

11. 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.

QUESTIONS TO BE EXAMINED

1. Does the recipient track, resolve, and respond to ADA-related complaints?
2. Do all bus and rail vehicles acquired for use in fixed-route service by public entities since the last Comprehensive Review meet the requirements of 49 CFR part 37?
3. Are vehicles used in contracted fixed-route service, including commuter bus service, accessible?
4. Since the last Comprehensive Review, if vehicles were purchased for demand-response service, other than for ADA complementary paratransit service, were the requirements of 49 CFR part 37 met?
5. Are facilities for providing public transportation that were constructed since the last Comprehensive Review readily accessible to and usable by individuals with disabilities?
6. Are facilities for providing public transportation that were altered since the last Comprehensive Review readily accessible to and usable by individuals with disabilities?
7. Does the recipient follow provision of service requirements?
8. Does the recipient accommodate individuals who rely on accessible equipment when that equipment is inoperative?
9. Is general route-deviation service open to the general public?
10. Is rail service accessible to and usable by persons with disabilities?
11. Is ferry service accessible to and usable by persons with disabilities?
12. Does the recipient monitor contracted service 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?
13. Does the recipient monitor service provided by subrecipients for compliance with the US DOT ADA regulations?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- ADA complaint procedures, if written
- ADA complaint form
- ADA complaint record retention procedures, if written
- Sample driver handbooks
- Sample driver operating and training manuals

- Sample vehicle specifications/information on annunciators
- Sample internal service monitoring materials, such as surveys, checklists, interview forms, etc.
- Sample operating and training manuals

Recipient Follow-up

- Documentation of structural impracticality
- 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
- Internal bulletins
- Lift/ramp specifications for the fleet
- Sample requests for reasonable modification

ADA1. Does the recipient track, resolve, and respond to ADA-related complaints?

BASIC REQUIREMENT

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

APPLICABILITY

All recipients

EXPLANATION

Recipients are required to have procedures for addressing ADA complaints that incorporate appropriate due process standards and provide for prompt and equitable resolution. The US DOT ADA Final Rule, effective July 13, 2015, revised the local complaint process requirements in 49 CFR Parts 27 and 37 to require that recipients sufficiently advertise the process for filing an ADA-related complaint 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. If the recipient does not operate service directly or is a pass-through entity, it must ensure that those entities operating service directly have a procedure for addressing ADA complaints.

Recipients must advertise their ADA-related complaint process through means such as websites and include the contact information (name, address, telephone number, and email address) for the employee designated to coordinate compliance. In lieu of providing the name of an individual, the Federal Transit Administration (FTA) has found it acceptable to provide a title (e.g., “ADA Coordinator” or “Customer Complaint Representative”) so long as any communications to the job title are directed to the designated employee who can then promptly respond. This can be accomplished by forwarding telephone calls, retrieving recorded messages, forwarding emails, or other means.

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 the Title VI and ADA bases and clearly distinguishes the two statutes.

INDICATORS OF COMPLIANCE

- Is the process for filing a complaint advertised to the public, such as on the recipient’s website?*
- Does public information about the complaint process include the appropriate contact information?*
- Are the complaint procedures accessible to and usable by individuals with disabilities?*

- d. *Do the procedures provide for the prompt and equitable resolution of complaints, including a procedure for responding to complaints and tracking the responses?*
- e. *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?*

DETERMINING COMPLIANCE

Prior to the site visit, review the recipient's website to determine if the complaint process is posted. Request and review the ADA complaint policy and procedures and copies of public information that provide information on filing ADA complaints, such as notices to the public, rider guides, and ADA or other complaint procedures. Determine whether or not the contract information for the employee designated to coordinate compliance is provided.

Evaluate whether an individual, after viewing the publicly available materials, would know how to file a complaint. Determine if the website itself is usable by persons with vision disabilities. Review the ADA complaint procedures and determine if the procedures are available in accessible formats upon request.

