Review the recipient's vehicle listing and inquire if any of its vehicles are inaccessible. If any inaccessible vehicles are used in demand-responsive service, request evidence demonstrating that equivalent service according to the regulatory criteria is provided.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it purchased or leased new inaccessible vehicles for use in demand-response service and cannot document that equivalent service is provided to persons with disabilities, including wheelchair users (note that such documentation must support any certification of equivalent service, and that a certification alone is insufficient).

DEFICIENCY CODE ADA-GEN4-1: Demand-response vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION: Ensure that all future vehicle acquisitions specify only accessible vehicles meeting the requirements of 49 CFR Part 38 until it can demonstrate that equivalent service is provided.

GOVERNING DIRECTIVE

49 CFR 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public.

(a) Except as provided in this section, a public entity operating a demand responsive system for the general public making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) If the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities, it may purchase new vehicles that are not readily accessible to and usable by individuals with disabilities.

(c) For purposes of this section, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (1) Response time;
- (2) Fares;
- (3) Geographic area of service;
- (4) Hours and days of service;
- (5) Restrictions or priorities based on trip purpose;
- (6) Availability of information and reservations capability; and
- (7) Any constraints on capacity or service availability.

ADA-GEN5. If the recipient has engaged the services of a taxi company, transportation network company, or other private entity to operate demand-response service, on its behalf or in conjunction with its services, including microtransit, mobility on demand, or services provided using autonomous vehicles, are all vehicles accessible, or can equivalent service be documented per 49 CFR §37.77(c)(1)-(7)?

BASIC REQUIREMENT

No entity shall discriminate against an individual with a disability in connection with the provision of transportation service.

APPLICABILITY

Recipients who enter into a contract or other arrangement or relationship, including but not limited to a grant, subgrant, or cooperative agreement, for demand-response service. Note that the DOT ADA regulations apply independent of the use of any Federal funding, and equally to “pilot” programs or demonstration projects.

DETAILED EXPLANATION FOR REVIEWER

Public entities operating demand-response service (including microtransit) for the general public or open to a segment of the general public defined by characteristics such as age, disability, or income who enter into a contract or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement) with a private entity must ensure that services provided through such arrangement are accessible to and usable by persons with disabilities, including wheelchair users. Where inaccessible vehicles are used, equivalent service must be provided to persons with disabilities, including those who use wheelchairs, according to the criteria found in 49 CFR 37.77(c). If the private entity lacks sufficient accessible vehicles to ensure that service is equivalent, the recipient may engage the services of another entity that has a sufficient number of accessible vehicles, require the private entity to provide a sufficient number of accessible vehicles, or provide accessible vehicles from its own fleet.

Regardless of funding source, ADA compliance is required as a condition of eligibility for Federal funding. Whether FTA funds a particular service or not is irrelevant; in order for the entity itself to be compliant, and therefore eligible for FTA funding, its services must be operated according to ADA requirements.

INDICATOR OF COMPLIANCE

- a. *If the recipient entered into a contract or other arrangement or relationship with a private entity to provide demand-response service, is equivalent service provided according to the criteria found in 49 CFR §37.77(c)?*

INSTRUCTIONS FOR REVIEWER

Onsite, examine the terms of any contract or other arrangement or relationship between the recipient and the private entity to determine how accessible vehicles are provided. Discuss how the recipient ensures that sufficient accessible vehicles are available to ensure the provision of equivalent service to persons with disabilities, including wheelchair users, according to the seven regulatory criteria, and obtain and review documentation in support of the entity's certification of equivalent service. Review any oversight reports. Ask specifically about response time, fares, and any constraints on capacity or service availability involving accessible vehicles. When discussing constraints on capacity or service availability, ask about the rate of canceled trips, and trip request wait times (how long it takes to match a rider with a driver before a trip is confirmed) for accessible vehicles.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it entered into a contract or other arrangement or relationship with a private entity, and all vehicles are not accessible, or it cannot document that equivalent service is provided to persons with disabilities, including wheelchair users, according to the regulatory criteria. (Note that such documentation must support any certification of equivalent service, and that a certification alone is insufficient)

DEFICIENCY CODE ADA-GEN5-1: Demand-response equivalent service deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit a plan to either replace inaccessible vehicles with accessible vehicles, bring the service into compliance with equivalent service requirements, or submit procedures for monitoring the demand-response service to ensure that equivalent service is provided to persons with disabilities, including wheelchair users, according to the criteria described in 49 CFR 37.77(c).

SUGGESTED CORRECTIVE ACTION 2: Submit procedures for monitoring the demand-response service to ensure that equivalent service is provided to persons with disabilities, including wheelchair users, according to the criteria described in 49 CFR 37.77(c).

SUGGESTED CORRECTIVE ACTION 3: Submit evidence of implementation of procedures for monitoring the demand-response service to ensure that equivalent service is provided to persons with disabilities, including wheelchair users, according to the criteria described in 49 CFR 37.77(c).

SUGGESTED CORRECTIVE ACTION 4: Submit documentation that the service has been discontinued.

GOVERNING DIRECTIVE

49 CFR 37.5 Nondiscrimination

(a) No entity shall discriminate against an individual with a disability in connection with the provision of transportation service.

49 CFR 37.23 Service under contract

(a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or

demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.

(c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

(d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.

49 CFR 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public.

(c) For purposes of this section, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (1) Response time;
- (2) Fares;
- (3) Geographic area of service;
- (4) Hours and days of service;
- (5) Restrictions or priorities based on trip purpose;
- (6) Availability of information and reservations capability; and
- (7) Any constraints on capacity or service availability

ADA-GEN6. Are facilities for providing public transportation that were constructed since the last Comprehensive Review, or transit stops within the public right of way established since January 17, 2025, readily accessible to and usable by individuals with disabilities, according to the DOT standards for transportation facilities or public rights of way?

BASIC REQUIREMENT

Newly constructed facilities, including transit stops within the public right of way, must meet US DOT accessibility requirements.

APPLICABILITY

Recipients who provide service

DETAILED EXPLANATION FOR REVIEWER

Any new facility to be used in providing public transportation services must be accessible according to the standards referenced in 49 CFR 37.9, as required by 49 CFR 37.41. “*Facility* means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.” Under 49 CFR 37.41(b), full compliance with these standards is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. “Structurally impracticable” is defined in 49 CFR 37.41(b)(1) as “those rare circumstances where the unique characteristics of terrain prevent the incorporation of accessibility features.”

If there are parties other than the recipient responsible for portions of the facility, the recipient must ensure that they also comply with the US DOT ADA requirements.

Note that there are differences between the standards required under US DOT ADA regulations and those issued by other Federal agencies and state, county, and municipal building codes cannot be relied upon to ensure compliance with US DOT ADA requirements.

On January 17, 2025, new DOT ADA requirements for transit stops within the public right of way became effective. These incorporate the Public Rights Of Way Accessibility Guidelines (PROWAG) as enforceable regulatory standards. Any bus stop or facility established in the public right of way as of that date is required to comply.

INDICATOR OF COMPLIANCE

- a. *Can the recipient demonstrate that the newly constructed facilities and transit stops within the public right of way meet accessibility requirements? If not, can the recipient demonstrate that meeting the accessibility requirements was structurally impracticable?*

INSTRUCTIONS FOR REVIEWER

Review awards to determine whether new facilities were constructed since the last Comprehensive Review, or new transit stops established in the public right of way after January 17, 2025. Obtain a list of facilities that were constructed since the last Comprehensive Review, or transit stops established after January 17, 2025. Discuss the list with the regional office to determine if they are aware of any accessibility issues. Work with the regional office and the RCRO to determine which facility(ies) and transit stops to tour during the site visit. Onsite, review procurement files to determine if procurements refer to US DOT ADA requirements. If the recipient has a signage standard or other documentation of system signage design, review the standard to ensure it complies with ADA requirements, including the requirements of 36 CFR Part 1191 Section 703. Discuss with the recipient how it ensures that plans, drawings, and construction comply with US DOT ADA requirements. Review documentation of structural impracticability that is the unique characteristics of terrain preventing the incorporation of accessibility features. Tour newly constructed facility(ies) to determine if the building is generally accessible, that is,

includes basic accessibility elements such as accessible parking, accessible routes, ramps, and elevators.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it constructed a new facility that did not meet US DOT accessibility requirements and cannot document structural impracticability.

DEFICIENCY CODE ADA-GEN6-1: New facility accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit a schedule for making the necessary modifications to bring the facility into compliance.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation of structural impracticability.

SUGGESTED CORRECTIVE ACTION 3: Submit a revised signage standard that complies with ADA requirements.

GOVERNING DIRECTIVE

49 CFR 37.9 Standards for accessible transportation facilities

(a) Transportation facilities other than transit stops in the public right-of-way.

(1) For purposes of this part, a transportation facility shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the requirements set forth in appendices B and D to 36 CFR part 1191, which apply to buildings and facilities covered by the Americans with Disabilities Act, as modified by appendix A to this part.

(b) Transportation facilities (transit stops) in the public right-of-way.

(1) Except as set forth in paragraph (b)(2) of this section, if new construction or alterations of a transit stop located in the public right-of-way commence after January 17, 2025, the new construction or alterations of the transit stop shall comply with the requirements set forth in the appendix to 36 CFR part 1190, which apply to pedestrian facilities located in the public right-of-way covered by the Americans with Disabilities Act.

(2) New construction or alterations of transit stops located in the public right-of-way on which construction has begun, or all approvals for final design have been received, before January 17, 2025, are not required to be consistent with the requirements set forth in the appendix to 36 CFR part 1190, but are otherwise required to be readily accessible to and usable by individuals with disabilities. **49 CFR 37.41 Construction of transportation facilities by public entities**

(a) A public entity shall construct any new facility to be used in providing designated public transportation services so that the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement also applies to the construction of a new station for use in intercity or commuter rail transportation. For purposes of this section, a facility or station is “new” if its construction begins (*i.e.*, issuance of notice to proceed) after January 25, 1992, or, in the case of intercity or commuter rail stations, after October 7, 1991.

(1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility

that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

- (3) If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

ADA-GEN7. Are facilities that were altered since the last Comprehensive Review, or transit stops within the public right of way altered since January 17, 2025, readily accessible to and usable by individuals with disabilities, according to the DOT standards for transportation facilities or public rights of way?

BASIC REQUIREMENT

Altered facilities must meet US DOT accessibility requirements.

APPLICABILITY

Recipients who provide service

DETAILED EXPLANATION FOR REVIEWER

If the entity alters an existing facility used to provide public transportation, including a transit stop within the public right of way, the altered portions of the facility must be accessible. If the altered portion includes the path of travel, the path of travel must be accessible. When the nature of an existing facility makes it impossible to comply fully with applicable accessibility standards, the alterations must be made accessible to the maximum extent feasible. 49 CFR 37.43(b) defines “to the maximum extent feasible” as “the occasional case where the nature of an existing facility makes it impossible to fully comply with applicable standards through a planned alteration.”

If the area being altered contains a primary function, such as a station platform, an additional requirement is triggered to make the path of travel to and from the altered area accessible, unless the cost of doing so is disproportionate to the cost of the alterations to the primary function area. The regulations define “disproportionate” as exceeding 20 percent of the cost of the alteration to the area containing the primary function. The US DOT ADA regulations provide guidance to define disproportionate costs, specify what costs may be counted, and provide a priority listing for accessibility elements to provide greatest access.

An entity must provide documentation sufficient to support that it has made the facility (or altered portion(s) of the facility) accessible to the maximum extent feasible or that alterations required but not made to the path of travel were disproportionate to the overall alterations in terms of cost and scope.

Note that there are differences between the standards required under US DOT ADA regulations and those issued by other Federal agencies and state, county, and municipal building codes cannot be relied upon to ensure compliance with US DOT ADA requirements.

On January 17, 2025, new DOT ADA requirements for transit stops within the public right of way became effective. These incorporate the Public Rights Of Way Accessibility Guidelines (PROWAG) as enforceable regulatory standards. Any transit stop within the public right of way that has been altered as of that date is required to comply.

INDICATORS OF COMPLIANCE

- a. Can the recipient demonstrate that the recently altered facilities meet accessibility requirements?*

- b. *Can the recipient provide documentation that the facility was made accessible to the maximum extent feasible?*

- c. *If the alteration to the facility(ies) involving an area containing a primary function did not result in making the path of travel to and from the altered area accessible, can the recipient demonstrate that the cost of alterations required to make the path of travel accessible were disproportionate to the overall alterations in terms of cost and scope?*

INSTRUCTIONS FOR REVIEWER

Review awards in TrAMS to determine whether facilities, including transit stops within the public right of way, were altered since the last Comprehensive Review. Discuss with the regional office any correspondence regarding altered facilities and transit stops within the public right of way and ADA accessibility. Obtain a list of newly altered facilities and transit stops within the public right of way.

Review procurement files to determine if architectural & engineering (A&E) services refer to US DOT ADA requirements, including PROWAG. Discuss with the recipient how it ensures that plans, drawings, and construction comply with US DOT ADA requirements, including PROWAG. If the recipient has a signage standard or other documentation of system signage design, review the standard to ensure it complies with ADA requirements, including the requirements of 36 CFR Part 1191 Section 703. Review documentation that the facility was made accessible to the maximum extent feasible. Tour the newly altered facility(ies), noting presence or absence in primary function areas of elements such as accessible parking, accessible routes, accessible counters, ramps, and elevators. Use the table below to assist with this documentation. The elements listed are not all-inclusive or may not apply to the particular altered facility.

Primary Function Area Accessibility Element (List not all-inclusive)	Element Present (Yes, No, or Not Applicable)
Accessible Parking	-
Accessible Routes	-
Accessible Counters	-
Ramps	-
Elevators	-
Escalators	-
(Add element)	-

Discuss with the recipient whether the alteration involved an area containing a primary function and if the path of travel to and from the altered area was not made accessible. Obtain and review documentation that the cost of the alterations required to make the path of travel accessible were disproportionate to the overall cost and scope of the alterations.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it altered a facility for providing public transportation that did not meet US DOT accessibility requirements and cannot document that it either made the facility accessible to the maximum extent feasible or the cost of making the path of travel to and from the altered area accessible was disproportionate to the overall alterations in terms of cost and scope.

DEFICIENCY CODE ADA-GEN7-1: Facility accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit a schedule for making the necessary modifications to bring the facility into compliance.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that the facility was made accessible to the maximum extent feasible.

SUGGESTED CORRECTIVE ACTION 3: Submit a schedule for making the necessary modifications to make the path of travel accessible.

SUGGESTED CORRECTIVE ACTION 4: Submit documentation supporting cost disproportionality with regard to the path of travel.

SUGGESTED CORRECTIVE ACTION 5: Submit a revised signage standard that complies with ADA requirements.

GOVERNING DIRECTIVE

49 CFR 37.9 Standards for accessible transportation facilities

(a) Transportation facilities other than transit stops in the public right-of-way.

(1) For purposes of this part, a transportation facility shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the requirements set forth in appendices B and D to 36 CFR part 1191, which apply to buildings and facilities covered by the Americans with Disabilities Act, as modified by appendix A to this part.

(b) Transportation facilities (transit stops) in the public right-of-way.

(1) Except as set forth in paragraph (b)(2) of this section, if new construction or alterations of a transit stop located in the public right-of-way commence after January 17, 2025, the new construction or alterations of the transit stop shall comply with the requirements set forth in the appendix to 36 CFR part 1190, which apply to pedestrian facilities located in the public right-of-way covered by the Americans with Disabilities Act.

(2) New construction or alterations of transit stops located in the public right-of-way on which construction has begun, or all approvals for final design have been received, before January 17, 2025, are not required to be consistent with the requirements set forth in the appendix to 36 CFR part 1190, but are otherwise required to be readily accessible to and usable by individuals with disabilities. 49 CFR 37.43 Alteration of transportation facilities by public entities

(a)(1) When a public entity alters an existing facility or a part of an existing facility used in providing designated public transportation services in a way that affects or could affect the usability of the facility or part of the facility, the entity shall make the alterations (or ensure that the alterations are made) in such a manner, to the maximum extent feasible, that the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations.

(2) When a public entity undertakes an alteration that affects or could affect the usability of or access to an area of a facility containing a primary function, the entity shall make the alteration in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of the alterations. *Provided*, that alterations to the path of travel, drinking fountains, telephones and bathrooms are not required to be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if the cost and scope of doing so would be disproportionate.

(c) As used in this section, a *primary function* is a major activity for which the facility is intended. Areas of transportation facilities that involve primary functions include, but are not necessarily limited to, ticket purchase and collection areas, passenger waiting areas, train or bus platforms, baggage checking and return areas and employment areas (except those involving non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators which are frequented only by repair personnel).

(d) As used in this section, a "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, parking areas, and streets), an entrance to the facility, and other parts of the facility. The term also includes the restrooms, telephones, and drinking fountains serving the altered area. An accessible path of travel may include walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps, clear floor paths through corridors, waiting areas, concourses, and other improved areas, parking access aisles, elevators and lifts, bridges, tunnels, or other passageways between platforms, or a combination of these and other elements.

(e)(1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20 percent of the cost of the alteration to the primary function area (without regard to the costs of accessibility modifications).

(2) Costs that may be counted as expenditures required to provide an accessible path of travel include:

- (i) Costs associated with providing an accessible entrance and an accessible route to the altered area (e.g., widening doorways and installing ramps);
- (ii) Costs associated with making restrooms accessible (e.g., grab bars, enlarged toilet stalls, accessible faucet controls);
- (iii) Costs associated with providing accessible telephones (e.g., relocation of phones to an accessible height, installation of amplification devices or TDDs);
- (iv) Costs associated with relocating an inaccessible drinking fountain.

(f)(1) When the cost of alterations necessary to make a path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, then such areas shall be made accessible to the maximum extent without resulting in disproportionate costs;

(2) In this situation, the public entity should give priority to accessible elements that will provide the greatest access, in the following order:

- (i) An accessible entrance;
- (ii) An accessible route to the altered area;
- (iii) At least one accessible restroom for each sex or a single unisex restroom (where there are one or more restrooms);
- (iv) Accessible telephones;
- (v) Accessible drinking fountains;
- (vi) When possible, other accessible elements (e.g., parking, storage, alarms).

(g) If a public entity performs a series of small alterations to the area served by a single path of travel rather than making the alterations as part of a single undertaking, it shall nonetheless be responsible for providing an accessible path of travel.

(h)(1) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alteration to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel is disproportionate.

ADA-GEN8. Does the recipient follow ADA provision of service requirements?

BASIC REQUIREMENT

Service must comply with the US DOT ADA regulations regarding provision of service.

APPLICABILITY

Recipients who provide service including recipients who enter into contracts or other arrangements or relationships with other entities to provide service on their behalf.

DETAILED EXPLANATION FOR REVIEWER

The US DOT ADA regulations (49 CFR 37.161- 37.173) detail specific requirements for service. (For ferry service requirements see question ADA-GEN12.) The regulations do not require written policies detailing how an entity will comply with these service provisions, but the entity should be able to demonstrate that it has policies and procedures in place to enable it to meet these requirements. The entity should be able to provide reasonable documentation to demonstrate that operators are trained in these requirements and explains how it enforces implementation.

- (a) Stop announcements are required for fixed-route service at transfer points, major intersections, destination points, intervals along the route sufficient to orient passengers to their location, and any stop upon request. The US DOT ADA regulations supersede any union agreement that prevents the entity from requiring operators to call stops. Where automated stop annunciators are used, the public or private entity must ensure the accuracy and usability of the annunciators and that drivers announce stops when the automated system is not functioning and any stop upon request.
- (b) When more than one route serves a stop, the public or private entity must provide an effective means by which an individual with a visual impairment or other disability waiting at a stop can identify the route on which he or she wants to travel. Where automated stop annunciators are used, the entity must ensure the accuracy and usability of the annunciators and that an alternative mechanism is available for an effective means of route identification at stops served by multiple vehicles and multiple routes when annunciators are out of service.
- (c) The entity must permit service animals to accompany individuals with disabilities in vehicles and facilities. The entity may ask whether an animal is a service animal and what functions it performs as such. The entity may not impose species or breed restrictions.

