City of Fayetteville
Fayetteville Area System of Transit

Americans with Disabilities Act of 1990

Paratransit Plan

Updated March 2016

FASTTRAC!
Transit Riders' A.D.A. Choice!

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455 Grove Street
Fayetteville, NC 28301

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SECTION 1.0
INTRODUCTION

1.1 PURPOSE

Title 42, Chapter 126, Section 12101 (Appendix O)
Regulation 49 CFR Part 37 (Appendix P)

On September 6, 1991, the U.S. Department of Transportation (USDOT) published final regulations of the Americans with Disabilities Act of 1990 (ADA). Included in these regulations was a requirement that public entities operating fixed-route transportation service for the general public must also provide complementary paratransit service to persons unable to use the fixed-route system. The regulations also require that a plan for implementing this complementary paratransit service be submitted by January 26, 1992 and that the service be in full compliance as soon as possible, but no later than January 26, 1997.

Following is the Fayetteville Area System of Transit's (FAST) Paratransit Plan of compliance with ADA's regulations, originally submitted in 1991 and revised in March 2016.

1.2 REFERENCE TO FEDERAL, STATE AND LOCAL REGULATIONS

FAST is funded in part through federal, state and local government contributions. Therefore, operational guidelines must comply with federal, state and local regulations. References will be made throughout this document to specific regulations.

1.3 TITLE VI NOTICE TO THE PUBLIC

The Fayetteville Area System of Transit (FAST) is committed to ensuring that no person is excluded from participation in, or denied the benefits of, its transit services or programs on the basis of race, color, national origin, age, sex or disability as afforded by non-discrimination laws and Title VI of the Civil Rights Act of 1964.

Its objective is to:

- Ensure that the level and quality of transportation service provided is without regard to race, color, or national origin;

- Promote the full and fair participation of all affected populations in transportation decision making;

- Prevent the denial, reduction, or delay in benefits related to programs and activities that benefit minority populations or low-income populations;

- Ensure meaningful access to programs and activities by persons with limited English proficiency.

FAST is committed to a policy of non-discrimination in the conduct of its business, including its Title VI responsibilities in the delivery of equal access to its programs, activities, and services.

If you believe FAST has denied you equal access to benefits, or excluded you from participation in services because of your race, color, national origin, sex, age, or disability, you may file a written complaint within 180 days of the alleged act of discrimination with FAST or the Federal Transit Administration or U.S. Department of Justice at the addresses listed below. FAST will strive to complete its investigation of all complaints within 90 days of receipt.

Title VI Coordinator
Fayetteville Area System of Transit
455 Grove Street
Fayetteville, NC 28301

Federal Transit Administration
Office of Civil Rights
Region IV
230 Peachtree Street, NW
Suite 800
Atlanta, GA 30303

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

FAST provides translation services free of charge to the public upon request.

SECTION 2.0
SERVICE STANDARDS

2.1 DESCRIPTION OF SERVICE

FAST operates nineteen (19) fixed-routes (Appendix A), six days a week. Monday thru Friday service operates from 5:30 AM until 10:30 PM. Saturday service operates from 7:30 AM until 10:30 PM. Sunday service is not currently provided. FAST operates 21 vehicles during peak operating hours. All of the fixed-route vehicles kneel and are mobility aid accessible.

In FY2014-15, fixed-route ridership was just under 1.58 million, and FAST provided approximately 1,094,000 revenue miles of fixed-route service. FASTTRAC! ridership was just under 61,000 with almost 457,000 miles of revenue service.

FAST implemented a new fare structure in April of 2013 (Appendix B).

Customers who experience challenges riding the FAST fixed-route bus system may be eligible under the Americans with Disabilities Act to use FASTTRAC! services. FASTTRAC! (Fayetteville Area System of Transit, Transit Riders ADA Choice) is a reservation-based system which provides origin to destination transportation service. Individuals interested in using this service must complete an Eligibility Application (Appendix C). Applications are available for pick-up at our Administrative Office (455 Grove Street), or can be downloaded from our website (www.ridefast.net). Applicants may also request an application thru the mail by calling (910) 433-1232.

FASTTRAC! operates within ¾ mile of the fixed-route service (Appendix D) during the same scheduled hours, using a fleet of 16 ADA accessible vehicles. All trips must be completed, with customers delivered to his/her destination, by the end of regularly scheduled fixed-route service hours.

There is no service on the following holidays (Appendix K):

New Year's Day
July 4th
Thanksgiving Day
Christmas Day

FAST operates on a Saturday schedule on the following holidays:

Memorial Day
Labor Day

FAST closes at 7:30 PM on Christmas Eve.

2.2 TRIP PURPOSE

There are no restrictions or priority given based on trip purpose. FASTTRAC! does not ask for or record trip purpose. FASTTRAC! does not provide emergency medical transportation.

2.3 COST TO CUSTOMER

A single trip fare for travel on FASTTRAC! is $2.00. Once a customer arrives at his/her first destination, a single trip has been completed. If the customer requires a return trip, or will be picked up and transported to a second location, another trip has begun and a second fare of $2.00 is due.

All fares are due before the trip begins. If a customer is at his/her original pick-up location and does not have the full fare, the trip will be canceled and the reservation will be logged as a no-show. If a customer is returning to his/her original location or a separate final destination and does not have the full fare, FASTTRAC! will ensure the customer is transported to his/her final destination under the "no strand rule". The customer will not be transported again or allowed to make another reservation until the outstanding fare has been paid.

All FASTTRAC! vehicles accept pre-paid passes, cash and coins only, and are not equipped to give change. 10- and 20-ride passes may be purchased from the following locations:

1. FAST Administrative Office
   455 Grove Street
   Fayetteville, NC 28301

   **This location accepts debit/credit cards or exact change only.*

2. FAST Transfer Center
   147 Old Wilmington Road
   Fayetteville, NC 28301

   **This location accepts cash only.*

3. Carlie C's IGA
   600 Cedar Creek Road
   Fayetteville, NC 28312

4. Carlie C's IGA
   690 S Reilly Road
   Fayetteville, NC 28314

5. Carlie C's IGA
   Bordeaux Shopping Center
   1790 Owen Drive
   Fayetteville, NC 28304

6. Carlie C's IGA
   Eutaw Village Shopping Center
   2738 Bragg Boulevard
   Fayetteville, NC 28303

   **Carlie C's locations sell 20-Ride ADA passes only. All locations accept debit/credit cards and cash.*

Personal Care Attendants (PCAs) travel free with a paying customer on both FASTTRAC! and fixed-route service. PCAs must embark and disembark at the same locations as the customer he/she is assisting. Additional friends and family members (companions) may travel as space allows (advance reservation required) and must pay their own fare of $2.00 per trip.

SECTION 3.0
ELIGIBILITY

3.1 ELIGIBILITY CRITERIA

FASTTRAC! is intended to provide service to individuals who are unable to independently use the fixed-route bus system. The specific criteria for determining eligibility for paratransit services is defined by the American with Disabilities Act of 1990 (ADA). Customers must meet <u>one</u> of the following eligibility requirements:

- Customer is unable, without the assistance of another individual, as a result of a physical or mental impairment, to get on, ride or get off an accessible vehicle in the fixed-route transit system;

- Customer needs the assistance of a wheelchair lift or other boarding device and are able to get on, ride and get off an accessible vehicle, but such a vehicle is not available on the fixed-route when he/she is planning to travel; or

- Customer has a specific impairment-related condition, which prevents him/her from traveling to or from a boarding location or stop on the fixed-route system.

3.2 DEFINITION OF DISABLED

According to 49 CFR § 37.3, *Disability* means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) The phrase "physical or mental impairment"

(i) Is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine;

(ii) Is any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) Includes, but is not limited to, such contagious or noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction and alcoholism; or

(iv) Does not include homosexuality or bisexuality.

(2) The phrase "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and work.

(3) The phrase "has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase "is regarded as having such an impairment" means an individual

(i) Has a physical or mental impairment that does not substantially limit major life activities, but which is treated by a public or private entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public or private entity as having such an impairment.

(5) The term "disability" does not include

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania;

(iii) Psychoactive substance abuse disorders resulting from the current illegal use of drugs; or

(iv) Mental disorders that do not prevent the individual from using fixed-route service.

3.3 ELIGIBILITY FOR REDUCED FARE ON FIXED-ROUTE

A person who is not eligible to use the FASTTRAC! service may still qualify for a reduced fare on the fixed-route system. An application (Appendix E) for this purpose must be completed and submitted to FAST. If approved, a FAST picture ID card will be issued. This card entitles the holder to a reduced fare on all fixed-routes.

FASTTRAC! customers are also entitled to ride the fixed-route bus service at a discount. He/she may show a FASTTRAC! photo ID card to qualify for the reduced fare. He/she is not required to complete the separate application referenced in Appendix E.

3.4 ELIGIBILITY OF VISITORS

If an applicant is certified by FAST to be ADA Paratransit Eligible, that eligibility entitles him/her to utilize paratransit services in other communities throughout the country for up to 21 days in a 12-month period. After the 21 days is up, he/she would be required to apply for continued use of that system.

Visitors to Fayetteville, NC who have been certified as ADA Paratransit Eligible by another public entity will be entitled to 21 days of service in a 12-month period. This period begins with the first day of service and does not have to be consecutive. Visitors will be required to provide proof of current eligibility on another paratransit system. If more than 21 days of transportation is required, he/she must complete the standard application process to continue.

If a visitor has not been certified by another public entity as ADA Paratransit Eligible, he/she may provide documentation verifying place of residence and type of disability, if it is not apparent.

Anyone that lives outside the City of Fayetteville but travels into the community on a regular basis and would be considered ADA Paratransit Eligible is encouraged to apply for use of the system. If a person lives outside of the service area and is considered eligible to use the FASTTRAC! system they may still be certified as ADA Paratransit Eligible, if they are able to provide a pick-up location that is within the service area boundaries.

All customers, regardless of visitor status, are required to pay the full fare or use a pre-paid pass for every trip.

3.5 ELIGIBILITY PROCESS

a. Individuals must submit a completed application package (Appendix C) before an eligibility determination can be made. In order for an application to be considered complete, the package must include a completed and signed application form and a completed Professional Verification Form (PVF) with all required signatures, to include the signature authorizing FAST to contact the designated medical professional if additional clarification is needed to complete the process. Applicants may also choose to complete an Authorization to Release Information form (Appendix F), although it is not required.

   Applications are available:

On our website	www.ridefast.net/fasttrac
By phone	(910) 433-1232, Option 3
In person/by mail	455 Grove Street Fayetteville, NC 28301

b. FASTTRAC! staff are responsible for reviewing applications and determining eligibility.

c. The applicant will be determined temporarily eligible for FASTTRAC! service once a completed application package is received. This temporary eligibility will continue for up to 21 days while the application package is reviewed and the in-person eligibility assessment takes place. When the completed application package

is received, the applicant is sent a temporary identification card, along with a letter explaining the remainder of the process (Appendix G).

d. After FASTTRAC! staff receive a complete application package, the applicant will be contacted to schedule an in-person eligibility assessment. Transportation to and from the assessment will be provided if needed. This assessment must take place within 21 days of the submission of the completed application package. The assessment may include, but is not limited to, an in-person interview, demonstration of the applicant's ability to use components of the fixed-route system and observations of the applicant's cognitive ability to understand transit functions.

   This in-person assessment may take place in conjunction with a FASTTRAC! orientation session where the applicant will also learn more about the FASTTRAC! system (Section 7.1).

e. If an applicant has been deemed ADA Paratransit Eligible, or conditionally eligible upon completion of an in-person eligibility assessment, he/she will be mailed a confirmation of eligibility or conditional eligibility letter, along with a photo ID card (Appendix H).

f. Eligible individuals must recertify at least every three years. If a customer holds a conditional approval, they must recertify as that approval expires.

3.6 ELIGIBILITY APPEALS PROCESS

If an applicant wishes to appeal an eligibility determination, the following process shall be followed:

a. The applicant must submit a FASTTRAC! Eligibility Appeal Form (Appendix I) within 60 days of the date of the letter notifying an individual that his/her application has been denied. The form must be delivered to the following address:

   Fayetteville Area System of Transit
   Attn: FASTTRAC! Eligibility Appeals Committee
   455 Grove Street
   Fayetteville, NC 28301

b. The applicant shall have the opportunity to be heard by the FASTTRAC! Eligibility Appeals Committee, which shall include a representative of the City of Fayetteville's Human Relations Department and/or the City of Fayetteville – Cumberland County Human Relations Commission.

A written determination of the appeal, including the reason(s) for the determination, shall be mailed to the applicant within 30 days of the receipt of the FASTTRAC! Eligibility Appeal Form. If a decision is not made within 30 days, the applicant will be determined temporarily eligible until such time as the decision regarding the appeal is made by the FASTTRAC! Eligibility Appeals Committee.

SECTION 4.0
TRIP RESERVATION PROCEDURES

4.1 RESERVATION LINE / LANGUAGE ASSISTANCE

Customers shall call (910) 433-1232 (1ADA) to make a reservation. The reservation line offers options for both English and Spanish speaking customers.

Customers who need assistance in another language should choose the option for English and then request the language of their choice. FAST utilizes a "Language Assistance Line" to assist customers in any language they choose. This translation assistance is provided free of charge to the customer.

Individuals who utilize text telephone may use the Relay North Carolina System to assist with communication. To use this service, dial 711 on the telephone keypad.

4.2 ADVANCE NOTICE REQUIREMENT

Same day reservations are not accepted. Reservations for next day service must be made no later than 4:30 PM the day before the trip. Reservations for future service can be made up to seven (7) days in advance. Reservations are taken on a first-come, first-served basis. Return reservations must be made when the outbound reservation is taken; otherwise the customer will be placed on a "will-call" list.

a. Delays – if a customer will be delayed past his/her scheduled pick-up time due to unforeseen circumstances, he/she is asked to contact the dispatcher as soon as possible. The dispatcher will place the customer on the will-call list. Will-call pick-ups are subject to space availability and the pick-up time cannot be guaranteed.

4.3 OFFICE HOURS

Reservations for service up to seven (7) days in advance can be made between 8:00 AM and 4:30 PM Monday thru Sunday. Reservations are taken on Sundays and/or holidays for

next-day service only, via a recording. A dispatcher will confirm the customer's appointment by 6:00 PM on Sundays and holidays for next day service.

4.4 RESERVATION PROCEDURES

FASTTRAC! service is a shared ride service. It is coordinated to safely and efficiently carry as many customers as possible.

Customers may make a reservation by calling (910) 433-1232 (1ADA). The customer can select his/her preferred language option from the first menu. Customers are required to provide the exact street address of his/her pick-up and drop-off locations. If the customer does not have the exact street address the dispatcher will inform him/her that he/she needs to call back when the correct information is available.

The following information will be requested by the dispatcher at the time of booking:

1. Customer Name
2. FASTTRAC! ID Number
3. Date of trip
4. Appointment time or desired pick-up time
5. Exact street address of pick-up and drop-off locations, including specific entrance if there are multiple options
6. Return trip information
7. What the customer will be taking with him/her on the trip (i.e. mobility aide, cane, cart, PCA, or companion)
8. Phone number where customer can be reached

4.5 SUBSCRIPTION SERVICE

Subscription service is a premium service provided as a convenience for customers who travel from the same location to the same destination on the same day(s), at the same time, at least once per week. If an individual will meet this criteria for a minimum of two consecutive months, he/she may apply for a subscription reservation. An application (Appendix J) must be completed at least two weeks in advance of the requested subscription start date. A separate application must be completed for each one-way trip request.

The application(s) will be reviewed by the Paratransit Operations Manager. If approved, subscription service will be granted for a period of six (6) months from the date of approval. If multiple applications are submitted for it is possible for one application to be approved, while the other may be disapproved due to capacity constraints during the days/times requested.

If a customer wishes to continue his/her subscription after the initial six (6) month period, he/she must submit a new application. The new application must be submitted at least 14 days prior to and no more than 30 days in advance of the expiration date of the current subscription service. It is the responsibility of the customer to monitor expiration dates and submit applications in a timely manner. If a renewal application is not submitted before a subscription expires, the subscription will terminate. Continuation of the current subscription service cannot be guaranteed. If a subscription expires or is not renewed, customers may still make reservations by following the standard process.

It is the policy of FASTTRAC! to not exceed a subscription rate of 50% of maximum capacity during any single hour block of time, with the exception of "peak times" where subscriptions will not exceed 25%. Peak times apply to the hours of 5:30 AM – 9:00 AM and 2:00 PM – 5:30 PM, Monday thru Friday. Peak times will be reviewed periodically and adjustments made as necessary. If during the application review the Paratransit Operations Manager determines that the current subscription rate exceeds the allowable rate during the time requested, the applicant will be contacted by phone to determine if an alternate time may be acceptable. If the applicant does not accept an alternate time schedule, he/she may be placed on a subscription waiting list.

If the applicant is approved for subscription service, he/she must continue to schedule trips via the reservation line until the subscription service begins.

Subscription service cannot be guaranteed outside of the original request applied for and approved by the Paratransit Operations Manager. Modifications are not permitted for existing subscription service. If a customer wishes to change anything relating to an existing subscription service, he/she must complete a new application. FASTTRAC! cannot guarantee that a new subscription will be available.

All subscription services are automatically suspended on the holidays listed in Appendix K, even if FAST is operating regular service on that day. Customers who wish to ride on these days must follow the standard reservation process. Customers are asked to "postpone" subscription service during vacations to avoid "no-show" penalties. A subscription service may be postponed up to two (2) times during a 6-month period, for up to a total of two (2) weeks.

FAST reserves the right to cancel any subscription service if the number of cumulative cancelations or no-shows in two consecutive months exceeds the limits outlined in Table 1. If a subscription service is canceled, the customer may continue to schedule trips through the standard reservation process (Section 4.5). If a subscription service is canceled, the customer may re-apply 30 days after the date on the Notification of Suspension of Service Letter (Appendix L). If the timeframe requested in that application is not available due to capacity constraints, the customer may be placed on a subscription waiting list.

Table 1 – Subscription Service No-Shows

# of Monthly Subscription Trips	Cumulative Cancelations or No-shows in a 60-Day Period
4 or Fewer	2
5 - 8	4
9+	6

4.6 SAME DAY REQUESTS FOR EARLY PICK-UPS

Same day requests to change a scheduled pick-up time will not be approved. If a customer is unable to keep his/her scheduled pick-up time, he/she must notify the dispatcher as soon as possible.

If the customer is still in need of transportation, the dispatcher will place the customer on will-call. Will-call pick-ups are based on space availability therefore pick-up times cannot be guaranteed. Every effort is made to complete the pick-up within 90 minutes.

If the customer is no longer in need of transportation services, he/she will be subject to the late cancelation and no-show policies outlined in Section 6.

SECTION 5.0
PICK-UP AND TRAVEL PROCEDURES

5.1 PICK-UP PROCEDURES

When a customer makes a reservation, he/she will be provided with a pick-up window. The scheduling software automatically assigns a 30-minute pick-up window to a reservation, centered on the negotiated pick-up time. This pick-up time can be as early as 15 minutes before, or as late as 15 minutes after the negotiated time.

Customers also have the option to schedule a "no earlier than" reservation. This option shifts the 30-minute window so that vehicles cannot arrive before the scheduled pick-up time, but may arrive up to 30 minutes after the negotiated time. This is still considered to be an on-time arrival.

Upon arrival at the customer's location, the operator will signal with the horn to notify him/her of the vehicle's arrival. The customer must board within five minutes of the vehicle's on-time arrival or the operator will leave and not return. If the customer does not board within this time, the reservation will be logged as a "no-show".

Under the no strand rule FAST will ensure all customers have transportation to the final destination identified in the original reservation. If a no-show occurs at a location other than the original pick-up location and the customer still requires transportation to a final destination, he/she may call the dispatcher to schedule a will-call pick-up. Will-call pick-ups are based on space availability and the pick-up time cannot be guaranteed. Will-call pick-ups are not permitted from the customer's original location.

If for some reason a customer needs more than five minutes to board, he/she should contact the dispatcher so that his/her customer profile can be updated.

If the vehicle arrives earlier than 15 minutes prior to the scheduled pick-up, the operator will signal with the horn to notify the customer. If the customer is not yet ready, the operator will wait until the 15-minute window begins and will signal again. At that time, the five minute window for boarding begins.

If the vehicle arrives more than 15 minutes after the scheduled pick-up and the customer refuses service or does not show, this will be considered a "missed trip" rather than a no-show, and the customer will not be penalized.

If the vehicle is running more than 15 minutes behind the scheduled pick-up time, the dispatcher will attempt to contact the customer to offer him/her a revised pick-up time. The customer may choose to cancel the trip at that time without penalty.

The entrance to the building/house where the customer is picked up will be the same entrance that he/she is brought back to unless the customer notifies the dispatcher of a different drop-off location at the time the reservation is scheduled. The same works in reverse. The customer will be picked up at the same door at which he/she was dropped off for the return trip.

5.2 COMPANIONS

Customers may be accompanied by a companion. The reservation for the companion must be made at the time of the original booking. Reservations are limited to two companions and are subject to space availability. The beginning and ending destination of the companion must be the same as that of the customer. Standard fares apply to all companion trips (refer to Section 2.3 – Cost to Customer). A Personal Care Attendant (PCA) does not count as a companion.

5.3 PERSONAL CARE ATTENDANT (PCA)

A Personal Care Attendant (PCA) is an individual who travels with an ADA eligible customer and is there to provide assistance to that person in meeting his/her personal needs. This assistance may not be required during the transit trip but may be required at the destination. A PCA is considered a mobility aid and is permitted to ride for free when traveling with the ADA eligible customer. If the customer requires a PCA, he/she must indicate this on the eligibility application, or resubmit an application at such time that the need is determined. PCAs must have the same beginning and ending destination as the customer.

PCAs shall remain with the customer during the complete trip and to/from the building.

FASTTRAC! cannot require that a customer travel with a PCA unless the customer engages in violent, seriously disruptive or illegal conduct, or if the customer poses a direct threat to the health or safety of others.

5.4 OPERATOR ASSISTANCE

Upon request, the operator will assist customers between the building and the vehicle. Such assistance must be requested in advance by notifying the dispatcher at the time the reservation is made. If the customer has indicated on his/her application that he/she requires operator assistance regularly, a note will be made in the customer profile which shall apply to all future trips.

Operator assistance ends when the operator has assisted the customer to the main door of the building, while keeping sight of the vehicle. If a customer needs assistance past this point, he/she needs to arrange for this in advance, or have a PCA. If a customer needs assistance carrying items to the main door of the building, they will be limited to what the operator can carry in one trip, while still assisting the customer. The items must fit in the space allotted for the customer on the vehicle and cannot infringe on the space reserved by another customer.

If the destination building is not accessible, the customer is not accompanied by a PCA, or there is not someone available to meet the customer, the operator may return the customer to the place of origin after receiving approval from the dispatcher.

The operator must keep the vehicle in sight at all times.

5.5 USE OF RAMP/LIFT AND SECUREMENTS

The operator will operate the ramp or lift and keep the customer under surveillance at all times during such operation. Customers who use the ramp or lift will be assisted on and off the apparatus by the operator.

For customers using a mobility device, the operator will secure the device before the vehicle is in motion. All mobility devices must be secured during transport. Refusal by the customer to allow a securement device will be seen as a refusal of service.

Federal Register /Vol. 76, No. 181, removed the term "common wheelchair". Transit providers must carry a mobility device and occupant if the lift and vehicle can physically accommodate the combined weight unless doing so is inconsistent with legitimate safety requirements.

"Legitimate safety requirements" include such circumstances as a mobility device of such size that it would block an aisle, would be too large to fully enter a vehicle, would block the exit, or would interfere with the safe evacuation of passengers in an emergency. This does not apply to securement; a transit provider cannot impose a limitation on the transportation of mobility devices based on an inability to secure the device to the satisfaction of the transportation provider.

Operators and passengers must use seatbelts at all times. Before pulling away from a stop, operators shall make sure that passengers are seated with seatbelts properly secured. Failure to use a seatbelt shall result in denial of transportation service for that trip and will be recorded as a seatbelt violation.

If a customer is traveling with a child (companion) that requires a car seat, the customer must provide the proper car seat. Children 8 years of age or younger, or weighing less than 80 pounds, are legally required to use a car/booster seat rated for the appropriate size and weight. The customer is responsible for properly installing the car/booster seat and safely securing the child. If any companion cannot be properly cared for by a customer, then the trip will be recorded as a no-show and transportation will not be provided.