Determine if the complaint procedures provide for due process, that is, provides an individual who is denied service the opportunity to contest that decision, correct the situation, and resume service, and if the procedures specify time requirements for research and response and provide for promptly responding to any individual filing a complaint and documentation of the response.

Onsite, review a sample of 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. Onsite, 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 for at least five years.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if 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, or its procedures do not provide due process, prompt response, documentation of the response, and the reason therefore to any individual filing a complaint.

DEFICIENCY CODE ADA1-1: Insufficient ADA complaint process

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the Regional Civil Rights Officer (RCRO) information for the public on filing an ADA complaint and documentation that the information has been made available to the public.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO the accessible formats provided to the public in making the ADA complaint procedures accessible to and usable by individuals with disabilities.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit to the RCRO ADA complaint procedures that provide for due process.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit to the RCRO ADA complaint procedures that require a prompt response to the individual filing the complaint.

SUGGESTED CORRECTIVE ACTION 5: The recipient must submit to the RCRO ADA complaint procedures that ensure that the reason for the response is provided to the individual filing the complaint.

SUGGESTED CORRECTIVE ACTION 6: The recipient must submit to the RCRO 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 for at least five years.

DEFICIENCY CODE ADA1-2: Insufficient ADA complaint record retention

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a procedure for retaining copies of ADA complaints for at least one year and summaries of ADA complaints for at least five years.

GOVERNING DIRECTIVES

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.”

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

“(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.”

ADA2. 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 37?

BASIC REQUIREMENT

All new bus or rail vehicles purchased or leased for use in fixed-route service by public entities must be accessible. 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

All recipients who purchase bus or rail vehicles for use in fixed-route service by public entities

EXPLANATION

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.

INDICATORS OF COMPLIANCE

- a. Did all new bus and rail vehicles purchased or leased by public entities operating fixed-route service comply with the standards found in 49 CFR part 38 of the US DOT ADA regulations?*
- 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. Since the last Comprehensive Review, has the recipient remanufactured any existing buses or rail vehicles for use in fixed-route service, or purchased or leased any remanufactured any buses or rail vehicles for use in fixed-route service?*

DETERMINING COMPLIANCE

Review the list of procurements obtained under the Procurement area of the review to determine whether new vehicles were acquired 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.

Review awards 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 to obtain an accessible vehicle. During the tour of the facility, check for inaccessible vehicles. Onsite, review the specifications for the remanufactured vehicles, engineering analysis, and visually inspect remanufactured 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 ADA2-1: New vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO documentation showing that the newly acquired new inaccessible vehicles were taken out of fixed-route service. Before placing them back in fixed-route service, the recipient must submit to the RCRO documentation demonstrating that the vehicles have been made accessible.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO 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 were made to obtain accessible vehicles.

DEFICIENCY CODE ADA2-2: Used vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 to the RCRO 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, and did not document an engineering analysis demonstrating a significant adverse impact on the structural integrity of the vehicle.

DEFICIENCY CODE ADA2-3: Remanufactured vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO 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, the recipient must submit to the RCRO documentation that it has made the vehicles accessible.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO evidence that it has canceled the lease for inaccessible vehicles.

GOVERNING DIRECTIVES

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.”

ADA3. Are vehicles used in contracted fixed-route service, including commuter bus service, accessible?

BASIC REQUIREMENT

Vehicles used in contracted fixed-route service, including commuter bus service, must be accessible.

APPLICABILITY

All public entities who contract for fixed-route service

EXPLANATION

When an entity contracts for fixed-route service, including commuter bus service, all of the buses 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.