The entity may require that a service animal be harnessed, leashed, or tethered while in public places, unless these devices interfere with the service animal's work or the person's disability prevents use of these devices. In such cases, the entity may require that the person maintain control of the animal via voice, signal, or other effective means.

Note that the US DOT definition of a service animal includes any guide dog, signal dog or other animal individually trained to work or perform tasks for an individual with a disability; it is not limited to dogs as in the US Department of Justice definition and excludes no breeds of dog or other animal. Emotional support animals or "comfort animals" are not service animals within the context of the US DOT ADA regulations. Entities may refuse to transport service animals that are

deemed to pose a direct threat to the health or safety of drivers or other riders, create a seriously disruptive atmosphere, or are otherwise not under the rider's control.

- (d) Signage designating wheelchair locations is required on buses. Signage designating priority seating is required on buses and rail vehicles. When an individual with a disability needs to sit in a seat or occupy a wheelchair securement location, the public or private entity must ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location: (i) individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and persons with disabilities (or other seat as necessary); and (ii) individuals (including other persons with disabilities) sitting in a fold-down or other movable seat in a wheelchair securement location. Drivers are not required to compel the person to move; however, the entity is permitted to adopt a policy requiring individuals to move in response to such requests.
- (e) Public and private entities are prohibited from setting weight or size limitations on wheelchairs it will transport that understate the weight capacity that the vehicle fleet can actually accommodate (e.g., a policy of not transporting wheelchair users whose combined weight is more than 600 pounds, when the design load of their vehicle lifts is 800 pounds). The term "common wheelchair," was deleted from 49 CFR Part 37 effective October 19, 2011. While the dimensions and capacities required for lifts, ramps, and securement areas have not changed, many vehicles are capable of accommodating larger and heavier wheelchairs. Where this is the case, it is inappropriate to limit the size and/or weight of the wheelchairs an entity will accommodate to the minimum standards. Entities must accommodate wheelchairs according to the true capacities of their vehicles.

It may be helpful for a recipient to publicize the capacities of its vehicles, so that passengers using wheelchairs can determine whether their mobility devices will fit aboard the recipient's vehicles. As long as this information does not understate the actual dimensions and design load of the vehicles in the recipient's fleet, and as long as these vehicles meet the requirements of 49 CFR Part 38, a recipient that does so is not deficient. Because the minimum standards for vehicle lifts and ramps have not changed, such a recipient may accurately report that its vehicles can accommodate wheelchairs measuring 30" x 48" and weighing up to 600 lbs. when occupied, if that represents its actual capacities. In those cases, a recipient may restrict service to wheelchairs within those dimensional and weight limitations.

Note that the definition of "wheelchair" specifically includes mobility scooters, and contains no requirements for brakes, footrests, push handles or other equipment. The entity may not condition the provision of service upon the presence of such ancillary equipment. The entity also may not condition the provision of service upon information from a wheelchair manufacturer concerning the "transportability" of a wheelchair; all wheelchairs must be accommodated. Policies requiring riders to transfer to a vehicle seat from their wheelchair are expressly prohibited. Entities may not require wheelchair users to sign or submit waivers as a condition of accommodating them.

- (f) Public and private entities must not refuse to permit a passenger who uses a lift or ramp to board or disembark from a vehicle at any designated stop, unless the lift or ramp cannot be deployed, the lift or ramp will be damaged if it is deployed, or temporary conditions preclude the safe use of the stop by all passengers. The entity must deploy lifts or ramps for persons who do not use wheelchairs, including standees. The entity may not seek waivers from standees who require the use of the lift.
- (g) Public and private entities may not deny service to individuals using respirators, concentrators, or portable oxygen.
- (h) Public information and communications must be made available in accessible formats, upon request. The alternate accessible format must be provided in a format that the requesting individual can actually use; which format (Braille, audio, large-type, etc.) is not specified. Public

and private entities must make available to individuals with disabilities adequate and accessible information concerning transportation services.

- (i) Public entities are required under 49 CFR 37.5(i)(3) to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services. The process to be used in considering requests for reasonable modifications is described in 49 CFR 37.169.

There is no specific requirement for a separate process for reasonable modifications; existing local processes may suffice. Whether a recipient relies on existing processes or develops something specific to reasonable modifications, there are some basic process requirements that must be met:

- Information on the reasonable modification process must be readily available to the public, and must be accessible
- Advance notice can be required, but flexibility is also needed to handle requests that are only practicable on the spot
- Individuals requesting modifications are not required to use the term “reasonable modification”

It should be obvious to the reviewer from public information whether and how the recipient accepts requests for reasonable modifications in policies and practices; no separate “reasonable modification policy” is required.

- (j) The key to ensuring compliance with these policies is ensuring that all employees are aware of them so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities. For employees, this might be done through initial and refresher trainings.
- (k) Having policies is not sufficient; the recipient must also monitor compliance with the policies.

INDICATORS OF COMPLIANCE

- a. *Are stops announced on fixed-route vehicles? When automated stop annunciators are inoperative or malfunction, do drivers announce stops?*
- b. *Has the recipient implemented a means of route identification at stops served by more than one route? When automated annunciators are inoperative or malfunction, does the recipient offer an alternative means of route identification?*
- c. *Does the recipient permit service animals meeting the definition in 49 CFR 37.3 to accompany passengers with disabilities aboard all vehicles and in all facilities? Does the recipient require “paperwork” or specific identification in order to accommodate service animals? Does the recipient impose species or breed restrictions on service animals?*
- d. *Does the recipient make priority seating available to individuals with disabilities? Is the required signage provided on all vehicles? Does the recipient make securement location(s) available to*

wheelchair users? Are securement locations designated? Does the recipient request that all persons occupying movable seating in securement locations, including other persons with disabilities, vacate the seating in order to accommodate wheelchair users? Does the recipient require wheelchair users to sign waivers as a condition of service?

- e. Does the recipient understate the size and weight of wheelchairs that it is able to transport?*
- f. Does the recipient deploy the lift or ramp at any stop upon request? Are there any stops at which the recipient does not deploy lifts? Does the recipient require standees to sign waivers as a condition of lift use?*
- g. Does the recipient provide service to persons using respirators, concentrators, and portable oxygen?*
- h. Does the recipient provide information in accessible formats upon request?*
- i. Does the recipient make information about how to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices? Does it provide a means, accessible to and usable by individuals with disabilities, to request a modification to the recipient's policies and practices?*
- j. Does the recipient's training program address how to operate vehicles and equipment safely, and properly assist and treat individuals with disabilities who use the service with respect, courtesy, and sensitivity?*
- k. Does the recipient monitor employees for compliance with the service provisions?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for public information on accessibility. Review the website and other public information for directions on how to request information in accessible formats. Review driver handbooks, operating and training manuals, and internal bulletins for information or procedures pertinent to the ADA service provisions. Review sample vehicle specifications and information on annunciators for how stops are announced and connecting routes identified. Review information on lift/ramp specifications for the fleet. Review ADA complaints addressing service provisions. Review paratransit information for general ADA deficiencies (service animals, wheelchair conditions, waivers, etc.).

During the site visit, discuss ADA service provision implementation.

1. If automated stop annunciators are used, discuss with trainers and transportation managers whether stops are announced and connecting routes identified when stop annunciators are inoperative or malfunction, and how stops are announced upon request. Check if inoperative announcement systems are addressed during pre-trip inspections.
2. Ask managers and trainers how they accommodate service animals, and whether there are requirements for identification or restrictions on species or breed.
3. Ask managers and trainers how they accommodate needs for priority seating in revenue service.
4. Ask managers and trainers how they accommodate wheelchair users requiring the use of the securement area(s) in revenue service. Look at signage designating the securement area as such.
5. Review public and agency materials for any restrictions on size or weight limitation on wheelchairs that will be transported.
6. Ask trainers and managers how they handle “difficult to secure” wheelchairs (note specifically that the term “wheelchair” expressly includes mobility scooters), whether they require any passengers to transfer to a vehicle seat under any circumstances, and how potentially “oversize” mobility devices are handled.
7. Ask the recipient for a list of stops at which it does not deploy lifts or ramps and the reasons for not deploying lifts or ramps at those stops.
8. If not addressed in written material, ask whether or not the recipient provides service to persons using respirators, concentrators, and portable oxygen.
9. Discuss any request for information in accessible formats and how the recipient honored the request.
10. Review information on requests for reasonable modifications. During the site visit, request the policy for and discuss implementation of the reasonable modification process.
11. Discuss the recipient’s training programs for assistance to riders with disabilities and disability sensitivity. Sample the training records for three recently hired drivers to document that the training is provided.
12. Review oversight documentation, including surveys, checklists, and interview forms for monitoring conducted of compliance with service provisions. Review employee disciplinary policies for how the recipient enforces compliance with the service provisions. Review procedures to determine how ADA-related complaints against an employee are researched and addressed.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

In addition to the normal assessment procedures, review the recipient’s website and discuss with the recipient and regional office to determine if it suspended front-door boarding. Review the recipient’s website and discuss with the recipient and regional office to determine if it suspended its mandatory securement policy. Discuss with the recipient how it made accommodation for passengers requesting assistance. Discuss how the recipient communicated to and trained its operators on its policies to ensure continued compliance with ADA requirements. Inquire of the recipient if it received complaints.

During pre-site visit or site visit discussions, discuss if/how the recipient has suspended, deviated from, or significantly updated or altered the implementation of its procedures during the COVID-19 public health emergency relating to availability of alternative accessible formats, requests for reasonable

accommodations, and accommodating individuals who rely on accessible equipment when that equipment is inoperative.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not ensure that stops are announced on fixed-route service including when the automated system is not functioning, stops are announced upon request or that a means of route identification on fixed-route stops served by more than one route is provided, including when the automated system is not functioning.

DEFICIENCY CODE ADA-GEN8-1: Stop announcement/vehicle ID mechanisms deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit documentation that it has implemented procedures to announce stops on fixed-route service and evidence that it monitors implementation of these procedures.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that it has implemented procedures to identify routes at fixed-route stops served by more than one route and evidence that it monitors implementation of these procedures.

SUGGESTED CORRECTIVE ACTION 3: Submit evidence that it monitors implementation of procedures to identify routes at fixed-route stops served by more than one route.

The recipient is deficient if it limits service animals to dogs or includes breed-specific provisions.

DEFICIENCY CODE ADA-GEN8-2: Imposition of improper service animal restrictions

SUGGESTED CORRECTIVE ACTION: Submit revised procedures for accommodating service animals that remove the provisions discussed in this report.

The recipient is deficient if it does not make priority seating available to individuals with disabilities. The recipient is deficient if it does not ask all persons occupying flip-up seats in the securement area, including other passengers with disabilities, to make the securement area available for wheelchair users.

DEFICIENCY CODE ADA-GEN8-3: Priority seating deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit documentation that it has implemented procedures to make priority seating available to individuals with disabilities and evidence that it monitors implementation of these procedures.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that it has implemented procedures to make securement areas with flip-up seating available to wheelchair users, including asking other passengers with disabilities to vacate such seats. Alternatively, the recipient may submit documentation that it has removed all seating from the securement areas in all of its vehicles.

The recipient is deficient if it sets weight or size limitations on wheelchairs meeting the definition contained in 49 CFR 37.3 that understate fleet capacity.

DEFICIENCY CODE ADA-GEN8-4: Weight/size limitations on wheelchairs

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has implemented procedures to transport any and all wheelchairs as defined in 49 CFR 37.3 that its vehicles can accommodate.

The recipient is deficient if it places conditions upon the transport of wheelchairs meeting the definition contained in 49 CFR 37.3, including requiring ancillary equipment, requires documentation regarding transportability, requires wheelchair users to transfer to a seat, or requires waivers from wheelchair users as a condition of providing service.

DEFICIENCY CODE ADA-GEN8-5: Inappropriate conditions required for transportation of wheelchairs

SUGGESTED CORRECTIVE ACTION 1: Submit documentation that it has removed conditions requiring wheelchairs to be equipped with ancillary equipment such as footrests, push handles, brakes, or other equipment.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that it has removed any conditions requiring wheelchairs to be certified as “transportable.”

SUGGESTED CORRECTIVE ACTION 3: Submit documentation that it no longer requires wheelchair users to transfer to a vehicle seat.

SUGGESTED CORRECTIVE ACTION 4: Submit documentation that it no longer requires waivers from wheelchair users as a condition of providing service.

The recipient is deficient if it does not deploy lifts and ramps for riders who request this, at any stop on any route, or requires waivers from standees who use a wheelchair lift as a condition of providing service.

DEFICIENCY CODE ADA-GEN8-6: Lift/ramp deployment deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit documentation that it has implemented procedures to deploy lifts and ramps at any stop on any route (when requested) and evidence that it monitors the implementation of these procedures.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that it no longer requires waivers from standees who use a wheelchair lift as a condition of providing service.

The recipient is deficient if it does not provide service to persons using respirators, concentrators, and portable oxygen.

DEFICIENCY CODE ADA-GEN8-7: Portable oxygen and respirators deficiency

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has implemented procedures to provide service to passengers using respirators, concentrators, and portable oxygen and evidence that it monitors implementation of these procedures.

The recipient is deficient if it does not provide information in alternative formats upon request.

DEFICIENCY CODE ADA-GEN8-8: Alternative accessible formats not provided

SUGGESTED CORRECTIVE ACTION: Submit procedures for processing requests for public information in alternative formats.

The recipient is deficient if it does not have a process to accept and address requests for reasonable modifications or make information about how to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices or if the information is not accessible to and usable by individuals with disabilities.

DEFICIENCY CODE ADA-GEN8-9: Reasonable modification deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit documentation that it has a process to accept and address requests for reasonable modifications.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that it makes information about how to make requests for reasonable modifications readily available to the public.

SUGGESTED CORRECTIVE ACTION 3: Submit documentation that it provides a means, accessible to and usable by individuals with disabilities, to request a modification.

The recipient is deficient if it does not train personnel to operate vehicles and equipment safely, and properly assist and treat individuals with disabilities who use the service with respect, courtesy, and sensitivity.

DEFICIENCY CODE ADA-GEN8-10: ADA training not adequate

SUGGESTED CORRECTIVE ACTION: Submit a training program to ensure that personnel are trained to proficiency, as appropriate for their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities, along with evidence of implementation.

The recipient is deficient if it does not monitor its operations for compliance with the service provisions.

DEFICIENCY CODE ADA-GEN8-11: Insufficient monitoring of operations for ADA service provisions

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that its operations comply with ADA service provisions.

SUGGESTED CORRECTIVE ACTION: Submit evidence of implementation of procedures for ensuring that its operations comply with ADA service provisions.

GOVERNING DIRECTIVE

49 CFR 37.3 Definitions

Service animal means any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

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.

49 CFR 37.5 Nondiscrimination

(i)(3) *Public entity-public transport.* Public entities that provide designated public transportation shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services, subject to the limitations of §37.169(c)(1)-(3). This requirement applies to the means public entities use to meet their obligations under all provisions of this part.

49 CFR 37.165 Lift and securement use

(a) This section applies to public and private entities.

(b) Except as provided in this section, individuals using wheelchairs shall be transported in the entity's vehicles or other conveyances.

(1) With respect to wheelchair/occupant combinations that are larger or heavier than those to which the design standards for vehicles and equipment of 49 CFR Part 38 refer, the entity must carry the wheelchair and occupant if the lift and vehicle can accommodate the wheelchair and occupant. The entity may decline to carry a wheelchair/occupant if the combined weight exceeds that of the lift specifications or if carriage of the wheelchair is demonstrated to be inconsistent with legitimate safety requirements.

49 CFR 37.167 Other service requirements

(a) This section applies to public and private entities.

(b) On fixed-route systems, the entity shall announce stops as follows:

(1) The entity shall announce at least at transfer points with other fixed routes, other major intersections and destination points, and intervals along a route sufficient to permit individuals with visual impairments or other disabilities to be oriented to their location.

(2) The entity shall announce any stop on request of an individual with a disability.

(c) Where vehicles or other conveyances for more than one route serve the same stop, the entity shall provide a means by which an individual with a visual impairment or other disability can identify the proper vehicle to enter or be identified to the vehicle operator as a person seeking a ride on a particular route.

(d) The entity shall permit service animals to accompany individuals with disabilities in vehicles and facilities.

(f) 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.

(g) The entity shall not refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, the lift will be damaged if it is deployed, or temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers.

(h) The entity shall not prohibit an individual with a disability from traveling with a respirator or portable oxygen supply, consistent with applicable Department of Transportation rules on the transportation of hazardous materials (49 CFR subtitle B, chapter 1, subchapter C).

(j)(1) When an individual with a disability enters a vehicle, and because of a disability, the individual needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location:

- (i) Individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary);
- (ii) Individuals sitting in or a fold-down or other movable seat in a wheelchair securement location.

(2) This requirement applies to light rail, rapid rail, and commuter rail systems only to the extent practicable.

(3) The entity is not required to enforce the request that other passengers move from priority seating areas or wheelchair securement locations.

(4) In all signage designating priority seating areas for elderly persons and persons with disabilities, or designating wheelchair securement areas, the entity shall include language informing persons sitting in these locations that they should comply with requests by transit provider personnel to vacate their seats to make room for an individual with a disability. This requirement applies to all fixed-route vehicles when they are acquired by the entity or to new or replacement signage in the entity's existing fixed-route vehicles.

49 CFR 37.169 Process to be used by public entities providing designated public transportation service in considering requests for reasonable modification.

(a)(2) The public entity shall make information about how to contact the public entity to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices.

49 CFR 37.173 Training requirements

Each public or private entity which operates a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.

Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR5

Transit systems should have procedures in place such as rear-door entry to ensure that social distancing is being observed by the system and transit riders to protect transit operators and the public. See FTA Safety Advisory 20-01. Some exceptions to rear-door-only boarding policies, however, are necessary for ADA compliance. Under DOT ADA regulations at 49 CFR 37.5(a), no entity may discriminate against an individual with a disability in connection with the provision of transportation service; per 49 CFR 37.165(b), individuals using wheelchairs must be transported in the agency's vehicles.

Wheelchair users are not the only persons with disabilities who may require the use of the front door of the vehicle. Per 49 CFR 37.165(g), ambulatory persons with disabilities also must be permitted to use the lift or ramp on request, and persons who are blind, for example, may require the use of the route identification mechanism required under 49 CFR 37.167(c) to identify the correct bus to board. Not all waiting passengers with disabilities who need to enter at the front will have a visible disability or be using mobility aids such as canes or walkers; per the regulation, the agency must accommodate such individuals at the front door as well.

When implementing a rear-door-only boarding policy, a transit agency should take steps to minimize confusion for riders and personnel. This effort could include conducting outreach to the disability community through local media channels and social media, informing riders of the policy and what to do if they require the use of the ramp or lift, and development of procedures and instructions for personnel.

Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR6

The DOT ADA regulations do not explicitly require the use of the securement system; under 49 CFR 37.165(c)(3), an agency may determine for itself whether or not securement will be mandatory for its system. Agencies, therefore, are free to suspend any mandatory securement policy that they may have in place. However, even if an agency suspends a mandatory securement policy, 49 CFR 37.165(f) still requires that the operator assist with the use of the securement system should an individual passenger make a request.

ADA-GEN9. Does the recipient ensure that accessibility equipment is maintained in operative condition, and that individuals who rely on accessible equipment are accommodated when that equipment is inoperative?

BASIC REQUIREMENT

Service must be accessible to and usable by persons with disabilities.

APPLICABILITY

Recipients who provide service

DETAILED EXPLANATION FOR REVIEWER

Public and private entities must maintain in operative condition those features of vehicles and facilities that are required to make them accessible to and usable by persons with disabilities, including wheelchair users. For ferry systems, the requirement for maintenance of accessible features applies to passenger facilities.