5.6 CAPACITY CONSTRAINTS

FASTTRAC! will not establish operational patterns or practices that significantly limit the availability of service. Reports of untimely pick-ups, trip denials, missed trips and excessively long trips will be reviewed quarterly. This information will be used when considering the additional use of vehicles and/or operators to meet capacity. If a significant capacity constraint is identified, additional vehicles may be placed into service to meet demand.

Trip Negotiation	It is sometimes difficult to lock in a specific pick-up time due to space constraints. The dispatcher may then initiate the negotiation process. FASTTRAC! may offer up to one (1) hour before or after the requested pick-up time.
Untimely Pick-Up	Pick-ups that are outside of the scheduled 30-minute window.
Trip Denial	Federal regulations allow for pick-ups to be scheduled up to an hour before or after the requested time (trip negotiation). If the dispatcher offers the customer a time beyond one hour before or after the requested time and the offered time is not acceptable to the customer, the trip will be considered "denied". The only exception is when a time offered would make the customer arrive late or require him/her to leave early from a scheduled activity. For example, if a customer ends his/her work day at 4:00 PM and requests a pick-up at that time, the dispatcher will search for an available trip within one hour of the request. The dispatcher cannot negotiate earlier than 4:00 PM since that would require the customer to leave work early.
Missed Trip	Trips that are not completed because the vehicle arrived more than 15 minutes after the scheduled pick-up time, and the customer either refused service or did not show.
Excessively Long Trip	Travel time (between pick-up and drop-off) of more than 90 minutes.
Refusal of Negotiated Trip	The dispatcher offers a reservation within the allowable negotiated window (see Trip Negotiation above), and the customer declines the reservation.

5.7 ROUTE CHANGES

FASTTRAC! operators cannot change pick-up or destination points or make detours upon customer request without first informing the dispatcher and receiving authorization.

5.8 SERVICE ANIMALS

Operators cannot require identification for a service animal. Operators are instructed never to touch or talk to a service animal without first asking for the owner's permission. In July of 2015, the Department of Justice (DOJ) narrowed the definition of a service animal to include only dogs. However, DOT ADA regulations were not affected by this change. Per § 37.3, a service animal is:

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

Examples of work or tasks as defined in the new regulations include but are not limited to:

- Assisting individuals who are blind or have low vision with navigation and other tasks;
- Alerting individuals who are deaf or hard of hearing to the presence of people or sounds;
- Providing non-violent protection or rescue work;
- Pulling a mobility device;
- Assisting an individual during a seizure;
- Alerting individuals to the presence of allergens;
- Retrieving items such as medicine or the telephone;
- Providing physical support and assistance with balance and stability to individuals with mobility disabilities; or
- Helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

5.9 LIFE SUPPORT EQUIPMENT

FASTTRAC! transports customers who use portable medical equipment such as respirators and oxygen tanks. Operators are not trained to administer oxygen or operate any other means of life support equipment. Customers are responsible for ensuring they have sufficient oxygen for the duration of their travel time.

5.10 RIDERS RULES OF CONDUCT

FAST has established a Rider Rules of Conduct & Exclusion Policy to outline conduct deemed inappropriate on FAST vehicles and properties, bus shelters, bus stops, and transfer points. This policy is intended to provide a safe, secure, and comfortable environment for all FAST employees and FAST customers.

The rules listed below are not all inclusive as additional rules and regulations may apply:

- No verbal threats or physical assault (fighting) against any FAST employee or passenger.
- No possession, distribution, and/or being under the influence of narcotics, illegal drugs, and/or drug paraphernalia.
- No weapons (including but not limited to pistols, rifles, knives or swords) or other objects considered dangerous.
- No eating or drinking, unless required for a medical condition. (Only water in a clear container with a screw-top lid will be permitted).
- No smoking (including electronic cigarettes), or chewing tobacco on FAST vehicles or inside FAST facilities.
- No carrying lighted tobacco products onto FAST vehicles or inside FAST facilities.
- No indecent, profane, boisterous, unreasonably loud, demeaning, or disrespectful behavior.
- No physical or sexual contact with FAST employees or passengers.
- No playing of audio devices without the use of personal earphones / headsets.
- No standing in front of the Standee Line (yellow or white line on the floor of the vehicle near the operator's seat).
- No animals allowed on vehicles or inside facilities, except for authorized service animals.
- No large articles, packages, baggage, non-collapsible strollers or baby buggies which block vehicle aisles/walkways.
- No loitering, soliciting for contributions, or distribution of any materials on FAST properties.
- No unattended children under (5) five years of age unless closely accompanied by an older responsible individual.
- No roller-skating, rollerblading, or skateboarding, or sitting on hand-rails at transfer points or inside FAST vehicles.
- No unsafe behavior which may endanger FAST employees and/or passengers.
- No hanging out, reaching out, or putting anything out of FAST vehicle windows.
- No refusal to pay a fare or refusal to show appropriate fare media to a FAST vehicle operator, when requested.
- No misuse of fare media, including counterfeit or stolen fare media.
- No obstructing or interfering with the safe operation of FAST vehicles.

- No motorized bikes, gasoline/fuel combustion-type vehicles, or oversized wheelchairs which exceed ADA guidelines.
- No fighting, instigating fights, or threatening acts of violence against FAST employees and/or passengers.
- No display of drunken behavior which may endanger FAST employees and/or passengers.
- No boarding vehicles and/or entering facilities without proper clothing (must wear shoes & shirt at all times).
- No stealing or willfully damaging, defacing or destroying City property.
- No indecent exposure.

A violation of any one of these rules may result in exclusion from FAST services and any FAST property.

SECTION 6.0
CANCELATIONS AND NO-SHOWS

6.1 CANCELATIONS

Reservations must be canceled prior to 4:30 PM the day before a scheduled trip. Cancelations made after 4:30 PM the prior day will be considered a late cancelation.

Only late cancelations that are under the customer's control may be counted against the customer. Late cancelations for reasons beyond the customer's control (e.g., family emergency/illness or operational problems on the part of the transit provider) will not be counted against the customer.

6.2 NO-SHOWS

All cancelations of scheduled trips made less than two (2) hours prior to the time of the trip will be considered a no-show. The only exception to this is for trips scheduled to depart prior to 7:00 AM Monday-Friday and prior to 9:00 AM on Saturday. However, these instances will still be considered late cancelations.

Only no-shows that are under the customer's control may be counted against the customer. No-shows for reasons beyond the customer's control (e.g., family emergency/illness or operational problems on the part of the transit provider) will not be counted against the customer.

6.3 PROGRESSIVE CORRECTIVE ACTION PLAN

FAST uses a progressive corrective action plan to encourage on-time scheduled use of FASTTRAC! services and to discourage customers from accumulating excessive no-show or late cancel incidents.

A customer will be subject to the progressive corrective action plan (Table 2) when he/she has booked at least eight trips in a calendar month and has a no-show or late cancel incident rate of at least 25% for that month. Customers that book fewer than eight trips in a calendar month will be subject to the progressive corrective action plan if their 90-day cumulative rate of late cancels or no-show incidents exceeds 25%. Incidents will be tracked over a 12-month rolling timeframe, with a 90-day forgiveness period.

If a customer wishes to pay a penalty in lieu of service suspension, he/she may do so at any time. A customer is not required to pay a penalty. Penalties will not be pro-rated.

In addition to no-show and late cancelation violations, FASTTRAC! may also suspend service if an individual engages in violent, disruptive, or illegal behavior or otherwise violates the Riders Rules of Conduct. Service may be suspended or permanently revoked if a customer threatens or has physical contact with the operator or other customers (see Section 5.10). FAST reserves the right to escalate the penalty level depending on the severity of the incident.

All service suspensions will be recorded. Details will be provided in a notification of suspension letter sent to the customer. Suspensions will begin 14 calendar days from the date of the letter.

Table 2 – Progressive Corrective Action Plan

1st Incident *	Initial Warning Letter
2nd Incident	Final Warning Letter
3rd Incident	7 Day Suspension from Service or $10 penalty
4th Incident	14 Day Suspension from Service or $15 penalty
5th Incident	30 Day Suspension from Service or $20 penalty
Additional Incidents	30 Day Suspension from Service or $25 penalty
* An "incident" refers to a 25% combined late cancelation or no-show rate in a one-month period if the customer has booked at least eight trips for that month. If the customer has booked fewer than eight trips in a month, an "incident" will refer to a 25% combined late cancelation or no-show rate for a cumulative 90-day period.	

6.4 APPEALS PROCESS FOR SERVICE SUSPENSION

If a customer wishes to appeal the determination to suspend service he/she must complete the FASTTRAC! Suspension of Service Appeal Form (Appendix M) and submit to the Paratransit Operations Manager prior to the date suspension is to begin. The appeal shall be submitted to:

FASTTRAC!
Attn: Paratransit Operations Manager
455 Grove Street
Fayetteville, NC 28301

Customers needing assistance completing the form may request an appointment with FASTTRAC! staff by contacting our office (see Section 7.7) during normal business hours. During the appeal process, eligibility for service will be reinstated pending resolution.

SECTION 7.0
OTHER INFORMATION

7.1 FASTTRAC! ORIENTATION

All FASTTRAC! customers are required to attend an in-person eligibility assessment as part of the application process. This can most easily be accomplished during a FASTTRAC! orientation session where the customer can also learn about using this service. Participants will be also given a manual to reference if they have questions (Appendix N). If a customer loses his/her manual, or would like to reprint any of the pages, the manual can be downloaded from our website, www.ridefast.net. This manual is also available in Large Print and Spanish versions. Additional language translations are available upon request at no charge to the customer.

7.2 REASONABLE MODIFICATION REQUESTS

FAST will make reasonable modifications to policies, practices and/or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide accessibility to services provided. Customers in need of a reasonable modification may submit a request using the "Reasonable Modification Request" form (Appendix P).

7.3 COMMUNICATION

Individuals who are deaf, hard of hearing, or speech impaired may need to communicate through text telephones (Telecommunication Device for the Deaf or TDD) rather than voice telephones. These individuals can contact Relay North Carolina for assistance by dialing 711 on their telephone keypad.

If a customer requires an interpreter during a FASTTRAC! Orientation class or other pre-scheduled appointment, a request for this service must be communicated at least 48 hours in advance so that proper accommodations can be made.

7.4 PUBLIC INFORMATION

This plan is available in Large Print and Spanish. Requests for additional copies may be placed by:

Phone	(910) 433-1232 (Option 3)
Email	FAST@ci.fay.nc.us
Website	www.ridefast.net/contact-us
Mail	FAST Administrative Office 455 Grove Street Fayetteville, NC 28301

7.5 AUTHORIZATION TO RELEASE INFORMATION

Medical information may be gathered as part of the eligibility process. This, and other personal information to include schedules/reservations, will not be shared with any other party, without the expressed written consent of the customer. Customers may give permission to release information by completing the Authorization to Release Information Form (Appendix F).

7.6 REPORTING ABUSE

FASTTRAC! employees are required to report to the Paratransit Operations Manager any suspicion or knowledge that a customer has been abused, neglected or exploited. The Paratransit Operations Manager will then then report this information to the following agency:

Cumberland County Department of Social Services
Adult Protective Services
(910) 677-2316
www.ccdssnc.com

Any person with knowledge of criminal activity must be report directly to the Fayetteville Police Department at (910) 433-1529 (non-emergency line) or by calling 911. The Fayetteville Police Department also has a Victim Advocate that may be contacted at (910) 433-1849.

7.7 COMPLAINT PROCESS

Fayetteville Area System of Transit strive to provide safe, efficient, reliable, courteous service to everyone in our community. FAST values customer feedback. Comments, compliments and/or concerns may be submitted by completing the FAST Complaint Form (Appendix O), or by the following methods:

Phone	(910) 433-1232 (Option 3)
Email	FAST@ci.fay.nc.us
Website	www.ridefast.net/contact-us
Mail	FAST Administrative Office Attn: Comments, Compliments & Concerns 455 Grove Street Fayetteville, NC 28301

Complaint forms are available at all FAST locations and on www.ridefast.net. FASTTRAC! customers wishing to submit their complaint in person may request an appointment with the Paratransit Operations Manager by calling (910) 433-1232 and selecting Option 3, or by emailing FAST@ci.fay.nc.us. All correspondence relating to FASTTRAC! will be documented and forwarded to the Paratransit Operations Manager on the day it is received. If a response is required, it will take place within 48 business hours.

7.8 CONTACT INFORMATION

Main Office:

FAST Administrative Office
455 Grove Street
Fayetteville, NC 28301

Information Center:	FAST Information Center 147 Old Wilmington Road Fayetteville, NC 28301
FAST Information Line:	(910) 433-1747
FASTTRAC! Reservations and Information:	(910) 433-1ADA (1232)
Website:	www.ridefast.net
Email:	FAST@ci.fay.nc.us

7.9 GLOSSARY

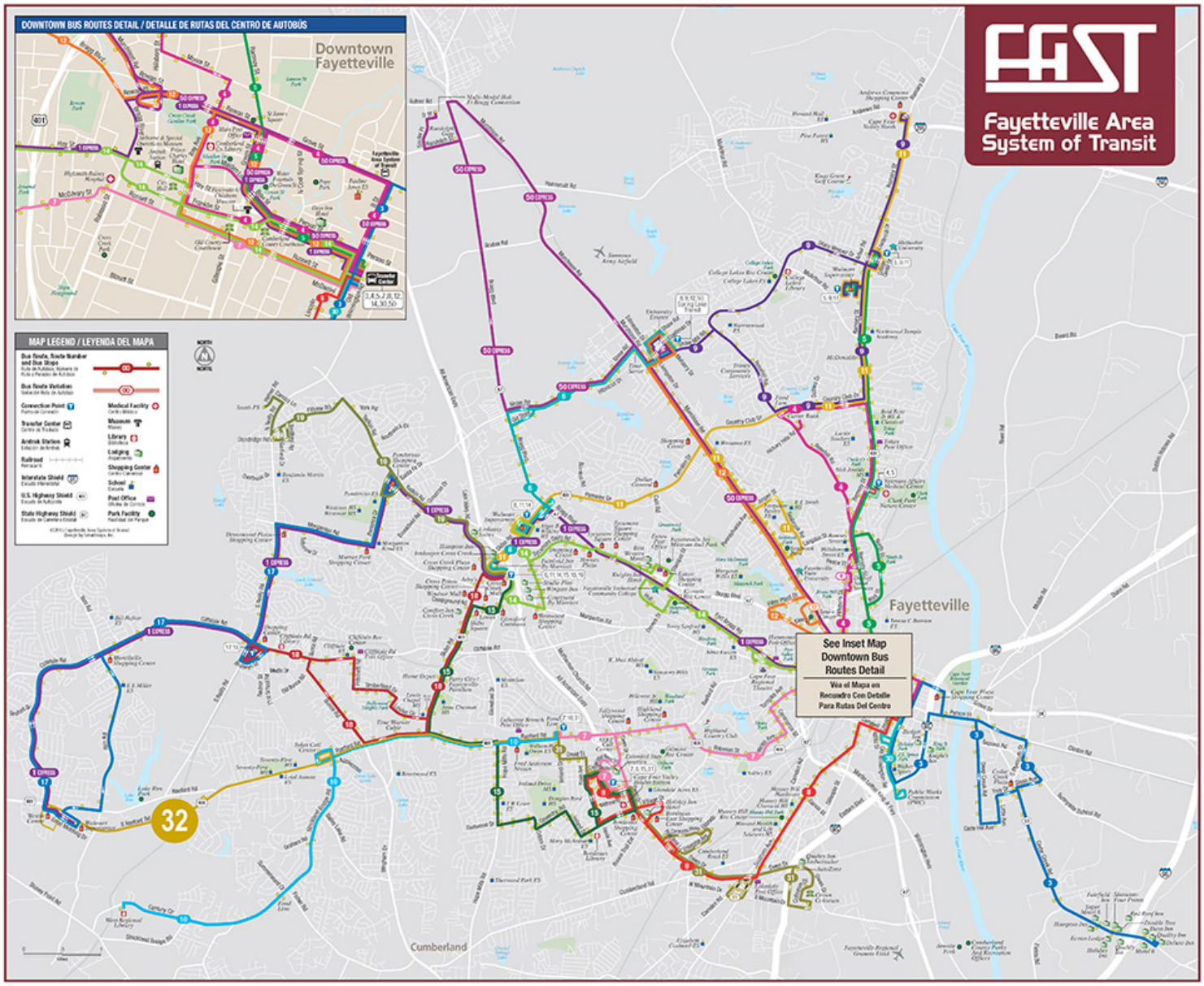
Accessible	Capable of being reached or used.
ADA Paratransit Eligible	Meeting the minimum requirements for using accessible paratransit service.
Americans with Disabilities Act	Prohibits discrimination against people with disabilities in employment, transportation, public accommodations, communications, and governmental activities.
Application Process	Formal request for service which consists of an application, a professional verification form and an in-person eligibility assessment.
Companion	An individual that accompanies a customer on a trip; does not count as a personal care attendant.
Customer	An individual that has been certified to use the FASTTRAC! service.
Destination	A place to which a customer is going.
Direct Threat	A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, procedures, or by the provision of auxiliary aids or services.

Disabled	With respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such impairment.
Eligible	Qualified to participate.
Emergency Medical Transportation	Provides out-of-hospital acute medical care, transport to definitive care, and other medical transport to patients with illnesses and injuries which prevent the patient from transporting themselves.
Fare	The money a customer pays to travel on FASTTRAC!.
Final Destination	The point or place where a trip ends.
Fixed-Route	Specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule.
Impairment	Diminished ability or quality.
Late Cancelation	The act of terminating a request for service after the designated booking hours for next day service.
Missed Trip	A travel request that was not completed due to the fault of the agency.
Mobility Device	Designed to assist with walking or otherwise improve the ability to move from place to place.
No-show	A cancelation made less than two hours from the negotiated pick-up window; being unavailable for pick-up at the agreed upon location during the negotiated pick-up window; refusing to board the vehicle when it arrives.
No Strand Rule	FAST will ensure that all customers are transported to the final destination identified in the original reservation. See Sections 2.3 and 5.1.

Origin	The point or place where the trip begins.
Paratransit	Comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed-route transportation systems.
PCA	Personal care attendant; someone designated or employed specifically to help the eligible customer meet his or her personal needs.
PVF	Professional verification form; part of the FAST ADA eligibility application to be filled out by a physician or licensed healthcare professional.
Refusal	A customer rejects a negotiated pick-up window within the allowable timeframe.
Reservation	A pre-scheduled trip; arrangement to have a seat held for use at a later time.
Revenue Service	The miles/hours a vehicle travels while serving customers.
Service Animal	Any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.
Service Area	A part or section of a city that is eligible for transit service.
Shared Ride	Multiple customers may be on board the transit vehicle at the same time; each customer may have a unique pick-up and drop-off location.
Suspension	The act of stopping service, or making eligibility ineffective.

Subscription Service	Series of on-going trips with no variance in times, days or locations.
Title VI	Of the Civil Rights Act of 1964, protecting persons from discrimination in the provision of service.
Trip	One-way travel from a single location to another; origin-to-destination.
Trip Denial	Inability to accommodate a service request due to capacity constraints.
Trip Negotiation	Discussion between the dispatcher and the customer to reach an agreement on travel times; one hour from requested time plus an additional hour if necessary based on demand.
Warning Letter	Notifies a customer that unacceptable behavior will be penalized if it continues.
Will-Call	Unscheduled trip on a stand-by basis.
49 CFR Part 37	Codifications of the general and permanent rules and regulations pertaining to the service-related requirements for fixed-route bus, complementary paratransit, demand responsive service, and rail systems published in the Federal Register by the executive departments and agencies of the federal government of the United States.

Appendix A
Fixed-Route Map



This map can be viewed in greater detail on our website at www.ridefast.net/routes

Appendix B
FAST Fares

FARES

Adult Bus Fare	$1.25
*Discount Bus Fare	$0.50
ADA Demand Response Fare	$2.00

PASSES

One Day Pass	$3.00
*One Day ½ Fare Pass (Sold from Bus)	$1.50
Rolling 8 Day Pass	$17.00
*Discount Rolling 8 Day Pass	$8.00
Rolling 30 Day Pass	$40.00
*Discount Rolling 30 Day Pass	$17.00
Student Rolling 30 Day Pass (Valid Student ID Required)	$30.00
**After School Activity Pass	No Charge
FASTTRAC! 10 Ride Pass	$17.50
FASTTRAC! 20 Ride Pass	$35.00

All sales are final. Children less than 36" tall ride for free with a paying adult. Children 36" or taller must pay the full fare. Please pay your one-way fare in exact change. FAST operators do not carry change.

** Discount fares are available for those persons age 65 and older, or for persons with a qualifying disability.*

***Please visit www.ridefast.net for details.*

Appendix C
FASTTRAC! Eligibility Application

PARATRANSIT SERVICE ELIGIBILITY APPLICATION

Please complete this application as thoroughly as possible, and to the best of your ability. In order to be considered complete, **every question** on the application must be answered. The more information you provide, the better our ADA staff will understand your abilities.

If you have any questions, please call (910) 433-1232 (option #4).

Please return the completed application to:

Fayetteville Area System of Transit (FAST)
FASTTRAC ! Application Review
455 Grove Street
Fayetteville, NC 28301

GENERAL INFORMATION

Name

Street Address

City State Zip Code

Home Phone Cell Phone

Email Address

Date of Birth (Month/Day/Year)

EMERGENCY CONTACT

Please list the name of the person or agency that we may contact in the event of an emergency:

Name

Address

City State Zip Code

Primary Phone Number

Alternate Phone Number

Email Address

Relationship to Client

USE OF FIXED ROUTE BUS SERVICE

Do you currently use the FAST fixed route system?

☐ Yes ☐ No

When was the last time you used the FAST fixed route system?

Can you get to a bus stop by yourself? Check One.

☐ Yes ☐ No ☐ Sometimes

Describe your disability and explain how it prevents you from using the FAST fixed route bus service. Be specific.

Is this condition temporary? Check one.

☐ Yes, until (enter date) ☐ No

FUNCTIONAL ABILITY AND MOBILITY INFORMATION

Do you use any of the following mobility aids? Check all that apply.

☐ Wheelchair
☐ Cane
☐ White cane
☐ Crutches
☐ Walker
☐ Service animal
☐ Hearing aid
☐ Prosthesis

☐ Other (please specify)

Do you need someone to help you when you travel outside of the home?

☐ Yes ☐ No ☐ Sometimes

If you need someone to help you, what assistance do they provide?

Can you walk up and down three 12-inch steps without help?

☐ Yes ☐ No ☐ Sometimes

Can you cross the street when a curb cut is available?

☐ Yes ☐ No ☐ Sometimes

Are you able to identify the correct bus for your destination?

☐ Yes ☐ No ☐ Sometimes

Can you wait at least 10 minutes at a bus stop that does not have a seat and/or a bus shelter?

☐ Yes ☐ No ☐ Sometimes

What barriers in your surroundings make it difficult for you to use the bus? Check all that apply.

☐ Lack of curb cuts
☐ No sidewalks
☐ Steep hills
☐ Busy streets I must cross
☐ Sidewalks are in poor condition (holes, etc.)

☐ Other (please specify)

Are you able to read, hear, understand and/or process information, schedules or directions that are needed to make necessary decisions during a trip?

☐ Yes ☐ No ☐ Sometimes

INFORMATION ABOUT ACCESSIBLE FAST BUS SERVICE

Traveling by FAST bus is a good alternative for those who are able to do so. Even if you cannot ride the bus by yourself, you may want to consider using the bus if someone will be available to assist you. FAST offers special fare incentives to FASTTRAC ! riders using the bus, and PCA's ride for free.

YOUR CURRENT TRAVEL

List your three (3) most frequent destinations and how you get there now:

Destination 1

Street Address

Frequency

Current Mode of Transportation
(Family, Friend, Taxi, etc.)

Destination 2

Street Address

Frequency

Current Mode of Transportation
(Family, Friend, Taxi, etc.)

Destination 3

Street Address

Frequency

Current Mode of Transportation
(Family, Friend, Taxi, etc.)

Please review the entire application to make sure all questions have been answered to the best of your ability. Once you return your completed application, you will receive a call from a FASTTRAC ! representative to set up an interview and transit orientation class. All applicants must attend the class and in-person assessment before they can be considered for eligibility.

ACKNOWLEDGMENT

I, the Applicant, understand that the purpose of this application form is to determine my eligibility for the ADA service. I agree to immediately notify the Fayetteville Area System of Transit (FAST) of any changes in disability status and understand that this may affect my eligibility to use the service. (Persons in violation will receive written notification that service will be suspended.) I also agree to release the information contained herein, which will be treated confidentially. I further understand that FAST reserves the right to request additional information.