INDICATOR OF COMPLIANCE

- a. *Does the contract specify that the vehicles must be accessible?*

DETERMINING COMPLIANCE

Onsite, review contracts for fixed-route service to identify vehicle accessibility requirements. Discuss the service(s) during the site visit. During the visit to the contractor, discuss the fleet and visually inspect vehicles. If non-accessible used vehicles were placed into service, determine if the recipient has evidence that the contractor made good faith efforts consistent with 49 CFR 37.73(c), 49 CFR 37.81(c), or 49 CFR 37.87(c) to purchase or lease an accessible vehicle. If non-accessible remanufactured vehicles are used, determine if the recipient has evidence that the contractor performed an engineering analysis documenting the structural infeasibility of making the vehicle accessible.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if the vehicles used by a fixed-route contractor are not accessible, and the recipient does not have evidence that the contractor either made good faith efforts to acquire accessible vehicles for the service, or conducted an engineering analysis that demonstrated a significant adverse impact on the structural integrity of a remanufactured vehicle.

DEFICIENCY CODE ADA3-1: Contracted service vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO evidence that it has required its contractors to use accessible equipment for fixed-route service and provided a timeframe for the contractor to be in compliance.

SUGGESTED CORRECTIVE ACTION 2: For used vehicles, the recipient must submit to the RCRO documentation of good faith efforts to obtain accessible vehicles for the service.

SUGGESTED CORRECTIVE ACTION 3: For remanufactured vehicles, the recipient must submit to the RCRO an engineering analysis that demonstrates a significant adverse impact on the structural integrity of the vehicle.

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.”

ADA4. Since the last Comprehensive Review, if vehicles were purchased for demand-response service, other than for ADA complementary paratransit service, were the requirements of 49 CFR part 37 met?

BASIC REQUIREMENT

Vehicles used in demand-response service must be accessible unless equivalent service is provided.

APPLICABILITY

Entities who provide demand-response service

EXPLANATION

Public entities operating demand-response service for the general public must purchase or lease accessible vehicles unless they can demonstrate 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. Demand-response service for the general public does not include ADA complementary paratransit service, which is subject to specific requirements. 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 contractors using non-accessible vehicles in contracted demand-response service provide equivalent service.

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.

Before procuring any inaccessible vehicle for demand-response service, the entity must file a certification of equivalent service with FTA. Recipients must file a certification of equivalent service for each procurement of inaccessible vehicles. Appendix C to 49 CFR part 37 of the US DOT ADA regulations includes a copy of the certification of equivalent service. The recipient must monitor its service to ensure

that equivalent service exists; that is, there is an equal opportunity for each individual with a disability to use the transportation service and that the service provided to individuals with disabilities and those without disabilities meet the equivalent service characteristics described above. The recipient must document its analysis.

INDICATORS OF COMPLIANCE

- a. *If the recipient purchased non-accessible equipment for demand-response service other than ADA complementary paratransit service, is equivalent service provided?*
- b. *If non-accessible vehicles were purchased for demand-response service since the last Comprehensive Review, was the certification of equivalent service filed with FTA?*

DETERMINING COMPLIANCE

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. Access the Transit Award Management System (TrAMS) to determine if the recipient submitted the certification of equivalent service. Note: The annual certs and assurances do not meet this requirement. Look in TrAMS to see if the certification was uploaded to the award application. Follow up with the RCRO. Obtain documentation showing that the recipient monitors its service to ensure that equivalent service is provided.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it purchased or leased new inaccessible vehicles for use in demand-response service and equivalent service is not provided. The recipient is deficient if it purchased or leased new inaccessible vehicles for use in demand-response service and did not file a certification of equivalent service with FTA.

DEFICIENCY CODE ADA4-1: Demand-response vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO a plan to 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.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO procedures for filing the certification of equivalent service in each year it plans to purchase or lease non-accessible vehicles for general public demand-response service.

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.”

(d) Public entities operating demand responsive service receiving funds under any other section of the FT Act shall file the certificate with the appropriate FTA regional office...All certificates under this paragraph may be made and filed in connection with a particular procurement or in advance of a procurement; however, no certificate shall be valid for more than one year. A copy of the required certificate is found in appendix C to this part.”

ADA5. Are facilities for providing public transportation that were constructed since the last Comprehensive Review readily accessible to and usable by individuals with disabilities?

BASIC REQUIREMENT

Newly constructed facilities must meet US DOT accessibility requirements.

APPLICABILITY

All recipients

EXPLANATION

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. 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.