These features include, but are not limited to, lifts and other means of access to vehicles, securement devices, elevators, signage, and systems to facilitate communications with persons with vision or hearing impairments. Accessibility features must be repaired promptly if they are damaged or out of order. (Isolated or temporary interruptions in service or access due to maintenance or repairs are not prohibited.) When accessibility features are damaged or out of order, §37.161(b) requires the agency to repair them promptly. The regulations do not state a time limit for making particular repairs, given the variety of circumstances involved. As Appendix D to §37.161 notes, however, “repairing accessible features must be made a high priority.” When an accessibility feature is out of order, the entity must take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

An important part of maintaining accessibility features so that they are “accessible to and usable by individuals with disabilities” is ensuring they are free from obstructions. Locked accessible doors and accessible paths of travel that are blocked by equipment or boxes of materials are not accessible to or usable by individuals with disabilities. Agencies have an obligation to enforce parking bans and to keep accessible features clear if they have direct control over the area. This can include removing illegally parked vehicles occupying accessible parking spaces or access aisles in station parking lots, removing bicycles obstructing ramps and accessible routes, and removing snow from ramps and accessible routes. Where a transit agency does not have direct control over the areas with accessibility features, FTA expects coordination with other public entities or private property owners.

Public entities are required to have a system of regular and frequent maintenance checks for wheelchair lifts and ramps on non-rail vehicles that is sufficient to ensure that the lifts are operational. There is no specific requirement for daily cycling of lifts and ramps, though many entities have adopted this practice to meet this requirement for regular and frequent maintenance checks. The procedures must be designed to ensure that the person discovering an inoperative lift or ramp is not a person waiting to use it at the bus stop.

Public entities must ensure that operators report immediately any in-service lift and ramp failures. The vehicle with the inoperable lift or ramp must be removed from service before the beginning of the next service day and the entity must repair the lift or ramp before the vehicle is returned to service. In the event that there is no spare vehicle available and the entity would be required to reduce service to repair the lift or ramp, it may keep the vehicle with the inoperable lift or ramp in service for no more than three days (if the entity serves an area of over 50,000 population) or five days (if the entity serves an area of 50,000 or less population). After these times have elapsed, the vehicle must go into the shop, not to return to service until the lift is repaired. Even during the three- or five-day period, if an accessible spare vehicle becomes available at any time, it must be used in place of the vehicle with the inoperative lift or

an inaccessible spare that is being used in its place. In any case in which a vehicle is operating on a fixed route with an inoperative lift (including in-service failures), and the headway to the next accessible vehicle exceeds 30 minutes, the entity must promptly (i.e., within 30 minutes) provide alternative transportation to persons with disabilities who are unable to use the vehicle.

One advantage to ramp-equipped buses is that the ramps are typically easy to deploy manually if the automatic mechanism is out of order. Many transit agencies have policies directing drivers to manually deploy the ramp for the waiting rider instead of calling for alternative transportation. FTA considers local policies that direct drivers to manually deploy ramps in lieu of arranging for alternative transportation acceptable.

The recipient must monitor its compliance with these US DOT ADA maintenance requirements, including the requirements to take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature and to provide alternative service for in-service lift and ramp failures.

INDICATORS OF COMPLIANCE

- a. Does the recipient have a system of regular maintenance checks to ensure that accessibility features of vehicles and facilities are operational?*
- b. When an elevator or other accessibility feature is out of service or otherwise unusable, does the recipient ensure that individuals who rely on the elevator or feature are accommodated?*
- c. Does the recipient have procedures to minimize downtime whenever an accessibility feature of a vehicle or facility is out of service?*
- d. Does the recipient ensure that vehicles with inoperative lifts or ramps are not placed into service unless no alternative accessible vehicles are available, and do not remain in service longer than three days (for areas over 50,000 population) or five days (for areas of 50,000 population or less)?*
- e. Does the recipient require vehicle operators to report lift and ramp failures immediately?*
- f. When lifts or ramps fail in service and cannot be deployed, is alternative accessible service provided to persons with disabilities within 30 minutes, if the headway to the next accessible bus exceeds 30 minutes?*
- g. Does the recipient ensure that the usability of accessible paths of travel is maintained and provide alternative service or other means of compliance when necessary?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website and other public materials for information on service during elevator failures, including public notification procedures. Onsite, review complaints regarding failure to provide alternative arrangements when elevators are out of service. If there are complaints, determine if the complaints indicate that the recipient does not have or did not follow its procedure for providing alternative arrangements. During the site visit, discuss the alternative service arrangements and

how the public is notified promptly about outages and alternative service. Review recipient's outage records. Determine the time requirements, if any, govern in-house elevator repair. Review contract provisions governing timely contractor response to and repair of elevator outages. Review maintenance records for regular and frequent checks to ensure elevators are operational.

Review operating and training manuals, websites, and other information (internal and external) for information or procedures for ensuring that accessible routes are maintained and unobstructed. Such procedures can address the agency's plans for maintaining/repairing accessible equipment/features, towing vehicles parked illegally or removing snow in/from access aisles or accessible spaces, ramps, etc. When touring facilities, note and follow up with the recipient on any inoperative elevators or blocked accessible paths of travel. Determine if the recipient is aware of the situation and, if so, how the recipient became aware of the situation, how soon it plans to address it, and what alternative arrangements are being made for passengers with disabilities.

Review driver handbooks, operating and training manuals, and internal bulletins for information or procedures on lift and ramp availability. Review ADA complaints addressing lift and ramp failures. Review data on fleet accessibility and the number of accessible spares. During the site visit, discuss pre-check procedures and responses to in-service lift/ramp malfunctions. If drivers are reporting in-service lift/ramp failures immediately as required, the frequency of in-service lift/ramp failures may be an indicator of the adequacy of lift/ramp maintenance.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not accommodate passengers when an elevator is out of service.

DEFICIENCY CODE ADA-GEN9-1: Elevator or other accessibility feature service deficiency

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has implemented procedures to accommodate passengers when an elevator or other accessibility feature is out of service.

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has implemented ongoing monitoring procedures to ensure reliability of elevators and other accessibility features.

The recipient is deficient if it does not prevent vehicles with inoperative lifts or ramps from being placed into service if there are accessible spares.

DEFICIENCY CODE ADA-GEN9-2: Vehicles with inoperative lift/ramp placed in service

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has implemented procedures to prevent vehicles with an inoperative lift or ramp from being placed into service if there are accessible spares and evidence that it monitors the implementation of these procedures.

The recipient is deficient if it does not require bus operators to report lift and ramp failures immediately.

DEFICIENCY CODE ADA-GEN9-3: Lift/ramp failures not reported immediately

SUGGESTED CORRECTIVE ACTION: Submit a policy requiring operators to report lift and ramp failures immediately and evidence of its implementation.

The recipient is deficient if it does not take vehicles with inoperative lifts or ramps out of service within the required time frames.

DEFICIENCY CODE ADA-GEN9-4: Vehicles with inoperative lift/ramp not removed from service

SUGGESTED CORRECTIVE ACTION: Submit procedures for taking vehicles with inoperative lifts or ramps out of service within the required time frames.

The recipient is deficient if it does not provide alternative accessible service to individuals with disabilities within 30 minutes in any case when a vehicle with an inoperable lift or ramp is in service on a route with headways greater than 30 minutes to the next accessible bus.

DEFICIENCY CODE ADA-GEN9-5: Alternative accessible service not provided

SUGGESTED CORRECTIVE ACTION: Submit procedures for providing alternative accessible service within 30 minutes on routes with headways greater than 30 minutes when a vehicle lift or ramp fails while in service and/or when a vehicle with an inoperable lift or ramp is used in service.

The recipient is deficient if it does not ensure that the usability of accessible paths is maintained and does not provide alternative service when necessary.

DEFICIENCY CODE ADA-GEN9-6: Usability of accessible paths not maintained

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that accessible paths are maintained in a usable manner, and that alternative service is provided whenever obstructions or conditions of disrepair prevent its use by persons with disabilities.

GOVERNING DIRECTIVE

49 CFR 37.161 Maintenance of accessible features: General

(b) Accessibility features shall be repaired promptly if they are damaged or out of order. When an accessibility feature is out of order, the entity shall take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

(c) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.”

49 CFR 37.163 Keeping lifts in operative condition: Public entities

(a) This section applies only to public entities with respect to lifts in non-rail vehicles.

(b) The entity shall establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.

(c) The entity shall ensure that vehicle operators report to the entity, by the most immediate means available, any failure of a lift to operate in service.

(d) Except as provided in paragraph (e) of this section, when a lift is discovered to be inoperative, the entity shall take the vehicle out of service before the beginning of the vehicle's next service day and ensure that the lift is repaired before the vehicle returns to service.

(e) If there is no spare vehicle available to take the place of a vehicle with an inoperable lift, such that taking the vehicle out of service will reduce the transportation service the entity is able to provide, the public entity may keep the vehicle in service with an inoperable lift for no more than five days (if the entity serves an area of 50,000 or less population) or three days (if the entity serves an area of over 50,000 population) from the day on which the lift is discovered to be inoperative.

(f) In any case in which a vehicle is operating on a fixed route with an inoperative lift, and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity shall promptly provide alternative

transportation to individuals with disabilities who are unable to use the vehicle because its lift does not work.

ADA-GEN10. Is route-deviation service open to the general public?

BASIC REQUIREMENT

Route-deviation service, when provided, must be open to the general public, advertised as such, and accessible to and useable by persons with disabilities.

APPLICABILITY

Recipients that provide route-deviation service

DETAILED EXPLANATION FOR REVIEWER

The US DOT ADA regulations regard a system that permits user-initiated deviations from routes or schedules as demand response, for which ADA complementary paratransit is not required. One key factor to consider in determining whether a transit system is fixed-route or demand-response is if an individual must request the service in some way, typically by making a phone call in advance. With fixed-route service, no action is needed to access the service--if a person is at the bus stop at the time the bus is scheduled to appear, then the person can use that service. In contrast, with demand-response service, the individual typically must make a phone call in order to ride the bus. A system that permits user-initiated deviations from routes generally fits the definition of demand-response service.

Note that the fact that there may be an interaction between a passenger and transportation service does not necessarily make otherwise fixed-route service demand responsive. Some services may use flag stops, in which a vehicle along the route does not stop unless a passenger flags the vehicle down. This kind of interaction does not make an otherwise fixed-route service demand responsive.

To be considered demand response, the service must deviate for the general public, not just persons with disabilities. If deviations are restricted to a particular group, the service ceases to be a form of demand-response service for the general public. Systems must provide information to the public on how to request a deviation. The service for persons with disabilities must be equivalent to the service for people without disabilities as specified in 49 CFR 37.77.

The requirements for use of accessible vehicles in demand-responsive service apply to route-deviation service. (See question ADA-GEN14)

In limited circumstances, a recipient may be able to provide both ADA complementary paratransit service and fixed-route service using the same vehicle. In these situations, the fixed-route bus would go off route (or "deviate") only for people with disabilities who have been determined to be ADA paratransit eligible. In this scenario, service to such persons must be provided according to the same requirements in subpart F of 49 CFR Part 37 for complementary paratransit (e.g., service area, response time, fares, hours and days of service, absence of capacity constraints and absence of trip purpose restrictions).

INDICATORS OF COMPLIANCE

- a. *Is route-deviation service promoted as open to the general public? Is the public provided information on how to request a deviation?*
- b. *If non-accessible vehicles are used to provide the service, is equivalent service meeting the requirements of 49 CFR 37.77(c) provided to individuals who require an accessible vehicle particularly in terms of response time?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for how the recipient promotes its service to the public. Review schedules, timetables, system and route maps, rider guide, and other public information to ensure that deviation service is promoted to the general public and information is provided on how to request a deviation. Review internal information, such as customer service staff instructions, dispatch procedures, and driver instructions (handbook, bulletins) to ensure that staff are instructed to deviate for the general public.

Review the accessibility of the fleet used to provide route-deviation service. If the fleet includes vehicles that are not accessible, when onsite obtain information, such as denial policies and records or dispatch procedures, showing that equivalent service is provided.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it provides route-deviation service but does not provide or promote the route-deviation service to the general public.

DEFICIENCY CODE ADA-GEN10-1: Route-deviation service provided but not provided/promoted to the general public

SUGGESTED CORRECTIVE ACTION: Submit documentation, such as public information and dispatching procedures, documenting that the service deviates for the general public or must submit documentation that it has implemented ADA complementary paratransit service.

The recipient is deficient if it operates non-accessible equipment in route-deviation service and cannot document that equivalent service is provided.

DEFICIENCY CODE ADA-GEN10-2: Equivalent service not provided

SUGGESTED CORRECTIVE ACTION 1: Ensure that all future vehicle acquisitions specify accessible vehicles until it can demonstrate that equivalent service is provided.

SUGGESTED CORRECTIVE ACTION 2: Submit procedures for providing equivalent service and evidence that the procedures have been implemented.

GOVERNING DIRECTIVE

49 CFR 37.121 Requirement for comparable complementary paratransit service

(a) Except as provided in paragraph (c) of this section, each public entity operating a fixed-route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed-route system.

(b) To be deemed comparable to fixed-route service, a complementary paratransit system shall meet the requirements of §§37.123-37.133 of this subpart. The requirement to comply with § 37.131 may be modified in accordance with the provisions of this subpart relating to undue financial burden.

49 CFR 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public

(a) Except as provided in this section, a public entity operating a demand-responsive system for the general public making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) If the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities, it may purchase new vehicles that are not readily accessible to and usable by individuals with disabilities.

(c) For purposes of this section, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (1) Response time;
 - (2) Fares;
 - (3) Geographic area of service;
 - (4) Hours and days of service;
 - (5) Restrictions or priorities based on trip purpose;
 - (6) Availability of information and reservations capability; and
 - (7) Any constraints on capacity or service availability.
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ADA-GEN11. Is rail service accessible to and usable by persons with disabilities?

BASIC REQUIREMENT

Rail service must be accessible to and usable by persons with disabilities.

APPLICABILITY

Recipients that provide rail service, including light, rapid, and commuter rail

DETAILED EXPLANATION FOR REVIEWER

Under the US DOT ADA regulations, all rail operators are required to ensure that each train (consisting of two or more vehicles if the recipient provides light or rapid rail) includes at least one car that is readily accessible to and usable by persons with disabilities, including persons who use wheelchairs. In addition, because every new, used, and remanufactured rail car is required to be accessible since 1991, most trains will have more than one accessible car. If accessible boarding is provided at a single point (i.e., as with a mini-high platform or wayside lift), to be considered accessible, trains must stop at every accessible station such that an accessible car aligns with this point. An accessible car is not usable if it cannot be boarded or a passenger requiring the station-based equipment cannot disembark. If all the wheelchair positions in the car aligning with the accessible boarding point are occupied, at subsequent stations the train must realign so as to permit boarding other accessible cars.

Where rail vehicles operate in a high-platform, level-boarding mode, devices or systems must be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars.

Appropriate devices include, but are not limited to, pantograph gates, chains, motion detectors, or, for commuter rail vehicles, between-car bellows. Some systems have had success with platform-mounted bollards, but this requires a high degree of precision on the part of the operator to properly position the train. For commuter rail, the requirement does not apply where between-car bellows are provided.

US DOT ADA regulations do not define what constitutes a “high platform.” However, because the hazard of falling to the track bed exists wherever level boarding is used, a light rail system operating trains of more than one car where level boarding is provided is required to have between-car barriers as stipulated in the US DOT ADA regulations.

All rail operators are required to ensure that new stations comply with ADA requirements for new construction. This includes a requirement that the rail-to-platform height be coordinated with the floor of each railcar such that the platform gap meets certain tolerances for level boarding. US DOT ADA regulations provide for exceptions to this requirement for commuter and light rail if it is not structurally or operationally feasible to provide level boarding, and the recipient lists alternate methods of boarding that may be used. There is no such exception for rapid rail; all newly constructed rapid rail stations must provide level-entry boarding within the gap tolerances prescribed for each type of vehicle in 49 CFR Part 38. If commuter or light rail stations are constructed without level boarding, and the structural and/or operational infeasibilities have not been documented for each, the recipient may be in violation of the US DOT ADA regulations. Further, if a rail operator undertakes any alterations to a station, those alterations must also be accessible per the US DOT ADA standards.

New and altered commuter and intercity rail stations must provide level boarding or an effective means of providing accessible boarding to each accessible car in each train. The performance standard of 49 CFR 37.42 requires that passengers with disabilities have access to all accessible cars available to passengers without disabilities in each train using a station. If all wheelchair locations are occupied by other wheelchair users in cars where the doors normally open at a station, FTA expects the rail operator to double-stop, reposition a portable wayside lift, or deploy car-borne lifts or move a lift, where necessary, in order to provide transportation to a wheelchair user in an unoccupied wheelchair location.

INDICATORS OF COMPLIANCE

- a. Is at least one car per train accessible?*
- b. If accessible boarding is provided at a single point (i.e., as with a mini-high platform or wayside lift), are all passengers wanting to board or alight at that single point able to do so?*
- c. If the rail system operates in a level-boarding mode, are between-car barriers provided for trains consisting of more than one car?*
- d. For any commuter rail station altered or constructed since the last review, is accessible boarding provided to each accessible car of the train?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on accessibility. Review copies of public information on riding rail service, such as a rider guide or customer information.

Review the rail fleet management plan for procedures for ensuring at least one accessible car per train and accessible boarding/alighting. Note: For light and rapid rail, "train" consists of two or more vehicles.

Review rail car specifications for between-car barriers. If level boarding is provided and vehicles are not equipped with between-car barriers, verify that station-based between-car barriers are provided. During the facility tour, verify that trains consisting of more than one car provide between-car barriers.

Review rail operations training materials regarding accessible boarding/alighting procedures, including use of bridge plates. If accessible boarding is provided at a single point, i.e., as with a mini-high platform or wayside lift, to be considered accessible, trains must stop at every accessible station such that an accessible car aligns with this point. If all the wheelchair positions in the car aligning with the accessible

boarding point are occupied, at subsequent stations the train must realign so as to permit boarding other accessible cars. If time permits, observe or ride the service. Determine how accessible cars are identified for customers.

Obtain a list from the recipient of altered or constructed new commuter rail stations since the last Comprehensive Review that identifies any stations that do not provide level boarding. For commuter and intercity rail stations that do not provide for level boarding, check with the regional office or the FTA Office of Civil Rights or Chief Counsel to determine whether FTA and/or the Federal Railroad Administration (FRA) approved the method of accessible boarding provided as required under 49 CFR 37.42. Prior to the site visit, review the recipient's website for information on accessibility. Review rail operations training materials regarding accessible boarding/alighting procedures, including use of bridge plates. Review public information on riding rail service, such as a rider guide or customer information for discussion on accessible boarding.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if at least one car per train is not accessible.

DEFICIENCY CODE ADA-GEN11-1: One-car-per-train rule deficiency

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that at least one car per train is accessible.

The recipient is deficient if accessible boarding is provided at a single point and all passengers wanting to board or alight at that single point are unable to do so.

DEFICIENCY CODE ADA-GEN11-2: Accessible boarding not provided

SUGGESTED CORRECTIVE ACTION: Submit procedures for aligning the train so as to permit all passengers wanting to board or alight at that single point are able to do so.

The recipient is deficient if between-car barriers are not provided.

DEFICIENCY CODE ADA-GEN11-3: Lacking between-car barriers

SUGGESTED CORRECTIVE ACTION: Submit a plan for retrofitting cars with between-car barriers.

The recipient is deficient if for commuter rail stations constructed or altered since the last Comprehensive Review level boarding is not provided or has not been substantiated as an exception.

DEFICIENCY CODE ADA-GEN11-4: Commuter rail level boarding deficiency

SUGGESTED CORRECTIVE ACTION: Prior to making this deficiency, discuss with the RCRO. Submit documentation supporting platform-related exceptions. The FTA headquarters will determine corrective actions for noncompliant new construction or alterations and operational deficiencies.