Signature of Applicant/Parent/Legal Guardian

Printed Name of Applicant/Parent/Legal Guardian

Date

MEDICAL CARE

Please list the name of the physician, health care professional or rehabilitation counselor who may be contacted by FAST Staff if verification is required.

Name

Address

City State Zip Code

Phone Number

AUTHORIZATION FOR RELEASE OF INFORMATION

I authorize the professional listed above to release to FAST information about my disability or health condition and its effect on my ability to travel on the FAST/FASTTRAC ! bus. I understand that I may revoke this authorization at any time. Unless earlier revoked, this form will permit the professional listed to release the information described for up to 90 days from the date below.

Signature of Applicant/Parent/Legal Guardian

Date

Printed Name of Applicant/Parent/Legal Guardian

Date

FASTTRAC!

Transit Riders' A.D.A. Choice!

PROFESSIONAL VERIFICATION FORM (PVF) FOR ADA

NOTE: The next three pages of this document must be completed by a physician, health care professional, or licensed rehabilitation counselor.

Applicant's Name:

The Americans with Disabilities Act of 1990 (ADA) is a Civil Rights bill which bans discrimination against people who are functionally unable to ride the current fixed route bus service. Services must be provided to those who are unable to use fixed route bus services. The applicant has indicated that you can provide information regarding his/her abilities to use ADA services. In order to be considered, **every question** on the PVF must be answered. The information you provide will enable us to make an appropriate determination for each trip request. All information will be kept confidential.

Please return the completed application to:

Fayetteville Area System of Transit (FAST)
FASTTRAC ! Application Review
455 Grove Street
Fayetteville, NC 28301
FAX: (910) 433-1064
Email for Scanned Documents: FAST@ci.fay.nc.us

How do you know the applicant?

Medical diagnosis of condition(s) causing disability:

Is this condition temporary?

☐ No ☐ Yes/Please provide an end date

Is the applicant able to (check all that apply):

Walk or travel 200 feet without assistance?	☐ No	☐ Yes
Walk or travel ¼ mile without assistance?	☐ No	☐ Yes
Walk or travel ¾ mile without assistance?	☐ No	☐ Yes
Climb three 12-inch steps without assistance?	☐ No	☐ Yes
Wait outside without support for 10 minutes or more?	☐ No	☐ Yes
Does the applicant use any mobility aids?	☐ No	☐ Yes

If yes, please list and explain to what extent:

Does the applicant have a hearing disability?	☐ No	☐ Yes
Does the applicant have a cognitive disability?	☐ No	☐ Yes

If yes, can the applicant (check all that apply):

Give address and phone numbers upon request?	☐ No	☐ Yes
Recognize a destination or landmark?	☐ No	☐ Yes

Deal with an unexpected change in routine? ☐ No ☐ Yes

Ask for, understand, and follow directions? ☐ No ☐ Yes

Safely and effectively travel through crowded and/complex facilities? ☐ No ☐ Yes

Does the applicant have a psychiatric disability? ☐ No ☐ Yes

What was the date of onset?

What is the prognosis?

Is the applicant taking any psychotropic, antidepressant or other medication(s) prescribed by you?

☐ No ☐ Yes

If yes, please list the type, frequency, dose, and any comments about how the medication(s) may complicate the individual's independent mobility in the community.

If the applicant takes his/her medications compliantly, will he/she be able to travel independently in the community?

Do you deem the applicant to be compliant in taking prescribed medication?

☐ No ☐ Yes

Does the applicant have a seizure disorder? ☐ No ☐ Yes

If yes, how often do seizures occur?

What is the prognosis?

Are there certain things that will trigger the applicant's seizures?

Please describe the applicant's ability to travel alone in the community. When and where can he/she safely travel without assistance?

What advice or limitations on traveling alone in the community have been communicated to the applicant?

Is the applicant permitted to drive? ☐ No ☐ Yes

Please identify any other conditions that limit the applicant's ability to use the fixed route FAST bus service:

NOTE: It is important that **all parts** of this form are completed. If not, the applicant's certification process will be delayed.

Print Name and Title:

Signature:

Date:

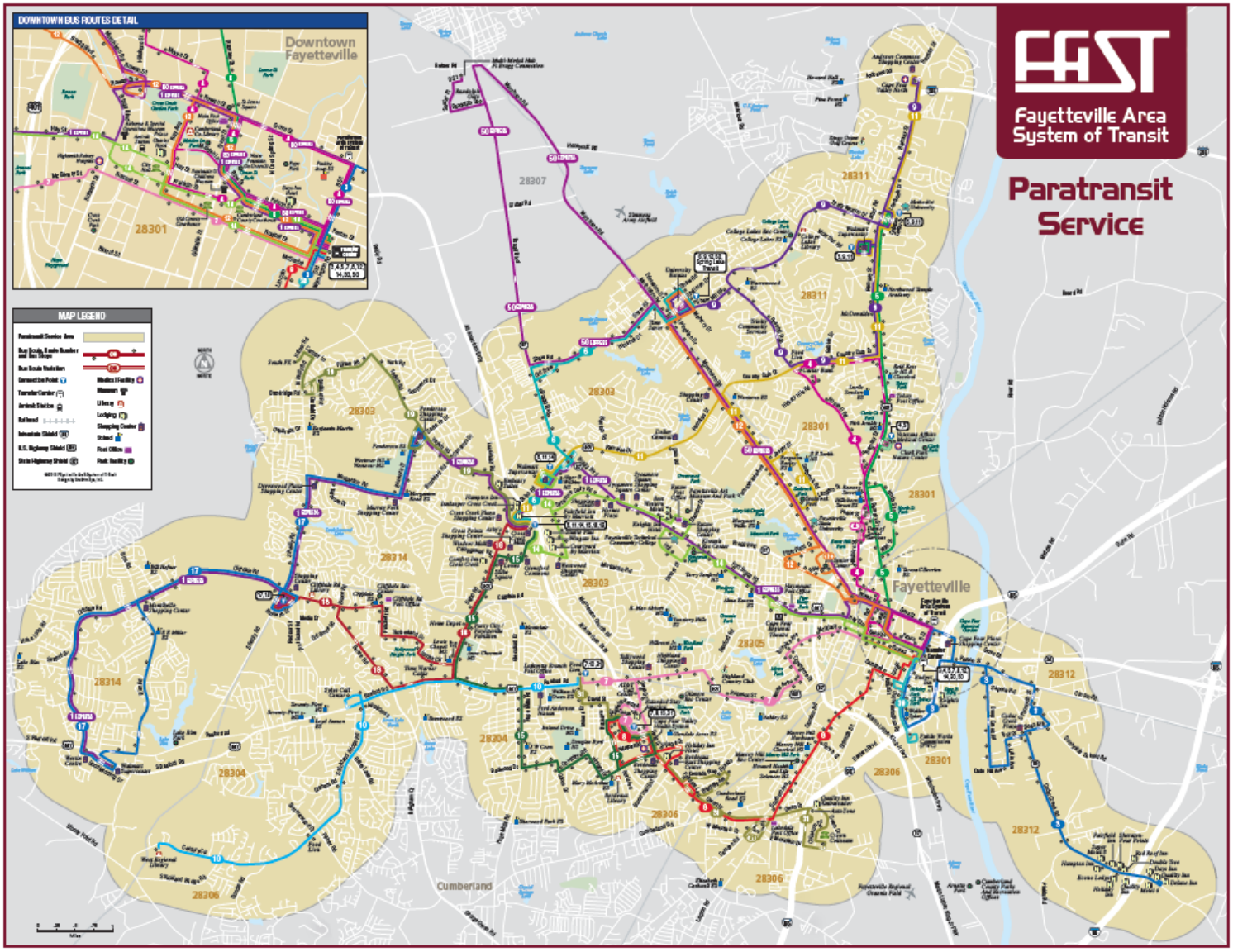
Phone Number:

Clinic/Agency Name:

City: State: Zip Code:

Professional License, Registration or
Certification Number:

Appendix D
FAST Service Area



This map can be viewed in greater detail on our website at www.ridefast.net/routes

Appendix E
Fixed-Route Reduced Fare Application

ELIGIBILITY CHECKLIST FOR DISCOUNTED FARE

_____ **Medicare Card Holder** – Complete only the top portion of the application and attach a copy of your valid Medicare Card and a copy of your valid government-issued Photo ID Card.

_____ **Age 65 or older** – Complete only the top portion of the application and attach a copy of your valid government-issued Photo ID Card to show proof of age.

_____ **VA Service Connected Card** – Complete only the top portion of the application and attach a copy of your VA Service Connected Card.

_____ **Disabled** – My disability can be professionally verified. Please check the appropriate box below and complete the application in its entirety.

My application has been completed by:

- ☐ A licensed or certified health care professional
- ☐ A representative from Cumberland County Mental Health
- ☐ A representative from Vocational Rehabilitation
- ☐ Other _____

Last Revised: August 12, 2014 (KB)

APPLICATION FOR DISCOUNT ID

WHO IS ELIGIBLE? A passenger may be eligible for a discount identification card from Fayetteville Area System of Transit (FAST), if through illness, age, injury, or congenital malfunction, the passenger is unable to utilize mass transportation facilities and services as effectively as persons who are not so affected. Passengers who qualify for the discount identification are those who require special facilities (such as ramps, lifts, or a wheelchair securement system), services (such as audible bus stop announcements), or planning (such as needing an aide to accompany or needing audible crosswalk signals or curb cuts to get to a stop).

WHO IS NOT ELIGIBLE? Passengers with disabilities that do not make it substantially more difficult for them to use public transportation when compared to a passenger who does not have a disability are not eligible for the FAST Discount ID card. Examples of disabilities that are included in this category are contagious disease, pregnancy, obesity, and drug or alcohol addiction. Passengers whose disability is corrected with medication, glasses or hearing aids are also not eligible.

To apply for your card, bring this completed form to the FAST Transfer Center, 147 Old Wilmington Road or FAST Administrative Offices, 455 Grove Street, with two forms of identification, one with a picture. **It may take up to 90 days to process completed applications.**

Applicant's Name: _____

Address: _____

City: _____Zip Code: _____

Home Phone: _____Date of Birth: _____

I authorize the health care professional completing this application to release to the City of Fayetteville, Transit Department protected health information related to my disability in order to verify my eligibility for a discounted bus fare. My authorization expires 90 days following the date of signature, below. I understand that my authorization is voluntary and may be revoked at any time by notifying the identified health care professional in writing, that disclosures made pursuant to this authorization may no longer be subject to privacy protections, and that my health care and payment for my health care will not be affected if I refuse to sign this form. I may inspect or copy the protected health information described by this authorization.

Signature of Applicant: _____ Date: _____
(Under 18, Signature of parent or guardian)

TO BE COMPLETED BY A LICENSED OR CERTIFIED HEALTH CARE PROFESSIONAL:

What special facilities does this applicant require to use the bus?
□ bus lift or ramp □ curb-height entrance step □ audio announcements □ visual interior signage

Is an aide needed to assist the applicant when using public transit?

Is this disability permanent, long term (has potential for improvement) or temporary (circle one)?
If temporary, what is the expected duration of the disability? □ 3 months; □ 6 months; □ one year

Please review the Guidelines on the back of this form and list those that apply in the space at the end. Also, please provide specific diagnosis or ICD codes. **Your signature and the applicant's diagnosis are required on the back of this form.**

Last Revised: August 1, 2012

GUIDELINES FOR HEALTH CARE PROFESSIONALS

1. **NON-AMBULATORY**: An individual is unable to walk and requires the use of a wheelchair or other mobility device.
2. **SEMI-AMBULATORY**: An individual is unable to walk without the use of a caliper leg brace, walker or crutches.
3. **UNREMITTING MUSCULOSKELETAL CONDITIONS:** An individual experiences substantial difficulty walking and/or functional limitation of movement.
4. **AMPUTATION:** An individual has an amputation of hands, one arm, one hand and/or one foot, or one or both legs.
5. **STROKE:** An individual has substantial functional motor deficits in any of two extremities, loss of balance and/or cognitive impairments three months post stroke.
6. **PULMONARY OR CARDIAC CONDITIONS:** An individual has a pulmonary or cardiac condition resulting in marked limitation of physical functioning and dyspnea during such activities as climbing steps and/or walking a short distance (200 feet without stopping to rest).
7. **BLIND OR LOW VISION**: An individual whose visual acuity in the better eye, with correction, is 10/200 or less, or who has tunnel vision to 10 degrees or less from a point of fixation so the widest diameter subtends an angle no greater than 20 degrees.
8. **DEAF OR HARD OF HEARING**: (Requires audiologist or otolaryngologist certification) An individual whose hearing loss is 7 dba or greater in the 500, 1000, 2000 KHz ranges in both ears, regardless of the use of hearing aids.
9. **NEUROLOGICAL CONDITIONS OR AUTISM**: An individual has difficulty with coordination, communication, social interaction and/or perception from a brain, spinal or peripheral nerve injury or illness, has functional motor deficits, or suffers manifestations that significantly reduce mobility.
10. **INTRACTABLE EPILEPSY**: In individual has had at least one tonic-clonic seizure within the past six months, despite taking prescribed medication.
11. **DEVELOPMENTAL OR LEARNING DISABILITIES**: An individual has a significant learning, perceptual and/or cognitive disability with a specific diagnosis. Some conditions are excluded from eligibility such as attention deficit disorder (ADD) and dyslexia.
12. **MENTAL ILLNESS**: An individual whose mental illness is chronic, long-term and includes a substantial disorder of thought, perception, orientation, or memory that impairs judgment and behavior. A specific diagnosis is required.
13. **CHRONIC PROGRESSIVE DEBILITATING CONDITIONS**: An individual who experiences debilitating diseases, autoimmune deficiencies, or progressive and uncontrollable malignancies, any of which are characterized by fatigue, weakness, pain and/or changes in mental status that impair mobility.

Name and address of Health Care Professional:

Physician's Speciality: _____

Guideline Numbers(s): _____

Diagnosis or ICD Code(s): _____

Signature of Health Care Professional: _____ Date: _____

FAST Use Only: Card # ID Presented: Exp. Date:

Last Revised: August 1, 2012

Appendix F
Authorization to Release Information

FASTTRAC! Authorization to Release Information

Section I					
Name					
Street Address					
City		State		Zip Code	
Telephone (Home)		Client ID#			
Email Address					
Accessible Format Requirements (check all that apply)		Large Print	Audio Tape		TDD
		Other (please detail)			

Section II

Please complete the following:

I, _____ (print name), hereby authorize any employee or contract employee of FAST to release my FASTTRAC! reservation schedule, to include dates, times, pick-up and drop-off locations, to the following persons (please print):

_____ _____

_____ _____

_____ _____

_____ _____

I understand that this authorization will remain in effect until my current FASTTRAC! eligibility for service expires, or until I submit a new Authorization to Release Information form.

_____ _____

Customer Name (please print) Customer Signature

Effective Date: _____

Please submit this form in person, or mail to the address below:
FAST
Attn: Paratransit Operations Manager
455 Grove Street
Fayetteville, NC 28301

If you require assistance in completing this form, you may call us at (910) 433-1232 (Option 3) to request an appointment.

Appendix G
Temporary FASTTRAC! Eligibility Letter

FASTTRAC!

Transit Riders' A.D.A. Choice!

Applicant's Name:
ID #:
Expiration Date:
Status: Temporary / Pending Certification

Thank you for your interest in the FASTTRAC! service provided by Fayetteville Area System of Transit (FAST). We have received your application for eligibility and we are currently processing your request.

This letter is to notify you that you have been granted temporary access to our FASTTRAC! service. **THIS IS NOT AN APPROVAL LETTER**. Please follow the enclosed instructions to begin using our system. For your convenience, we have enclosed a temporary identification card with this packet.

We will contact you as soon as possible to schedule your in-person assessment and travel training class. If you have any questions, please contact us at 910-433-1ADA (1232). We look forward to serving your future transportation needs!

Respectfully,

FASTTRAC! Client Services

Enclosures:
1- Temporary ID Card
1- Reservation Instructions

Appendix H
FASTTRAC! Eligibility Letter

FASTTRAC!

Transit Riders' A.D.A. Choice!

Name:
Client ID#:
Recertification Date:
Personal Care Attendant: Yes No On Occasion

Congratulations! You have been certified to use **FASTTRAC!** Please see the enclosed guide for more information about our system.

You may make reservations up to seven (7) days in advance by calling (910) 433-1232 (1ADA) to speak with a dispatcher. Our reservation office hours are Monday thru Friday, 8:00 AM to 4:30 PM. Sunday calls for next day appointments are handled by a recording service. We do not accept reservations for same day service.

If you are unable to keep a scheduled trip, please call the dispatcher at least two (2) hours before your scheduled pick-up time. If a cancelation is not made at least 2 hours before your scheduled pick-up time, you will be considered a "no-show". Continued failure to make scheduled trips may result in suspension of your FASTTRAC! privileges.

Our program currently serves an area that is within ¾ mile of our fixed route bus service. If you live outside of this area, you may still qualify for our program; however, you will have to meet the FASTTRAC! vehicle at a location that is within the area covered.

A one-way trip is $2.00. You can purchase this on the FASTTRAC! vehicle using exact change. We also offer passes for multiple trips. You can purchase a pass at the following locations:

Location	Address	Hours	Payment Type Accepted
FAST Administrative Office	455 Grove Street	Monday-Friday 9:00 AM – 4:30 PM	Exact Change, Debit Card, Credit Card *
FAST Transfer Center	147 Old Wilmington Road	Monday – Saturday 6:00 AM – 10:00 PM	Cash (exact change not required)
Carlie C's Stores	Cedar Creek Road Reilly Road Eutaw Shopping Center Bordeaux Shopping Center	Monday – Sunday at the service desk	Cash, Debit Card, Credit Card

*You may also purchase a pass over the phone, using a credit card, by calling (910) 433-1747 and selecting option #4.

Appendix I
FASTTRAC! Eligibility Appeal Form

FASTTRAC! Eligibility Determination Appeal

Please complete this form if you would like to appeal our determination regarding your eligibility for FASTTRAC! service. Once completed, please return to the address listed below. Completed forms must be postmarked within 60 days of the date of your eligibility determination letter.

Section I

Name					
Street Address					
City		State		Zip Code	
Telephone (Home)		Telephone (Work)			
Email Address					
Accessible Format Requirements (check all that apply)		Large Print	Audio Tape		TDD
		Other (please detail)			

Section II

Are you filing this appeal on your own behalf? Yes* ☐ No ☐

* If you answered "yes" to this question, please proceed to Section III.

If not, please supply the name and relationship of the person for whom you are appealing:

Please explain why you have filed for a third party:

Please confirm that you have obtained the permission of the appealing party if you are filing on behalf of a third party: Yes ☐ No ☐

Section III

Please select on of the following:

I choose to submit additional information for the Appeal Committee to consider, but do not want to appeal in person. (If you choose this option, please send all additional information you would like the Appeal Committee to consider along with this form. Please consider the basis for the determination outlined in your eligibility determination letter when preparing the additional information. ☐

I choose to appeal in person. (If you choose this option, we will contact you to schedule a mutually agreeable day and time for the appeal hearing. You may bring additional information to the hearing and can attend with others who are able to provide information on your behalf.) ☐

Section IV

Have you previously filed an eligibility determination appeal with this agency? Yes ☐ No ☐

Please submit this form in person, or mail to the address below:
City of Fayetteville
Attn: FASTTRAC! Eligibility Appeals Committee
433 Hay Street
Fayetteville, NC 28301

If you require assistance in completing this form, you may call us at (910) 433-1232 (Option 3) to request an appointment.

Appendix J
Subscription Service Application

FASTTRAC!

Transit Riders' A.D.A. Choice!

Subscription Service Application

Subscription service is designed as a convenience for customers who travel from the same location to the same destination on the same day(s), at the same time, at least once per week. If an individual will meet these criteria for a minimum of two consecutive months, he/she may apply for a subscription reservation.

To apply for subscription service, please fill out the form below and mail to:

FASTTRAC! Subscription Services
455 Grove Street
Fayetteville, NC 28301

Please continue to schedule reservations thru the standard process until otherwise directed.

If you have additional questions please contact the Paratransit Operations Manager at 910-433-1232.

Customer Name _____

Customer ID# _____

Primary Phone # _____

Alternate Phone # _____

Pick-up address_____

Destination Address _____

Appointment time or desired pick-up time _____ AM/PM

Days of the week you are requesting service: (circle all that apply)

Monday Tuesday Wednesday Thursday Friday Saturday

Appendix K
FAST Holidays

New Year's Day	**No Service**
MLK, Jr. Day	Regular Service
Good Friday	Regular Service
Memorial Day	**FAST will operate on a Saturday schedule**
Independence Day (4th of July)	**No Service**
Labor Day	**FAST will operate on a Saturday schedule**
Veteran's Day	Regular Service
Thanksgiving	**No Service**
Day after Thanksgiving	Regular Service
Christmas Eve	**Regular service concludes at 7:30 PM**
Christmas Day	**No Service**
Day after Christmas	Regular Service
New Year's Eve	Regular Service

Appendix L
Notification of Service Suspension Letter

FASTTRAC!

Transit Riders' A.D.A. Choice!

Date:

To:

RE: FASTTRAC! Suspension of Service/Fine Notification Letter

Dear _____,

This letter serves as notification of temporary suspension of service or fine as a result of excessive no-shows/late cancelation violations.

Dates and description of incidents: _____

_____

_____ 1st Incident	Initial Warning Letter
_____ 2nd Incident	Final Warning Letter
_____ 3rd Incident	7 Day Suspension from Service or $10 penalty
_____ 4th Incident	14 Day Suspension from Service or $15 penalty
_____ 5th Incident	30 Day Suspension from Service or $20 penalty
_____ 5+ Incidents	30 Day Suspension from Service or $25 penalty

This is your _____ incident and you have elected a _____.

If you have elected a service suspension in lieu of a fine, the service suspension will begin 14 calendar days from the date of this letter. Your account will be re-instated on _____.

If you have any questions about this suspension please call 910-433-1232 (1ADA). If you wish to appeal the determination to suspend service you must complete the FASTTRAC! Suspension of Service Appeal form (attached) and submit to the Paratransit Operations Manager prior to the date suspension is to begin.

The appeal shall be submitted to:

FASTTRAC!
Attn: Paratransit Operations Manager
455 Grove Street
Fayetteville, NC 28301

Sincerely,

FASTTRAC! Client Services

Appendix M
FASTTRAC! Suspension of Service Appeal Form

FASTTRAC! Suspension of Service Appeal

Section I					
Name					
Street Address					
City		State		Zip Code	
Telephone (Home)		Client ID#			
Email Address					
Accessible Format Requirements (check all that apply)		Large Print	Audio Tape		TDD
		Other (please detail)			

Section II			
Are you filing this appeal on your own behalf?	Yes*		No
* If you answered "yes" to this question, please proceed to Section III.			
If not, please supply the name and relationship of the person for whom you are appealing:			
Please explain why you have filed for a third party:			
Please confirm that you have obtained the permission of the appealing party if you are filing on behalf of a third party:	Yes		No

Section III
Please describe your appeal. You should include specific details such as reservation dates and times, reasons for the missed trips (either no shows or late cancelations), and any other information that would assist us in the investigation of your appeal. Please also provide any other documentation that is relevant to this appeal. You may attach additional sheets as necessary.

Section IV			
Have you previously filed a suspension of service appeal with this agency?	Yes		No

Please submit this form in person, or mail to the address below:
FASTTRAC!
Attn: Paratransit Operations Manager
455 Grove Street
Fayetteville, NC 28301

If you require assistance in completing this form, you may call us at (910) 433-1232 (Option 3) to request an appointment.

Appendix N
FASTTRAC! Orientation Manual

FASTTRAC!

Transit Rider's A.D.A Choice!

Paratransit Services as Provided by the Americans with Disabilities Act of 1990

www.ridefast.net

FASTTRAC!

910-433-1232 (1ADA)

455 Grove Street

Fayetteville, NC 28301

FAST (Fixed Route) Information Center

910-433-1747

147 Old Wilmington Road

Fayetteville, NC 28301

HOURS OF OPERATION

Monday-Friday	5:30AM-10:30PM
Saturday	7:30AM-10:30PM
Sunday	CLOSED
New Year's Day	CLOSED
4th of July	CLOSED
Thanksgiving Day	CLOSED
Christmas Day	CLOSED

FAST administrative offices are closed on all federal holidays.

WHAT IS ADA PARATRANSIT SERVICE?

The Americans with Disabilities Act (ADA) is a federal civil rights law for people with disabilities. ADA paratransit services are designed to help customers who cannot use the fixed route system due to a disability. As part of the ADA of 1990, the United States Department of Transportation requires that public transit systems provide paratransit services that are complementary to our fixed route service.