INDICATOR OF COMPLIANCE

- a. *Can the recipient demonstrate that the newly constructed facilities meet accessibility requirements? Otherwise, can the recipient demonstrate that meeting the accessibility requirements was structurally impracticable?*

DETERMINING COMPLIANCE

Review awards to determine whether new facilities were constructed since the last Comprehensive Review. Obtain a list of facilities that were constructed since the last Comprehensive Review. 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) to tour during the site visit. Onsite, review procurement files to determine if procurements refer to US DOT ADA requirements. Discuss with the recipient how it ensures that plans, drawings, and construction comply with US DOT ADA requirements. Review documentation of structural impracticality, that is the unique characteristics of terrain prevent 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 for providing public transportation that did not meet US DOT accessibility requirements and cannot document structural impracticality.

DEFICIENCY CODE ADA5-1: New facility accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a schedule for making the necessary modifications to bring the facility into compliance.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO documentation of structural impracticality.

GOVERNING DIRECTIVES

49 CFR 37.9 Standards for accessible transportation facilities

“(a) 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.”

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.”

ADA6. Are facilities for providing public transportation that were altered since the last Comprehensive Review readily accessible to and usable by individuals with disabilities?

BASIC REQUIREMENT

Altered facilities must meet US DOT accessibility requirements.

APPLICABILITY

All recipients

EXPLANATION

If the entity alters an existing facility used to provide public transportation, 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.

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?*

DETERMINING COMPLIANCE

Review awards in TrAMs to determine whether facilities were altered since the last Comprehensive Review. Discuss with the regional office. If FTA is aware of accessibility issues and has signed off on the project, look no further. Obtain a list of newly altered facilities. Review procurement files to determine if architecture & engineering (A&E) services refer to US DOT ADA requirements. Discuss with the recipient how it ensures that plans, drawings, and construction comply with US DOT ADA requirements. 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.

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 ADA6-1: Facility accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO a schedule for making the necessary modifications to bring the facility into compliance.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO documentation that the facility was made accessible to the maximum extent feasible.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit to the RCRO a schedule for making the necessary modifications to make the path of travel accessible.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit to the RCRO documentation supporting cost disproportionality with regard to the path of travel.

GOVERNING DIRECTIVES

49 CFR 37.9 Standards for accessible transportation facilities

“(a) 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.”

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.

(a)(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).”

ADA7. 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

EXPLANATION

The US DOT ADA regulations (49 CFR 37.161-169) detail specific requirements for bus and rail service. (For ferry service requirements see question 11.) 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 the entity enforces their implementation.

- a) Stop announcements are required for fixed-route service at transfer points, major intersections, destination points, intervals along the route to orient passengers, 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 that drivers announce stops.
- 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 an alternative mechanism for an effective means of route identification at stops served by multiple vehicles and multiple routes when annunciators are out of service.
- c) 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 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.

- d) US DOT's Final Rule amending 49 CFR part 37, which went into effect October 19, 2011, prohibits public and private entities 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 Final Rule deletes the sentence containing "common wheelchair" from part 37, recognizing that some vehicles used in public transit can accommodate wheelchairs that do not meet the definition of "common wheelchair." Wheelchairs that exceed the weight or dimensional requirements of a "common wheelchair" can be transported on and be used on such vehicles. In such cases, the recipient must change its operating policies so as not to limit service accessibility by the term "common wheelchair."

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.

- e) 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.
- f) Public and private entities may not deny service to individuals using respirators, concentrators, or portable oxygen.
- g) Public and private entities must ensure adequate time for individuals with disabilities to board or disembark a vehicle.
- 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. Public and private entities must make available to individuals with disabilities adequate and accessible information concerning transportation services.
- i) Effective July 13, 2015, 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. 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 make priority seating available to individuals with disabilities?*
- d. *Does the recipient transport all wheelchairs that do not exceed the capacities of the vehicle and its equipment (lifts/ramps)?*
- e. *Does the recipient deploy the lift or ramp at any stop upon request?*
- f. *Does the recipient provide service to persons using respirators, concentrators, and portable oxygen?*
- g. *Does the recipient provide adequate time for individuals with disabilities to board/disembark a vehicle?*
- 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?*

DETERMINING COMPLIANCE

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 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.