GOVERNING DIRECTIVE

49 CFR 37.42 Service in an Integrated Setting to Passengers at Intercity, Commuter, and High-Speed Rail Station Platforms Constructed or Altered After February 1, 2012

(a) In addition to meeting the requirements of sections 37.9 and 37.41, an operator of a commuter, intercity, or high-speed rail system must ensure, at stations that are approved for entry into final design or that begin construction or alteration of platforms on or after February 1, 2012, that the following

performance standard is met: individuals with disabilities, including individuals who use wheelchairs, must have access to all accessible cars available to passengers without disabilities in each train using the station.

(b) For new or altered stations serving commuter, intercity, or high-speed rail lines or systems, in which no track passing through the station and adjacent to platforms is shared with existing freight rail operations, the performance standard of paragraph (a) of this section must be met by providing level-entry boarding to all accessible cars in each train that serves the station.

(c) For new or altered stations serving commuter, intercity, or high-speed rail lines or systems, in which track passing through the station and adjacent to platforms is shared with existing freight rail operations, the railroad operator may comply with the performance standard of paragraph (a) by use of one or more of the following means:

- (1) Level-entry boarding;
- (2) Car-borne lifts;
- (3) Bridge plates, ramps or other appropriate devices;
- (4) Mini-high platforms, with multiple mini-high platforms or multiple train stops, as needed, to permit access to all accessible cars available at that station; or
- (5) Station-based lifts;

(d) Before constructing or altering a platform at a station covered by paragraph (c) of this section, at which a railroad proposes to use a means other than level-entry boarding, the railroad must meet the following requirements:

- (1) If the railroad operator not using level-entry boarding chooses a means of meeting the performance standard other than using car-borne lifts, it must perform a comparison of the costs (capital, operating, and life-cycle costs) of car-borne lifts and the means chosen by the railroad operator, as well as a comparison of the relative ability of each of these alternatives to provide service to individuals with disabilities in an integrated, safe, timely, and reliable manner. The railroad operator must submit a copy of this analysis to FTA or FRA at the time it submits the plan required by paragraph (d)(2) of this section.
- (2) The railroad operator must submit a plan to FRA and/or FTA, describing its proposed means to meet the performance standard of paragraph (a) of this section at that station. The plan must demonstrate how boarding equipment or platforms would be deployed, maintained, and operated; and how personnel would be trained and deployed to ensure that service to individuals with disabilities is provided in an integrated, safe, timely, and reliable manner.
- (3) Before proceeding with constructing or modifying a station platform covered by paragraphs (c) and (d) of this section, the railroad must obtain approval from the FTA (for commuter rail systems) or the FRA (for intercity rail systems). The agencies will evaluate the proposed plan and may approve, disapprove, or modify it. The FTA and the FRA may make this determination jointly in any situation in which both a commuter rail system and an intercity or high-speed rail system use the tracks serving the platform. FTA and FRA will respond to the railroad's plan in a timely manner, in accordance with the timetable set forth in paragraphs (d)(3)(i) through (d)(3)(iii) of this paragraph.

49 CFR 37.93 One car per train rule

- (a) The definition of accessible for purposes of meeting the one car per train rule is spelled out in the applicable subpart for each transportation system type in part 38 of this title.
- (b) Each person providing intercity rail service and each commuter rail authority shall ensure that, as soon as practicable, but in no event later than July 26, 1995, that each train has one car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.
- (c) Each public entity providing light or rapid rail service shall ensure that each train, consisting of two or more vehicles, includes at least one car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no case later than July 25, 1995.

49 CFR 38.63 Between-car barriers (rapid rail)

- (a) *Requirement.* Suitable devices or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Acceptable solutions include, but are not limited to, pantograph gates, chains, motion detectors or similar devices.
- (b) *Exception.* Between-car barriers are not required where platform screens are provided which close off the platform edge and open only when trains are correctly aligned with the doors.

49 CFR 38.85 Between-car barriers (light rail)

Where vehicles operate in a high-platform, level-boarding mode, devices, or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Appropriate devices include, but are not limited to, pantograph gates, chains, motion detectors or other suitable devices.

49 CFR 38.109 Between-car barriers (commuter rail)

Where vehicles operate in a high-platform, level-boarding mode, devices or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Appropriate devices include, but are not limited to, pantograph gates, chains, motion detectors or other suitable devices.

ADA-GEN12. Is ferry service accessible to and usable by persons with disabilities?

BASIC REQUIREMENT

Ferry service must be accessible to and usable by persons with disabilities.

APPLICABILITY

Recipients that provide ferry service

DETAILED EXPLANATION FOR REVIEWER

Ferry service is covered by 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels," which became effective November 10, 2010. This rule prohibits owners and operators of passenger vessels, including U.S. and foreign-flag vessels, from discriminating against passengers on

the basis of disability; requires vessels and related facilities to be accessible; and requires owners and operators of vessels to take steps to accommodate passengers with disabilities.

Accessibility of landside facilities are addressed by Subpart D. Subpart E, which addresses the accessibility of the vessels themselves, is reserved until the U.S. Architectural and Transportation Barriers Compliance Board issues applicable standards, and such standards are incorporated into the US DOT ADA regulations. Requirements for assistance and services to passengers with disabilities are contained in Subpart F.

Passenger vessel operators are required to make a designated complaints resolution official (CRO) available for contact on each vessel and at each terminal. The CRO may be available in-person or via telephone. If a telephone link is used, text telephone (TTY) or telecommunications relay service (TRS) must be available so that persons with hearing impairments are able to communicate readily with the CRO.

The CRO must have the authority to make dispositive resolution of complaints on the entity's behalf, including the power to overrule the decisions of any other personnel (but cannot countermand a decision of the master of the vessel with respect to safety matters). In any situation in which any person complains or raises concern with the entity's personnel about discrimination, policies, or services with respect to passengers with a disability, and personnel do not immediately resolve the issue to the passenger's satisfaction or do not provide a requested accommodation, the entity's personnel must immediately inform the passenger of the right to contact a CRO and the location and/or phone number of the available CRO.

Public operators of passenger vessels are required to make reasonable modifications in policies, practices, or procedures when necessary to accommodate individuals with disabilities, unless they can demonstrate that making such modifications would fundamentally alter the nature of the service.

Passenger vessel operators may not limit the number of persons with disabilities on a vessel, require medical documentation, or require advance notice, and may not require a passenger with a disability to travel with another person, subject passengers with disabilities to restrictions that do not apply to other passengers, or impose higher fares, surcharges or other fees.

If a passenger vessel operator provides, contracts for, or otherwise arranges for transportation to and from a passenger vessel, the entity must ensure that the transfer service is accessible to and usable by persons with disabilities.

The entity must provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance or other vehicle drop-off point and the location where passengers board and disembark from the vessel. This includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim areas.

Passenger vessel operators are required to promptly provide assistance to passengers with disabilities who are not able to get on or off a vessel without assistance and may use any means to which the passenger consents (such as lifts, ramps, boarding chairs, or assistance by vessel personnel). However, the entity cannot require a passenger with a disability to accept assistance if he or she is readily able to get on or off of the vessel independently.

Passenger vessel operators must permit individuals with mobility disabilities to use power and manual wheelchairs and other mobility aids such as walkers, crutches, canes, braces, or similar devices in any areas that are open to pedestrian use. In addition, the entity must also make reasonable modifications to its policies, practices, or procedures to permit the use of other powered mobility devices used by persons with mobility impairments (e.g., Segways), unless it can be demonstrated that a specific device cannot be operated on board the vessel consistent with legitimate safety requirements.

Briefings or other safety-related information must be provided through means that effectively communicate their content to persons with vision or hearing impairments, using auxiliary aids and services where necessary. This includes providing written materials in alternative formats that persons with vision impairments can use. Entities must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, unless it is required of all passengers. Passengers with disabilities must be provided with whatever assistance is necessary to enable their full participation in safety or emergency evacuation drills that are provided to all passengers, and maintain evacuation programs, information, and equipment in locations that passengers with disabilities can readily access and use.

INDICATORS OF COMPLIANCE

- a. *Is a CRO made available on each vessel and at each terminal? Does the CRO have power to overrule the decisions of any other personnel except for the master of the vessel with respect to safety matters?*
- b. *Are requests for reasonable modifications in policies, practices, or procedures made unless such modifications would fundamentally alter the nature of the service?*
- c. *Is the number of persons with disabilities on a vessel limited?*
- d. *Is medical documentation or advance notice from a passenger with a disability required?*
- e. *Is a passenger with a disability required to travel with another person?*
- f. *If transportation service is provided to and from the ferry, is the transfer accessible?*
- g. *Is assistance provided as requested to passengers with disabilities in moving between the terminal entrance or drop-off point and the ferry boarding location, including assistance with ticket counters and baggage checking/claim areas?*
- h. *Is assistance provided promptly to passengers with disabilities who are not able to board or disembark without assistance?*
- i. *Are passengers with wheelchairs and mobility aids such as walkers, crutches, canes, braces, or similar devices restricted from using any areas that are open to pedestrians?*

- j. *Are briefings and other safety-related information provided to passengers with hearing or vision impairments? Is written material provided in alternative formats upon request?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on accessibility. Review copies of public information on riding ferry service, such as a rider guide or customer information. Review ADA policies and procedures, if written. From the review of these documents, ascertain the recipient's policies and procedures on use of the CRO; making reasonable modifications; the number of persons with disabilities allowed on the vessel; advanced notification of travel by persons with disabilities; personal assistants accompanying persons with disabilities; transfer service provided to persons with disabilities; assistance provided to persons with disabilities; alternative formats used for briefing and safety-related information; and, restrictions on accessing areas by persons with disabilities. Onsite, discuss these policies and procedures and how they are implemented.

Obtain and review an organization chart and job description for responsibilities of the CRO. Obtain and review ferry operations ADA training materials to ascertain if ferry personnel are made aware of the CRO and their role. Onsite, during complaint file review, note any ADA-related ferry complaints and how they are resolved. Determine if decisions made by the CRO are resolved by personnel other than the master of the vessel with respect to safety matters. When touring the facility and vessel, review posted information to determine if the recipient publicizes how the CRO can be contacted.

For transfers offered to persons with disabilities, when onsite, tour the passenger ferry terminal and walk the route designated for such transfers noting the transit connections and whether the route is accessible.

For information offered in accessible formats, when onsite, discuss audio and visual provision of service information during travel. During the facility tour, review postings in the terminal and on a vessel to confirm implementation of the recipient's policies. If time permits, ride the service.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has not appropriately designated a CRO or the CRO does not have the authority to overrule the decisions of other personnel except for the master of the vessel with respect to safety matters.

DEFICIENCY CODE ADA-GEN12-1: CRO missing or lacking authority

SUGGESTED CORRECTIVE ACTION: Submit evidence, such as an organization chart, job description, or Board or management directive, that it has designated a CRO. Submit a policy stating that the CRO has the authority to overrule personnel except for the master of the vessel with respect to safety matters.

The recipient is deficient if it does not accept requests for reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination on the basis of disability unless the modifications would fundamentally alter the nature of the service.

DEFICIENCY CODE ADA-GEN12-2: Reasonable modification not provided for ferry service

SUGGESTED CORRECTIVE ACTION: Submit a procedure for making reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination on the basis of disability unless the modifications would fundamentally alter the nature of the service.

The recipient is deficient if it inappropriately limits the number of passengers with disabilities on a vessel for other than weight or stability issues related to legitimate safety issues as determined by the captain.

DEFICIENCY CODE ADA-GEN12-3: Limits on passengers with disabilities on ferry service

SUGGESTED CORRECTIVE ACTION: Submit revised policies and procedures that prohibit limiting the number of passengers with a disability on a passenger vessel except for weight or stability issues for legitimate safety reasons as determined by the captain.

The recipient is deficient if medical documentation or advance notice is required from a passenger with a disability or if it requires a passenger with a disability to travel with another person.

DEFICIENCY CODE ADA-GEN12-4: Excessive requirements placed on passenger with disabilities on ferry service

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has ceased requiring medical documentation, advance notice from a passenger with a disability or requiring passengers with disabilities from traveling with another passenger.

The recipient is deficient if non-accessible transportation is provided to and from the vessel.

DEFICIENCY CODE ADA-GEN12-5: Non-accessible transportation to/from vessel

SUGGESTED CORRECTIVE ACTION: Submit evidence that it provides accessible transportation to and from the vessel.

The recipient is deficient if it does not 1) provide assistance as requested to ferry passengers with disabilities in moving between the terminal entrance or drop-off point and the ferry boarding location, including assistance with ticket counters and baggage checking/claim areas, or 2) provide prompt assistance to passengers with disabilities who are not able to board or disembark without assistance.

DEFICIENCY CODE ADA-GEN12-6: Assistance not provided to passengers with disabilities

SUGGESTED CORRECTIVE ACTION: Submit procedures to provide assistance as requested to ferry passengers with disabilities in moving between the terminal entrance or drop-off point and the ferry boarding location, including assistance with ticket counters and baggage checking/claim areas, and/or provide assistance promptly to passengers with disabilities who are not able to board or disembark without assistance, along with evidence of implementation.

The recipient is deficient if it does not provide briefings and other safety-related information provided to passengers with hearing or vision impairments or if written material is not provided in alternative formats upon request.

DEFICIENCY CODE ADA-GEN12-7: Ferry service safety information provision deficiencies

SUGGESTED CORRECTIVE ACTION: Submit evidence that briefings and safety-related information is provided to passengers with hearing or vision impairments, or written material provided in alternative formats upon request.

The recipient is deficient if it restricts passengers with wheelchairs and mobility aids such as walkers, crutches, canes, braces or similar devices from using any areas that are open to pedestrians.

DEFICIENCY CODE ADA-GEN12-8: Restrictions on passengers with wheelchairs or mobility aids

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has ceased restricting passengers with wheelchairs and mobility aids such as walkers, crutches, canes, braces, or similar devices from using any areas that are open to pedestrians.

GOVERNING DIRECTIVE

49 CFR 39.21 What is the general nondiscrimination requirement of the part?

(b)(2) As a PVO that is a public entity, you must make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless you can demonstrate that making the modifications would fundamentally alter the nature of the services, programs, or activities you offer.

49 CFR 39.29 May PVOs limit the number of passengers with a disability on a passenger vessel?

As a PVO, you must not limit the number of passengers with a disability other than individuals with a mobility disability on your vessel. However, if in the captain's judgment, weight or stability issues are presented by the presence of mobility devices and would conflict with legitimate safety requirements pertaining to the vessel and its passengers, then the number of passengers with mobility aids may be limited, but only to the extent reasonable to prevent or avoid such a conflict.

49 CFR 39.33 May PVOs require a passenger with a disability to provide a medical certificate?

Except as provided in §39.31, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation on your vessel.

49 CFR 39.35 May PVOs require a passenger with a disability to provide advance notice that he or she is traveling on or using a passenger vessel when no particular services are sought?

As a PVO, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on or using a passenger vessel when the passenger is not seeking particular auxiliary aids or services, or special privileges or services, that in order to be provided need to be arranged before the passenger arrives to board the vessel.

49 CFR 39.41 May a passenger with a disability be required to travel with another person?

- (a) You must not require that a passenger with a disability travel with another person as a condition of being provided transportation on or use of a passenger vessel.
- (b) Your personnel are not required to perform personal tasks (e.g., assisting with eating, dressing, toileting) for a passenger.

49 CFR 39.45 May PVOs impose other restrictions on passengers with a disability that they do not impose on other passengers?

- (a) As a PVO, you must not subject passengers with a disability to restrictions that do not apply to other passengers, except as otherwise explicitly permitted in this part.
- (b) Restrictions you must not impose on passengers with a disability include, but are not limited to, the following:
 - (1) Restricting passengers' movement within the vessel or a terminal;

- (2) Requiring passengers to remain in a holding area or other location in order to receive transportation or services;
 - (4) Requiring passengers to wear badges or other special identification; or
 - (5) Requiring ambulatory passengers, including but not limited to blind or visually impaired passengers, to use a wheelchair or other mobility device in order to receive assistance required by this Part or otherwise offered to the passenger.
- (c) Special muster stations for disabled individuals are permissible for emergency evacuations in order to centrally locate available resources.

49 CFR 39.81 What assistance must PVOs provide to passengers with a disability in getting to and from a passenger vessel?

- (a) As a PVO, if you provide, contract for, or otherwise arrange for transportation to and from a passenger vessel in the U.S. (e.g., a bus transfer from an airport to a vessel terminal), you must ensure that the transfer service is accessible to and usable by individuals with disabilities, as required by this Part.
- (b) You must also provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance (or a vehicle drop-off point adjacent to the entrance) of a terminal in the U.S. and the place where people get on or off the passenger vessel. This requirement includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim. It also includes a brief stop upon request at an accessible toilet room.

49 CFR 39.83 What are PVOs' obligations for assisting passengers with a disability in getting on and off a passenger vessel?

- (a) If a passenger with a disability can readily get on or off a passenger vessel without assistance, you are not required to provide such assistance to the passenger. You must not require such a passenger with a disability to accept assistance from you in getting on or off the vessel unless it is provided to all passengers as a matter of course.
- (b) With respect to a passenger with a disability who is not able to get on or off a passenger vessel without assistance, you must promptly provide assistance that ensures that the passenger can get on or off the vessel.
- (c) When you have to provide assistance to a passenger with a disability in getting on or off a passenger vessel, you may use any available means to which the passenger consents (e.g., lifts, ramps, boarding chairs, assistance by vessel personnel).

49 CFR 39.89 What requirements apply to on-board safety briefings, information, and drills?

As a PVO, you must comply with the following requirements with respect to safety briefings, information, or drills provided to passengers:

- (a) You must provide the briefings or other safety-related information through means that effectively communicate their content to persons with vision or hearing impairments, using auxiliary aids and services where necessary for effective communication. This includes providing written materials in alternative formats that persons with vision impairments can use.
- (b) You must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that you impose such a

requirement on all passengers. You must not take any action adverse to a qualified individual with a disability on the basis that the person has not “accepted” the briefing.

- (c) As a PVO, if you present on-board safety briefings to passengers on video screens, you must ensure that the safety-video presentation is accessible to passengers with impaired hearing (e.g., through use of captioning or placement of a sign language interpreter in the video).
- (d) You must provide whatever assistance is necessary to enable passengers with disabilities to participate fully in safety or emergency evacuation drills provided to all passengers.
- (e) You must maintain evacuation programs, information, and equipment in locations that passengers can readily access and use.

49 CFR 39.101 What are the requirements for providing Complaints Resolution Officials?

- (a) As a PVO, you must designate one or more Complaints Resolution Officials (CROs).
- (b) You must make a CRO available for contact on each vessel and at each terminal that you serve. The CRO may be made available in person or via telephone, if at no cost to the passenger. If a telephone link to the CRO is used, TTY or TRS service must be available so that persons with hearing impairments may readily communicate with the CRO. You must make CRO service available in the language(s) in which you make your other services available to the general public.
- (e) You must ensure that each of your CROs has the authority to make dispositive resolution of complaints on behalf of the PVO. This means that the CRO must have the power to overrule the decision of any other personnel, except that the CRO may not be given authority to countermand a decision of the master of a vessel with respect to safety matters.

ADA-GEN13. Does the recipient monitor service provided under contract or other arrangement or relationship with a private entity, or service provided by another public entity on the recipient’s behalf, for compliance with the U.S. Department of Transportation (US DOT) ADA regulations?

BASIC REQUIREMENT

Service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement) must meet the US DOT ADA requirements that apply to the recipient.

APPLICABILITY

Recipients who enter into contracts or other arrangements or relationships with other entities, lease vehicles or otherwise rely on another entity to provide service. Note that the DOT ADA regulations apply equally to “pilot” programs or demonstration projects.

DETAILED EXPLANATION FOR REVIEWER

Recipients are required to ensure that service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward, or cooperative agreement) adheres to the same ADA requirements that apply to the recipient. This includes written contracts or informal arrangement that reflects an ongoing relationship between the parties. See ADA-GEN5 for a more detailed explanation of each requirement.