Complementary paratransit service is an extension of the fixed route service and is considered origin to destination service. We service all areas within the City of Fayetteville, as long as they are within ¾ mile from a city bus route or within the "glove" of service. Service for the FASTTRAC! is equal to the hours,

days, and locations serviced by our fixed routes.

FASTTRAC! does not prioritize trips. We are not medical transportation, a taxi service, or stretcher service. FASTTRAC! does not operate as an ambulance service.

QUALIFYING FOR FASTTRAC!

All FAST vehicles are mobility device accessible. This means that not all persons with a disability may qualify for the FASTTRAC! Eligibility for FASTTRAC! is determined by your physician's verification of your limited accessibility to our fixed route. There are two categories of disabilities that may qualify you for the FASTTRAC! The

two categories of disabilities are physical and mental impairment.

1. **Physical Impairment**: Physiological disorder; a specific physical impairment to your mobility which makes accessibility to the fixed route a hardship.

2. **Mental Impairment**: Psychological disorder; such as mental retardation, autism, and dementia; cannot navigate independently.

Eligibility

Eligibility determinations will be made based on the information obtained during the in-person assessment and will be supported with the professional verification form filled out by your licensed healthcare professional. You will receive an eligibility decision within

21 days of receipt of both parts of the eligibility application. Temporary service privileges will remain until an eligibility decision is made. Upon approval you will be issued a welcome letter and photo ID card. If you require a replacement ID card, you must pay $2.00 for the 1st replacement, $3.00 for the 2nd replacement, and $5.00 for any additional replacements thereafter.

Recertification

You will be required to recertify your account every 36 months or sooner if you have conditional approval. You are responsible for keeping track of your expiration date. It will be printed on the front of your photo ID.

FASTTRAC!

Transit Rider's A.D.A Choice!

The phone number for FASTTRAC! Is

(910) 433-1232 (*1ADA*)

This number will place you in a queue and you should never receive a "busy" signal when calling. If you get a "busy" signal, you may have dialed the wrong phone number.

Calls are answered in the order they are received. Please do not hang up or you will lose your place in the queue.

Please listen closely to the recording and have your ID card number ready. You will need this number in order to schedule a trip.

(Calls may be recorded for quality control or training)

Listen to the recording then press:

1	English
2	Spanish

1	Dispatch	• Will-Call Pick-Up • Vehicle Status • Cancel Same Day Trip
2	Reservations	• Schedule a Trip • Cancel a Future Trip • Check Address for Service Area • Update Customer Info
3	Administration	• Customer Concerns • Compliments • Purchase Bus Passes
4	ADA Supervisor	ADA Eligibility Questions

FARE INFORMATION

One-Way Service is $2.00. Operators and fare boxes do not give change. Please pay as you board.

10-Ride Pass- $17.50

20-Ride Pass- $35.00

There is no expiration date for FASTTRAC! passes.

Passes are non-refundable and cannot be exchanged. All sales are final.

You can purchase passes at the following locations using the specified form of payment:

FAST Information Center

147 Old Wilmington Rd

M-F (5AM-10PM) / Cash Only

Saturday (7AM-10PM) / Cash Only

FAST Main Office - 455 Grove St

M-F (8:30AM-4:30PM)

Exact Change/Credit or Debit Card

IGA Carlie C's

Cedar Creek Rd – Bordeaux

Reilly Rd - Eutaw Shopping Center

Monday-Sunday (During store hours)
Cash/Credit

There is no fee charged for regular mail delivery, which can take up to 10 days. We offer expedited delivery of passes via our “Priority Mail” option at an additional cost of $5.75. This option provides delivery in 1 to 3 business days and includes a tracking number.

Please plan accordingly. You will need to have cash to pay for your trips until your pass has arrived.

HOW TO SCHEDULE A TRIP

You may book an appointment by calling 910-433-1232. Select your preferred language option from the first menu, and select “Option 2” from the operations menu. Booking hours are between 8:00 AM and 4:30 PM. We do not accept requests for same day service.

Please limit your conversation to the information needed to successfully negotiate your trip. All calls should last no longer then 1 ½ minutes. All customers are to provide the exact street address of their pick-up and drop-off locations. (For example: 1550 Skibo Rd; not the Wal-Mart on Skibo).

Guessing an address is not recommended.

If you do not have the exact street address the dispatcher will inform you that you need to call back when you have the correct information. Remember, it could be you on the other line trying to get through.

Trip Negotiation: It is sometimes difficult to lock in a specific pick-up time due to availability. The dispatcher may then initiate the negotiation process. We can offer up to two hours before your appointment.

Refusal: A refusal of your pick-up occurs when the dispatcher offers you a pick-up/drop-off within the negotiation limits and you REFUSE it.

Denial: A denial is recorded when the dispatcher has nothing to offer you within the negotiation limits.

HELPFUL HINTS

PEAK CALL TIMES are from 5:30 AM - 9:00 AM and again from 2:00 PM - 5:30 PM.

The first week of each month fills up quickly…do not wait too long to book for the first of the month!

Please have the following items ready **before** you call to book your appointment:

1. Customer Name
2. FASTTRAC! ID Number
3. Date of trip—NO SAME DAY SERVICE!
4. Appointment time, desired pick-up time, or will-call
5. Exact street address of pick-up and drop-off locations (ex. 123 Main Street, “Wal-Mart on Skibo Road” is not acceptable)
6. Return trip information
7. What you will you take on your trip (mobility aide, lift, cart, PCA, COM)?
8. Phone number where you can be reached.

NOTE – When you call on Sunday to make a reservation, you will be required to leave a message. Any messages received after 4:30 PM will not be processed. Be sure to leave all of the information listed in the previous section. Failure to leave return trip info will result in not being scheduled for a return trip. If you have not received a call back by 6:00 PM that day, your reservation is not confirmed and you will need to call back during normal booking hours. Detailed pick-up information will not be left on a voicemail or communicated to anyone other than the customer. If you are not available when the FASTTRAC! representative calls with your next-day confirmation, you will be required to call during normal business hours to get your pick-up window.

BOOKING GUIDELINES

1. Please be sure to have address information readily available. You will be booked to the address YOU provide. If the address is incorrect, you will have the choice of getting off the vehicle at the address that you provided, or you may choose to return home and re-book your trip for another day. You will be required to pay for your trip home and you will be dropped-off as the operator's schedule allows.

2. Please advise the dispatcher if you will require additional assistance from your door to the vehicle, or if you will need to use the ambulatory lift of the vehicle. Operators are not allowed to enter a customer's home and may not lose sight of their vehicle.

3. Please ensure that you give the dispatcher specific pick-up instructions. For locations with multiple access points, you will be required to provide a building number or entrance. For example, when booking a trip to FTCC, you would say, “2201 Hull Rd. Continuing Ed Bldg.”

4. Please be prepared to tell the dispatcher if you will travel with a personal care attendant (PCA). A PCA is anyone that assists in the performance of at least one major life function such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and work. You must reserve a seat for your PCA at the time of your booking. You will NOT be able to add

your PCA to your trip on the day of travel. PCA's will travel free of charge.

5. A companion may travel with you. You must reserve a seat for your companion at the time of your booking. You will NOT be able to add your companion to your trip on the day of travel. Companions will pay $2.00 per one-way trip.

6. Please notify the dispatcher, during the booking process, if you will have a shopping cart on your trip. Limit your packages to what you can safely carry. Packages should not spill over into other seats. There is no charge for taking a cart; however, if you choose not to take a cart and your bags spill over into additional seats, you will be required to pay for the extra seat as it is required on

the fixed route. If you do not tell the dispatcher that you will have a cart (or additional bags) at the time you book the trip, you may have to wait for another bus to come back for you as time and demand allows.

7. Please provide your own child seat if you will need it. FAST does not supply any type of safety seats. You are responsible for the securement of the child seat and for the child throughout the ride.

8. A minimum of one hour is required between trips. Operators will not wait for you to “run in” for quick errands.

9. Please make a note of the 30-minute pick-up window provided by the

dispatcher to assist you in remembering the times to be ready for your trips.

REASONABLE MODIFICATION

“Reasonable” means fair and sensible, not extreme or excessive, possessing sound judgment. “Modification” means the act or process of changing parts of something.

We are required to make **reasonable modifications**, to make fair and sensible changes using sound judgment to our policies, practices and procedures; to avoid discrimination and ensure that our system is accessible to individuals with disabilities.

If you are requesting a Reasonable Modification, you must be able to

describe what you NEED to use the service. Please complete the Reasonable Modification Request Form and return to our office. Forms are available on our website, or by calling (910) 433-1232 and choosing option #4.

The entire reasonable modification policy can be found at http://www.gpo.gov/fdsys/pkg/FR-2015-03-13/pdf/2015-05646.pdf

Examples of a reasonable modification:

It is reasonable for a bus operator to pull-up ahead/after a designated stop if there is an illegally parked car in the way. However, it is not reasonable to ask the bus operator to take you to another location because you gave the incorrect address during your booking.

It is reasonable to allow a person with a medical condition, such as diabetes, to eat something (such as a hard candy or a chocolate bar) to avoid adverse health conditions. However, it is not reasonable to consume a meal while on the bus because you didn't have time to eat your meal before the bus arrived.

WHAT TO EXPECT THE DAY OF YOUR TRIP

1. You can expect to receive courteous and respectful assistance from the operators during the use of lifts, ramps, securement devices, mobility aids and lap/shoulder belts.

2. Please ensure that you understand the provider's pick-up window so that you are ready to board the vehicle when it arrives. Passengers will be advised to expect our operator within a 30-minute **pick-up window**. That is, our operators may arrive up to 15 minutes before and 15 minutes after your scheduled pick-up time. Upon arrival, the operator will signal with the horn to notify you of arrival. You must present yourself for boarding within five minutes of our arrival or the operator will leave and not return. You will then be entered as a **No-Show**.

Definitions

A **pick-up window** is 15 minutes before and 15 minutes after your scheduled

reservation time, unless otherwise noted by the dispatcher.

Vehicle wait time starts when the vehicle arrives (within the 30-minute pick up window) and lasts for 5 minutes. This time is not factored into the operator's route and is a courtesy we extend to our customers.

Late cancelations are logged when a customer calls to cancel a scheduled ride after 4:30 PM the day before the trip is scheduled to take place. If a customer cancels a trip less than 2 hours before the scheduled pick-up time, this will be considered a no-show.

A **No-Show** is logged when an operator arrives at a pick-up address and the customer does NOT present himself/herself for boarding. Your

account may be suspended based on a pattern/practice of abuse of the system.

---

3. Please ensure you are able to see the vehicle pull-up to your pick-up address. You are not expected to stand outside.

4. Please ensure the address of your residence is clearly visible from the street.

5. Please ensure the pick-up area at your residence is safe and easy to access. We do not enter driveways or park under canopies without prior approval from the FAST Safety Coordinator.

6. Be prepared for the operator to make stops ahead of yours. This is a shared-ride service.

7. All passengers will wear seatbelts and all mobility devices will be properly secured.

8. Personal hygiene must meet acceptable standards for the comfort and welfare of all passengers and operators.

9. You are expected to follow the Riders Rules of Conduct. (Page 34)

10. Please do not distract the operator during the ride and refrain from engaging others in unsolicited conversation.

11. At all times, treat the operator and fellow passengers with respect. Seriously disruptive behavior may result in a loss of your transportation service.

SERVING CUSTOMERS WHO USE SERVICE ANIMALS

While some service animals wear special collars or harnesses, others do not. Operators cannot require seeing identification for a service animal. If you are riding with a passenger that has a service animal, never touch or talk to the animal without asking the owner's permission.

The Department of Justice (DOJ) now states that the service animal must be:

“Individually trained to do work or perform tasks for the benefit of an individual with a disability; including a physical, sensory, psychiatric, intellectual, or other mental disability.”

Animals that simply provide emotional support, well-being, comfort, or companionship are not considered service animals under the regulations.

Example of work or tasks as defined in the new regulations includes:

- Assisting individuals who are blind or have low vision with navigation and other tasks.
- Alerting individuals who are deaf or hard of hearing to the presence of people or sounds.
- Providing non-violent protection or rescue work.
- Pulling a wheelchair.

- Assisting an individual during a seizure.
- Alerting individuals to the presence of allergens.
- Retrieving items such as medicine or the telephone.
- Providing physical support and assistance with balance and stability to individuals with mobility disabilities.
- Helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

SERVING CUSTOMERS USING LIFE SUPPORT EQUIPMENT

We transport riders who use portable medical equipment such as oxygen.

- Operators are not trained to administer oxygen or operate any other means of life support equipment.
- You may be on board for a maximum time of 90 minutes, so please ensure you have sufficient oxygen for the duration of your trip. You will not be given priority drop-off due to your failure to plan for your trip accordingly.

Frequently Requested Addresses

Common Destinations	Street Address
Blue Street Senior Center	739 Blue Street
Cape Fear Valley Hospital	1638 Owen Drive
Cross Creek Mall	419 Cross Creek Mall
Eutaw Shopping Center	823 Elm Street
FKC-Avon	1315 Avon Street
FKC-North	130 North Longview
FKC-South	526 Ramsey Street
FKC-West	6959 Nexus Court
FTCC	2201 Hull Road
Gilmore Center	1600 Purdue Drive
HealthPlex	1930 Skibo Road
High Smith Rainey Hospital	150 Robeson Street
Information Center	147 Old Wilmington Road
Kmart	1931 Skibo Road

Market Fair Mall	1912 Skibo Road
Medical Arts Building	101 Robeson Street
Methodist College	5400 Ramsey Street
Southeast Rehab	1638 Owen Drive
Tallywood Shopping Center	3100 Raeford Road
VA Hospital	2300 Ramsey Street
Walmart Raeford Road	7701 S. Raeford Road
Walmart Ramsey Street	4601 Ramsey Street
Walmart Skibo Road	1550 Skibo Road
Westwood Shopping Center	400 Westwood Shopping Center
Library Cliffdale Road	6882 Cliffdale Rd
Main Library Downtown	300 Maiden Lane
Library Bordeaux Center	3711 Village Dr.

Rider's Rules of Conduct and Security

For Your Safety & Security:

NO Fighting, instigating fights or threatening acts of violence against FAST employees and/or passengers.

NO Possession, distribution, and/or being under the influence of narcotics, illegal drugs, and/or drug paraphernalia.

NO Weapons (pistols, rifles, knives or swords) or other objects which are dangerous in nature.

NO EATING or DRINKING, unless medically necessary (ONLY water-in a clear container with a screw-top lid will be permitted).

NO SMOKING, CHEWING TOBACCO, or carrying lighted tobacco (including electronic cigarettes) onto FAST vehicles or on City of Fayetteville property.

NO Indecent, profane, boisterous, unreasonably loud, demeaning, or disrespectful behavior.

NO Physical or sexual contact with FAST employees or passengers.

NO Playing of audio devices without the use of personal earphones/headsets.

NO Standing in front of the Standee Line (yellow or white line on the floor of the vehicle near operator's seat).

NO Animals allowed on vehicles or inside facilities-except for authorized service animals.

NO Large articles, packages, baggage, non-collapsible strollers or baby buggies which block vehicle aisles/walkways.

NO LOITERING, Soliciting for contributions, distributing of any materials on FAST properties.

NO Children under 5 years of age unless closely accompanied by an older responsible guardian.

NO Roller-skating, roller-blading, skateboarding or sitting on hand-rails at transfer points or inside FAST

NO Hanging out, reaching out, or putting anything out of FAST vehicle windows.

NO Refusal to pay a fare or refusal to show appropriate fare media/I.D. to a FAST representative, when requested.

NO Misuse of fare media, including counterfeit or stolen fare media.

NO Obstructing or interfering with the safe operation of FAST vehicles.

NO Motorized bikes, gasoline/fuel combustion-type vehicles, or oversized wheelchairs which exceeded guidelines.

NO Drunken behavior which may endanger FAST employees and/or passengers.

NO Boarding vehicles and/or entering facilities without proper clothing (must wear shoes & shirt at all times)

NO Stealing or willfully damaging, defacing or destroying City property.

NO Indecent exposure

VIOLATIONS OF THESE RULES MAY RESULT IN PERSON(S) BEING EXCLUDED FROM USE OF FAST SERVICES PERMANENTLY AND MAY INCLUDE CRIMINAL CHARGES & ARREST BY LOCAL, STATE, AND/OR FEDERAL LAW ENFORCEMENT AUTHORITIES.

Copies of the entire policy, including exclusion & appeal procedures, are available at:

FAST Administrative Offices
455 Grove Street
Fayetteville, NC 28301

or

FAST Information Center
147 Old Wilmington Road
Fayetteville, NC 28301

Cumberland County Coordinating Council on Older Adults, Inc.

339 Devers Street
Fayetteville, North Carolina 28303

Senior Information Line: **910-321-2888**

Do you need help making your home more accessible?

Call the senior information line, for more information.

RURAL RESIDENTS….DO YOU NEED A RIDE?

The Community Transportation Program offers transportation to rural residents of Cumberland County.

910-678-7675

5:00 AM - 8:00 PM Monday thru Friday
** Prior to receiving transportation, the customer must be confirmed as an eligible rural resident and that the trip requested is an allowable expense using grant funds. **

The Community Transportation Program also offers transportation to medical appointments for residents of Cumberland County who are 60+ years of age or disabled.

910-678-7619

DSS Medical Transportation

If you are not eligible for FASTTRAC! service, you may be eligible for transportation assistance from the Department of Social Services.

910-677-2526 or 910-677-2533

Ask for information on adult transportation.

Weekly Trash Collection

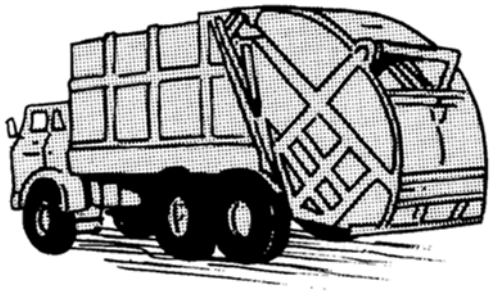
Anyone who is unable, because of a physical disability, to roll the household waste container to the curb may receive (upon approval of the Environmental Services Director or designee) backdoor service at no cost. This service is provided as long as there is no one else living in the home that can push the cart curbside.

Additional documentation (including but not limited to a doctor's certificate) may be required for approval. This service covers household waste only and is limited to one container per week. Yard waste which is generated should be placed at the curb for normal weekly curbside collection.

For further information contact:

City of Fayetteville Call Center

910-433-1FAY (1329)



PASSENGER SAFETY LAW

Effective June 1, 2007

§ 20-137.1. Child restraint systems required.

(a) Every operator who is transporting one or more passengers of less than 16 years of age shall have all such passengers properly secured in a child passenger restraint system or seat belt which meets federal standards applicable at the time of its manufacture.

(a1) A child less than eight years of age and less than 80 pounds in weight shall be properly secured in a weight-appropriate child passenger restraint system. In vehicles equipped with an active passenger-side front air bag, if the vehicle has a rear seat, a child less than five years of age and less than 40

pounds in weight shall be properly secured in a rear seat, unless the child restraint system is designed for use with air bags. If no seating position equipped with a lap and shoulder belt to properly secure the weight-appropriate child passenger restraint system is available, a child less than eight years of age and between 40 and 80 pounds may be restrained by a properly fitted lap belt only.

(b) The provisions of this section shall not apply: (i) to ambulances or other emergency vehicles; (ii) if all seating positions equipped with child passenger restraint systems or seat belts are occupied; or (iii) to vehicles which are not required by federal law or regulation to be equipped with seat belts.

(c) Any operator found responsible for a violation of this section may be punished by a penalty not to exceed twenty-five dollars ($25.00), even when more than one child less than 16 years of age was not properly secured in a restraint system. No operator charged under this section for failure to have a child under eight years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system for a vehicle in which the child is normally transported.

(d) A violation of this section shall have all of the following consequences:

(1) Two drivers' license points shall be assessed pursuant to G.S. 20-16.

(2) No insurance points shall be assessed.

(3) The violation shall not constitute negligence per se or contributory negligence per se.

(4) The violation shall not be evidence of negligence or contributory negligence.

FAYETTEVILLE AREA SYSTEM OF TRANSIT
455 GROVE STREET
FAYETTEVILLE, NORTH CAROLINA 28301

Transit Department Supplemental Administrative Policies/Procedures Manual

Subject: Safety – Seat Belt Use and Wheelchair Securement

Section: 3.03 Safety

Effective Date: November 17, 2009

Directive:

To establish guidelines and procedures, in order to facilitate full compliance with all Federal, State, and Local laws and to ensure the safety of our customers and our employees.

Procedure:

While operating FAST owned/operated vehicles, FAST employees shall be responsible for the proper use of all safety-seat belt and wheelchair securement systems/devices and in accordance with the following vehicle operation guidelines:

I. While operating the following FAST owned/operated vehicle types:

1) Passenger car/truck/SUV
2) FASTTRAC! / ADA Paratransit Van/Cut-A-Way Van/LTV

ALL vehicle occupants must have his/her safety-seat belt fastened **BEFORE** vehicle movement/operation is permitted.

ALL wheelchairs and mobility devices must be properly secured, using the four (4) point tie-down system, **BEFORE** vehicle movement/operation is permitted.

ALL vehicle occupants, wheelchairs, and mobility devices **must remain secured and restrained** during all vehicle movement/operation.

In addition, children under the age of four (4) and/or under forty (40) pounds must be properly secured in accordance with the manufacturer's instructions in a child restraint system that meets federal motor carrier vehicle safety standards. The provision for and securement of child safety seats and/or equipment shall be the responsibility of the child(s) guardian, parent or companion.

CHECK ON LEARNING

1. How many days in advance can you make a reservation?

    a. 7 days

    b. 10 business days

    c. 14 calendar days

    d. 1 day per phone call

2. Can you schedule a same day appointment?

    a. Yes

    b. No

3. What is the cut-off time for making appointments for the next day?

a. 4:30 p.m.

b. 5:00 p.m.

c. 6:00 p.m.

d. No cut-off time

4. Does FAST provide child seats or other mobility aids?

a. Yes

b. No

5. Can you call to schedule an appointment if you do NOT have the correct address?

a. Yes, the reservationist is familiar with most common addresses

b. No, it is the customer's responsibility to provide accurate pick-up and drop-off information

6. Is it possible that you will have to ride to other pick-ups before you are dropped off at your destination?

a. Yes, this is a shared ride service

b. No, this is a personal car service

7. When should you advise FAST of phone number, address, and other changes to your customer record?

a. When you get around to it

b. As soon as the information changes

c. Only when you need to book an appointment

d. When you are waiting for your van to arrive (Tip: It will never arrive because the van will go to your old address)

Appendix O
FAST Complaint Form

Complaint Form

Section I					
Name					
Street Address					
City		State		Zip Code	
Telephone (Home)		Telephone (Work)			
Email Address					

Section II

Are you filing this complaint on your own behalf? Yes* ☐ No ☐

* If you answered "yes" to this question, please proceed to Section III.

If not, please supply the name and relationship of the person for whom you are complaining:

Please explain why you have filed for a third party:

Please confirm that you have obtained the permission of the aggrieved party if you are filing on behalf of a third party: Yes ☐ No ☐

Section III

Please describe your complaint. You should include specific details such as names, dates, times, route numbers, witnesses, and any other information that would assist us in our investigation of your allegations. Please also provide any other documentation that is relevant to this complaint. You may attach additional sheets as necessary.

Section IV

Have you filed this complaint with any other Federal, State or Local Agency? Please check all that apply.

- ☐ Department of Transportation
- ☐ Federal Transit Administration
- ☐ U.S. Department of Justice
- ☐ Equal Employment Opportunity Commission
- ☐ Other (please provide Agency Names)

If you have filed this complaint with any other agency, please complete the following:

Agency Name	Contact Person	Phone Number	Email Address

Please submit this form in person, or mail to the address below:
Fayetteville Area System of Transit (FAST), Attn: FAST Complaints, 455 Grove Street, Fayetteville, NC 28301

Appendix P
Reasonable Modification Request Form

Reasonable Modification Request Form

Section I					
Name					
Street Address					
City		State		Zip Code	
Telephone (Home)		Telephone (Work)			
Email Address					

Section II				
Are you making this request on your own behalf?	Yes*		No	
* If you answered "yes" to this question, please proceed to Section III.				
If not, please supply the name and relationship of the person for whom you are making the request:				
Please explain why you have filed for a third party:				
Please confirm that you have obtained the permission of the other party if you are filing on behalf of a third party:	Yes		No	

Section III
What modification/accomodation are you requesting? Please be specific.