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. Check if inoperative announcement systems are addressed during pre-trip inspections.

2. Look for priority seating signs on vehicles during the facility tour. Note: The regulation requires a recipient to ask but does not require the recipient to force an individual to move. A recipient may have a mandatory-move policy in place, but this is not required.
3. Ask trainers and managers how potentially “oversize” mobility devices are handled.
4. Ask the recipient if there are any stops at which it does not deploy lifts or ramps and the reasons why.
5. If not addressed in written material, ask whether or not the recipient provides service to persons using respirators, concentrators, and portable oxygen.
6. Review the ADA complaints for any relevant report on the time allowed for individuals with disabilities to board/disembark a vehicle. Discuss how the recipient provides adequate time for individuals with disabilities to board/disembark a vehicle.
7. Discuss any request for information in accessible formats and how the recipient honored the request. Note: The requirement is to provide material in a format the customer can use; which format (Braille, audio, large-type, etc.) is not specified. Also, be aware that provision of non-English information is separate from provision of accessible-format materials.
8. Review information on requests for reasonable modifications. During the site visit, request the policy for and discuss implementation of the reasonable modification process.
9. Discuss the recipient’s training programs for assistance to riders with disabilities and disability sensitivity.
10. 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.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not ensure that stops are announced on fixed-route service, or that a means of route identification on fixed-route stops served by more than one route is provided.

DEFICIENCY CODE ADA7-1: Stop announcement/vehicle ID mechanisms deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO 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: The recipient must submit to the RCRO 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.

The recipient is deficient if it does not make priority seating available to individuals with disabilities.

DEFICIENCY CODE ADA7-2: Priority seating deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation that it has implemented procedures to make priority seating available to individuals with disabilities and evidence that it monitors implementation of these procedures.

The recipient is deficient if it sets weight or size limitations on wheelchairs that understate fleet capacity.

DEFICIENCY CODE ADA7-3: Weight/size limitations on wheelchairs

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation that it has implemented procedures to transport wheelchairs that do not exceed the vehicle or equipment capacity.

The recipient is deficient if it does not deploy lifts and ramps for riders who request this, at any stop on any route.

DEFICIENCY CODE ADA7-4: Lift/ramp deployment deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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.

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

DEFICIENCY CODE ADA7-5: Portable oxygen and respirators deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 complaints or operating policies indicate that the recipient does not provide adequate time for individuals with disabilities to board/disembark a vehicle.

DEFICIENCY CODE ADA7-6: Dwell time deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation that it has implemented procedures to provide adequate time for individuals with disabilities to board/disembark a vehicle and evidence that it monitors the implementation of these procedures.

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

DEFICIENCY CODE ADA7-7: Alternative accessible formats not provided

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for processing requests for public information in alternative formats.

The recipient is deficient if it does not 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 ADA7-8: Reasonable modification deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO documentation that it makes information about how to make requests for reasonable modifications readily available to the public.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO 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 ADA7-9: ADA training not adequate

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 and evidence of its implementation.

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

DEFICIENCY CODE ADA7-10: Insufficient monitoring of operations for ADA service provisions

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for ensuring that its operations comply with ADA service provisions.

GOVERNING DIRECTIVES

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....

(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).

(i) The entity shall ensure that adequate time is provided to allow individuals with disabilities to complete boarding or disembarking from the vehicle.

(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.”

2 CFR 200.303 Internal controls

“The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.”

ADA8. Does the recipient accommodate individuals who rely on accessible equipment when that equipment is inoperative?

APPLICABILITY

All recipients

BASIC REQUIREMENT

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

EXPLANATION

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. The requirement for maintenance of accessible features applies to passenger facilities for ferry systems. 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 an accessibility feature is out of order, the entity must take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

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.