INDICATOR OF COMPLIANCE

- a. *How does the recipient monitor service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward, or cooperative agreement) with a private entity, service provided by lessees, or service provided by another public entity on the recipient's behalf under contract or other arrangement or relationship for:*

1. *Complaint procedures?*
2. *Vehicle acquisition?*
3. *Facility construction and alterations?*
4. *Service provision, including reasonable modification, training to proficiency in the performance of duties (including use of wheelchair securement systems and treating individuals with disabilities with dignity and respect), accommodation of service animals and portable oxygen, etc.? (See ADA-GEN8)*
5. *Maintenance of accessible features?*
6. *Route-deviation service?*
7. *Rail service?*
8. *Ferry service?*

INSTRUCTIONS FOR REVIEWER

Review sample transportation service contracts and other arrangements or relationships, agreements to provide supplemental transportation, and leases for ADA requirements, including training and service related requirements. Review contract management procedures, including tracking and monitoring service quality. Review reports, questionnaires, and checklists used for ensuring compliance with ADA requirements, including those governing training to proficiency in the conduct of duties. Onsite, discuss ADA policies and procedures with the recipient and review recipient's oversight files for the contractor(s) and lessee(s) to be visited during the site visit. Discuss ADA policies and procedures with the contractors/lessees visited.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not ensure that contractors, entities with which the recipient has other arrangements or relationships, and lessees comply with ADA provisions of service requirements.

DEFICIENCY CODE ADA-GEN13-1: Insufficient oversight of contracted service for ADA requirements

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that contractors, entities with which the recipient has other arrangements or relationships, and lessees comply with the ADA service provisions.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence of implementation of procedures for ensuring that contractors, entities with which the recipient has other arrangements or relationships, and lessees comply with the relevant US DOT ADA requirements.

GOVERNING DIRECTIVE

49 CFR 39.23 Service under contract

(a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.

(c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed-route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

(d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.

49 CFR 39.23 What are the requirements concerning contractors to owners and operators of passenger vessels?

(a) If, as a PVO, you enter into a contractual or other arrangement or relationship with any other party to provide services to or affecting passengers, you must ensure that the other party meets the requirements of this Part that would apply to you if you provided the service yourself.

ADA-GEN14. Does the recipient monitor service provided by subrecipients for compliance with the US DOT ADA regulations?

BASIC REQUIREMENT

The recipient must ensure that subrecipients comply with the US DOT ADA regulations.

APPLICABILITY

Recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER

Recipients are required to ensure that subrecipients adhere to all relevant ADA requirements. See preceding questions for a more detailed explanation of each requirement.

States must obtain certifications of equivalent service from Sections 5307, 5311, and 5339 subrecipients before the subrecipient acquires non-accessible vehicles for demand-response service, not including ADA complementary paratransit service. Note: Even though the US DOT ADA regulations do not list Section 5339 subrecipients as having to file certifications of equivalent service with a state administering agency for purchases of non-accessible vehicles for demand-response service, Section 5339 funds take on the requirements of the Section 5307 or 5311 program, depending on the program the funds support. Therefore, a certification of equivalent service is required from Section 5339 subrecipients. The requirement does not apply to Section 5310 subrecipients that are providing closed door service to their own clientele. The ADA regulations do not require non-state recipients to obtain certifications of equivalent service. Many recipients obtain the annual certification and assurances from subrecipients. The certification of equivalent service is included in the FTA annual certifications and assurances. The recipient must look behind the certification, that is, determine if the subrecipient provides equivalent service before the subrecipient acquires non-accessible vehicles for demand-response service.

All Section 5311 subrecipients, including private nonprofit entities, are to follow the rules for public entities.

INDICATORS OF COMPLIANCE

a. How does the recipient monitor subrecipients for?

- 1. Complaint procedures?*
- 2. Vehicle acquisition?*
- 3. Facility construction and alterations?*
- 4. Service provision, such as reasonable modification, training, etc.?*
- 5. Maintenance of accessible features?*
- 6. Route-deviation service?*
- 7. Rail service?*
- 8. Ferry service?*

- b. *Does the state have on file certifications of equivalent service from Section 5307, 5311, and 5339 subrecipients that acquire non-accessible vehicles for general public demand-response service?*

INSTRUCTIONS FOR REVIEWER

Review subrecipient agreements for ADA requirements, including training requirements. Request and review contract management procedures. Review reports, questionnaires, and checklists used for ensuring compliance with ADA requirements. Onsite, discuss ADA policies and procedures with the recipient and review the oversight files for the subrecipient(s) to be visited during the site visit. Note: FTA is looking for a Comprehensive Review of service provision requirements. Recipients are not required to ensure that subrecipients monitor for each service provision. Discuss ADA policies and procedures with the subrecipient(s) visited.

Review the state or program management plan to determine whether the recipient allows subrecipients to purchase non-accessible equipment for demand-response service. If so, review how the recipient determines whether the subrecipient provides equivalent service. Determine how the state obtains certifications of equivalent service from Sections 5307, 5311, and 5339 subrecipients before the subrecipient acquires non-accessible vehicles for demand-response service, not including ADA complementary paratransit service.; if annual certifications are used, determine how the state reviews the subrecipients' supporting documentation to ensure compliance.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not monitor and ensure that its subrecipients comply with relevant US DOT ADA requirements.

DEFICIENCY CODE ADA-GEN14-1: Insufficient oversight of subrecipients for ADA requirements

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients comply with the relevant US DOT ADA requirements.

SUGGESTED CORRECTIVE ACTION: Submit evidence of implementation of procedures for ensuring that subrecipients comply with the relevant US DOT ADA requirements

The state is deficient if it does not obtain a certification of equivalent service from Section 5307, 5311, or 5339 subrecipients that acquire non-accessible vehicles for general public demand-response service.

DEFICIENCY CODE ADA-GEN14-2: Insufficient oversight of ADA vehicle accessibility requirements

SUGGESTED CORRECTIVE ACTION: Submit procedures for obtaining certifications of equivalent service from Section 5307, 5311, and 5339 subrecipients before the subrecipients acquire non-accessible equipment for demand-response service.

GOVERNING DIRECTIVE

Chapter 53 of title 49, United States Code, as amended by Fixing America's Surface Transportation Act Related FAST and MAP-21 provisions, Section 5339. Grants for buses and bus facilities

(a)(3) Grant requirements--The requirements of--

(A) section 5307 shall apply to recipient of grants made in urbanized areas under this subsection; and

(B) section 5311 shall apply to recipients of grants made in rural areas under this subsection.

49 CFR 200.332 Requirements for pass-through entities

A pass-through entity must:

(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

- (1) Review financial and performance reports.
- (2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.
- (3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521.

49 CFR 37.23 Service under contract

(a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.

(c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed-route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

(d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.

49 CFR Part 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public

(d) A public entity receiving FTA funds under 49 U.S.C. 5311 or a public entity in a small urbanized area which receives FTA funds under 49 U.S.C. 5307 from a state administering agency rather than directly from FTA, which determines that its service to individuals with disabilities is equivalent to that provided other persons shall, before any procurement of an inaccessible vehicle, file with the appropriate state program office a certificate that it provides equivalent service meeting the standards of paragraph (c) of this section.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

During the review were any issues/areas of concerns identified during the review:

- Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including ADA reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of ADA.
- Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year.
- Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit findings.
- Are any oversight review, investigation, or audit findings currently open.
- Are any issues related to ADA indicated in the Oversight Assessment Tool (OAT).
- What deficiencies or potential deficiencies have been identified by the FTA Office of Civil Rights through complaint investigations, compliance reviews, and other sources.
- Have any ADA complaints been filed with FTA.
- Does the ADA complaint process provide for due process.
- Does the recipient have forward-facing seats in the front of buses.
- Does the recipient appear to have the capacity and employee training to ensure compliance with the ADA.
- Do the recipient, contractors, and lessees appear to have sufficient accessible spare vehicles to meet the ADA service requirements.
- Did background research or site visit observations reveal any potential issues or concerns about the recipient's compliance with ADA requirements not covered previously in this section.
- If the recipient operates a demand-responsive service of any kind, and relies on equivalent service to accommodate persons with disabilities who require accessible vehicles, are the accessible vehicles comparable in nature to the inaccessible vehicles provided to ambulatory passengers (e.g., are ambulatory passengers provided with luxury vehicles while wheelchair users are provided only with Low-Speed Vehicles as classified by NHTSA).
- If the recipient has engaged the services of a private entity to operate demand-responsive services on its behalf or under its banner via contract or other arrangement or relationship, how does the recipient ensure that equivalent service is provided to persons with disabilities, including those who use wheelchairs?
- If the recipient has engaged the services of a private entity to operate demand-responsive services on its behalf or under its banner via contract or other arrangement or relationship, what oversight or controls does the recipient have in place to ensure compliance with DOT ADA nondiscrimination requirements in connection with the provision of such services?

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REFERENCES

1. 2 CFR 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"
3. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"
4. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"
5. 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels"
6. FTA Circular 4710.1, "Americans with Disabilities Act (ADA) Guidance"

USEFUL WEBLINKS

1. FTA ADA Website
2. U.S. Department of Transportation (US DOT) Disability Law Guidance
3. ADA Standards for Transportation Facilities
4. Federal Highway Administration Guidance on Pedestrian Access for Persons with Disabilities
5. Disability Rights Education & Defense Fund - Topic Guides on ADA Transportation
6. U.S. Department of Justice ADA Homepage
7. FTA's Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
8. Notice of Concurrence
9. Emergency Relief rule

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13. AMERICANS WITH DISABILITIES ACT (ADA) COMPLEMENTARY PARATRANSIT

PURPOSE OF THIS REVIEW AREA

Under 49 CFR 37.121(a), each public entity operating a fixed-route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed-route system. "Comparability" is determined by 49 CFR 37.123-37.133. Requirements for complementary paratransit do not apply to commuter bus, commuter rail, or intercity rail systems.

QUESTIONS TO BE EXAMINED

1. If the recipient is a public operator of a fixed-route service (bus or rail), does it provide ADA complementary paratransit service?
2. Does the recipient's paratransit eligibility determination process meet ADA complementary paratransit service requirements?
3. Does the recipient provide ADA complementary paratransit service to out-of-town visitors on the same basis as it provides service to eligible riders?
4. Does the recipient's paratransit service meet the ADA complementary paratransit service requirements?
5. If the recipient has a no-show/late cancellation policy for ADA complementary paratransit service, does it meet the ADA complementary paratransit service requirements?
6. Does the recipient place any limits on the availability of service to ADA paratransit eligible individuals?
7. Does the recipient monitor service provided under contract or other arrangement or relationship, or service provided by another entity on the recipient's behalf, for compliance with 49 CFR Part 37, Subpart F?
8. Does the recipient monitor ADA complementary paratransit service provided by subrecipients for compliance with 49 CFR Part 37, Subpart F?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Paratransit rider's guide
- Paratransit application form
- Operations, dispatch, scheduling or reservation procedures
- Sample notification letter templates for conditional eligibility, temporary eligibility, and denials
- ADA complementary paratransit service contracts
- Oversight tools for service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement), including required reports, questionnaires, and checklists for ADA complementary paratransit service
- For contracts or other arrangements, samples of completed oversight tools such as completed check lists, meeting minutes, reports, or summaries, and in particular, evidence of responsiveness to issues identified during analysis of service criteria outlined in 49 CFR 37.131 analysis
- Copies of contracts or other agreements, or terms of other relationships (including, but not limited to, awards, subawards or cooperative agreements) with private entities to operate ADA complementary paratransit service

- Oversight tools for subrecipients, including required reports, questionnaires, and checklists for ADA complementary paratransit service
- For subrecipients, samples of completed oversight tools such as completed check lists, meeting minutes, reports, or summaries, and in particular, evidence of responsiveness to issues identified during analysis of service criteria outlined in 49 CFR 37.131 analysis

Note that it is possible for paratransit guides and information to point to general ADA deficiencies covered in the previous section. For example, while the paratransit guide may be the only place that a requirement for boarding direction or service animal harnesses is found, that does not make it a paratransit-specific deficiency. Use the deficiency codes in the ADA General section for these types of deficiencies, if found. The two ADA sections are designed to work together.

Recipient Follow-up

- Service denials for the past three years by year
- Travel times for the past three years by year
- Missed trips for the past three years by year
- Telephone hold time performance for reservations lines for the past three years by year
- No-show policy (If any)

ADA-CPT1. If the recipient is a public operator of a fixed-route service (bus or rail), does it provide ADA complementary paratransit service?

BASIC REQUIREMENT

Public operators of a fixed route system must provide paratransit as a complement to the fixed-route system.

APPLICABILITY

Public operators of a fixed-route system (other than commuter rail or commuter bus service)

DETAILED EXPLANATION FOR REVIEWER

Each public operator of a fixed-route system (bus and rail) is required to provide complementary paratransit. The requirement to provide complementary paratransit service does not apply to commuter bus or commuter rail, as defined by 49 CFR 37.3, or to university service as discussed in 49 CFR 37.25.

Commuter bus service is fixed-route bus service characterized by service predominately in one direction during peak periods, with limited stops and routes of extended length, usually between the central business district and outlying suburbs. It may also include other service characterized by a limited route structure, no attempt to comprehensively cover a service area, limited purposes of travel or a coordinated relationship to another mode of transportation.

Commuter rail transportation means short-haul rail passenger service operating in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, usually characterized by reduced fare, multiple ride, and commutation tickets and by morning and evening peak period operations. This term does not include light or rapid rail transportation.

49 CFR 37.25 specifies that “university transportation systems” are operated by public or private institutions of higher education. Most transit operators are not institutions of higher education and, by definition, would therefore not be operating “university service.” In order for routes operated by a transit provider to be covered by this provision, an institution of higher education would be required to have a formal arrangement with the transit operator to provide service on the institution’s behalf.

INDICATORS OF COMPLIANCE

- If the recipient is a public operator of fixed-route service other than commuter rail or*

commuter bus service, is complementary paratransit service provided?

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website to determine whether the recipient operates fixed-route service (other than commuter bus or commuter rail service). Any recipients who indicate that they only operate commuter bus service should be examined more closely to ensure that the service meets the definition of commuter bus found in 49 CFR 37.3 and discussed in Appendix D.

Any recipient that operates only route-deviation service, which is regarded as demand-response service, should be examined more closely to determine whether the service provides for route deviation for all passengers on the same terms (see question ADA-GEN10).

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it is a public operator of a fixed-route system (other than commuter bus or commuter rail) and does not provide paratransit as a complement to the fixed-route system.

DEFICIENCY CODE ADA-CPT1-1: Failure to provide complementary paratransit

SUGGESTED CORRECTIVE ACTION: Submit a plan with milestones for implementing paratransit as a complement to its fixed-route service according to the criteria described in 49 CFR Part 37, subpart F.

GOVERNING DIRECTIVE

49 CFR 37.3 Definitions

Commuter bus service means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation.

Commuter rail transportation means short-haul rail passenger service operating in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, usually characterized by reduced fare, multiple ride, and commutation tickets and by morning and evening peak period operations. This term does not include light or rapid rail transportation.

49 CFR 37.25 University transportation systems

- (a) Transportation services operated by private institutions of higher education are subject to the provisions of this part governing private entities not primarily engaged in the business of transporting people.
- (b) Transportation systems operated by public institutions of higher education are subject to the provisions of this part governing public entities. If a public institution of higher education operates a fixed route system, the requirements of this part governing commuter bus service apply to that system.

49 CFR 37.121 Requirement for comparable complementary paratransit service

- (a) Except as provided in paragraph (c) of this section, each public entity operating a fixed route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.

- (b) To be deemed comparable to fixed route service, a complementary paratransit system shall meet the requirements of §§37.123-37.133 of this subpart. The requirement to comply with §37.131 may be modified in accordance with the provisions of this subpart relating to undue financial burden.
- (c) Requirements for complementary paratransit do not apply to commuter bus, commuter rail, or intercity rail systems.

49 CFR Part 37 Appendix D Section 37.3 Definitions

The definition of “commuter bus service” is important because the ADA does not require complementary paratransit to be provided with respect to commuter bus service operated by public entities. The rationale that may be inferred for the statutory exemption for this kind of service concerns its typical characteristics (e.g., no attempt to comprehensively cover a service area, limited route structure, limited origins, and destinations, interface with another mode of transportation, limited purposes of travel). These characteristics can be found in some transportation systems other than bus systems oriented toward work trips. For example, bus service that is used as a dedicated connector to commuter or intercity rail service, certain airport shuttles, and university bus systems share many or all of these characteristics. As explained further in the discussion of subpart B, the Department has determined that it is appropriate to cover these services with the requirements applicable to commuter bus systems.

ADA-CPT2. Does the recipient’s paratransit eligibility determination process meet ADA complementary paratransit service requirements?

BASIC REQUIREMENT

ADA complementary paratransit service must be provided to ADA eligible individuals.

APPLICABILITY

Public providers of fixed-route service (other than commuter rail or commuter bus service)

DETAILED EXPLANATION FOR REVIEWER

Each entity providing ADA complementary paratransit service is required to establish a process for determining ADA paratransit eligibility. The entity must process a completed application within 21 calendar days of submittal. If after 21 calendar days, the entity has not made an eligibility determination, the applicant must be treated as eligible and must be provided service on the 22nd day until and unless the entity denies the application.

Individuals may be ADA paratransit eligible on the basis of a temporary, conditional or permanent disability. The entity is not required to implement conditional eligibility.

Applicants given conditional or temporary eligibility must be given a written decision conveying the determination and information on the right to an appeal. The written determination denying eligibility and those granting less than unconditional eligibility cannot just state that it has been determined that the applicant can use fixed-route service. As explained in Appendix D to 49 CFR 37.125, a mere recital that the applicant can use fixed-route transit is not sufficient. The reasons must specifically convey the evidence in the matter and relate it to the eligibility criteria.

The entity is required to establish an appeals process for persons denied eligibility or granted conditional or temporary eligibility. Applicants can be required to submit written notice that they intend to exercise their appeal rights. However, an applicant cannot be required to submit a written appeal, as this would constitute a prohibited unreasonable administrative burden on the applicant. The entity may require that this written notice be filed within 60 days of the denial of a person’s application. The process must include an opportunity to be heard to present information and “separation of authority” between those hearing the

appeal and those that made the original decision to deny eligibility. An individual may also waive the in-person hearing and proceed on the basis of a written presentation.

The entity is not required to provide ADA complementary paratransit service pending the determination of the appeal, but if the decision takes longer than 30 days after completing the appeals process, paratransit service must be provided from that time until a decision to deny the appeal is issued. A written notification of an appeal determination, with the reason for it, is also required.

Eligibility for complementary paratransit is directly related to the functional ability of individuals with disabilities to use fixed-route transit services. Eligibility is not based on a diagnosis or type of disability. Individuals with the same diagnosis or disability can have very different functional abilities to use fixed-route services. Similarly, eligibility is not based on the type of mobility aids that individuals use. Use of a wheelchair does not imply automatic eligibility, for example, since many individuals who use wheelchairs are able to use fixed-route services for many or all of their trips. Nor is ADA paratransit eligibility based on age, income or whether or not individuals can drive or have access to private automobile transportation.

The entity may request basic personal identifying information on its application forms, such as name, date of birth and home address. Collection of other information, such as income or personal vehicle ownership, must be clearly optional; the entity is deficient if it uses such information as a basis for determining paratransit eligibility. A process by which applications collecting such additional information are rejected as “incomplete” is an indication that the information is not optional and has become a part of the eligibility process. Note that entities that have system-wide policies requiring all children under a certain age to travel with an adult (for fixed-route transit as well as complementary paratransit) may apply these policies to eligibility determinations for children.