Please submit this form in person, or mail to the address below:
Fayetteville Area System of Transit (FAST), Attn: Reasonable Modification Requests, 455 Grove Street, Fayetteville, NC 28301

Appendix Q
Americans with Disabilities Act of 1990 (ADA)

AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED

Following is the current text of the Americans with Disabilities Act of 1990 (ADA), including changes made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009. The ADA was originally enacted in public law format and later rearranged and published in the United States Code. The United States Code is divided into titles and chapters that classify laws according to their subject matter. Titles I, II, III, and V of the original law are codified in Title 42, chapter 126, of the United States Code beginning at section 12101. Title IV of the original law is codified in Title 47, chapter 5, of the United States Code. Since this codification resulted in changes in the numbering system, the Table of Contents provides the section numbers of the ADA as originally enacted in brackets after the codified section numbers and headings.

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

Sec. 12101. Findings and purpose

(a) Findings. The Congress finds that

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose. It is the purpose of this chapter

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Sec. 12101 note: Findings and Purposes of ADA Amendments Act of 2008, Pub. L. 110-325, § 2, Sept. 25, 2008, 122 Stat. 3553, provided that:

(a) Findings. Congress finds that

(1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and provide broad coverage;

(2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

(3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled;

(4) the holdings of the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;

(5) the holding of the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;

(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;

(7) in particular, the Supreme Court, in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), interpreted the term "substantially limits" to require a greater degree of limitation than was intended by Congress; and

(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term "substantially limits" as "significantly restricted" are inconsistent with congressional intent, by expressing too high a standard.

(b) Purposes. The purposes of this Act are

(1) to carry out the ADA's objectives of providing "a clear and comprehensive national mandate for the elimination of discrimination" and "clear, strong, consistent, enforceable standards addressing discrimination" by reinstating a broad scope of protection to be available under the ADA;

(2) to reject the requirement enunciated by the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) to reject the Supreme Court's reasoning in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in School Board of Nassau County v. Arline, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

(4) to reject the standards enunciated by the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), that the terms "substantially" and "major" in the definition of disability under the ADA "need to be interpreted strictly to create a demanding standard for qualifying as disabled," and that to be substantially limited in performing a major life activity under the ADA "an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives";

(5) to convey congressional intent that the standard created by the Supreme Court in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) for "substantially limits", and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis; and

(6) to express Congress' expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term "substantially limits" as "significantly restricted" to be consistent with this Act, including the amendments made by this Act.

Sec. 12102. Definition of disability

As used in this chapter:

(1) Disability. The term "disability" means, with respect to an individual

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major Life Activities

(A) In general. For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions. For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment. For purposes of paragraph (1)(C):

(A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability. The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E) (i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph

(I) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

Sec. 12103. Additional definitions. As used in this chapter

(1) Auxiliary aids and services. The term “auxiliary aids and services” includes

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) State. The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SUBCHAPTER I - EMPLOYMENT

Sec. 12111. Definitions

As used in this subchapter:

(1) Commission. The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.

(2) Covered entity. The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee. The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer

(A) In general. The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions. The term "employer" does not include

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs

(A) In general. The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs. The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc. The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual. The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation. The term "reasonable accommodation" may include

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified

readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general. The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

Sec. 12112. Discrimination

(a) General rule. No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction. As used in subsection (a) of this section, the term “discriminate against a qualified individual on the basis of disability” includes

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration

(A) that have the effect of discrimination on the basis of disability;

(B) that perpetuates the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a

relationship or association;

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general. It shall not be unlawful under this section for a covered entity to take any action that constitute discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption. If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception. This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination. For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general. The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry. Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry. A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination. A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries. A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement. Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

Sec. 12113. Defenses

(a) In general. It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards. The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Qualification standards and tests related to uncorrected vision. Notwithstanding section 12102(4)(E)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

(d) Religious entities

(1) In general. This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement. Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(e) List of infectious and communicable diseases

(1) In general. The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Such list shall be updated annually.

(2) Applications. In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction. Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services.

Sec. 12114. Illegal use of drugs and alcohol

(a) Qualified individual with a disability. For purposes of this subchapter, a qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction. Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of covered entity. A covered entity

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing

(1) In general. For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction. Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees. Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c) of this section.

Sec. 12115. Posting notices

Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e-10 of this title.

Sec. 12116. Regulations

Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5.

Sec. 12117. Enforcement

(a) Powers, remedies, and procedures. The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination. The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

SUBCHAPTER II - PUBLIC SERVICES

Part A - Prohibition Against Discrimination and Other Generally Applicable Provisions

Sec. 12131. Definitions

As used in this subchapter:

(1) Public entity. The term "public entity" means

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of title 49).

(2) Qualified individual with a disability. The term "qualified individual with a disability" means an individual who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Sec. 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Sec. 12133. Enforcement

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

Sec. 12134. Regulations

(a) In general. Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

(b) Relationship to other regulations. Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

(c) Standards. Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers

Compliance Board in accordance with section 12204(a) of this title.

Part B - Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

Subpart I - Public Transportation Other than by Aircraft or Certain Rail Operations

Sec. 12141. Definitions

As used in this subpart:

(1) Demand responsive system. The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

(2) Designated public transportation. The term "designated public transportation" means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 12161 of this title)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) Fixed route system. The term "fixed route system" means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) Operates. The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) Public school transportation. The term "public school transportation" means transportation by school bus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) Secretary. The term "Secretary" means the Secretary of Transportation.

Sec. 12142. Public entities operating fixed route systems

(a) Purchase and lease of new vehicles. It shall be considered discrimination for purposes of section which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following July 26, 1990, and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) Purchase and lease of used vehicles. Subject to subsection (c)(1) of this section, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease, after the 30th day following July 26, 1990, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Remanufactured vehicles

(1) General rule. Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following July 26, 1990; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended; unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Exception for historic vehicles

(A) General rule. 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 to be 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 only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

(B) Vehicles of historic character defined by regulations. For purposes of this paragraph and section 12148(a) of this title, a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

Sec. 12143. Paratransit as a complement to fixed route service

(a) General rule. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs that are sufficient to provide to such individuals a level of service

(1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or

(2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) Issuance of regulations. Not later than 1 year after July 26, 1990, the Secretary shall issue final regulations to carry out this section.

(c) Required contents of regulations

(1) Eligible recipients of service. The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section

(A) (i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (a), accompanying the individual with a disability provided that space for these additional individuals are available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) Service area. The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) Service criteria. Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) Undue financial burden limitation. The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) Additional services. The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) Public participation. The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) Plans. The regulations issued under this section shall require that each public entity which operates a fixed route system

(A) within 18 months after July 26, 1990, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation

services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) Provision of services by others. The regulations issued under this section shall

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) Other provisions. The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) Review of plan

(1) General rule. The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) Disapproval. If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) Modification of disapproved plan. Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) "Discrimination" defined. As used in subsection (a) of this section, the term "discrimination" includes

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7) of this section;

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d) (3) of this section;

(3) submission to the Secretary of a modified plan under subsection (d)(3) of this section which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) Statutory construction. Nothing in this section shall be construed as preventing a public entity

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

Sec. 12144. Public entity operating a demand responsive system

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following July 26, 1990, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

Sec. 12145. Temporary relief where lifts are unavailable

(a) Granting. With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 12142(a) or 12144 of this title to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) Duration and notice to Congress. Any relief granted under subsection (a) of this section shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) Fraudulent application. If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) of this section was fraudulently applied for, the Secretary shall

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

Sec. 12146. New facilities

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Sec. 12147. Alterations of existing facilities

(a) General rule. With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, 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. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations 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 such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Special rule for stations

(1) General rule. For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Rapid rail and light rail key stations

(A) Accessibility. Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation] in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on July 26, 1990.

(B) Extension for extraordinarily expensive structural changes. The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following July 26, 1990, at least 2/3 of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) Plans and milestones. The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

Sec. 12148. Public transportation programs and activities in existing facilities and one car per train rule

(a) Public transportation programs and activities in existing facilities

(1) In general. With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 12132 of

this title and section 794 of title 29, for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) Exception. Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 12147(a) of this title (relating to alterations) or section 12147(a) of this title (relating to key stations).

(3) Utilization. Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) One car per train rule

(1) General rule. Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) Historic trains. In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 12142(c)(1) of this title and which do not significantly alter the historic character of such vehicle.

Sec. 12149. Regulations

(a) In general. Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart (other than section 12143 of this title).

(b) Standards. The regulations issued under this section and section 12143 of this title shall include standards applicable to facilities and vehicles covered by this part. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

Sec. 12150. Interim accessibility requirements

If final regulations have not been issued pursuant to section 12149 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 12146 and 12147 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be

necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

Subpart II - Public Transportation by Intercity and Commuter Rail

Sec. 12161. Definitions

As used in this subpart:

(1) Commuter authority. The term "commuter authority" has the meaning given such term in section 24102(4) of title 49.

(2) Commuter rail transportation. The term "commuter rail transportation" has the meaning given the term "commuter rail passenger transportation" in section 24102(5) of title 49.

(3) Intercity rail transportation. The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.

(4) Rail passenger car. The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single- level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) Responsible person. The term "responsible person" means

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) Station. The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

Sec. 12162. Intercity and commuter rail actions considered discriminatory

(a) Intercity rail transportation

(1) One car per train rule. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New intercity cars

(A) General rule. Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Special rule for single-level passenger coaches for individuals who use wheelchairs. Single-level passenger coaches shall be required to

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair, only to the extent provided in paragraph (3).

(C) Special rule for single-level dining cars for individuals who use wheelchairs. Single-level dining cars shall not be required to

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) Special rule for bi-level dining cars for individuals who use wheelchairs. Bi-level dining cars shall not be required to

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) Accessibility of single-level coaches

(A) General rule. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches

(i) a number of spaces

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train, as soon as practicable, but in no event later than 5 years after July 26, 1990; and

(ii) a number of spaces

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train, as soon as practicable, but in no event later than 10 years after July 26, 1990.

(B) Location. Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) Limitation. Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) Other accessibility features. Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (a) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) Food service

(A) Single-level dining cars. On any train in which a single-level dining car is used to provide food service

(i) if such single-level dining car was purchased after July 26, 1990, table service in such car shall be provided to a passenger who uses a wheelchair if

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals. Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (I) through which an individual who uses a wheelchair

may enter.

(B) Bi-level dining cars. On any train in which a bi-level dining car is used to provide food service

(i) if such train includes a bi-level lounge car purchased after July 26, 1990, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) Commuter rail transportation

(1) One car per train rule. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New commuter rail cars

(A) General rule. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Accessibility. For purposes of section 12132 of this title and section 794 of title 29, a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) Used rail cars. It shall be considered discrimination for purposes of section 1132 of this title and section 794 of title 29 for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(d) Remanufactured rail cars

(1) Remanufacturing. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to remanufacture a rail passenger car for use

in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Purchase or lease. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) Stations

(1) New stations. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Existing stations

(A) Failure to make readily accessible

(i) General rule. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(ii) Period for compliance

(I) Intercity rail. All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after July 26, 1990.

(II) Commuter rail. Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after July 26, 1990, except that the time limit may be extended by the Secretary of Transportation up to 20 years after July 26, 1990, in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) Designation of key stations. Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) Plans and milestones. The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) Requirement when making alterations

(i) General rule. It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) Alterations to a primary function area. It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations 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 such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) Required cooperation. It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for an owner, or person in control, of a station governed by subparagraph (a) or (b) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this chapter.

Sec. 12163. Conformance of accessibility standards

Accessibility standards included in regulations issued under this subpart shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this title.

Sec. 12164. Regulations

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart.

Sec. 12165. Interim accessibility requirements

(a) Stations. If final regulations have not been issued pursuant to section 12164 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 12162(e) of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance

with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) Rail passenger cars. If final regulations have not been issued pursuant to section 12164 of this title, a person shall be considered to have complied with the requirements of section 12162(a) through (d) of this title that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this subpart and are in effect at the time such design is substantially completed.

SUBCHAPTER III - PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 12181. Definitions

As used in this subchapter:

(1) Commerce. The term "commerce" means travel, trade, traffic, commerce, transportation, or communications

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) Commercial facilities. The term "commercial facilities" means facilities

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 12162 of this title or covered under this subchapter, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) Demand responsive system. The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) Fixed route system. The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) Over-the-road bus. The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) Private entity. The term "private entity" means any entity other than a public entity (as defined in section 12131(1) of this title).

(7) Public accommodation. The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect

commerce

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) Rail and railroad. The terms "rail" and "railroad" have the meaning given the term "railroad" in section 20102[1] of title 49.

(9) Readily achievable. The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered

entity.

(10) Specified public transportation. The term "specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) Vehicle. The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 12162 of this title or covered under this subchapter.

Sec. 12182. Prohibition of discrimination by public accommodations

(a) General rule. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

(1) General prohibition

(A) Activities

(i) Denial of participation. It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit. It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit. It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals. For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings. Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate. Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities

that are not separate or different.

(D) Administrative methods. An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association. It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions

(A) Discrimination. For purposes of subsection (a) of this section, discrimination includes

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) Fixed route system

(i) Accessibility. It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 12184 of this title to

purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) Equivalent service. If a private entity which operates a fixed route system and which is not subject to section 12184 of this title purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) Demand responsive system. For purposes of subsection (a) of this section, discrimination includes

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 12184 of this title to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses

(i) Limitation on applicability. Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements. For purposes of subsection (a) of this section, discrimination includes

(I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and

(II) any other failure of such entity to comply with such regulations.

(3) Specific construction. Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

Sec. 12183. New construction and alterations in public accommodations and commercial facilities

(a) Application of term. Except as provided in subsection (b) of this section, as applied to public accommodations and commercial facilities, discrimination for purposes of section 12182(a) of this title includes

(1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations 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 where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Elevator. Subsection (a) of this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

Sec. 12184. Prohibition of discrimination in specified public transportation services provided by private entities

(a) General rule. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) Construction. For purposes of subsection (a) of this section, discrimination includes

(1) the imposition or application by an entity described in subsection (a) of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to

(A) make reasonable modifications consistent with those required under section 12182(b)(2)(A)(ii) of this title;

(B) provide auxiliary aids and services consistent with the requirements of section 12182(b)(2)(A)(iii) of this title; and

(C) remove barriers consistent with the requirements of section 12182(b)(2)(A) of this title

and with the requirements of section 12183(a)(2) of this title;

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over- the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4) (A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title; and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Historical or antiquated cars

(1) Exception. To the extent that compliance with subsection (a)(2)© or (a)(7)of this section would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) Definition. As used in this subsection, the term "historical or antiquated rail passenger car" means a rail passenger car

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

Sec. 12185. Study

(a) Purposes. The Office of Technology Assessment shall undertake a study to determine

(1) the access needs of individuals with disabilities to over-the-road buses and over-the- road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) Contents. The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 12184(a)(4) and 12186(a)(2) of this title, are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) Advisory committee. In conducting the study required by subsection (a) of this section, the Office of Technology Assessment shall establish an advisory committee, which shall consist of

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) Deadline. The study required by subsection (a) of this section, along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall

be submitted to the President and Congress within 36 months after July 26, 1990. If the President determines that compliance with the regulations issued pursuant to section 12186(a)(2)(B) of this title on or before the applicable deadlines specified in section 12186(a)(2)(B) of this title will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

(e) Review. In developing the study required by subsection (a) of this section, the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 792 of title 29. The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d) of this section.

Sec. 12186. Regulations

(a) Transportation provisions

(1) General rule. Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections12182 (a)(2)(a) and (C) of this title and to carry out section 12184 of this title (other than subsection (a)(4)).

(2) Special rules for providing access to over-the-road buses

(A) Interim requirements

(i) Issuance. Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) Effective period. The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (a).

(B) Final requirement

(i) Review of study and interim requirements. The Secretary shall review the study submitted under section 12185 of this title and the regulations issued pursuant to subparagraph (A).

(ii) Issuance. Not later than 1 year after the date of the submission of the study under section 12185 of this title, the Secretary shall issue in an accessible format new regulations to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require, taking into account the purposes of the study under section 12185 of this title and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) Effective period. Subject to section 12185(d) of this title, the regulations issued pursuant to this subparagraph shall take effect

(I) with respect to small providers of transportation (as defined by the Secretary), 3 years after the date of issuance of final regulations under clause (ii); and

(II) with respect to other providers of transportation, 2 years after the date of issuance of such final regulations.

(C) Limitation on requiring installation of accessible restrooms. The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) Standards. The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 12182(b) (2) and 12184 of this title.

(b) Other provisions. Not later than 1 year after July 26, 1990, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this subchapter not referred to in subsection (a) of this section that include standards applicable to facilities and vehicles covered under section 12182 of this title.

(c) Consistency with ATBCB guidelines. Standards included in regulations issued under subsections (a) and (b) of this section shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

(d) Interim accessibility standards

(1) Facilities. If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 12183 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) Vehicles and rail passenger cars. If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this subchapter, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this subchapter and are in effect at the time such design is substantially completed.

Sec. 12187. Exemptions for private clubs and religious organizations

The provisions of this subchapter shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

Sec. 12188. Enforcement

(a) In general

(1) Availability of remedies and procedures. The remedies and procedures set forth in section 2000a-3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

(2) Injunctive relief. In the case of violations of sections 12182(b)(2)(A)(iv) and Section 12183(a) of this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this subchapter.

(b) Enforcement by Attorney General

(1) Denial of rights

(A) Duty to investigate

(i) In general. The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compliance of covered entities under this subchapter.

(ii) Attorney General certification. On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this chapter for the accessibility and usability of covered facilities under this subchapter. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this chapter.

(B) Potential violation. If the Attorney General has reasonable cause to believe that

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this subchapter; or

(ii) any person or group of persons has been discriminated against under this subchapter and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court. In a civil action under paragraph (1) (B), the court

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure,

or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) Single violation. For purposes of paragraph (2) (C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages. For purposes of subsection (b) (2) (B) of this section, the term "monetary damages" and "such other relief" does not include punitive damages.

(5) Judicial consideration. In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this chapter by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

Sec. 12189. Examinations and courses

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

SUBCHAPTER IV - MISCELLANEOUS PROVISIONS

Sec. 12201. Construction

(a) In general. Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws. Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I of this chapter, in transportation covered by subchapter II or III of this chapter, or in places of public accommodation covered by subchapter III of this chapter.

(c) Insurance. Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter I and III of this chapter.

(d) Accommodations and services. Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(e) Benefits under State worker's compensation laws. Nothing in this chapter alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

(f) Fundamental alteration. Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

(g) Claims of no disability. Nothing in this chapter shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability.

(h) Reasonable accommodations and modifications. A covered entity under subchapter I, a public entity under subchapter II, and any person who owns, leases (or leases to), or operates a place of public accommodation under subchapter III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 12102(1) solely under subparagraph (C) of such section.

Sec. 12202. State immunity

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

Sec. 12203. Prohibition against retaliation and coercion

(a) Retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation. It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) Remedies and procedures. The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively.

Sec. 12204. Regulations by Architectural and Transportation Barriers Compliance Board

(a) Issuance of guidelines. Not later than 9 months after July 26, 1990, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of subchapters II and III of this chapter.

(b) Contents of guidelines. The supplemental guidelines issued under subsection (a) of this section shall establish additional requirements, consistent with this chapter, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) Qualified historic properties

(1) In general. The supplemental guidelines issued under subsection (a) of this section shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) Sites eligible for listing in National Register. With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) Other sites. With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

Sec. 12205. Attorney's fees

In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

Sec. 12205a. Rule of Construction Regarding Regulatory Authority

The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this chapter includes the authority to issue regulations implementing the definitions of disability in section 12102 (including rules of construction) and the definitions in section 12103, consistent with the ADA Amendments Act of 2008.

Sec. 12206. Technical assistance

(a) Plan for assistance

(1) In general. Not later than 180 days after July 26, 1990, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this chapter, and other Federal agencies, in understanding the responsibility of such entities and agencies under this chapter.

(2) Publication of plan. The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5 (commonly known as the Administrative Procedure Act).

(b) Agency and public assistance. The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a) of this section, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) Implementation

(1) Rendering assistance. Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapter or subchapters of this chapter for which such agency has responsibility.

(2) Implementation of subchapters

(A) Subchapter I. The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a) of this section, for subchapter I of this chapter.

(B) Subchapter II

(i) Part A. The Attorney General shall implement such plan for assistance for part A of subchapter II of this chapter.

(ii) Part B. The Secretary of Transportation shall implement such plan for assistance for part B of subchapter II of this chapter.

(C) Subchapter III. The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for subchapter III of this chapter, except for section 12184 of this title, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) Title IV. The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals. Each Federal agency that has responsibility under paragraph (2) for implementing this chapter shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this chapter no later than six months after applicable final regulations are published under subchapters I, II, and III of this chapter and title IV.

(d) Grants and contracts

(1) In general. Each Federal agency that has responsibility under subsection (2) of this section for implementing this chapter may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this chapter. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or grants described in this paragraph.

(2) Dissemination of information. Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this chapter and to provide information and technical assistance about techniques for effective compliance with this chapter.

(e) Failure to receive assistance. An employer, public accommodation, or other entity covered under this chapter shall not be excused from compliance with the requirements of this chapter because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

Sec. 12207. Federal wilderness areas

(a) Study. The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of report. Not later than 1 year after July 26, 1990, the National Council on Disability shall submit the report required under subsection (a) of this section to Congress.

(c) Specific wilderness access

(1) In general. Congress reaffirms that nothing in the Wilderness Act (16 U.S.C. 1131 et seq.) is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) "Wheelchair" defined. For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

Sec. 12208. Transvestites

For the purposes of this chapter, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

Sec. 12209. Instrumentalities of Congress

The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:

(1) In general. The rights and protections under this chapter shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) Establishment of remedies and procedures by instrumentalities. The chief official of each

instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1).

(3) Report to Congress. The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) Definition of instrumentalities. For purposes of this section, the term "instrumentality of the Congress" means the following: the General Accounting Office, the Government Printing Office, and the Library of Congress.

(5) Enforcement of employment rights. The remedies and procedures set forth in section 2000e -16 of this title shall be available to any employee of an instrumentality of the Congress who alleges a violation of the rights and protections under sections 12112 through 12114 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(6) Enforcement of rights to public services and accommodations. The remedies and procedures set forth in section 2000e -16 of this title shall be available to any qualified person with a disability who is a visitor, guest, or patron of an instrumentality of Congress and who alleges a violation of the rights and protections under sections 12131 through 12150 of this title or section 12182 or 12183 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(7) Construction. Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

Sec. 12210. Illegal use of drugs

(a) In general. For purposes of this chapter, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction. Nothing in subsection (a) of this section shall be construed to exclude as an individual with a disability an individual who

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) Health and other services. Notwithstanding subsection (a) of this section and section 12211(b)(3) of this subchapter, an individual shall not be denied health services, or services

provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) "Illegal use of drugs" defined

(1) In general. The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 801 et seq.). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) Drugs. The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Sec. 12211. Definitions

(a) Homosexuality and bisexuality. For purposes of the definition of "disability" in section 12102(2) of this title, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

(b) Certain conditions. Under this chapter, the term "disability" shall not include

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

Sec. 12212. Alternative means of dispute resolution

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter.

Sec. 12213. Severability

Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the chapter, and such action shall not affect the enforceability of the remaining provisions of the chapter.

TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

CHAPTER 5 - WIRE OR RADIO COMMUNICATION

SUBCHAPTER II - COMMON CARRIERS

Part I - Common Carrier Regulation

Sec. 225. Telecommunications services for hearing-impaired and speech-impaired individuals

(a) Definitions. As used in this section

(1) Common carrier or carrier. The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 153 of this

title and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 152(a) and 221(a) of this title.

(2) TDD. The term "TDD" means a Telecommunications Device for the Deaf which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) Telecommunications relay services. The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) Availability of telecommunications relay services

(1) In general. In order to carry out the purposes established under section 151 of this title, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) Use of general authority and remedies. For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this subchapter with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this chapter by a common carrier engaged in interstate communication.

(c) Provision of services. Each common carrier providing telephone voice transmission services shall, not later than 3 years after July 26, 1990, provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations

(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) of this section and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d) of this section; or

(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) of this section for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) of this section for such State.

(d) Regulations

(1) In general. The Commission shall, not later than 1 year after July 26, 1990, prescribe

regulations to implement this section, including regulations that

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met in carrying out subsection (c) of this section;

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

(2) Technology. The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 157(a) of this title, the use of existing technology and do not discourage or impair the development of improved technology.

(3) Jurisdictional separation of costs

(A) In general. Consistent with the provisions of section 410 of this title, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) Recovering costs. Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f) of this section, a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

(e) Enforcement

(1) In general. Subject to subsections (f) and (g) of this section, the Commission shall enforce this section.

(2) Complaint. The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

(f) Certification

(1) State documentation. Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies

available for enforcing any requirements imposed by the State program.