Public entities and private entities operating service under contract to a public entity 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.

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. *When an elevator is out of service, does the recipient accommodate individuals who rely on the elevator?*
- b. *Does the recipient ensure that vehicles with inoperative lifts or ramps are not placed into service when alternative accessible vehicles are available?*
- c. *Does the recipient require vehicle operators to report lift and ramp failures immediately?*
- d. *Is alternative accessible service provided to persons with disabilities?*

DETERMINING COMPLIANCE

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 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 ADA8-1: Elevator service deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation that it has implemented procedures to accommodate passengers when an elevator is out of service.

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 ADA8-2: Vehicles with inoperative lift/ramp placed in service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA8-3: Lift/ramp failures not reported immediately

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA8-4: Vehicles with inoperative lift/ramp not removed from service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA8-5: Alternative accessible service not provided

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for providing alternative accessible service within 30 minutes on routes with headway 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.

GOVERNING DIRECTIVES

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.

(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.”

ADA9. Is general route-deviation service open to the general public?

BASIC REQUIREMENT

Route-deviation service must be open to the general public and accessible to and usable by persons with disabilities.

APPLICABILITY

All recipients providing route-deviation service to the general public

EXPLANATION

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.

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.

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 the 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 provided to individuals who require an accessible vehicle?*

DETERMINING COMPLIANCE

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 is 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 does not provide or promote deviation service to the general public.

DEFICIENCY CODE ADA9-1: Deviation service not provided/promoted to the general public

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation, such as public information and dispatching procedures, documenting that the service deviates for the general public or must submit to the RCRO 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 ADA9-2: Equivalent route-deviation service not provided

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO documentation that equivalent service is provided.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO procedures for providing equivalent service and evidence that the procedures have been implemented.

GOVERNING DIRECTIVES

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.”

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.”

ADA10. 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

Rail operations, including light, rapid, and commuter rail

EXPLANATION

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. 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.

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. 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 (other than key station requirements), those alterations must also be accessible per the US DOT ADA standards.

New and altered commuter and intercity rail stations are required to comply with a new performance standard that requires either level boarding or an effective means of providing accessible boarding to each accessible car in each train.

The performance standard of section 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. *Do trains consisting of more than one car provide between-car barriers?*
- d. *For any commuter rail station altered or constructed after February 1, 2012, is accessible boarding provided to each accessible car of the train?*

DETERMINING COMPLIANCE

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. During the facility tour, verify that trains consisting of more than one car provide between-car barriers. For commuter rail, note that the requirement does not apply where between-car bellows are provided.

Review rail operations training materials regarding accessible boarding/alighting procedures, including use of bridgeplates. 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 to determine if it 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 bridgeplates. 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 ADA10-1: One-car-per-train rule deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for complying with the one-car-per-train rule.

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 and the recipient does not reposition the train to permit accessible boarding of other accessible cars.

DEFICIENCY CODE ADA10-2: Accessible boarding not provided

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for complying with the one-car-per-train rule.

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

DEFICIENCY CODE ADA10-3: Lacking between-car barriers

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA10-4: Commuter rail level boarding deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation supporting platform-related exceptions. The FTA regional office and headquarters will determine corrective actions for noncompliant new construction or alterations and operational deficiencies.

GOVERNING DIRECTIVES

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, and where between-car bellows are not provided, 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 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.”

ADA11. 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

Ferry operations

EXPLANATION

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.

49 CFR 39.21(b)(2) requires public operators of passenger vessels 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?*

DETERMINING COMPLIANCE

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 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 ADA11-1: CRO missing or lacking authority

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO evidence, such as an organization chart, job description, or Board or management directive, that it has designated a CRO. Submit to the RCRO 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 ADA11-2: Reasonable modification not provided for ferry service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA11-3: Limits on passengers with disabilities on ferry service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO revised policies and procedures that prohibits 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 of if it requires a passenger with a disability to travel with another person.