The entity may note as part of its eligibility process whether or not the applicant travels with a personal care attendant (PCA) but may not establish a process to “approve” travel with a PCA. A PCA is someone designated or employed specifically to help the eligible individual meet his or her personal needs. Those needs may or may not include assistance involving the transportation process; most functions performed by a PCA do not involve travel. The entity may not involve itself in the selection of an individual’s PCA nor seek to “approve” persons serving as PCAs. The entity may not require an individual indicating that s/he travels with a PCA to always travel with a PCA, or deny service based on the absence of a PCA for a particular trip or trips. The entity may not require the individual to be accompanied by the same PCA.

INDICATORS OF COMPLIANCE

- a. *Are eligibility decisions made within 21 days of receipt of a complete application? If an application is not processed within 21 days, is presumptive eligibility granted on the 22nd day until and unless the application is denied in writing?*
- b. *Does the recipient give to persons who are denied eligibility or given conditional or temporary eligibility a written notice with specific reasons for the decision?*
- c. *Are applicants notified of the right to an appeal? Do applicants have at least 60 days to appeal? Does the process include an opportunity to be heard, separation of functions, and written notification of the decision and the reason for it? If a decision is not made within 30 days of completing the appeal process, is paratransit service provided until and unless a decision to deny the appeal is issued?*

- d. *Do the eligibility criteria include inappropriate factors such as income, ability to drive, vehicle ownership, access to other transportation or the results of travel training? For application forms that include such information, will the application be rejected if it is “incomplete”?*
- e. *As part of the eligibility process, does the recipient seek to approve persons serving as PCAs? Does it require individuals who note they travel with a PCA to always travel with a PCA? Does it require a rider’s PCA to provide assistance with boarding, disembarking or the transportation process? Does it require riders using PCAs to always be accompanied by a PCA, or by the same PCA?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient’s website for information on ADA complementary paratransit service. Review information provided to the public that describes the ADA complementary paratransit services and the eligibility process.

Onsite, discuss with the recipient how the application progress is documented, processed, and monitored, and how eligibility determinations are made. Spot check recent application files and the determination letters issued to ensure that the recipient processed them within 21 calendar days and whether notification was timely. If not, determine whether and how applicants are informed that they can schedule and use the ADA paratransit service on the 22nd day until such time that the application is denied.

Review template certification letters. Onsite, review a sample of recent application files and determination letters for denial of eligibility, conditional eligibility, and temporary eligibility. Reasons provided must specifically reference transit-related functional skills. The reasons must specifically convey the evidence in the matter and relate it to the applicant’s functional abilities.

Review public information that describes the ADA complementary paratransit services and the eligibility process and template certification letters to determine how applicants are notified of the right to an appeal. Verify that at least 60 days are provided to the applicant to request an appeal. Determine if the notice requires an applicant to submit a written justification prior to the appeal hearing, as this would constitute a prohibited unreasonable administrative burden.

Review appeal procedures to verify that the appeals process provides for separation of functions; that is, separation of authority between any individuals hearing the appeal and any individuals who made the original decision to deny eligibility or grant conditional or temporary eligibility. Verify that the applicant is provided an opportunity to be heard; an applicant may waive the in-person hearing and proceed on the basis of a written presentation. Verify that written appeals are not required (though notification of intent to appeal can be required in writing). Verify that transportation is provided when decisions have not been made within 30 days of completing the appeal process; the recipient is not required to provide ADA complementary paratransit pending the determination of the appeal. Review a sample of appeal files to verify documentation and timely processing and notification.

Review paratransit application form(s) and procedures for inappropriate eligibility factors such as income, ability to drive, vehicle ownership, access to other transportation, the results of travel training, or applicant’s address. If application forms or procedures contain such factors, determine if they are used as eligibility criteria or in determining completeness of the form or if applications are rejected if this information is not provided.

Review the paratransit application form(s) for questions regarding PCAs. Review public information that describes the ADA complementary paratransit services and the eligibility process for requirements regarding PCAs.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not grant presumptive eligibility for applications not processed within 21 days of receipt of a complete application.

DEFICIENCY CODE ADA-CPT2-1: Presumptive eligibility deficiencies

SUGGESTED CORRECTIVE ACTION: Submit a procedure for granting presumptive eligibility for applications not processed within 21 days until and unless the recipient denies the application.

The recipient is deficient if it does not provide the specific reasons for granting less than unconditional eligibility.

DEFICIENCY CODE ADA-CPT2-2: Eligibility letter deficiencies

SUGGESTED CORRECTIVE ACTION: Submit a procedure for stating the specific reason for granting less than unconditional eligibility and evidence of its implementation.

The recipient is deficient if it does not have an eligibility appeals process. The recipient is deficient if its deadline for filing an appeal is shorter than 60 days. The recipient is deficient if it requires the applicant to submit a written justification prior to the appeal hearing. The recipient is deficient if the appeals process does not provide for an opportunity to be heard, separation of functions or written notification of the decision and the reason for it. The recipient is deficient if it does not provide paratransit service within 30 days of completing the appeal process until and unless a decision to deny the appeal is issued.

DEFICIENCY CODE ADA-CPT2-3: Eligibility appeals process not properly implemented

SUGGESTED CORRECTIVE ACTION 1: Submit an eligibility appeals process.

SUGGESTED CORRECTIVE ACTION 2: Submit an eligibility appeals process that provides for at least 60 days to file an appeal.

SUGGESTED CORRECTIVE ACTION 3: Submit an eligibility appeals process that does not require the applicant to submit a written justification prior to the appeal hearing.

SUGGESTED CORRECTIVE ACTION 4: Submit an eligibility appeals process that provides for an opportunity to be heard, separation of functions, and written notification of the decision and the reason for it.

SUGGESTED CORRECTIVE ACTION 5: Submit an eligibility appeals process that provides the applicant with paratransit service when the appeal decision is not made within 30 days of completing the appeal process until and unless a decision to deny the appeal is issued.

The recipient is deficient if its eligibility determination considers inappropriate factors such as income, ability to drive, vehicle ownership, access to other transportation or the results of travel training, or applicant address.

DEFICIENCY CODE ADA-CPT2-4: Eligibility criteria deficiencies

SUGGESTED CORRECTIVE ACTION: Submit a revised eligibility process that eliminates the inappropriate factors.

The recipient is deficient if its eligibility process includes “approval” of the use of a PCA. The recipient is deficient if it requires individuals who note that they travel with a PCA to always travel with a PCA. The recipient is deficient if it requires a rider’s PCA to provide assistance with boarding, disembarking or with the transportation process. A recipient is deficient if it requires riders using PCAs to always be accompanied by the same PCA.

DEFICIENCY CODE ADA-CPT2-5: Personal care attendant deficiencies

SUGGESTED CORRECTIVE ACTION 1: Submit revised eligibility procedures that do not purport to “approve” the use of a PCA, only record whether or not the rider travels with a PCA.

SUGGESTED CORRECTIVE ACTION 2: Submit revised eligibility procedures that do not condition the accommodation of an eligible rider’s PCA upon the eligible rider always traveling with a PCA.

SUGGESTIVE CORRECTIVE ACTION 3: Submit revised eligibility procedures that do not condition the accommodation of a PCA upon the PCA providing assistance with boarding, disembarking, or the travel process.

SUGGESTED CORRECTIVE ACTION 4: Submit revised eligibility procedures that do not condition the accommodation of a PCA upon the applicant always traveling with the same PCA.

GOVERNING DIRECTIVE

49 CFR 37.125 ADA paratransit eligibility: Process

Each public entity required to provide complementary paratransit service by §37.121 of this part shall establish a process for determining ADA paratransit eligibility.

- (c) If, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application.
- (d) The entity's determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible, the determination shall state the reasons for the finding.
- (g) The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.
 - (1) The entity may require that an appeal be filed within 60 days of the denial of an individual's application.
 - (2) The process shall include an opportunity to be heard and to present information and arguments, separation of functions (*i.e.*, a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it.
 - (3) The entity is not required to provide paratransit service to the individual pending the determination on appeal. However, if the entity has not made a decision within 30 days of the completion of the appeal process, the entity shall provide paratransit service from that time until and unless a decision to deny the appeal is issued.
- (i) In applications for ADA paratransit eligibility, the entity may require the applicant to indicate whether or not he or she travels with a personal care attendant.

Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR9

Transit systems are free to suspend in-person assessments and use a remote or paper process for eligibility determinations. The DOT ADA regulations at 49 CFR 37.125 do not require in-person assessments for paratransit eligibility, and in fact do not specify how the eligibility process should work. Because a paper or virtual process is not typically as effective in assessing functional ability accurately, a transit system also may decide to be overly broad in who they find eligible, and then reassess during regular recertification sometime in the future. Note that because applicants would be presumptively eligible after 21 days under 49 CFR 37.125(c) if their applications are not processed, a transit system may wish preemptively to offer presumptive eligibility for the duration of the COVID-19 public health emergency, subject to reevaluation once the public health emergency ends. Complete suspension of the eligibility process is not permitted, because 49 CFR 37.131(f)(2) specifically prohibits the use of wait lists to access the service.

ADA-CPT3. Does the recipient provide ADA complementary paratransit service to out-of-town visitors on the same basis as it provides service to eligible riders?

BASIC REQUIREMENT

ADA complementary paratransit service must be provided to out-of-town visitors on the same basis as it provides service to persons found eligible through its eligibility process.

APPLICABILITY

Public providers of fixed-route service (other than commuter rail or commuter bus service).

DETAILED EXPLANATION FOR REVIEWER

Paratransit service must be provided to visitors on the same basis as it is provided to local residents. "On the same basis" means under all the same conditions, service criteria, etc., without distinction. For the period of a visit, the visitor is treated exactly like an eligible local user, without any higher priority being given to either. Complementary paratransit service must be provided to visitors if:

1. The visitor can present documentation from his or her "home" jurisdiction's ADA complementary paratransit system that he or she is eligible. The local provider will give "full faith and credit" to the identification card or other documentation issued by the other entity.
2. The visitor can present, if the individual's disability is not apparent, proof of the disability (e.g., a letter from a doctor or rehabilitation professional) and, if required by the local provider, proof of visitor status (i.e., proof of residence somewhere else). Once the documentation is presented, the local provider will make service available on the basis of the individual's statement that he or she is unable to use the fixed-route transit system, that is, the local provider cannot require functional testing.

Determining whether a visitor is entitled to service should be a fairly simple and quick process enabling the visitor to contact the host agency to learn what is required to obtain service and then being able to easily meet the requirements. This also means that upon receipt of any required documentation described above, entities are to quickly enter necessary information into any databases or systems to permit visitors to place trip requests. The Federal Transit Administration (FTA) envisions this as a process that can often be completed the same day or no more than one day later.

The entity is required to provide service for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during that 365-day period. It may request that the visitor apply for eligibility in order to receive additional service beyond this number of days.

INDICATORS OF COMPLIANCE

- a. *Does the recipient accept documentation of eligibility from the visitor issued to the visitor by the visitor's home jurisdiction?*
- b. *Does the recipient provide service to visitors whose disability is apparent or who provide documentation of disability?*
- c. *Does the recipient provide service to visitors for at least 21 days within a 365-day period?*
- d. *Does the recipient process visitors' service requests within the same day or not more than one day later?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on ADA complementary paratransit service for visitors. Review information provided to the public that describes the ADA complementary paratransit services and the process for providing service to visitors to determine whether the recipient:

- Accepts documentation of eligibility provided by the visitor from the visitor's home jurisdiction
- Provides service to persons who provide documentation of disability
- Provides service to visitors who seek service in person and whose disability is apparent without requesting additional information beyond proof of residency
- Processes requests for service from visitors within the same day or not more than one day later

Onsite, discuss with the recipient how paratransit service is provided to visitors. Agencies are expected to accept this documentation directly from the individual and not require that the documentation be provided directly from the individual's home transit agency. The recipient may request documentation of residency.

Evaluate whether the recipient provides any combination of 21 days of service during a 365-day period beginning with the visitor's first use of the service, rather than a continuous 21-day period commencing from the first use. The recipient may require the visitor to apply for eligibility to receive additional service beyond the 21 days. Onsite, discuss with the recipient how many days of service is provided to visitors.

Discuss with the recipient how long it takes to process requests for service from visitors. Sample the files for requests received in the past year.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not accept documentation of eligibility issued by the visitor's home jurisdiction.

DEFICIENCY CODE ADA-CPT3-1: Home jurisdiction eligibility documentation not accepted or not accepted directly from the visitor

SUGGESTED CORRECTIVE ACTION: Submit a procedure for accepting documentation of eligibility issued by the visitor's home jurisdiction from the visitor.

The recipient is deficient if it does not provide service to visitors based on apparent disabilities or documentation of disability.

DEFICIENCY CODE ADA-CPT3-2: Service not provided to visitors with apparent or documented disabilities

SUGGESTED CORRECTIVE ACTION: Submit a procedure for providing service to visitors whose disability is apparent or who present documentation of disability, provided that if documentation of residency has been requested, it has also been submitted.

The recipient is deficient if it does not provide service to visitors for 21 days within a 365-day period.

DEFICIENCY CODE ADA-CPT3-3: Service to visitors not provided for at least 21 days

SUGGESTED CORRECTIVE ACTION: Submit a procedure for providing visitors with 21 days of service within a 365-day period.

The recipient is deficient if it does not process visitors' requests for service the same day or not more than one day later.

DEFICIENCY CODE ADA-CPT3-4: Service to visitors not provided under same conditions as eligible riders

SUGGESTED CORRECTIVE ACTION: Submit a procedure for processing requests for service from visitors on the same day or not more than one day later.

GOVERNING DIRECTIVE

49 CFR 37.127 Complementary paratransit service for visitors

- (a) Each public entity required to provide complementary paratransit service under §37.121 of this part shall make the service available to visitors as provided in this section.
- (b) For purposes of this section, a visitor is an individual with disabilities who does not reside in the jurisdiction(s) served by the public entity or other entities with which the public entity provides coordinated complementary paratransit service within a region.
- (c) Each public entity shall treat as eligible for its complementary paratransit service all visitors who present documentation that they are ADA paratransit eligible, under the criteria of §37.125 of this part, in the jurisdiction in which they reside.
- (d) With respect to visitors with disabilities who do not present such documentation, the public entity may require the documentation of the individual's place of residence and, if the individual's disability is not apparent, of his or her disability. The entity shall provide paratransit service to individuals with disabilities who qualify as visitors under paragraph (b) of this section. The entity shall accept a certification by such individuals that they are unable to use fixed route transit.
- (e) A public entity shall make the service to a visitor required by this section available for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during such 365-day period. In no case shall the public entity require a visitor to apply for or receive eligibility certification from the public entity before receiving the service required by this section.

49 CFR Part 37 Appendix D to 49 CFR 37.127 Complementary paratransit service for visitors

This section requires each entity having a complementary paratransit system to provide service to visitors from out of town on the same basis as it is provided to local residents. By "on the same basis," we mean

under all the same conditions, service criteria, etc., without distinction. For the period of a visit, the visitor is treated exactly like an eligible local user, without any higher priority being given to either.

ADA-CPT4. Does the recipient's paratransit service meet the ADA complementary paratransit service requirements?

BASIC REQUIREMENT

ADA complementary paratransit service must be origin-to-destination service provided according to the service criteria described in 49 CFR 37.131.

APPLICABILITY

Public providers of fixed-route service (other than commuter rail or commuter bus service)

DETAILED EXPLANATION FOR REVIEWER

In crafting the ADA, Congress recognized that even when a fixed-route transit system is fully accessible there will be some individuals whose disabilities prevent them from using the system. Congress therefore created a "safety net" to ensure that these individuals have transportation available to them on the same basis as individuals using fixed-route systems.

The following requirements apply to complementary paratransit service.

Types of service. ADA complementary paratransit must be "origin-to-destination" service. The basic mode of service can be designated as door-to-door or curb-to-curb. If the entity's basic mode of service is curb-to-curb, the entity must provide assistance from the vehicle to the first doorway for customers who need additional assistance to complete the trip. The entity cannot charge individuals needing door-to-door service an extra fee as this violates the nondiscrimination provisions of 49 CFR 37.5, the paratransit fare requirements of 49 CFR 37.131(c), and the requirement to provide origin-to-destination service under 49 CFR 37.129(a).

Some small entities may operate comingled fixed-route and complementary paratransit service using the same vehicle operated along a fixed route and deviating from the route only for ADA paratransit eligible riders. If this option is chosen, the agency must be prepared to demonstrate to FTA that it is fulfilling all of the Subpart F requirements. This would include, for example, ensuring complementary paratransit is provided within $\frac{3}{4}$ mile of the fixed route and is free from capacity constraints.

Service area. The paratransit service area for fixed-route bus service consists of corridors $\frac{3}{4}$ -mile wide on either side of a fixed route, with a $\frac{3}{4}$ -mile radius around the end points. The $\frac{3}{4}$ -mile service area requirement is a straight-line distance ("as the crow flies"). This requirement obligates transit agencies to also provide service throughout a "core service area," which refers to the portion of agencies' service areas where many bus routes intersect and/or overlap so that their respective $\frac{3}{4}$ -mile corridors cover virtually all destinations. For smaller agencies, the core service areas are usually downtown districts served by multiple bus routes. For larger agencies, the core service areas may encompass entire downtowns or suburban activity centers. Inside the fixed-route bus core service areas, 49 CFR 37.131(a)(1)(ii) requires the complementary paratransit service to also include any small areas not inside any of the corridors but which are surrounded by corridors.

The minimum rail service area for complementary paratransit—excluding commuter and intercity rail, which are exempt from the requirement—is defined as circles of $\frac{3}{4}$ -mile radius from the center of each station. The $\frac{3}{4}$ -mile requirement is a straight-line distance (a radius around rail stations or "air miles"). This requirement obligates transit agencies to provide complementary paratransit trips from any point within one station circle to any point within the station circle of another station, but not between two points within the same station circle.

The service areas encompass all points within the $\frac{3}{4}$ -mile range; where service areas extend beyond political boundaries of a transit agency's jurisdiction, this requirement obligates the agency to provide service to and from such points, except when legal prohibitions prevent service. Per Appendix D to 49 CFR 37.131, there must be a *legal bar* to the entity providing service on the other side of the boundary.

Response time. For any day that a transit agency operates complementary paratransit, 49 CFR 37.131(b) requires that eligible riders be able to reserve trips on the day before. For example, individuals can request a Wednesday trip by calling during normal business hours on Tuesday. Agencies may not require customers to reserve trips 24 hours in advance; this is not next-day service, and is described by Appendix D to 49 CFR 37.131 as "inadequate" to meet that standard.

Transit agencies must also ensure that riders can reserve trips on a next-day basis on days even when the administrative office is closed and fixed routes may not be running (e.g., on holidays). As discussed in Appendix D to § 37.131, "on days prior to a service day on which the administrative offices are not open at all (e.g., a Sunday prior to a Monday service day), the reservation service would also be open 9 to 5." As explained below and in Appendix D, agencies may use voicemail to accept these reservations. Agencies using voicemail or other automated means of reserving trips must ensure, however, that any eligible rider making a reservation on a non-service day for a trip to be taken at the beginning of the next service day are assured of their reservation. If there is no Sunday service, and service begins at 5:00 a.m. on Monday, but reservation hours do not begin until 8:00 a.m., it would not be appropriate to wait until 8:00 a.m. on Monday to check the Sunday reservations line.

If a transit agency's normal business hours for its administrative offices are 8:00 a.m. to 5:00 p.m. from Monday to Friday and it operates service Monday through Sunday, 49 CFR 37.131(b) requires the agency—whether with reservation staff or other staff (e.g., dispatch)—to accept trip requests from 8:00 a.m. to 5:00 p.m. Sunday through Saturday. Further, 49 CFR 37.131(b) requires agencies to permit callers who request trips during these hours to be able to reserve trips for any time during the next service day. If an agency operates service past midnight—or operates service 24 hours a day—this also means allowing callers to call during normal business hours (i.e., during administrative office hours) the day before the trip to request a trip at any time the next day, including a trip that would begin just after midnight.