(2) Requirements for certification. After review of such documentation, the Commission shall certify the State program if the Commission determines that

(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d) of this section; and

(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) Method of funding. Except as provided in subsection (d) of this section, the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) Suspension or revocation of certification. The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) Complaint

(1) Referral of complaint. If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) of this section is in effect, the Commission shall refer such complaint to such State.

(2) Jurisdiction of Commission. After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if

(A) final action under such State program has not been taken on such complaint by such State

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f) of this section.

TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

CHAPTER 5 - WIRE OR RADIO COMMUNICATION

SUBCHAPTER VI - MISCELLANEOUS PROVISIONS

Sec. 611. Closed-captioning of public service announcements

Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal Government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee

(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and

(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.

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ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

Subpart A—General

Subpart B—Applicability

Subpart C—Transportation Facilities

Subpart D—Acquisition of Accessible Vehicles by Public Entities

Subpart E—Acquisition of Accessible Vehicles by Private Entities

AUTHORITY: 42 U.S.C. 12101–12213; 49 U.S.C. 322.

SOURCE: 56 FR 45621, Sept. 6, 1991, unless otherwise noted.

Subpart A—General

§ 37.1 Purpose.

The purpose of this part is to implement the transportation and related provisions of titles II and III of the Americans with Disabilities Act of 1990.

§ 37.3 Definitions.

As used in this part:

Accessible means, with respect to vehicles and facilities, complying with the accessibility requirements of parts 37 and 38 of this title.

The Act or *ADA* means the Americans with Disabilities Act of 1990 (Pub. L. 101–336, 104 Stat. 327, 42 U.S.C. 12101–12213 and 47 U.S.C. 225 and 611), as it may be amended from time to time.

Administrator means Administrator of the Federal Transit Administration, or his or her designee.

Alteration means a change to an existing facility, including, but not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height

partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical or electrical systems are not alterations unless they affect the usability of the building or facility.

Automated guideway transit system or *AGT* means a fixed-guideway transit system which operates with automated (driverless) individual vehicles or multi-car trains. Service may be on a fixed schedule or in response to a passenger-activated call button.

Auxiliary aids and services includes:

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone headset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, closed and open captioning, text telephones (also known as telephone devices for the deaf, or TDDs), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; or

(4) Other similar services or actions.

Bus means any of several types of self-propelled vehicles, generally rubber-tired, intended for use on city streets, highways, and busways, including but not limited to minibuses, forty- and thirty-foot buses, articulated buses, double-deck buses, and electrically powered trolley buses, used by public entities to provide designated public transportation service and by private entities to provide transportation service including, but not limited to, specified public transportation services. Self-propelled, rubber-tired vehicles designed to look like antique or vintage trolleys are considered buses.

Commerce means travel, trade, transportation, or communication among the several states, between any foreign country or any territory or possession and any state, or between points in the same state but through another state or foreign country.

Commuter authority means any state, local, regional authority, corporation, or other entity established for purposes of providing commuter rail transportation (including, but not necessarily limited to, the New York Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, and any successor agencies) and any entity created by one or more such agencies for the purposes of operating, or contracting for the operation of, commuter rail transportation.

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

Commuter rail car means a rail passenger car obtained by a commuter authority for use in commuter rail transportation.

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

Demand responsive system means any system of transporting individuals, including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including but not limited to specified public transportation service, which is not a fixed route system.

Designated public transportation means transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) The phrase *physical or mental impairment* means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) The term *physical or mental impairment* includes, but is not limited to, such contagious or noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction and alcoholism;

(iv) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and work.

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase *is regarded as having such an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities, but which is treated by a public or private entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public or private entity as having such an impairment.

(5) The term *disability* does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania;

(iii) Psychoactive substance abuse disorders resulting from the current illegal use of drugs.

Facility means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Fixed route system means a system of transporting individuals (other than by aircraft), including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including, but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule.

FT Act means the Federal Transit Act of 1964, as amended (49 U.S.C. App. 1601 *et seq.*).

High speed rail means a rail service having the characteristics of intercity rail service which operates primarily on a dedicated guideway or track not used, for the most part, by freight, including, but not limited to, trains on welded rail, magnetically levitated (maglev) vehicles on a special guideway, or other advanced technology vehicles, designed to travel at speeds in

excess of those possible on other types of railroads.

Individual with a disability means a person who has a disability, but does not include an individual who is currently engaging in the illegal use of drugs, when a public or private entity acts on the basis of such use.

Intercity rail passenger car means a rail car, intended for use by revenue passengers, obtained by the National Railroad Passenger Corporation (Amtrak) for use in intercity rail transportation.

Intercity rail transportation means transportation provided by Amtrak.

Light rail means a streetcar-type vehicle operated on city streets, semi-exclusive rights of way, or exclusive rights of way. Service may be provided by step-entry vehicles or by level boarding.

New vehicle means a vehicle which is offered for sale or lease after manufacture without any prior use.

Operates includes, with respect to a fixed route or demand responsive system, the provision of transportation service by a public or private entity itself or by a person under a contractual or other arrangement or relationship with the entity.

Over-the-road bus means a bus characterized by an elevated passenger deck located over a baggage compartment.

Paratransit means comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems.

Private entity means any entity other than a public entity.

Public entity means:

(1) Any state or local government;

(2) Any department, agency, special purpose district, or other instrumentality of one or more state or local governments; and

(3) The National Railroad Passenger Corporation (Amtrak) and any commuter authority.

Purchase or lease, with respect to vehicles, means the time at which an entity is legally obligated to obtain the vehicles, such as the time of contract execution.

Public school transportation means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

Rapid rail means a subway-type transit vehicle railway operated on exclusive private rights of way with high level platform stations. Rapid rail also may operate on elevated or at grade level track separated from other traffic.

Remanufactured vehicle means a vehicle which has been structurally restored and has had new or rebuilt major components installed to extend its service life.

Secretary means the Secretary of Transportation or his/her designee.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394, 29 U.S.C. 794), as amended.

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

Small operator means, in the context of over-the-road buses (OTRBs), a private entity primarily in the business of transporting people that is not a Class I motor carrier. To determine whether an operator has sufficient average annual gross transportation operating revenues to be a Class I motor carrier, its revenues are combined with those of any other OTRB operator with which it is affiliated.

Solicitation means the closing date for the submission of bids or offers in a procurement.

Specified public transportation means transportation by bus, rail, or any other conveyance (other than aircraft) provided by a private entity to the general public, with general or special service (including charter service) on a regular and continuing basis.

Station means, with respect to intercity and commuter rail transportation, the portion of a property located appurtenant to a right of way on which intercity or commuter rail transportation is operated, where such portion

is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but this term does not include flag stops (i.e., stations which are not regularly scheduled stops but at which trains will stop to board or detrain passengers only on signal or advance notice).

Transit facility means, for purposes of determining the number of text telephones needed consistent with section 10.3.1(12) of appendix A to this part, a physical structure the primary function of which is to facilitate access to and from a transportation system which has scheduled stops at the structure. The term does not include an open structure or a physical structure the primary purpose of which is other than providing transportation services.

Used vehicle means a vehicle with prior use.

Vanpool means a voluntary commuter ridesharing arrangement, using vans with a seating capacity greater than 7 persons (including the driver) or buses, which provides transportation to a group of individuals traveling directly from their homes to their regular places of work within the same geographical area, and in which the commuter/driver does not receive compensation beyond reimbursement for his or her costs of providing the service.

Vehicle, as the term is applied to private entities, does not include a rail passenger car, railroad locomotive, railroad freight car, or railroad caboose, or other rail rolling stock described in section 242 of title III of the Act.

Wheelchair means a mobility aid belonging to any class of three or four-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered. A ''common wheelchair'' is such a device which does not exceed 30 inches in width and 48 inches in length measured two inches above the ground, and does not weigh more than 600 pounds when occupied.

[56 FR 45621, Sept. 6, 1991, as amended at 58 FR 63101, Nov. 30, 1993; 61 FR 25415, May 21, 1996; 63 FR 51690, Sept. 28, 1998]

§ 37.5 Nondiscrimination.

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

(b) Notwithstanding the provision of any special transportation service to individuals with disabilities, an entity shall not, on the basis of disability, deny to any individual with a disability the opportunity to use the entity's transportation service for the general public, if the individual is capable of using that service.

(c) An entity shall not require an individual with a disability to use designated priority seats, if the individual does not choose to use these seats.

(d) An entity shall not impose special charges, not authorized by this part, on individuals with disabilities, including individuals who use wheelchairs, for providing services required by this part or otherwise necessary to accommodate them.

(e) An entity shall not require that an individual with disabilities be accompanied by an attendant.

(f) Private entities that are primarily engaged in the business of transporting people and whose operations affect commerce shall not discriminate against any individual on the basis of disability in the full and equal enjoyment of specified transportation services. This obligation includes, with respect to the provision of transportation services, compliance with the requirements of the rules of the Department of Justice concerning eligibility criteria, making reasonable modifications, providing auxiliary aids and services, and removing barriers (28 CFR 36.301–36.306).

(g) An entity shall not refuse to serve an individual with a disability or require anything contrary to this part because its insurance company conditions coverage or rates on the absence of individuals with disabilities or requirements contrary to this part.

(h) It is not discrimination under this part for an entity to refuse to provide

service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct. However, an entity shall not refuse to provide service to an individual with disabilities solely because the individual's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of the entity or other persons.

§ 37.7 Standards for accessible vehicles.

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

(b)(1) For purposes of implementing the equivalent facilitation provision in §38.2 of this subtitle, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(i) A public or private entity that provides transportation services and is subject to the provisions of subpart D or subpart E this part; or

(ii) The manufacturer of a vehicle or a vehicle component or subsystem to be used by such entity to comply with this part.

(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision of part 38 of this title concerning which the entity is seeking a determination of equivalent facilitation.

(iii) [Reserved]

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in part 38 of this subtitle; and

(v) Documentation of the public participation used in developing an alternative method of compliance.

(3) In the case of a request by a public entity that provides transportation services subject to the provisions of subpart D of this part, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a private entity that provides transportation services subject to the provisions of subpart E of this part or a manufacturer, the private entity or manufacturer shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(5) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Policy and International Affairs.

(6) Determinations of equivalent facilitation are made only with respect to vehicles or vehicle components used in the provision of transportation services covered by subpart D or subpart E of this part, and pertain only to the specific situation concerning which the determination is made. Entities shall not cite these determinations as indicating that a product or method constitute equivalent facilitations in situations other than those to which the determinations specifically pertain. Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any

product or method by the Federal government, the Department of Transportation, or any of its operating administrations.

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

[56 FR 45621, Sept. 6, 1991, as amended at 58 FR 63101, Nov. 30, 1993; 61 FR 25416, May 21, 1996]

§ 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.

(b) Facility alterations begun before January 26, 1992, in a good faith effort to make a facility accessible to individuals with disabilities may be used to meet the key station requirements set forth in §§ 37.47 and 37.51 of this part, even if these alterations are not consistent with the requirements set forth in Appendices B and D to 36 CFR part 1191 and Appendix A to this part, if the modifications complied with the Uniform Federal Accessibility Standards (UFAS) or ANSI A117.1(1980) (American National Standards Specification for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped). This paragraph applies only to alterations of individual elements and spaces and only to the extent that provisions covering those elements or spaces are contained in UFAS or ANSI A117.1, as applicable.

(c) (1) New construction or alterations of buildings or facilities on which construction has begun, or all approvals for final design have been received, before November 29, 2006, are not required to be consistent with the requirements set forth in Appendices B and D to 36 CFR part 1191 and Appendix A to this part, if the construction or alterations comply with the former Appendix A to this part, as codified in the October 1, 2006, edition of the Code of Federal Regulations.

(2) Existing buildings and facilities that are not altered after November 29, 2006, and which comply with the former Appendix A to this part, are not required to be retrofitted to comply with the requirements set forth in Appendices B and D to 36 CFR part 1191 and Appendix A to this part.

(d)(1) For purposes of implementing the equivalent facilitation provision in ADA Chapter 1, Section 103, of Appendix B to 36 CFR part 1191, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(i)(A) A public or private entity that provides transportation facilities subject to the provisions of subpart C of this part, or other appropriate party with the concurrence of the Administrator.

(B) With respect to airport facilities, an entity that is an airport operator subject to the requirements of 49 CFR part 27 or regulations implementing the Americans with Disabilities Act, an air carrier subject to the requirements of 14 CFR part 382, or other appropriate party with the concurrence of the Administrator.

(ii) The manufacturer of a product or accessibility feature to be used in a transportation facility or facilities.

(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision(s) of Appendices B and D to 36 CFR part 1191 or Appendix A to this part concerning which the entity is seeking a determination of equivalent facilitation.

(iii) [Reserved]

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability provided in Appendices B and D to 36 CFR part 1191 or Appendix A to this part; and

(v) Documentation of the public participation used in developing an alternative method of compliance.

(3) In the case of a request by a public entity that provides transportation

facilities (including an airport operator), or a request by an air carrier with respect to airport facilities, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to Department of Transportation officials and members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a manufacturer or a private entity other than an air carrier, the manufacturer or private entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(5) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Transportation Policy.

(6)(i) Determinations of equivalent facilitation are made only with respect to transportation facilities, and pertain only to the specific situation concerning which the determination is made. *Provided, however,* that with respect to a product or accessibility feature that the Administrator determines can provide an equivalent facilitation in a class of situations, the Administrator may make an equivalent facilitation determination applying to that class of situations.

(ii) Entities shall not cite these determinations as indicating that a product or method constitutes equivalent facilitation in situations, or classes of situations, other than those to which the determinations specifically pertain.

(iii) Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government, the Department of Transportation, or any of its operating administrations.

[71 FR 63265, Oct. 30, 2006]

§ 37.11 Administrative enforcement.

(a) Recipients of Federal financial assistance from the Department of Transportation are subject to administrative enforcement of the requirements of this part under the provisions of 49 CFR part 27, subpart C.

(b) Public entities, whether or not they receive Federal financial assistance, also are subject to enforcement action as provided by the Department of Justice.

(c) Private entities, whether or not they receive Federal financial assistance, are also subject to enforcement action as provided in the regulations of the Department of Justice implementing title III of the ADA (28 CFR part 36).

[56 FR 45621, Sept. 6, 1991, as amended at 61 FR 25416, May 21, 1996]

§ 37.13 Effective date for certain vehicle specifications.

(a) The vehicle lift specifications identified in §§ 38.23(b)(6), 38.83(b)(6), 38.95(b)(6), and 38.125(b)(6) of this title apply to solicitations for vehicles under this part after January 25, 1992.

(b) The vehicle door height requirements for vehicles over 22 feet identified in § 38.25(c) of this title apply to solicitations for vehicles under this part after January 25, 1992.

[56 FR 64215, Dec. 9, 1991]

§ 37.15 Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and

4.29.6 of appendix A to this part are suspended temporarily until July 26, 2001.

[64 FR 64837, 64838, Nov. 23, 1998]

§§ 37.16–37.19 [Reserved]

Subpart B—Applicability

§ 37.21 Applicability: General.

(a) This part applies to the following entities, whether or not they receive Federal financial assistance from the Department of Transportation:

(1) Any public entity that provides designated public transportation or intercity or commuter rail transportation;

(2) Any private entity that provides specified public transportation; and

(3) Any private entity that is not primarily engaged in the business of transporting people but operates a demand responsive or fixed route system.

(b) For entities receiving Federal financial assistance from the Department of Transportation, compliance with applicable requirements of this part is a condition of compliance with section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance.

(c) Entities to which this part applies also may be subject to ADA regulations of the Department of Justice (28 CFR parts 35 or 36, as applicable). The provisions of this part shall be interpreted in a manner that will make them consistent with applicable Department of Justice regulations. In any case of apparent inconsistency, the provisions of this part shall prevail.

§ 37.23 Service under contract.

(a) When a public entity enters into a contractual or other arrangement 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 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 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.

§ 37.25 University transportation systems.

(a) Transportation services operated by private institutions of higher education are subject to the provisions of this part governing private entities not primarily engaged in the business of transporting people.

(b) Transportation systems operated by public institutions of higher education are subject to the provisions of this part governing public entities. If a public institution of higher education operates a fixed route system, the requirements of this part governing commuter bus service apply to that system.

§ 37.27 Transportation for elementary and secondary education systems.

(a) The requirements of this part do not apply to public school transportation.

(b) The requirements of this part do not apply to the transportation of school children to and from a private elementary or secondary school, and its school-related activities, if the school is providing transportation service to students with disabilities equivalent to that provided to students without disabilities. The test of equivalence is the same as that provided in § 37.105. If the school does not meet the requirement of this paragraph for exemption from the requirements of this part, it is subject to the requirements of this

part for private entities not primarily engaged in transporting people.

[56 FR 45621, Sept. 6, 1991, as amended at 61 FR 25415, May 21, 1996]

§ 37.29 Private entities providing taxi service.

(a) Providers of taxi service are subject to the requirements of this part for private entities primarily engaged in the business of transporting people which provide demand responsive service.

(b) Providers of taxi service are not required to purchase or lease accessible automobiles. When a provider of taxi service purchases or leases a vehicle other than an automobile, the vehicle is required to be accessible unless the provider demonstrates equivalency as provided in §37.105 of this part. A provider of taxi service is not required to purchase vehicles other than automobiles in order to have a number of accessible vehicles in its fleet.

(c) Private entities providing taxi service shall not discriminate against individuals with disabilities by actions including, but not limited to, refusing to provide service to individuals with disabilities who can use taxi vehicles, refusing to assist with the stowing of mobility devices, and charging higher fares or fees for carrying individuals with disabilities and their equipment than are charged to other persons.

§ 37.31 Vanpools.

Vanpool systems which are operated by public entities, or in which public entities own or purchase or lease the vehicles, are subject to the requirements of this part for demand responsive service for the general public operated by public entities. A vanpool system in this category is deemed to be providing equivalent service to individuals with disabilities if a vehicle that an individual with disabilities can use is made available to and used by a vanpool in which such an individual chooses to participate.

§ 37.33 Airport transportation systems.

(a) Transportation systems operated by public airport operators, which provide designated public transportation and connect parking lots and terminals or provide transportation among terminals, are subject to the requirements of this part for fixed route or demand responsive systems, as applicable, operated by public entities. Public airports which operate fixed route transportation systems are subject to the requirements of this part for commuter bus service operated by public entities. The provision by an airport of additional accommodations (e.g., parking spaces in a close-in lot) is not a substitute for meeting the requirements of this part.

(b) Fixed-route transportation systems operated by public airport operators between the airport and a limited number of destinations in the area it serves are subject to the provisions of this part for commuter bus systems operated by public entities.

(c) Private jitney or shuttle services that provide transportation between an airport and destinations in the area it serves in a route-deviation or other variable mode are subject to the requirements of this part for private entities primarily engaged in the business of transporting people which provide demand responsive service. They may meet equivalency requirements by such means as sharing or pooling accessible vehicles among operators, in a way that ensures the provision of equivalent service.

§ 37.35 Supplemental service for other transportation modes.

(a) Transportation service provided by bus or other vehicle by an intercity commuter or rail operator, as an extension of or supplement to its rail service, and which connects an intercity rail station and limited other points, is subject to the requirements of this part for fixed route commuter bus service operated by a public entity.

(b) Dedicated bus service to commuter rail systems, with through ticketing arrangements and which is available only to users of the commuter rail system, is subject to the requirements of this part for fixed route commuter bus service operated by a public entity.

§ 37.37 Other applications.

(a) A private entity does not become subject to the requirements of this part for public entities, because it receives

an operating subsidy from, is regulated by, or is granted a franchise or permit to operate by a public entity.

(b) Shuttle systems and other transportation services operated by privately-owned hotels, car rental agencies, historical or theme parks, and other public accommodations are subject to the requirements of this part for private entities not primarily engaged in the business of transporting people. Either the requirements for demand responsive or fixed route service may apply, depending upon the characteristics of each individual system of transportation.

(c) Conveyances used by members of the public primarily for recreational purposes rather than for transportation (e.g., amusement park rides, ski lifts, or historic rail cars or trolleys operated in museum settings) are not subject to the requirements of this part. Such conveyances are subject to Department of Justice regulations implementing title II or title III of the ADA (28 CFR part 35 or 36), as applicable.

(d) Transportation services provided by an employer solely for its own employees are not subject to the requirements of this part. Such services are subject to the regulations of the Equal Employment Opportunity Commission under title I of the ADA (29 CFR part 1630) and, with respect to public entities, the regulations of the Department of Justice under title II of the ADA (28 CFR part 35).

(e) Transportation systems operated by private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000–a(e)) or religious organizations or entities controlled by religious organizations are not subject to the requirements of this part.

(f) If a parent private company is not primarily engaged in the business of transporting people, or is not a place of public accommodation, but a subsidiary company or an operationally distinct segment of the company is primarily engaged in the business of transporting people, the transportation service provided by the subsidiary or segment is subject to the requirements of this part for private entities primarily engaged in the business of transporting people.

(g) High-speed rail systems operated by public entities are subject to the requirements of this part governing intercity rail systems.

(h) Private rail systems providing fixed route or specified public transportation service are subject to the requirements of § 37.107 with respect to the acquisition of rail passenger cars. Such systems are subject to the requirements of the regulations of the Department of Justice implementing title III of the ADA (28 CFR part 36) with respect to stations and other facilities.

§ 37.39 [Reserved]

Subpart C—Transportation Facilities

§ 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.

(b) (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.

[56 FR 45621, Sept. 6, 1991, as amended by 71 FR 63266, Oct. 30, 2006]

§ 37.43 Alteration of transportation facilities by public entities.

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

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

(3) The requirements of this paragraph also apply to the alteration of existing intercity or commuter rail stations by the responsible person for, owner of, or person in control of the station.

(4) The requirements of this section apply to any alteration which begins (i.e., issuance of notice to proceed or work order, as applicable) after January 25, 1992, or, in the case of intercity and commuter rail stations, after October 7, 1991.

(b) As used in this section, the phrase *to the maximum extent feasible* applies to the occasional case where the nature of an existing facility makes it impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the entity shall provide the maximum physical accessibility feasible. Any altered features of the facility or portion of the facility that can be made accessible shall be made accessible. If providing accessibility to certain individuals with disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to individuals with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

(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 (nonpassenger) elevators which are frequented only by repair personnel).

(d) As used in this section, a ''path of travel'' includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, parking areas, and streets), an entrance to the facility, and other parts of the facility. The term also includes the restrooms, telephones, and drinking fountains serving the altered area. An accessible path of travel may include walks and sidewalks, curb

ramps and other interior or exterior pedestrian ramps, clear floor paths through corridors, waiting areas, concourses, and other improved areas, parking access aisles, elevators and lifts, bridges, tunnels, or other passageways between platforms, or a combination of these and other elements.

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

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

(i) Costs associated with providing an accessible entrance and an accessible route to the altered area (e.g., widening doorways and installing ramps);

(ii) Costs associated with making restrooms accessible (e.g., grab bars, enlarged toilet stalls, accessible faucet controls);

(iii) Costs associated with providing accessible telephones (e.g., relocation of phones to an accessible height, installation of amplification devices or TDDs);

(iv) Costs associated with relocating an inaccessible drinking fountain.

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

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

(i) An accessible entrance;

(ii) An accessible route to the altered area;

(iii) At least one accessible restroom for each sex or a single unisex restroom (where there are one or more restrooms);

(iv) Accessible telephones;

(v) Accessible drinking fountains;

(vi) When possible, other accessible elements (e.g., parking, storage, alarms).

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

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

(2) For the first three years after January 26, 1992, only alterations undertaken between that date and the date of the alteration at issue shall be considered in determining if the cost of providing accessible features is disproportionate to the overall cost of the alteration.

(3) Only alterations undertaken after January 26, 1992, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alteration.

§ 37.45 Construction and alteration of transportation facilities by private entities.

In constructing and altering transit facilities, private entities shall comply with the regulations of the Department of Justice implementing Title III of the ADA (28 CFR part 36).

§ 37.47 Key stations in light and rapid rail systems.

(a) Each public entity that provides designated public transportation by means of a light or rapid rail system shall make key stations on its system readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement is separate from and in addition to requirements set forth in § 37.43 of this part.

(b) Each public entity shall determine which stations on its system are

key stations. The entity shall identify key stations, using the planning and public participation process set forth in paragraph (d) of this section, and taking into consideration the following criteria:

(1) Stations where passenger boardings exceed average station passenger boardings on the rail system by at least fifteen percent, unless such a station is close to another accessible station;

(2) Transfer stations on a rail line or between rail lines;

(3) Major interchange points with other transportation modes, including stations connecting with major parking facilities, bus terminals, intercity or commuter rail stations, passenger vessel terminals, or airports;

(4) End stations, unless an end station is close to another accessible station; and

(5) Stations serving major activity centers, such as employment or government centers, institutions of higher education, hospitals or other major health care facilities, or other facilities that are major trip generators for individuals with disabilities.