DEFICIENCY CODE ADA11-4: Excessive requirements placed on passenger with disabilities on ferry service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO evidence that it has ceased requiring medical documentation or 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 ADA11-5: Non-accessible transportation to/from vessel

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA11-6: Assistance not provided to passengers with disabilities

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 and 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 ADA11-7: Ferry service safety information provision deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA11-8: Restrictions on passengers with wheelchairs or mobility aids

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO evidence that it has ceased restricting 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.

GOVERNING DIRECTIVES

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

“(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 a avoid [sic] such a conflict.”

49 CFR 39.35 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 39.35 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 39.45 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 passenger vessel owner or operator (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.”

ADA12. Does the recipient monitor contracted service, service provided by lessees, or service provided by another public entity on the recipient’s behalf for compliance with the US DOT ADA regulations?

BASIC REQUIREMENT

Contracted service must meet the US DOT ADA requirements that apply to the recipient.

APPLICABILITY

Recipients who contract out, lease vehicles, or rely on another public entity to provide service

EXPLANATION

Recipients are required to ensure that contracted service adheres to the same ADA requirements that apply to the recipient. See preceding questions for a more detailed explanation of each requirement.

INDICATOR OF COMPLIANCE

- a. *How does the recipient monitor contracted service/service provided by lessees/service provided by another public entity on the recipient's behalf for?*
 1. *Complaint procedures?*
 2. *Vehicle acquisition?*
 3. *Facility construction and alterations?*
 4. *Service provision, including training?*
 5. *Maintenance of accessible features?*
 6. *Route-deviation service?*
 7. *Rail service?*
 8. *Ferry service?*

DETERMINING COMPLIANCE

Review transportation service contracts, agreements to provide supplemental transportation, and leases for ADA requirements, including training requirements. Review contract management procedures, including tracking and monitoring service quality. Review reports, questionnaires, and checklists used for ensuring compliance with ADA requirements. 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. Onsite, discuss ADA policies and procedures with the contractors/lessees visited.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not ensure that contractors and lessees comply with ADA provision of service requirements.

DEFICIENCY CODE 646: Insufficient oversight of contracted service for ADA requirements

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for ensuring that contractors and lessees comply with the ADA service provisions, along with evidence of implementation.

GOVERNING DIRECTIVES

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.”

ADA13. 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

EXPLANATION

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

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?*
 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?*

DETERMINING COMPLIANCE

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. Discuss ADA policies and procedures with the subrecipient(s) visited.

Prior to the site visit, review the state management plan to determine whether the state allows subrecipients to purchase non-accessible equipment for demand-response service. Determine how the state obtains certifications of equivalent service 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 nonaccessible 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. Discuss with staff.

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 ADA13-1: Insufficient oversight of subrecipients for ADA requirements

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for ensuring that subrecipients comply with the relevant US DOT ADA requirements and evidence of implementation.

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

DEFICIENCY ADA13-2: Insufficient oversight of ADA vehicle accessibility requirements

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 DIRECTIVES

49 CFR 200.331 Requirements for pass-through entities

“All pass-through entities must:

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing 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 Management decision.”

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

1. 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?
2. Are any oversight reviews, audits, or investigations reviews scheduled during this Federal fiscal year?
3. Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit findings?
4. Are any oversight review, investigation, or audit findings currently open?
5. Are any issues related to ADA indicated in the Oversight Assessment Tool (OAT)?
6. What deficiencies or potential deficiencies have been identified by the FTA Office of Civil Rights through complaint investigations, compliance reviews, and other sources?
7. Have any ADA complaints been filed with FTA?
8. Does the recipient appear have the capacity to ensure compliance with the ADA? Are employees trained to proficiency in ADA requirements?
9. Do the recipient, contractors, and lessees appear to have sufficient accessible spare vehicles to meet the ADA service requirements?
10. 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?

REFERENCES

1. 2 CFR Part 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. Project ACTION
6. Disability Rights Education & Defense Fund - Topic Guides on ADA Transportation
7. U.S. Department of Justice ADA Homepage

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