As noted in 49 CFR 37.131(b)(4), while next-day service is the base requirement, agencies may permit advance reservations up to 14 days before a rider's desired trip.

Fares. Under 49 CFR 37.131(c), the fare for a trip charged to an ADA paratransit eligible rider cannot exceed twice the fare that would be charged to an individual paying full fare (i.e., without regard for discounts) for a similar trip on the agency's fixed-route system.

To calculate the proper paratransit fare, the entity would determine the route(s) that an individual would take to get from his or her origin to his or her destination on the fixed-route system at the same time of day the person was traveling. Applicable charges like transfer fees or premium service charges may be added to the amount, but discounts (e.g., the half-fare discount for off-peak fixed route travel by seniors and persons with disabilities) would not be subtracted. The transit provider could charge up to twice the resulting amount for the paratransit trip. The system operates the same regardless of whether the paratransit trip is being provided in place of a bus or a rail trip the user cannot make on the fixed-route system.

Some entities operate fare-free routes or zones that are established either on their own or by an outside organization such as downtown business districts or convention authorities. In cases where a paratransit rider is traveling between origins and destinations that are both within $\frac{3}{4}$ -mile of a fare-free zone, and the typical fixed-route rider would make use of the fare-free service to make a comparable trip, the comparable paratransit fare would also be zero. Entities with fare-free zones that wish to determine whether a typical fixed-route rider would in fact use the fare-free option over a paid trip should compare the following factors in their analysis:

- Regular fixed-route fare (outside of free-fare zone)
- Frequency of the free service versus alternative service
- Need for transfers on the free versus alternative service
- Walking distances to and from the free service versus the alternative

Such an analysis might demonstrate that fixed-route riders would walk to the nearest boarding point in the fare-free zone instead of boarding the nearest fixed-route vehicle and transferring to the free-fare service. It might also demonstrate that individuals crossing the free-fare zone would use the regular fixed-route system, while individuals traveling between points along the free-fare zone would be more likely to use the fare-free service. This analysis would enable a transit agency to determine whether it may charge a fare for a given complementary paratransit trip between points that are both within $\frac{3}{4}$ mile of the free-fare zone.

Where other entities such as business organizations or chambers of commerce sponsor fare-free routes or zones, transit agencies are encouraged to consider including a requirement in such arrangements that the entity also assume responsibility for paratransit fares within such areas.

Some entities may operate fare-free promotions for a defined, limited period of time. While the US DOT ADA regulations specify that “discounts” are not required to be calculated when determining the comparable paratransit fare, the US DOT ADA regulations are silent on what constitutes a discount, other than the half-fare provision contained in the Federal Transit Act. It is therefore incumbent on the entity to determine whether a limited-time fare promotion constitutes a discount and provide support for such determination.

Companions may be charged the same fare as the eligible individual they are accompanying. Personal care attendants ride free.

One exception to the fare requirement is made for social service agency (or other organization-sponsored) trips. This exception, which allows the transit provider to negotiate a price with the agency that is more than twice the relevant fixed-route fare, applies to “agency trips,” by which we mean trips which are guaranteed to the agency for its use.

Trip purpose. There can be no restrictions or priorities based on trip purpose in a comparable complementary paratransit system. When a user reserves a trip, the entity will need to know the origin, destination, time of travel, and how many people are traveling. The entity does not need to know why the person is traveling and should not even ask. Entities may limit subscription service to some trip purposes.

Hours and days of service. If riders can take a particular trip between two points on an agency’s fixed-route system at a specific time of day, 49 CFR 37.131(e) requires the same trip to be available on complementary paratransit. A transit agency’s complementary paratransit service area, therefore, may change by time of day and day of week when certain fixed routes are not in service. The service area may also expand and contract as individual bus routes or rail lines begin and end operation each day. If a transit agency runs fixed-route service on weekends and holidays, it must provide complementary paratransit on those days as well.

PCAs and companions. ADA complementary paratransit must be provided to at least one other individual accompanying an eligible individual. If a PCA accompanies an individual, the service must be provided to the PCA and at least one additional individual accompanying the ADA eligible individual, if requested. Additional companions must be provided service if space is available, unless doing so would displace other ADA paratransit eligible individuals.

INDICATORS OF COMPLIANCE

- a. *Is the base mode of service door-to-door or curb-to-curb? If curb-to-curb, does the recipient ensure origin-to-destination service is provided when necessary?*
- b. *Does the recipient provide paratransit service within a 3/4-mile radius of all fixed bus routes (except commuter)? If the recipient provides rail service (except commuter), does the paratransit service area include areas within a 3/4-mile radius of each station? Where fixed routes cross jurisdictional boundaries, does the paratransit service area follow suit? Where the paratransit service area surrounding a fixed route crosses jurisdictional boundaries, is paratransit service provided across such boundaries? If it is not, do legal prohibitions prevent service?*
- c. *Does the recipient provide paratransit service on a next-day (not 24-hour's notice) basis? Does the entity provide a means for riders to reserve trips on the day before a service day, even if the offices are closed? Are reservations accepted during the same business hours on a non-service day as they are when the offices are open? Are trips reserved on non-service days for travel at the beginning of the next service day confirmed prior to the rider's requested trip time?*
- d. *Is the paratransit fare no more than twice the fare for a trip between the same points made using the fixed-route system?*
- e. *Does the recipient impose any trip purpose prioritization for its paratransit service? Does the recipient ask about trip purpose in the application or reservations process? Is there any evidence that trip purpose is used to prioritize trips?*
- f. *Does the recipient's paratransit service operate during all days and times when the fixed-route service operates? Are there fixed routes that operate when the paratransit system does not?*
- g. *Is service provided to at least one other individual accompanying an eligible passenger? If the eligible passenger travels with a PCA, is service provided to at least one other individual in addition to the PCA?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on the ADA complementary paratransit service criteria (service area, reservation requirements, (response time fares, trip purpose, day, and hours of service). Review the recipient's eligibility form(s) and rider guide(s) concerning complementary paratransit service criteria.

Review information provided to the public that describes the ADA complementary paratransit services. Onsite, discuss with the recipient the paratransit service factors and how the recipient ensures that they are met.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not provide origin-to-destination service when needed.

DEFICIENCY CODE ADA-CPT4-1: Origin-to-destination service deficiency

SUGGESTED CORRECTIVE ACTION: Submit evidence that it provides origin-to-destination service.

The recipient is deficient if it does not provide service between points within at least $\frac{3}{4}$ -mile radius of fixed bus routes, or between points within a $\frac{3}{4}$ -mile radius of one rail station to points within a $\frac{3}{4}$ -mile radius of another rail station, or within the core service area. The recipient is deficient if its service area would cross jurisdictional boundaries, but it does not provide service beyond jurisdictional boundaries, and cannot demonstrate the existence of a legal bar.

DEFICIENCY CODE ADA-CPT4-2: Service area deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit evidence that the service area for its ADA complementary paratransit system includes all areas within a $\frac{3}{4}$ -mile radius of fixed bus routes and a $\frac{3}{4}$ -mile radius of rail stations.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that complementary paratransit service is provided within the core service area.

SUGGESTED CORRECTIVE ACTION 3: Submit evidence of a legal bar preventing the provision of service across jurisdictional boundaries or must submit evidence that service is provided across jurisdictional boundaries.

The recipient is deficient if it does not provide next-day service, accept reservations on all days prior to service days, or accept reservations during regular business hours.

DEFICIENCY CODE ADA-CPT4-3: Next-day service deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit evidence that complementary paratransit service is provided on a next-day, not 24-hour, basis.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that reservations are taken on each day before a service day, including weekends and holidays, during comparable business hours, and confirmed prior to the rider's requested trip time.

SUGGESTED CORRECTIVE ACTION 3: Submit evidence that reservations are taken during regular business hours.

The recipient is deficient if ADA complementary paratransit fares are more than twice the fare for a comparable trip on fixed routes or if PCAs pay a fare on ADA complementary paratransit service.

DEFICIENCY CODE ADA-CPT4-4: Paratransit fare deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit evidence that paratransit fares do not exceed twice the fare for a comparable trip using fixed routes.

SUGGESTED CORRECTIVE ACTION 2: For fare-free routes, zones or areas, submit the results of an analysis showing that paratransit fares for comparable fixed-route trips made using the fare-free service are also free.

SUGGESTED CORRECTIVE ACTION 3: For fare-free routes, zones or areas where other entities assume the responsibility for paying the fixed-route fare, submit evidence that they have included a requirement that such entities include paratransit fares in their arrangements with the recipient for comparable fixed-route trips made using the fare-free service or provide the trips fare-free without compensation from the third party.

SUGGESTED CORRECTIVE ACTION 4: For fare-free promotions available for a defined, limited period of time, submit evidence that it has conducted an analysis supporting the designation of such promotions as a “discount.”

SUGGESTED CORRECTIVE ACTION 5: Submit evidence that it has ceased requiring personal care attendants accompanying eligible riders to pay a fare.

The recipient is deficient if it imposes restrictions or priorities based on trip purpose (other than for subscription service).

DEFICIENCY CODE ADA-CPT4-5: Trip purpose restrictions or prioritization

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has ceased the application of trip purpose restrictions or priorities.

The recipient is deficient if paratransit service is not available during the same hours and days as fixed-route service.

DEFICIENCY CODE ADA-CPT4-6: Paratransit service hours and days do not match those of fixed-route service

SUGGESTED CORRECTIVE ACTION: Submit evidence that the hours and days during which paratransit service operates are the same as those for a comparable trip using the fixed-route system.

The recipient is deficient if at least one other individual may not accompany an eligible passenger or may not accompany the eligible passenger in addition to the PCA.

DEFICIENCY CODE ADA-CPT4-7: Restrictions on companions

SUGGESTED CORRECTIVE ACTION 1: Submit evidence that at least one other individual may accompany an eligible passenger.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that at least one other individual in addition to the PCA may accompany an eligible passenger.

GOVERNING DIRECTIVE

49 CFR 37.123 ADA Paratransit Eligibility: Standards

(a) Individuals accompanying an ADA paratransit eligible individual shall be provided service as follows:

- (1) One other individual accompanying the ADA paratransit eligible individual shall be provided service—

- (i) If the ADA paratransit eligible individual is traveling with a personal care attendant, the entity shall provide service to one other individual in addition to the attendant who is accompanying the eligible individual;
 - (ii) A family member or friend is regarded as a person accompanying the eligible individual, and not as a personal care attendant, unless the family member or friend registered is acting in the capacity of a personal care attendant;
- (2) Additional individuals accompanying the ADA paratransit eligible individual shall be provided service, provided that space is available for them on the paratransit vehicle carrying the ADA paratransit eligible individual and that transportation of the additional individuals will not result in a denial of service to ADA paratransit eligible individuals;
- (3) In order to be considered as “accompanying” the eligible individual for purposes of this paragraph (f), the other individual(s) shall have the same origin and destination as the eligible individual.

49 CFR 37.129 Types of service

- (a) Except as provided in this section, complementary paratransit service for ADA paratransit eligible persons shall be origin-to-destination service.
- (b) Complementary paratransit service for ADA paratransit eligible persons described in §37.123(e)(2) of this part may also be provided by on-call bus service or paratransit feeder service to an accessible fixed route, where such service enables the individual to use the fixed route bus system for his or her trip.
- (c) Complementary paratransit service for ADA eligible persons described in §37.123(e)(3) of this part also may be provided by paratransit feeder service to and/or from an accessible fixed route.

49 CFR 37.131 Service criteria for complementary paratransit

The following service criteria apply to complementary paratransit required by §37.121 of this part.

(a) *Service Area*—

(1) *Bus.*

- (i) The entity shall provide complementary paratransit service to origins and destinations within corridors with a width of three-fourths of a mile on each side of each fixed route. The corridor shall include an area with a three-fourths of a mile radius at the ends of each fixed route.
- (ii) Within the core service area, the entity also shall provide service to small areas not inside any of the corridors but which are surrounded by corridors.
- (iii) Outside the core service area, the entity may designate corridors with widths from three-fourths of a mile up to one and one half miles on each side of a fixed route, based on local circumstances.
- (iv) For purposes of this paragraph, the core service area is that area in which corridors with a width of three-fourths of a mile on each side of each fixed route merge together such that, with few and small exceptions, all origins and destinations within the area would be served.

(2) *Rail.*

- (i) For rail systems, the service area shall consist of a circle with a radius of $\frac{3}{4}$ of a mile around each station.

- (ii) At end stations and other stations in outlying areas, the entity may designate circles with radii of up to 1 1/2 miles as part of its service area, based on local circumstances.
- (3) *Jurisdictional boundaries.* Notwithstanding any other provision of this paragraph, an entity is not required to provide paratransit service in an area outside the boundaries of the jurisdiction(s) in which it operates, if the entity does not have legal authority to operate in that area. The entity shall take all practicable steps to provide paratransit service to any part of its service area.
- (b) *Response time.* The entity shall schedule and provide paratransit service to any ADA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day. Reservations may be taken by reservation agents or by mechanical means.
 - (1) The entity shall make reservation service available during at least all normal business hours of the entity's administrative offices, as well as during times, comparable to normal business hours, on a day when the entity's offices are not open before a service day.
 - (2) The entity may negotiate pickup times with the individual, but the entity shall not require an ADA paratransit eligible individual to schedule a trip to begin more than one hour before or after the individual's desired departure time.
 - (3) The entity may use real-time scheduling in providing complementary paratransit service.
 - (4) The entity may permit advance reservations to be made up to 14 days in advance of an ADA paratransit eligible individual's desired trips. When an entity proposes to change its reservations system, it shall comply with the public participation requirements equivalent to those of §37.137 (b) and (c).
- (c) *Fares.* The fare for a trip charged to an ADA paratransit eligible user of the complementary paratransit service shall not exceed twice the fare that would be charged to an individual paying full fare (i.e., without regard to discounts) for a trip of similar length, at a similar time of day, on the entity's fixed route system.
 - (1) In calculating the full fare that would be paid by an individual using the fixed route system, the entity may include transfer and premium charges applicable to a trip of similar length, at a similar time of day, on the fixed route system.
 - (2) The fares for individuals accompanying ADA paratransit eligible individuals, who are provided service under §37.123 (f) of this part, shall be the same as for the ADA paratransit eligible individuals they are accompanying.
 - (3) A personal care attendant shall not be charged for complementary paratransit service.
 - (4) The entity may charge a fare higher than otherwise permitted by this paragraph to a social service agency or other organization for agency trips (i.e., trips guaranteed to the organization).
- (d) *Trip purpose restrictions.* The entity shall not impose restrictions or priorities based on trip purpose.
- (e) *Hours and days of service.* The complementary paratransit service shall be available throughout the same hours and days as the entity's fixed route service.

41 U.S.C. §12143

- (a) General rule - It shall be considered discrimination for purposes of Section 12132 of [Title 41] and Section 794 of Title 29 for a public entity which operates a fixed route system... to fail to provide with respect to the operations of its fixed route system... paratransit and other special transportation

services to individuals with disabilities... that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

ADA-CPT5. If the recipient has a no-show/late cancellation policy for ADA complementary paratransit service, does it meet the ADA complementary paratransit service requirements?

BASIC REQUIREMENT

Recipients may- but are not required to - establish an administrative process to suspend, for a reasonable amount of time, the provision of ADA complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips. The procedure must provide for due process.

APPLICABILITY

Public providers of fixed-route service (other than commuter rail or commuter bus service)

DETAILED EXPLANATION FOR REVIEWER

Under 49 CFR 37.125(h), an entity may establish an administrative procedure to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips.

As explained in Appendix D to this section of the regulation, a “pattern or practice” involves intentional, repeated or regular actions, not isolated, accidental, or singular incidents. An entity’s no-show policy must therefore be narrowly tailored to ensure that suspension is only imposed for a true pattern or practice of missing scheduled trips. For example, three no-shows in 30 days would not be a pattern or practice for a frequent or daily rider. Such a policy would take into account frequency of rides and no-shows, and not use a simple number threshold.

Any suspensions must be “for a reasonable period of time.” Suspension of service for 30 days for a first “offense,” for example, is not “reasonable.” A reasonable suspension for a first instance of a pattern or practice of no-shows might be a few days to a week. Subsequent offenses may justify longer suspensions, but FTA generally considers suspensions longer than 30 days to be excessive.

Entities may not impose a mandatory financial penalty as part of a no-show policy, including charging for the fare for the no-show trip. 49 CFR 37.125(h) permits only the establishment of an administrative process to suspend, for a reasonable amount of time, the provision of complementary paratransit service to eligible individuals who establish a pattern or practice of missing scheduled trips. In very limited cases, however, transit operators and riders facing suspension have voluntarily and mutually agreed to make and accept payment for the missed trips in lieu of suspension. Where such arrangements are made voluntarily, FTA has elected not to intervene.

Only no-shows that are under the rider’s control may be counted against the rider. No-shows caused by reasons beyond the rider’s control (e.g., scheduling problems, late pickups, and operational problems on the part of the entity or a family emergency or sudden turn for the worse in a variable medical condition) or operator error must not be counted against the rider.

FTA has permitted entities to include late cancellations in their suspension policy, but only to the extent that late cancellations have the same effect on the system as a no-show, and only for late cancellations within the rider’s control. FTA has found it acceptable to consider a late cancellation as one made within an hour or two before the pickup time provided to the rider.

49 CFR 37.125(g)(2) obligates entities to inform riders in writing that they have the right to appeal the proposed suspension (with an option for an in-person appeal), consistent with the appeals process outlined in 49 CFR 37.125(g). This means including instructions on the appeal process, and how to request an appeal. Under 49 CFR 37.125(h)(3), suspensions are stayed pending the outcome of the appeal.

It is important to note that 49 CFR 37.125(h) permits an entity to establish a no-show policy; it does not require one to do so. An entity is therefore not deficient if it does not have a no-show policy and does not suspend riders based on no-shows.

A noncompliant no-show policy is noncompliant even if it is not enforced.

INDICATORS OF COMPLIANCE

- a. If the recipient has adopted a no-show policy, does the recipient suspend riders for a reasonable period of time only after a pattern or practice of missing scheduled trips is established?*
- b. If the recipient has adopted a no-show policy, does the recipient impose a mandatory financial penalty as part of its no-show policy?*
- c. Are only no-shows under the rider's control counted towards the suspension?*
- d. Before suspending service for no-show violations, does the recipient notify the rider and provide an opportunity to respond? Does the recipient allow individuals to appeal no-show policy violations and stay suspensions pending the outcome of the appeal?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website and other information provided to the public that describes the ADA complementary paratransit services for information on the ADA complementary paratransit service no-show policy.

Determine:

- If the recipient suspends riders, for how long and under what circumstances
- If there is discussion on imposing mandatory financial penalties
- If there is discussion on not suspending riders for no-shows not under their control
- If there is discussion on the process of suspending riders

Onsite, discuss the no-show process with the recipient.

- Verify that any suspensions are a result of a "pattern or practice" of missing scheduled trips. Note whether the recipient relies on a simple percentage, which does not establish a pattern or practice for infrequent riders.
- Verify that any suspensions are "for a reasonable period of time." Note whether suspensions reset on a "rolling" basis after each "offense", imposing longer suspensions as a default.
- Verify that the recipient does not impose a financial penalty as part of a no-show policy, including charging the fare for the no-show trip.
- Verify that only no-shows under the rider's control are counted against the rider.

- Verify that before suspending service, the recipient notifies the individual in writing that it proposes to suspend service, providing the specific basis for the proposed suspension and the proposed sanction.
- Verify that the recipient provides the individual an opportunity to be heard and to present information.
- Verify that the suspension is stayed pending the outcome of the appeal.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it suspends riders for an unreasonable amount of time (consult with the FTA Office of Civil Rights as needed). The recipient is deficient if it suspends riders without establishing that the rider has a pattern or practice of missing scheduled trips (consult with the FTA Office of Civil Rights as needed). The recipient is *not* deficient if it does not suspend riders and has no policy for doing so.