(c)(1) Unless an entity receives an extension under paragraph (c)(2) of this section, the public entity shall achieve accessibility of key stations as soon as possible, but in no case later than July 26, 1993, except that an entity is not required to complete installation of detectable warnings required by section 10.3.2(2) of appendix A to this part until July 26, 1994.

(2) The FTA Administrator may grant an extension of this completion date for key station accessibility for a period up to July 26, 2020, provided that two-thirds of key stations are made accessible by July 26, 2010. Extensions may be granted as provided in paragraph (e) of this section.

(d) The public entity shall develop a plan for compliance for this section. The plan shall be submitted to the appropriate FTA regional office by July 26, 1992. (See appendix B to this part for list.)

(1) The public entity shall consult with individuals with disabilities affected by the plan. The public entity also shall hold at least one public hearing on the plan and solicit comments on it. The plan submitted to FTA shall document this public participation, including summaries of the consultation with individuals with disabilities and the comments received at the hearing and during the comment period. The plan also shall summarize the public entity's responses to the comments and consultation.

(2) The plan shall establish milestones for the achievement of required accessibility of key stations, consistent with the requirements of this section.

(e) A public entity wishing to apply for an extension of the July 26, 1993, deadline for key station accessibility shall include a request for an extension with its plan submitted to FTA under paragraph (d) of this section. Extensions may be granted only with respect to key stations which need extraordinarily expensive structural changes to, or replacement of, existing facilities (e.g., installations of elevators, raising the entire passenger platform, or alterations of similar magnitude and cost). Requests for extensions shall provide for completion of key station accessibility within the time limits set forth in paragraph (c) of this section. The FTA Administrator may approve, approve with conditions, modify, or disapprove any request for an extension.

[56 FR 45621, Sept. 6, 1991, as amended at 58 FR 63102, Nov. 30, 1993]

§ 37.49 Designation of responsible person(s) for intercity and commuter rail stations.

(a) The responsible person(s) designated in accordance with this section shall bear the legal and financial responsibility for making a key station accessible in the same proportion as determined under this section.

(b) In the case of a station more than fifty percent of which is owned by a public entity, the public entity is the responsible party.

(c) In the case of a station more than fifty percent of which is owned by a private entity the persons providing commuter or intercity rail service to the station are the responsible parties, in a proportion equal to the percentage of all passenger boardings at the station attributable to the service of each,

over the entire period during which the station is made accessible.

(d) In the case of a station of which no entity owns more than fifty percent, the owners of the station (other than private entity owners) and persons providing intercity or commuter rail service to the station are the responsible persons.

(1) Half the responsibility for the station shall be assumed by the owner(s) of the station. The owners shall share this responsibility in proportion to their ownership interest in the station, over the period during which the station is made accessible.

(2) The person(s) providing commuter or intercity rail service to the station shall assume the other half of the responsibility. These persons shall share this responsibility. These persons shall share this responsibility for the station in a proportion equal to the percentage of all passenger boardings at the station attributable to the service of each, over the period during which the station is made accessible.

(e) Persons who must share responsibility for station accessibility under paragraphs (c) and (d) of this section may, by agreement, allocate their responsibility in a manner different from that provided in this section.

§ 37.51 Key stations in commuter rail systems.

(a) The responsible person(s) shall make key stations on its system readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement is separate from and in addition to requirements set forth in § 37.43 of this part.

(b) Each commuter authority shall determine which stations on its system are key stations. The commuter authority shall identify key stations, using the planning and public participation process set forth in paragraph (d) of this section, and taking into consideration the following criteria:

(1) Stations where passenger boardings exceed average station passenger boardings on the rail system by at least fifteen percent, unless such a station is close to another accessible station;

(2) Transfer stations on a rail line or between rail lines;

(3) Major interchange points with other transportation modes, including stations connecting with major parking facilities, bus terminals, intercity or commuter rail stations, passenger vessel terminals, or airports;

(4) End stations, unless an end station is close to another accessible station; and

(5) Stations serving major activity centers, such as employment or government centers, institutions of higher education, hospitals or other major health care facilities, or other facilities that are major trip generators for individuals with disabilities.

(c)(1) Except as provided in this paragraph, the responsible person(s) shall achieve accessibility of key stations as soon as possible, but in no case later than July 26, 1993, except that an entity is not required to complete installation of detectable warnings required by section 10.3.2(2) of appendix A to this part until July 26, 1994.

(2) The FTA Administrator may grant an extension of this deadline for key station accessibility for a period up to July 26, 2010. Extensions may be granted as provided in paragraph (e) of this section.

(d) The commuter authority and responsible person(s) for stations involved shall develop a plan for compliance for this section. This plan shall be completed and submitted to FTA by July 26, 1992.

(1) The commuter authority and responsible person(s) shall consult with individuals with disabilities affected by the plan. The commuter authority and responsible person(s) also shall hold at least one public hearing on the plan and solicit comments on it. The plan shall document this public participation, including summaries of the consultation with individuals with disabilities and the comments received at the hearing and during the comment period. The plan also shall summarize the responsible person(s) responses to the comments and consultation.

(2) The plan shall establish milestones for the achievement of required accessibility of key stations, consistent with the requirements of this section.

(3) The commuter authority and responsible person(s) of each key station identified in the plan shall, by mutual agreement, designate a project manager for the purpose of undertaking the work of making the key station accessible.

(e) Any commuter authority and/or responsible person(s) wishing to apply for an extension of the July 26, 1993, deadline for key station accessibility shall include a request for extension with its plan submitted to under paragraph (d) of this section. Extensions may be granted only in a case where raising the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes (e.g., installations of elevators, or alterations of magnitude and cost similar to installing an elevator or raising the entire passenger platform) are necessary to attain accessibility. Requests for extensions shall provide for completion of key station accessibility within the time limits set forth in paragraph (c) of this section. The FTA Administrator may approve, approve with conditions, modify, or disapprove any request for an extension.

[56 FR 45621, Sept. 6, 1991, as amended at 58 FR 63102, Nov. 30, 1993]

§ 37.53 Exception for New York and Philadelphia.

(a) The following agreements entered into in New York, New York, and Philadelphia, Pennsylvania, contain lists of key stations for the public entities that are a party to those agreements for those service lines identified in the agreements. The identification of key stations under these agreements is deemed to be in compliance with the requirements of this Subpart.

(1) Settlement Agreement by and among Eastern Paralyzed Veterans Association, Inc., James J. Peters, Terrance Moakley, and Denise Figueroa, individually and as representatives of the class of all persons similarly situated (collectively, ''the EPVA class representatives''); and Metropolitan Transportation Authority, New York City Transit Authority, and Manhattan and Bronx Surface Transit Operating Authority (October 4, 1984).

(2) Settlement Agreement by and between Eastern Paralyzed Veterans Association of Pennsylvania, Inc., and James J. Peters, individually; and Dudley R. Sykes, as Commissioner of the Philadelphia Department of Public Property, and his successors in office and the City of Philadelphia (collectively ''the City'') and Southeastern Pennsylvania Transportation Authority (June 28, 1989).

(b) To comply with §§ 37.47 (b) and (d) or 37.51 (b) and (d) of this part, the entities named in the agreements are required to use their public participation and planning processes only to develop and submit to the FTA Administrator plans for timely completion of key station accessibilty, as provided in this subpart.

(c) In making accessible the key stations identified under the agreements cited in this section, the entities named in the agreements are subject to the requirements of § 37.9 of this part.

§ 37.55 Intercity rail station accessibility.

All intercity rail stations shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than July 26, 2010. This requirement is separate from and in addition to requirements set forth in § 37.43 of this part.

§ 37.57 Required cooperation.

An owner or person in control of an intercity or commuter rail station shall provide reasonable cooperation to the responsible person(s) for that station with respect to the efforts of the responsible person to comply with the requirements of this subpart.

§ 37.59 Differences in accessibility completion dates.

Where different completion dates for accessible stations are established under this part for a station or portions of a station (e.g., extensions of different periods of time for a station which serves both rapid and commuter rail systems), accessibility to the following elements of the station shall be achieved by the earlier of the completion dates involved:

(a) Common elements of the station;

(b) Portions of the facility directly serving the rail system with the earlier completion date; and

(c) An accessible path from common elements of the station to portions of the facility directly serving the rail system with the earlier completion date.

§ 37.61 Public transportation programs and activities in existing facilities.

(a) A public entity shall operate a designated public transportation program or activity conducted in an existing facility so that, when viewed in its entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(b) This section does not require a public entity to make structural changes to existing facilities in order to make the facilities accessible by individuals who use wheelchairs, unless and to the extent required by §37.43 (with respect to alterations) or §§37.47 or 37.51 of this part (with respect to key stations). Entities shall comply with other applicable accessibility requirements for such facilities.

(c) Public entities, with respect to facilities that, as provided in paragraph (b) of this section, are not required to be made accessible to individuals who use wheelchairs, are not required to provide to such individuals services made available to the general public at such facilities when the individuals could not utilize or benefit from the services.

§§37.63–37.69 [Reserved]

Subpart D—Acquisition of Accessible Vehicles By Public Entities

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

(a) Except as provided elsewhere in this section, 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.

(b) A pubilc entity may purchase or lease a new bus that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if it applies for, and the FTA Administrator grants, a waiver as provided for in this section.

(c) Before submitting a request for such a waiver, the public entity shall hold at least one public hearing concerning the proposed request.

(d) The FTA Administrator may grant a request for such a waiver if the public entity demonstrates to the FTA Administrator's satisfaction that—

(1) The initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) Hydraulic, electromechanical, or other lifts for such new buses could not be provided by any qualified lift manufacturer to the manufacturer of such new buses in sufficient time to comply with the solicitation; and

(3) Any further delay in purchasing new buses equipped with such necessary lifts would significantly impair transportation services in the community served by the public entity.

(e) The public entity shall include with its waiver request a copy of the initial solicitation and written documentation from the bus manufacturer of its good faith efforts to obtain lifts in time to comply with the solicitation, and a full justification for the assertion that the delay in bus procurement needed to obtain a lift-equipped bus would significantly impair transportation services in the community. This documentation shall include a specific date at which the lifts could be supplied, copies of advertisements in trade publications and inquiries to trade associations seeking lifts, and documentation of the public hearing.

(f) Any waiver granted by the FTA Administrator under this section shall be subject to the following conditions:

(1) The waiver shall apply only to the particular bus delivery to which the waiver request pertains;

(2) The waiver shall include a termination date, which will be based on information concerning when lifts will become available for installation on the new buses the public entity is purchasing. Buses delivered after this date, even though procured under a solicitation to which a waiver applied, shall be equipped with lifts;

(3) Any bus obtained subject to the waiver shall be capable of accepting a lift, and the public entity shall install a lift as soon as one becomes available;

(4) Such other terms and conditions as the FTA Administrator may impose.

(g)(1) When the FTA Administrator grants a waiver under this section, he/she shall promptly notify the appropriate committees of Congress.

(2) If the FTA Administrator has reasonable cause to believe that a public entity fraudulently applied for a waiver under this section, the FTA Administrator shall:

(i) Cancel the waiver if it is still in effect; and

(ii) Take other appropriate action.

§ 37.73 Purchase or lease of used non-rail vehicles by public entities operating fixed route systems.

(a) Except as provided elsewhere in this section, each public entity operating a fixed route system purchasing or leasing, after August 25, 1990, a used bus or other used 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) A public entity may purchase or lease a used vehicle for use on its fixed route system that is not readily accessible to and usable by individuals with disabilities if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so.

(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.

(d) Each public entity purchasing or leasing used vehicles that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts it made for three years from the date the vehicles were purchased. These records shall be made available, on request, to the FTA Administrator and the public.

§ 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.

§ 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) A public entity receiving FTA funds under section 18 or a public entity in a small urbanized area which receives FTA funds under Section 9 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. 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. A public entity which does not receive FTA funds shall make such a certificate and retain it in its files, subject to inspection on request of FTA. 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.

(e) The waiver mechanism set forth in § 37.71(b)–(g) (unavailability of lifts) of this subpart shall also be available to public entities operating a demand responsive system for the general public.

§ 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.

§ 37.81 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.

(a) Except as provided elsewhere in this section, each public entity operating a rapid or light rail system which, after August 25, 1990, purchases or leases a used 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.

(b) A public entity may purchase or lease a used rapid or light rail vehicle for use on its rapid or light rail system that is not readily accessible to and usable by individuals if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so.

(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.

(d) Each public entity purchasing or leasing used rapid or light rail vehicles that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts it made for three years from the date the vehicles were purchased. These records shall be made available, on request, to the FTA Administrator and the public.

§ 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.

§ 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.

§ 37.87 Purchase or lease of used intercity and commuter rail cars.

(a) Except as provided elsewhere in this section, Amtrak or a commuter authority purchasing or leasing a used intercity or commuter rail car after August 25, 1990, shall ensure that the car is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) Amtrak or a commuter authority may purchase or lease a used intercity or commuter rail car that is not readily accessible to and usable by individuals if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so.

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

(1) An initial solicitation for used vehicles specifying that all used vehicles accessible to and usable by individuals with disabilities;

(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.

(d) When Amtrak or a commuter authority leases a used intercity or commuter rail car for a period of seven days or less, Amtrak or the commuter authority may make and document good faith efforts as provided in this paragraph instead of in the ways provided in paragraph (c) of this section:

(1) By having and implementing, in its agreement with any intercity railroad or commuter authority that serves as a source of used intercity or commuter rail cars for a lease of seven days or less, a provision requiring that the lessor provide all available accessible rail cars before providing any inaccessible rail cars.

(2) By documenting that, when there is more than one source of intercity or commuter rail cars for a lease of seven days or less, the lessee has obtained all available accessible intercity or commuter rail cars from all sources before obtaining inaccessible intercity or commuter rail cars from any source.

(e) Amtrak and commuter authorities purchasing or leasing used intercity or commuter rail cars that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts that were made for three years from the date the cars were purchased. These records shall be made available, on request, to the Federal Railroad Administration or FTA Administrator, as applicable. These records shall be made available to the public, on request.

[56 FR 45621, Sept. 6, 1991, as amended at 58 FR 63102, Nov. 30, 1993]

§ 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.

§ 37.91 Wheelchair locations and food service on intercity rail trains.

(a) As soon as practicable, but in no event later than July 26, 1995, each person providing intercity rail service shall provide on each train a number of spaces—

(1) To park wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less

than one half of the number of single level rail passenger coaches in the train; and

(2) To fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one half the number of single level rail passenger coaches in the train.

(b) As soon as practicable, but in no event later than July 26, 2000, each person providing intercity rail service shall provide on each train a number of spaces—

(1) To park wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single level rail passenger coaches in the train; and

(2) To fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single level rail passenger coaches in the train.

(c) In complying with paragraphs (a) and (b) of this section, a person providing intercity rail service may not provide more than two spaces to park wheelchairs nor more than two spaces to fold and store wheelchairs in any one coach or food service car.

(d) Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a single level dining car through which an individual who uses a wheelchair may enter.

(e) On any train in which either a single level or bi-level dining car is used to provide food service, a person providing intercity rail service shall provide appropriate aids and services to ensure that equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals. Appropriate auxiliary aids and services include providing a hard surface on which to eat.

(f) This section does not require the provision of securement devices on intercity rail cars.

§ 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.

§ 37.95 Ferries and other passenger vessels operated by public entities. [Reserved]

§§ 37.97–37.99 [Reserved]

Subpart E—Acquisition of Accessible Vehicles by Private Entities

§ 37.101 Purchase or lease of vehicles by private entities not primarily engaged in the business of transporting people.

(a) *Application.* This section applies to all purchases or leases of vehicles by private entities which are not primarily engaged in the business of transporting people, in which a solicitation for the vehicle is made after August 25, 1990.

(b) *Fixed Route System. Vehicle Capacity Over 16.* If the entity operates a fixed route system and purchases or leases a vehicle with a seating capacity of over 16 passengers (including the driver) for use on the system, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) *Fixed Route System. Vehicle Capacity of 16 or Fewer.* If the entity operates a fixed route system and purchases or leases a vehicle with a seating capacity of 16 or fewer passengers (including the driver) for use on the system, it shall ensure that the vehicle is readily accessible to and usable by individuals

with disabilities, including individuals who use wheelchairs, unless the system, when viewed in its entirety, meets the standard for equivalent service of § 37.105 of this part.

(d) *Demand Responsive System, Vehicle Capacity Over 16.* If the entity operates a demand responsive system, and purchases or leases a vehicle with a seating capacity of over 16 passengers (including the driver) for use on the system, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the system, when viewed in its entirety, meets the standard for equivalent service of § 37.105 of this part.

(e) *Demand Responsive System, Vehicle Capacity of 16 or Fewer.* Entities providing demand responsive transportation covered under this section are not specifically required to ensure that new vehicles with seating capacity of 16 or fewer are accessible to individuals with wheelchairs. These entities are required to ensure that their systems, when viewed in their entirety, meet the equivalent service requirements of §§ 37.171 and 37.105, regardless of whether or not the entities purchase a new vehicle.

[56 FR 45621, Sept. 6, 1991, as amended at 61 FR 25416, May 21, 1996]

§ 37.103 Purchase or lease of new non-rail vehicles by private entities primarily engaged in the business of transporting people.

(a) *Application.* This section applies to all acquisitions of new vehicles by private entities which are primarily engaged in the business of transporting people and whose operations affect commerce, in which a solicitation for the vehicle is made (except as provided in paragraph (d) of this section) after August 25, 1990.

(b) *Fixed route systems.* If the entity operates a fixed route system, and purchases or leases a new vehicle other than an automobile, a van with a seating capacity of less than eight persons (including the driver), or an over-the-road bus, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) *Demand responsive systems.* If the entity operates a demand responsive system, and purchases or leases a new vehicle other than an automobile, a van with a seating capacity of less than eight persons (including the driver), or an over-the-road bus, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the system, when viewed in its entirety, meets the standard for equivalent service of § 37.105 of this part.

(d) *Vans with a capacity of fewer than 8 persons.* If the entity operates either a fixed route or demand responsive system, and purchases or leases a new van with a seating capacity of fewer than eight persons including the driver (the solicitation for the vehicle being made after February 25, 1992), the entity shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the system, when viewed in its entirety, meets the standard for equivalent service of § 37.105 of this part.

§ 37.105 Equivalent service standard.

For purposes of §§ 37.101 and 37.103 of this part, a fixed route system or 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:

(a) (1) Schedules/headways (if the system is fixed route);

(2) Response time (if the system is demand responsive);

(b) Fares;

(c) Geographic area of service;

(d) Hours and days of service;

(e) Availability of information;

(f) Reservations capability (if the system is demand responsive);

(g) Any constraints on capacity or service availability;

(h) Restrictions priorities based on trip purpose (if the system is demand responsive).

§ 37.107 Acquisition of passenger rail cars by private entities primarily engaged in the business of transporting people.

(a) A private entity which is primarily engaged in the business of transporting people and whose operations affect commerce, which makes a solicitation after February 25, 1992, to purchase or lease a new rail passenger car to be used in providing specified public transportation, shall ensure that the car is readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. The accessibility standards in part 38 of this title which apply depend upon the type of service in which the car will be used.

(b) Except as provided in paragraph (c) of this section, a private entity which is primarily engaged in transporting people and whose operations affect commerce, which remanufactures a rail passenger car to be used in providing specified public transportation to extend its useful life for ten years or more, or purchases or leases such a remanufactured rail car, shall ensure that the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. For purposes of this paragraph, it shall be considered feasible to remanufacture a rail passenger car 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 car.

(c) Compliance with paragraph (b) of this section is not required to the extent that it would significantly alter the historic or antiquated character of a historic or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in the violation of any rule, regulation, standard or order issued by the Secretary under the Federal Railroad Safety Act of 1970. For purposes of this section, a historic or antiquated rail passenger car means a rail passenger car—

(1) Which is not less than 30 years old at the time of its use for transporting individuals;

(2) The manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(3) Which—

(i) Has a consequential association with events or persons significant to the past; or

(ii) Embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

§ 37.109 Ferries and other passenger vessels operated by private entities. [Reserved]

§§ 37.111–37.119 [Reserved]

Subpart F—Paratransit as a Complement to Fixed Route Service

§ 37.121 Requirement for comparable complementary paratransit service.

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

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

(c) Requirements for complementary paratransit do not apply to commuter bus, commuter rail, or intercity rail systems.

§ 37.123 ADA paratransit eligibility: Standards.

(a) Public entities required by § 37.121 of this subpart to provide complementary paratransit service shall provide the service to the ADA paratransit eligible individuals described in paragraph (e) of this section.

(b) If an individual meets the eligibility criteria of this section with respect to some trips but not others, the individual shall be ADA paratransit eligible only for those trips for which he or she meets the criteria.

(c) Individuals may be ADA paratransit eligible on the basis of a permanent or temporary disability.

(d) Public entities may provide complementary paratransit service to persons other than ADA paratransit eligible individuals. However, only the cost of service to ADA paratransit eligible individuals may be considered in a public entity's request for an undue financial burden waiver under §§ 37.151–37.155 of this part.

(e) The following individuals are ADA paratransit eligible:

(1) Any individual with a disability who is unable, as the result of a physical or mental impairment (including a vision impairment), and without the assistance of another individual (except the operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable individuals with disabilities.

(2) Any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device and is able, with such assistance, to board, ride and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time, or within a reasonable period of such time, when such a vehicle is not being used to provide designated public transportation on the route.

(i) An individual is eligible under this paragraph with respect to travel on an otherwise accessible route on which the boarding or disembarking location which the individual would use is one at which boarding or disembarking from the vehicle is precluded as provided in § 37.167(g) of this part.

(ii) An individual using a common wheelchair is eligible under this paragraph if the individual's wheelchair cannot be accommodated on an existing vehicle (e.g., because the vehicle's lift does not meet the standards of part 38 of this title), even if that vehicle is accessible to other individuals with disabilities and their mobility wheelchairs.

(iii) With respect to rail systems, an individual is eligible under this paragraph if the individual could use an accessible rail system, but—

(A) There is not yet one accessible car per train on the system; or

(B) Key stations have not yet been made accessible.

(3) Any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system.

(i) Only a specific impairment-related condition which prevents the individual from traveling to a boarding location or from a disembarking location is a basis for eligibility under this paragraph. A condition which makes traveling to boarding location or from a disembarking location more difficult for a person with a specific impairment-related condition than for an individual who does not have the condition, but does not prevent the travel, is not a basis for eligibility under this paragraph.

(ii) Architectural barriers not under the control of the public entity providing fixed route service and environmental barriers (e.g., distance, terrain, weather) do not, standing alone, form a basis for eligibility under this paragraph. The interaction of such barriers with an individual's specific impairment-related condition may form a basis for eligibility under this paragraph, if the effect is to prevent the individual from traveling to a boarding location or from a disembarking location.

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

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

(i) If the ADA paratransit eligible individual is traveling with a personal care attendant, the entity shall provide service to one other individual in addition to the attendant who is accompanying the eligible individual;

(ii) A family member or friend is regarded as a person accompanying the eligible individual, and not as a personal care attendant, unless the family member or friend registered is acting in the capacity of a personal care attendant;

(2) Additional individuals accompanying the ADA paratransit eligible individual shall be provided service, provided that space is available for them on the paratransit vehicle carrying the ADA paratransit eligible individual and that transportation of the additional individuals will not result in a denial of service to ADA paratransit eligible individuals;

(3) In order to be considered as ''accompanying'' the eligible individual for purposes of this paragraph (f), the other individual(s) shall have the same origin and destination as the eligible individual.

§ 37.125 ADA paratransit eligibility: Process.

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

(a) The process shall strictly limit ADA paratransit eligibility to individuals specified in § 37.123 of this part.

(b) All information about the process, materials necessary to apply for eligibility, and notices and determinations concerning eligibility shall be made available in accessible formats, upon request.

(c) If, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application.

(d) The entity's determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible, the determination shall state the reasons for the finding.

(e) The public entity shall provide documentation to each eligible individual stating that he or she is ''ADA Paratransit Eligible.'' The documentation shall include the name of the eligible individual, the name of the transit provider, the telephone number of the entity's paratransit coordinator, an expiration date for eligibility, and any conditions or limitations on the individual's eligibility including the use of a personal care attendant.

(f) The entity may require recertification of the eligibility of ADA paratransit eligible individuals at reasonable intervals.

(g) The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.

(1) The entity may require that an appeal be filed within 60 days of the denial of an individual's application.