DEFICIENCY CODE ADA-CPT5-1: Unreasonable no-show suspension

SUGGESTED CORRECTIVE ACTION 1: Submit a procedure for suspending riders for a reasonable amount of time.

SUGGESTED CORRECTIVE ACTION 2: Submit a procedure for suspending a rider only after establishing that the rider has a pattern or practice of missing scheduled trips.

SUGGESTED CORRECTIVE ACTION 3: Submit evidence that it is no longer suspending paratransit riders for missing scheduled trips.

The recipient is deficient if it imposes an involuntary financial penalty for no-shows.

DEFICIENCY CODE ADA-CPT5-2: Financial penalty imposed for no-shows

SUGGESTED CORRECTIVE ACTION 1: Submit documentation that it has ceased the assessment of financial penalties for no-shows and notified the public of this policy change.

SUGGESTED CORRECTIVE ACTION 2: Submit a procedure for accepting payment for missed trips in lieu of suspension only if voluntarily agreed to by the passenger.

The recipient is deficient if it counts no-shows not under the rider's control toward suspension.

DEFICIENCY CODE ADA-CPT5-3: Suspension based on no-shows not under rider control

SUGGESTED CORRECTIVE ACTION: Submit a procedure for only counting no-shows under the rider's control toward the suspension.

The recipient is deficient if it does not notify the rider of the pending suspension in writing and provide the specific basis for it, does not offer the opportunity for the rider to appeal or does not stay the suspension pending the outcome of the appeal.

DEFICIENCY CODE ADA-CPT5-4: Insufficient no-show suspension procedures

SUGGESTED CORRECTIVE ACTION 1: Submit an appeals process that notifies the rider of the suspension in writing, specifically indicating the basis of the proposed suspension and the proposed sanction.

SUGGESTED CORRECTIVE ACTION 2: Submit an appeals process that offers the opportunity for the rider to appeal.

SUGGESTED CORRECTIVE ACTION 3: Submit an appeals process that provides the rider an opportunity to be heard.

SUGGESTED CORRECTIVE ACTION 4: Submit an appeals process that stays the suspension pending the outcome of the appeal.

GOVERNING DIRECTIVE

49 CFR 37.125 ADA paratransit eligibility: Process

- (i) The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.
 - (1) The entity may require that an appeal be filed within 60 days of the denial of an individual's application.
 - (2) The process shall include an opportunity to be heard and to present information and arguments, separation of functions (i.e., a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it.
- (ii) The entity may establish an administrative process to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips.
 - (1) Trips missed by the individual for reasons beyond his or her control (including, but not limited to, trips which are missed due to operator error) shall not be a basis for determining that such a pattern or practice exists.”
 - (2) Before suspending service, the entity shall take the following steps:
 - (i) Notify the individual in writing that the entity proposes to suspend service, citing with specificity the basis of the proposed suspension and setting forth the proposed sanction.
 - (ii) Provide the individual an opportunity to be heard and to present information and arguments;
 - (iii) Provide the individual with written notification of the decision and the reasons for it.
 - (3) The appeals process of paragraph (g) of this section is available to an individual on whom sanctions have been imposed under this paragraph. The sanction is stayed pending the outcome of the appeal.

ADA-CPT6. Does the recipient place limits on the availability of service to ADA paratransit eligible individuals?

BASIC REQUIREMENT

Recipients shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals.

APPLICABILITY

Public providers of fixed-route service (other than commuter rail or commuter bus service)

DETAILED EXPLANATION FOR REVIEWER

The US DOT ADA regulations specify that an entity may not limit the availability of complementary paratransit to eligible individuals by using various capacity constraints to limit service. Any operational

pattern or practice that has the effect of limiting availability is also prohibited (e.g., trip denials, late pickups, missed trips, or excessively long trips). “Pattern or practice” in the regulations refers to regular or repeated actions, such as repeated denials on peak days, not isolated or singular incidents. The regulations note that operational problems beyond the control of the entity, such as unanticipated weather or traffic problems that affect all vehicular traffic, do not count as a pattern or practice under this provision. Repeated incidents caused by poor maintenance or excessively tight scheduling, however, would trigger this provision. A substantial number of late arrivals that are significantly late can trigger this provision.

In order to determine whether capacity constraints exist, entities should have a definition of ADA trip denial, missed trip (i.e., trip missed by the entity), on-time performance, and excessively long trip. The entity’s definitions must make distinctions between trips it or its contractors miss (where the customer is not transported or elects not to take the trip) and late pickups (where the customer takes the trip despite vehicle arrival outside of the pickup window). Entities are required to plan and budget for 100 percent of demand for next-day service. The entity may not intentionally plan to deny, miss, or otherwise not serve a percentage of trips.

The regulations allow entities to negotiate pickup times with ADA eligible persons within a one-hour +/- window. If the entity cannot schedule a ride that is no more than one hour before or after the desired departing time, the trip must be tracked as a denial. Even if a rider accepts an offer of a trip that is outside the one-hour window, the trip must be tracked as a denial due to the entity’s inability to meet the ADA service criteria. Similarly, if only one leg of a round trip can be reserved, and the rider declines to take both trips, it must be tracked as two denials. (If the rider accepts the “return” trip, only one trip has been denied). If the rider refuses an alternate time that is within the one-hour window, it is not a denial for the purposes of ADA compliance.

The entity may not limit the number of trips an individual will be provided. For example, the entity cannot have a policy of no more than four trips per day. Accordingly, the entity cannot set a minimum or maximum number of trips for an eligible individual. Similarly, policies limiting the number of trip requests per telephone call are considered restrictive.

The entity may not use what amounts to a waiting list. Although it may not be called a waiting list, placing callers’ names on a list when the schedules are full and informing them they will be contacted if space becomes available would constitute a prohibited waiting list. Similarly, telling callers the schedules are full and suggesting they call back later to see if space becomes available would be a waiting list.

Entities may accept a trip request during a reservation call and internally schedule the trip later (within the pickup window communicated to the rider at the time of reservation), which are often referred to as confirmed but unscheduled trips.

Entities should have a mechanism in place for monitoring, tracking, and verifying these indicators of capacity constraints. While there is no regulatory requirement for record-keeping or monitoring in any particular way, entities must be able to demonstrate that the trip denials it does have, as well as the missed trips, late pickups, trips of excessive length, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. Entities should track service for ADA trips separately from non-ADA trips.

INDICATORS OF COMPLIANCE

- a. *Where the recipient cannot provide a trip at the requested time, does the recipient negotiate trip times so that trips are scheduled within one hour before or after an individual’s desired departure time?*

- b. *Does the recipient appropriately categorize denials?*

- c. *Does the recipient appropriately categorize untimely pickups, missed trips, and excessive trip lengths?*
- d. *Does the recipient restrict the number of trips an eligible individual will be provided?*
- e. *Does the recipient limit the availability of service by using any kind of waiting list?*
- f. *Does any operational pattern or practice significantly limit the availability of service to eligible individuals?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on ADA complementary paratransit service reservations and scheduling. Review the rider guide or other customer information and reservation procedures. Note references to negotiating eligible trip requests within the one-hour window, and the handling and documentation of potential trip denials. Verify that the recipient does not limit the number of trips an individual will be provided. Verify that the recipient does not use what amounts to a waiting list. Note how the recipient logs its reservations, pickup times, and scheduled trips.

Onsite, discuss if the entity tracks a trip as a denial if it cannot be scheduled no more than one hour before or after the desired departing time, even if a rider accepts the trip. Similarly, if only one leg of a round trip can be reserved, and the rider declines to take both trips, determine if the agency tracks that as two denials. (If the rider accepts the "return" trip, only one trip has been denied). If the rider refuses an alternate time that is within the one-hour window, it is not a denial for the purposes of ADA compliance.

Onsite, discuss with the recipient how it ensures it does not have capacity constraints. Review reports from the reservation and scheduling software, if available. If not available, discuss with the recipient how it schedules trips, for example, in 15- or 30-minute blocks, and review with the recipient driver manifests for a recent day with higher than average ridership, typically a day in the beginning of the month, to see if there are indications of late trips, missed trips or excessively long trips. Evaluate data on trip denials, on-time performance, missed trips, and excessively long trips for the past year and the current year for any operational pattern or practice that has the effect of limiting availability such as trip denials, late pickups, missed trips or excessively long trips. If data indicate no pattern or practice of capacity constraints and the recipient does not collect or analyze data to ensure that capacity constraints do not develop, document such as an issue of concern for FTA awareness.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not schedule trips at the requested time and does not negotiate trips within one hour before or after an individual's desired departure time.

DEFICIENCY CODE ADA-CPT6-1: ADA complementary paratransit scheduling deficiencies

SUGGESTED CORRECTIVE ACTION: Submit documentation, such as updated public information and scheduling procedures, that demonstrates that it negotiates trips within one hour before or after an individual's desired departure time.

The recipient is deficient if rides scheduled outside the hour before-or-after scheduling window are not tracked as denials, even when a rider accepts the trip. The recipient is deficient if it does not track as two denials when one leg of a roundtrip cannot be reserved and the rider declines both trips.

DEFICIENCY CODE ADA-CPT6-2: ADA complementary paratransit service denial tracking deficiencies

SUGGESTED CORRECTIVE ACTION 1: Submit documentation, such as updated scheduling procedures, that rides scheduled outside the hour before-or-after scheduling window are tracked as denials.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation, such as updated scheduling procedures, that declined roundtrips are tracked as two denials when one leg of the trip cannot be reserved.

The recipient is deficient if it restricts the number of trips an eligible individual will be provided.

DEFICIENCY CODE ADA-CPT6-3: ADA complementary paratransit service restricted for eligible individuals

SUGGESTED CORRECTIVE ACTION: Submit documentation, such as updated public information and scheduling procedures, demonstrating that it has eliminated restrictions on the number of trips.

The recipient is deficient if it restricts the availability of trips using any type of waiting list.

DEFICIENCY CODE ADA-CPT6-4: ADA complementary paratransit service waiting lists

SUGGESTED CORRECTIVE ACTION: Submit documentation, such as updated public information and revised scheduling procedures, demonstrating that it has eliminated the use of waiting lists or practices that amount to waiting lists.

The recipient is deficient if it demonstrates an operational pattern or practice that significantly limits the availability of complementary paratransit service.

DEFICIENCY CODE ADA-CPT6-5: Limits or capacity constraints on ADA complementary paratransit service

SUGGESTED CORRECTIVE ACTION: Submit a plan to eliminate an operational pattern or practice that creates ADA complementary paratransit capacity constraints.

The recipient is deficient if it does not have a mechanism in place for monitoring, tracking, and verifying indicators of capacity constraints sufficient to indicate that untimely pickups, denials, missed trips, and excessive trip lengths experienced by riders are not due to an operational pattern or practice that significantly limits the availability of ADA paratransit service.

DEFICIENCY CODE ADA-CPT6-6: Inability to demonstrate lack of capacity constraints through available tracking data.

SUGGESTED CORRECTIVE ACTION: Submit evidence that aggregate data on paratransit performance is being collected and monitored on a regular and ongoing basis for indications of systemic capacity constraints

GOVERNING DIRECTIVE

49 CFR 37.131 Service criteria for complementary paratransit

(a) Response time.

- (1) The entity may negotiate pickup times with the individual, but the entity shall not require an ADA paratransit eligible individual to schedule a trip to begin more than one hour before or after the individual's desired departure time."

(b) Capacity constraints. The entity shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals by any of the following:

- (1) Restrictions on the number of trips an individual will be provided;
- (2) Waiting lists for access to the service; or
- (3) Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons.
 - (i) Such patterns or practices include, but are not limited to, the following:
 - (A) Substantial numbers of significantly untimely pickups for initial or return trips;
 - (B) Substantial numbers of trip denials or missed trips;
 - (C) Substantial numbers of trips with excessive trip lengths.
 - (ii) Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists.

ADA-CPT7. Does the recipient monitor service provided under contract or other arrangement or relationship, by another entity on the recipient's behalf, for compliance with 49 CFR Part 37, Subpart F?

BASIC REQUIREMENT

ADA complementary paratransit service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward, or cooperative agreement) by a taxi company, transportation network company, or other private entity, as well as service provided by another public entity must meet the US DOT ADA requirements that apply to the recipient.

APPLICABILITY

Recipients who contract out or otherwise rely on another entity to provide all or a portion of their complementary paratransit service. Note that the DOT ADA regulations apply equally to "pilot" programs or demonstration projects.

DETAILED EXPLANATION FOR REVIEWER

When a public entity enters into a contractual or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement) with another public or private entity to operate any aspect of its ADA complementary paratransit service, the public entity is responsible for ensuring that the service provided meets all of the requirements of the US DOT ADA regulations that would apply to the public entity if the public entity provided the service itself. Where an entity relies on another public entity

to provide paratransit service on its behalf, the entity remains responsible for meeting the requirements of 49 CFR part 37 Subpart F. In other words, the entity must ensure that the service provided on its behalf meets all the requirements that it would be required to meet if it provided the service directly. The entity is not permitted to defer to the private entity operating the service. The entity must have procedures in place to monitor the performance of such service to ensure that these requirements are met.

For example, if a transit operator relies on a taxi company or transportation network company (TNC) or other private entity to provide a portion of its paratransit service, it must ensure that all paratransit-eligible riders, including wheelchair users, receive service according to the paratransit service criteria. See preceding questions for a more detailed explanation of each requirement.

It should be noted that many transit operators are engaging the services of a taxi company, TNC or other private entity to provide what they describe variously as “premium” or “non-ADA” service. While there is no such thing as “non-ADA service”, such “premium” services would be regarded as demand-response and would be required to meet the requirements for equivalent service. This service is evaluated under ADA-GEN5 in the Americans with Disabilities Act (ADA) – General section of this workbook.

INDICATOR OF COMPLIANCE

- a. *If a recipient enters into a contract or other arrangement or relationship with a private entity for all or a portion of its ADA complementary paratransit service or relies on any other public entities to provide the service, does the recipient ensure that the service provided meets the ADA complementary paratransit requirements as outlined in 49 CFR part 37 Subpart F?*

INSTRUCTIONS FOR REVIEWER

Review contracts and other agreements to ascertain if the recipient communicated ADA requirements, including contracts to provide eligibility services and agreements with supplemental transportation providers such as taxi overflow service. Review contract management procedures to understand how the recipient will ensure the contractor complies with the requirements. Review monitoring procedures and documentation for monitoring activities conducted during the review period to note if ADA requirements were reviewed.

Onsite, discuss the recipient’s tracking, monitoring, and reporting procedures for all contractor functions, including eligibility. Review oversight files for the contractor(s) and entity(ies) to be visited during the site visit to determine if the program is implemented in accordance with the agreement. Discuss ADA complementary paratransit policies and procedures with the contractor(s) visited to determine if the program is implemented in accordance with the agreement. See ADA-CPT1-1 for specific requirements.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not ensure that service provided through contracted or other arrangements or relationships with private entities complies with ADA complementary paratransit service requirements.

DEFICIENCY CODE ADA-CPT7-1: Insufficient oversight of contractors/other private entities providing ADA complementary paratransit

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that service provided on its behalf by contractors or other providers complies with the ADA service provisions.

SUGGESTED CORRECTIVE ACTION: Submit evidence of implementation of procedures for ensuring that service provided on its behalf by contractors or other providers complies with the ADA service provisions.

Governing Directive

49 CFR 37.23 Service under contract

- (a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.
- (b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.
- (c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.
- (d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.

ADA-CPT8. Does the recipient monitor ADA complementary paratransit service provided by subrecipients for compliance with 49 CFR Part 37, Subpart F?

BASIC REQUIREMENT

ADA complementary paratransit service provided by subrecipients must be comparable to fixed-route service.

APPLICABILITY

Recipients with subrecipients that operate fixed-route service

DETAILED EXPLANATION FOR REVIEWER

Recipients are required to ensure that subrecipients adhere to all relevant ADA complementary paratransit requirements. In other words, the entity must ensure that the service provided on its behalf meets all the requirements that it would be required to meet if it provided the service directly. The entity is not permitted to defer to the subrecipient operating the service. The entity must have procedures in place to monitor the performance of such service to ensure that these requirements are met. Where a state provides Section 5311 funds to a subrecipient that is private nonprofit to operate a fixed-route service, the requirement to provide complementary paratransit applies to this service.

See preceding questions for a more detailed explanation of each requirement. The US DOT ADA regulations contain no exemptions for “pilot” or demonstration projects.

INDICATOR OF COMPLIANCE

- a. *Does the recipient monitor subrecipients for ADA complementary paratransit service as outlined in 49 CFR part 37 Subpart F?*

INSTRUCTIONS FOR REVIEWER

Review subrecipient agreements to ascertain if the recipient communicated ADA requirements, including training requirements, to the subrecipient as part of the contractual obligations. Review reports,

questionnaires, and checklists used for ensuring compliance with ADA requirements to determine how the recipient monitors that the ADA requirements are met. Onsite, discuss ADA policies and procedures with the recipient and review the oversight files for the subrecipient(s) to be visited. Discuss ADA complementary paratransit policies and procedures with the subrecipient(s) visited to determine if the program is implemented in accordance with the agreement. See ADA-CPT1-1 for specific requirements.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not ensure that its subrecipients comply with ADA provision of service requirements.

DEFICIENCY CODE ADA-CPT8-1: Insufficient oversight of subrecipients for ADA complementary paratransit

SUGGESTED CORRECTIVE ACTION: Submit specific procedures for ensuring that subrecipients comply with the ADA complementary paratransit requirements.

SUGGESTED CORRECTIVE ACTION: Submit evidence of implementation of specific procedures for ensuring that subrecipients comply with the ADA complementary paratransit requirements.

Governing Directive

49 CFR 200.332 Requirements for pass-through entities

A pass-through entities must:

Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

- (1) Review financial and performance reports.
- (2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.
- (3) Issue a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

Did background research and/or onsite observations support any of the concerns below:

- Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including ADA reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of ADA?
- Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year?
- Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit findings?
- Are any oversight review, investigation or audit findings currently open?
- Are any issues related to ADA indicated in the Oversight Assessment Tool (OAT)?
- What deficiencies or potential deficiencies have been identified by the FTA Office of Civil Rights through complaint investigations, compliance reviews, and other sources?
- Have any ADA complaints been filed with FTA?
- Does the recipient have a definition for ADA trip denial, missed trip (i.e., trip missed by the recipient), on-time performance, and excessively long trip?
- Does the recipient monitor its service for a pattern or practice of capacity constraints?
- If the recipient requires the use of prepurchased or prepaid fare media, are there concerns with the ability of riders to obtain service on a next-day basis?
 - How readily and widely available is the fare media?
 - Is travel required to obtain fare media, including when paying via cash or check?
 - What is the lead time to establish and replenish prepaid accounts or receive fare media, including when paying via cash or check?
 - Changes to the recipient's ADA complementary paratransit service (i.e., change in no-show/late cancellation policy, change in fare payment methods, implementation of door-to-door, curb-to-curb or origin-to-destination service) that have been implemented since the last Comprehensive Review
 - Changes to the recipient's ADA complementary paratransit delivery (e.g., change or add contractors, enter into a delegated management agreement with a public or private entity, combine service with another agency, change from in-house to contracted operation or vice-versa, or otherwise change its business model) that have been implemented since the last Comprehensive Review
 - Accuracy of operation data
 - Training provided to staff
 - Provision of complementary paratransit service not covered previously in this section

REFERENCES

1. 2 CFR 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"
3. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"
4. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"
5. 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels"
6. FTA Circular 4710.1, "Americans with Disabilities Act (ADA) Guidance"

USEFUL WEBLINKS

1. FTA ADA Website
2. US DOT Disability Law Guidance
3. ADA Standards for Transportation Facilities
4. Federal Highway Administration Guidance on Pedestrian Access for Persons with Disabilities
5. Project ACTION
6. Disability Rights Education & Defense Fund - Topic Guides on ADA Transportation
7. U.S. Department of Justice ADA Homepage
8. FTA's Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
9. Notice of Concurrence
10. Emergency Relief rule