(2) The process shall include an opportunity to be heard and to present information and arguments, separation of functions (i.e., a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it.

(3) The entity is not required to provide paratransit service to the individual pending the determination on appeal. However, if the entity has not made a decision within 30 days of the completion of the appeal process, the entity shall provide paratransit service from that time until and unless a decision to deny the appeal is issued.

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

(1) Trips missed by the individual for reasons beyond his or her control (including, but not limited to, trips which are missed due to operator error) shall not be a basis for determining that such a pattern or practice exists.

(2) Before suspending service, the entity shall take the following steps:

(i) Notify the individual in writing that the entity proposes to suspend service, citing with specificity the basis of the proposed suspension and setting forth the proposed sanction.

(ii) Provide the individual an opportunity to be heard and to present information and arguments;

(iii) Provide the individual with written notification of the decision and the reasons for it.

(3) The appeals process of paragraph (g) of this section is available to an individual on whom sanctions have been imposed under this paragraph. The sanction is stayed pending the outcome of the appeal.

(i) In applications for ADA paratransit eligibility, the entity may require the applicant to indicate whether or not he or she travels with a personal care attendant.

§ 37.127 Complementary paratransit service for visitors.

(a) Each public entity required to provide complementary paratransit service under § 37.121 of this part shall make the service available to visitors as provided in this section.

(b) For purposes of this section, a visitor is an individual with disabilities who does not reside in the jurisdiction(s) served by the public entity or other entities with which the public entity provides coordinated complementary paratransit service within a region.

(c) Each public entity shall treat as eligible for its complementary paratransit service all visitors who present documentation that they are ADA paratransit eligible, under the criteria of § 37.125 of this part, in the jurisdiction in which they reside.

(d) With respect to visitors with disabilities who do not present such documentation, the public entity may require the documentation of the individual's place of residence and, if the individual's disability is not apparent, of his or her disability. The entity shall provide paratransit service to individuals with disabilities who qualify as visitors under paragraph (b) of this section. The entity shall accept a certification by such individuals that they are unable to use fixed route transit.

(e) A public entity shall make the service to a visitor required by this section available for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during such 365-day period. In no case shall the public entity require a visitor to apply for or receive eligibility certification from the public entity before receiving the service required by this section.

[56 FR 45621, Sept. 6, 1991, as amended at 61 FR 25416, May 21, 1996]

§ 37.129 Types of service.

(a) Except as provided in this section, complementary paratransit service for ADA paratransit eligible persons shall be origin-to-destination service.

(b) Complementary paratransit service for ADA paratransit eligible persons described in § 37.123(e)(2) of this part may also be provided by on-call bus service or paratransit feeder service to an accessible fixed route, where such service enables the individual to use the fixed route bus system for his or her trip.

(c) Complementary paratransit service for ADA eligible persons described in § 37.123(e)(3) of this part also may be provided by paratransit feeder service to and/or from an accessible fixed route.

§ 37.131 Service criteria for complementary paratransit.

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

(a) *Service Area*—(1) *Bus.* (i) The entity shall provide complementary paratransit service to origins and destinations within corridors with a width of three-fourths of a mile on each side of each fixed route. The corridor shall include an area with a three-fourths of a mile radius at the ends of each fixed route.

(ii) Within the core service area, the entity also shall provide service to small areas not inside any of the corridors but which are surrounded by corridors.

(iii) Outside the core service area, the entity may designate corridors with widths from three-fourths of a mile up to one and one half miles on each side of a fixed route, based on local circumstances.

(iv) For purposes of this paragraph, the core service area is that area in which corridors with a width of three-fourths of a mile on each side of each fixed route merge together such that, with few and small exceptions, all origins and destinations within the area would be served.

(2) *Rail.* (i) For rail systems, the service area shall consist of a circle with a radius of ¾ of a mile around each station.

(ii) At end stations and other stations in outlying areas, the entity may designate circles with radii of up to 1½ miles as part of its service area, based on local circumstances.

(3) *Jurisdictional boundaries.* Notwithstanding any other provision of this paragraph, an entity is not required to provide paratransit service in an area outside the boundaries of the jurisdiction(s) in which it operates, if the entity does not have legal authority to operate in that area. The entity shall take all practicable steps to provide paratransit service to any part of its service area.

(b) *Response time.* The entity shall schedule and provide paratransit service to any ADA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day. Reservations may be taken by reservation agents or by mechanical means.

(1) The entity shall make reservation service available during at least all normal business hours of the entity's administrative offices, as well as during times, comparable to normal business hours, on a day when the entity's offices are not open before a service day.

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

(3) The entity may use real-time scheduling in providing complementary paratransit service.

(4) The entity may permit advance reservations to be made up to 14 days in advance of an ADA paratransit eligible individual's desired trips. When an entity proposes to change its reservations system, it shall comply with the public participation requirements equivalent to those of § 37.137 (b) and (c).

(c) *Fares.* The fare for a trip charged to an ADA paratransit eligible user of the complementary paratransit service shall not exceed twice the fare that would be charged to an individual paying full fare (i.e., without regard to discounts) for a trip of similar length, at a similar time of day, on the entity's fixed route system.

(1) In calculating the full fare that would be paid by an individual using the fixed route system, the entity may include transfer and premium charges applicable to a trip of similar length, at a similar time of day, on the fixed route system.

(2) The fares for individuals accompanying ADA paratransit eligible individuals, who are provided service under § 37.123 (f) of this part, shall be the same as for the ADA paratransit eligible individuals they are accompanying.

(3) A personal care attendant shall not be charged for complementary paratransit service.

(4) The entity may charge a fare higher than otherwise permitted by this paragraph to a social service agency or other organization for agency trips (i.e., trips guaranteed to the organization).

(d) *Trip purpose restrictions.* The entity shall not impose restrictions or priorities based on trip purpose.

(e) *Hours and days of service.* The complementary paratransit service shall be available throughout the same hours and days as the entity's fixed route service.

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

(1) Restrictions on the number of trips an individual will be provided;

(2) Waiting lists for access to the service; or

(3) Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons.

(i) Such patterns or practices include, but are not limited to, the following:

(A) Substantial numbers of significantly untimely pickups for initial or return trips;

(B) Substantial numbers of trip denials or missed trips;

(C) Substantial numbers of trips with excessive trip lengths.

(ii) Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists.

(g) *Additional service.* Public entities may provide complementary paratransit service to ADA paratransit eligible individuals exceeding that provided for in this section. However, only the cost of service provided for in this section may be considered in a public entity's request for an undue financial burden waiver under §§ 37.151–37.155 of this part.

[56 FR 45621, Sept. 6, 1991, as amended at 61 FR 25416, May 21, 1996; 71 FR 63266, Oct. 30, 2006]

§ 37.133 Subscription service.

(a) This part does not prohibit the use of subscription service by public entities as part of a complementary paratransit system, subject to the limitations in this section.

(b) Subscription service may not absorb more than fifty percent of the number of trips available at a given time of day, unless there is non-subscription capacity.

(c) Notwithstanding any other provision of this part, the entity may establish waiting lists or other capacity constraints and trip purpose restrictions or priorities for participation in the subscription service only.

§ 37.135 Submission of paratransit plan.

(a) *General.* Each public entity operating fixed route transportation service, which is required by § 37.121 to provide complementary paratransit service, shall develop a paratransit plan.

(b) *Initial submission.* Except as provided in § 37.141 of this part, each entity shall submit its initial plan for compliance with the complementary paratransit service provision by January 26, 1992, to the appropriate location identified in paragraph (f) of this section.

(c) *Annual Updates.* Except as provided in this paragraph, each entity shall submit an annual update to its plan on January 26 of each succeeding year.

(1) If an entity has met and is continuing to meet all requirements for complementary paratransit in §§ 37.121–37.133 of this part, the entity may submit to FTA an annual certification of continued compliance in lieu of a plan update. Entities that have submitted a joint plan under § 37.141 may submit a joint certification under this paragraph. The requirements of §§ 37.137 (a) and (b), 37.138 and 37.139 do not apply when a certification is submitted under this paragraph.

(2) In the event of any change in circumstances that results in an entity which has submitted a certification of continued compliance falling short of compliance with §§ 37.121–37.133, the entity shall immediately notify FTA in writing of the problem. In this case, the entity shall also file a plan update meeting the requirements of §§ 37.137–37.139 of this part on the next following January 26 and in each succeeding year until the entity returns to full compliance.

(3) An entity that has demonstrated undue financial burden to the FTA shall file a plan update meeting the requirements of §§ 37.137–37.139 of this part on each January 26 until full compliance with §§ 37.121–37.133 is attained.

(4) If FTA reasonably believes that an entity may not be fully complying with all service criteria, FTA may require the entity to provide an annual update to its plan.

(d) *Phase-in of implementation.* Each plan shall provide full compliance by no later than January 26, 1997, unless the entity has received a waiver based on undue financial burden. If the date for full compliance specified in the plan is after January 26, 1993, the plan shall include milestones, providing for measured, proportional progress toward full compliance.

(e) *Plan implementation.* Each entity shall begin implementation of its plan on January 26, 1992.

(f) *Submission locations.* An entity shall submit its plan to one of the following offices, as appropriate:

(1) The individual state administering agency, if it is—

(i) A section 18 recipient;

(ii) A small urbanized area recipient of section 9 funds administered by the State;

(iii) A participant in a coordinated plan, in which all of the participating entities are eligible to submit their plans to the State; or

(2) The FTA Regional Office (as listed in appendix B to this part) for all other entities required to submit a paratransit plan. This includes an FTA recipient under section 9 of the FT Act; entities submitting a joint plan (unless they meet the requirements of paragraph (f)(1)(iii) of this section), and a public entity not an FT Act recipient.

[56 FR 45621, Sept. 6, 1991, as amended at 61 FR 25416, May 21, 1996; 61 FR 26468, May 28, 1996]

§ 37.137 Paratransit plan development.

(a) *Survey of existing services.* Each submitting entity shall survey the area to be covered by the plan to identify any person or entity (public or private) which provides a paratransit or other special transportation service for ADA paratransit eligible individuals in the service area to which the plan applies.

(b) *Public participation.* Each submitting entity shall ensure public participation in the development of its paratransit plan, including at least the following:

(1) *Outreach.* Each submitting entity shall solicit participation in the development of its plan by the widest range of persons anticipated to use its paratransit service. Each entity shall develop contacts, mailing lists and other appropriate means for notification of opportunities to participate in the development of the paratransit plan;

(2) *Consultation with individuals with disabilities.* Each entity shall contact individuals with disabilities and groups representing them in the community. Consultation shall begin at an early stage in the plan development and should involve persons with disabilities in all phases of plan development. All documents and other information concerning the planning procedure and the provision of service shall be available, upon request, to members of the public, except where disclosure would be an unwarranted invasion of personal privacy;

(3) *Opportunity for public comment.* The submitting entity shall make its plan available for review before the plan is finalized. In making the plan available for public review, the entity shall ensure that the plan is available upon request in accessible formats;

(4) *Public hearing.* The entity shall sponsor at a minimum one public hearing and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements; and

(5) *Special requirements.* If the entity intends to phase-in its paratransit service over a multi-year period, or request a waiver based on undue financial burden, the public hearing shall afford the opportunity for interested citizens to express their views concerning the phase-in, the request, and which service criteria may be delayed in implementation.

(c) *Ongoing requirement.* The entity shall create an ongoing mechanism for the participation of individuals with disabilities in the continued development and assessment of services to persons with disabilities. This includes, but is not limited to, the development of the initial plan, any request for an undue financial burden waiver, and each annual submission.

§ 37.139 Plan contents.

Each plan shall contain the following information:

(a) Identification of the entity or entities submitting the plan, specifying for each—

(1) Name and address; and

(2) Contact person for the plan, with telephone number and facsimile telephone number (FAX), if applicable.

(b) A description of the fixed route system as of January 26, 1992 (or subsequent year for annual updates), including—

(1) A description of the service area, route structure, days and hours of service, fare structure, and population served. This includes maps and tables, if appropriate;

(2) The total number of vehicles (bus, van, or rail) operated in fixed route service (including contracted service), and percentage of accessible vehicles

and percentage of routes accessible to and usable by persons with disabilities, including persons who use wheelchairs;

(3) Any other information about the fixed route service that is relevant to establishing the basis for comparability of fixed route and paratransit service.

(c) A description of existing paratransit services, including:

(1) An inventory of service provided by the public entity submitting the plan;

(2) An inventory of service provided by other agencies or organizations, which may in whole or in part be used to meet the requirement for complementary paratransit service; and

(3) A description of the available paratransit services in paragraphs (c)(2) and (c)(3) of this section as they relate to the service criteria described in § 37.131 of this part of service area, response time, fares, restrictions on trip purpose, hours and days of service, and capacity constraints; and to the requirements of ADA paratransit eligibility.

(d) A description of the plan to provide comparable paratransit, including:

(1) An estimate of demand for comparable paratransit service by ADA eligible individuals and a brief description of the demand estimation methodology used;

(2) An analysis of differences between the paratransit service currently provided and what is required under this part by the entity(ies) submitting the plan and other entities, as described in paragraph (c) of this section;

(3) A brief description of planned modifications to existing paratransit and fixed route service and the new paratransit service planned to comply with the ADA paratransit service criteria;

(4) A description of the planned comparable paratransit service as it relates to each of the service criteria described in § 37.131 of this part—service area, absence of restrictions or priorities based on trip purpose, response time, fares, hours and days of service, and lack of capacity constraints. If the paratransit plan is to be phased in, this paragraph shall be coordinated with the information being provided in paragraphs (d)(5) and (d)(6) of this paragraph;

(5) A timetable for implementing comparable paratransit service, with a specific date indicating when the planned service will be completely operational. In no case may full implementation be completed later than January 26, 1997. The plan shall include milestones for implementing phases of the plan, with progress that can be objectively measured yearly;

(6) A budget for comparable paratransit service, including capital and operating expenditures over five years.

(e) A description of the process used to certify individuals with disabilities as ADA paratransit eligible. At a minimum, this must include—

(1) A description of the application and certification process, including—

(i) The availability of information about the process and application materials inaccessible formats;

(ii) The process for determining eligibility according to the provisions of §§ 37.123–37.125 of this part and notifying individuals of the determination made;

(iii) The entity's system and timetable for processing applications and allowing presumptive eligibility; and

(iv) The documentation given to eligible individuals.

(2) A description of the administrative appeals process for individuals denied eligibility.

(3) A policy for visitors, consistent with § 37.127 of this part.

(f) Description of the public participation process including—

(1) Notice given of opportunity for public comment, the date(s) of completed public hearing(s), availability of the plan in accessible formats, outreach efforts, and consultation with persons with disabilities.

(2) A summary of significant issues raised during the public comment period, along with a response to significant comments and discussion of how the issues were resolved.

(g) Efforts to coordinate service with other entities subject to the complementary paratransit requirements of this part which have overlapping or contiguous service areas or jurisdictions.

(h) The following endorsements or certifications:

(1) A resolution adopted by the board of the entity authorizing the plan, as

submitted. If more than one entity is submitting the plan there must be an authorizing resolution from each board. If the entity does not function with a board, a statement shall be submitted by the entity's chief executive;

(2) In urbanized areas, certification by the Metropolitan Planning Organization (MPO) that it has reviewed the plan and that the plan is in conformance with the transportation plan developed under the Federal Transit/Federal Highway Administration joint planning regulation (49 CFR part 613 and 23 CFR part 450). In a service area which is covered by more than one MPO, each applicable MPO shall certify conformity of the entity's plan. The provisions of this paragraph do not apply to non-FTA recipients;

(3) A certification that the survey of existing paratransit service was conducted as required in §37.137(a) of this part;

(4) To the extent service provided by other entities is included in the entity's plan for comparable paratransit service, the entity must certify that:

(i) ADA paratransit eligible individuals have access to the service;

(ii) The service is provided in the manner represented; and

(iii) Efforts will be made to coordinate the provision of paratransit service by other providers.

(i) A request for a waiver based on undue financial burden, if applicable. The waiver request should include information sufficient for FTA to consider the factors in §37.155 of this part. If a request for an undue financial burden waiver is made, the plan must include a description of additional paratransit services that would be provided to achieve full compliance with the requirement for comparable paratransit in the event the waiver is not granted, and the timetable for the implementation of these additional services.

(j) *Annual plan updates.* (1) The annual plan updates submitted January 26, 1993, and annually thereafter, shall include information necessary to update the information requirements of this section. Information submitted annually must include all significant changes and revisions to the timetable for implementation;

(2) If the paratransit service is being phased in over more than one year, the entity must demonstrate that the milestones identified in the current paratransit plans have been achieved. If the milestones have not been achieved, the plan must explain any slippage and what actions are being taken to compensate for the slippage.

(3) The annual plan must describe specifically the means used to comply with the public participation requirements, as described in §37.137 of this part.

§37.141 Requirements for a joint paratransit plan.

(a) Two or more entities with overlapping or contiguous service areas or jurisdictions may develop and submit a joint plan providing for coordinated paratransit service. Joint plans shall identify the participating entities and indicate their commitment to participate in the plan.

(b) To the maximum extent feasible, all elements of the coordinated plan shall be submitted on January 26, 1992. If a coordinated plan is not completed by January 26, 1992, those entities intending to coordinate paratransit service must submit a general statement declaring their intention to provide coordinated service and each element of the plan specified in §37.139 to the extent practicable. In addition, the plan must include the following certifications from each entity involved in the coordination effort:

(1) A certification that the entity is committed to providing ADA paratransit service as part of a coordinated plan.

(2) A certification from each public entity participating in the plan that it will maintain current levels of paratransit service until the coordinated plan goes into effect.

(c) Entities submitting the above certifications and plan elements in lieu of a completed plan on January 26, 1992, must submit a complete plan by July 26, 1992.

(d) Filing of an individual plan does not preclude an entity from cooperating with other entities in the development or implementation of a joint plan. An entity wishing to join with

other entities after its initial submission may do so by meeting the filing requirements of this section.

§ 37.143 Paratransit plan implementation.

(a) Each entity shall begin implementation of its complementary paratransit plan, pending notice from FTA. The implementation of the plan shall be consistent with the terms of the plan, including any specified phase-in period.

(b) If the plan contains a request for a wavier based on undue financial burden, the entity shall begin implementation of its plan, pending a determination on its waiver request.

§ 37.145 State comment on plans.

Each state required to receive plans under § 37.135 of this part shall:

(a) Ensure that all applicable section 18 and section 9 recipients have submitted plans.

(b) Certify to FTA that all plans have been received.

(c) Forward the required certification with comments on each plan to FTA. The plans, with comments, shall be submitted to FTA no later than April 1, 1992, for the first year and April 1 annually thereafter.

(d) The State shall develop comments to on each plan, responding to the following points:

(1) Was the plan filed on time?

(2) Does the plan appear reasonable?

(3) Are there circumstances that bear on the ability of the grantee to carry out the plan as represented? If yes, please elaborate.

(4) Is the plan consistent with statewide planning activities?

(5) Are the necessary anticipated financial and capital resources identified in the plan accurately estimated?

§ 37.147 Considerations during FTA review.

In reviewing each plan, at a minimum FTA will consider the following:

(a) Whether the plan was filed on time;

(b) Comments submitted by the state, if applicable;

(c) Whether the plan contains responsive elements for each component required under § 37.139 of this part;

(d) Whether the plan, when viewed in its entirety, provides for paratransit service comparable to the entity's fixed route service;

(e) Whether the entity complied with the public participation efforts required by this part; and

(f) The extent to which efforts were made to coordinate with other public entities with overlapping or contiguous service areas or jurisdictions.

§ 37.149 Disapproved plans.

(a) If a plan is disapproved in whole or in part, FTA will specify which provisions are disapproved. Each entity shall amend its plan consistent with this information and resubmit the plan to the appropriate FTA Regional Office within 90 days of receipt of the disapproval letter.

(b) Each entity revising its plan shall continue to comply with the public participation requirements applicable to the initial development of the plan (set out in § 37.137 of this part).

§ 37.151 Waiver for undue financial burden.

If compliance with the service criteria of § 37.131 of this part creates an undue financial burden, an entity may request a waiver from all or some of the provisions if the entity has complied with the public participation requirements in § 37.137 of this part and if the following conditions apply:

(a) At the time of submission of the initial plan on January 26, 1992—

(1) The entity determines that it cannot meet all of the service criteria by January 26, 1997; or

(2) The entity determines that it cannot make measured progress toward compliance in any year before full compliance is required. For purposes of this part, measured progress means implementing milestones as scheduled, such as incorporating an additional paratransit service criterion or improving an aspect of a specific service criterion.

(b) At the time of its annual plan update submission, if the entity believes that circumstances have changed since its last submission, and it is no longer able to comply by January 26, 1997, or make measured progress in any year

before 1997, as described in paragraph (a)(2) of this section.

§ 37.153 FTA waiver determination.

(a) The Administrator will determine whether to grant a waiver for undue financial burden on a case-by-case basis, after considering the factors identified in § 37.155 of this part and the information accompanying the request. If necessary, the Administrator will return the application with a request for additional information.

(b) Any waiver granted will be for a limited and specified period of time.

(c) If the Administrator grants the applicant a waiver, the Administrator will do one of the following:

(1) Require the public entity to provide complementary paratransit to the extent it can do so without incurring an undue financial burden. The entity shall make changes in its plan that the Administrator determines are appropriate to maximize the complementary paratransit service that is provided to ADA paratransit eligible individuals. When making changes to its plan, the entity shall use the public participation process specified for plan development and shall consider first a reduction in number of trips provided to each ADA paratransit eligible person per month, while attempting to meet all other service criteria.

(2) Require the public entity to provide basic complementary paratransit services to all ADA paratransit eligible individuals, even if doing so would cause the public entity to incur an undue financial burden. Basic complementary paratransit service in corridors defined as provided in § 37.131(a) along the public entity's key routes during core service hours.

(i) For purposes of this section, key routes are defined as routes along which there is service at least hourly throughout the day.

(ii) For purposes of this section, core service hours encompass at least peak periods, as these periods are defined locally for fixed route service, consistent with industry practice.

(3) If the Administrator determines that the public entity will incur an undue financial burden as the result of providing basic complementary paratransit service, such that it is infeasible for the entity to provide basic complementary paratransit service, the Administrator shall require the public entity to coordinate with other available providers of demand responsive service in the area served by the public entity to maximize the service to ADA paratransit eligible individuals to the maximum extent feasible.

§ 37.155 Factors in decision to grant an undue financial burden waiver.

(a) In making an undue financial burden determination, the FTA Administrator will consider the following factors:

(1) Effects on current fixed route service, including reallocation of accessible fixed route vehicles and potential reduction in service, measured by service miles;

(2) Average number of trips made by the entity's general population, on a per capita basis, compared with the average number of trips to be made by registered ADA paratransit eligible persons, on a per capita basis;

(3) Reductions in other services, including other special services;

(4) Increases in fares;

(5) Resources available to implement complementary paratransit service over the period covered by the plan;

(6) Percentage of budget needed to implement the plan, both as a percentage of operating budget and a percentage of entire budget;

(7) The current level of accessible service, both fixed route and paratransit;

(8) Cooperation/coordination among area transportation providers;

(9) Evidence of increased efficiencies, that have been or could be effectuated, that would benefit the level and quality of available resources for complementary paratransit service; and

(10) Unique circumstances in the submitting entity's area that affect the ability of the entity to provide paratransit, that militate against the need to provide paratransit, or in some other respect create a circumstance considered exceptional by the submitting entity.

(b)(1) Costs attributable to complementary paratransit shall be limited to costs of providing service specifically required by this part to ADA

paratransit eligible individuals, by entities responsible under this part for providing such service.

(2) If the entity determines that it is impracticable to distinguish between trips mandated by the ADA and other trips on a trip-by-trip basis, the entity shall attribute to ADA complementary paratransit requirements a percentage of its overall paratransit costs. This percentage shall be determined by a statistically valid methodology that determines the percentage of trips that are required by this part. The entity shall submit information concerning its methodology and the data on which its percentage is based with its request for a waiver. Only costs attributable to ADA-mandated trips may be considered with respect to a request for an undue financial burden waiver.

(3) Funds to which the entity would be legally entitled, but which, as a matter of state or local funding arrangements, are provided to another entity and used by that entity to provide paratransit service which is part of a coordinated system of paratransit meeting the requirements of this part, may be counted in determining the burden associated with the waiver request.

§§ 37.157–37.159 [Reserved]

Subpart G—Provision of Service

§ 37.161 Maintenance of accessible features: General.

(a) Public and private entities providing transportation services shall maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible to and usable by individuals with disabilities. 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 impaired vision or hearing.

(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.

§ 37.163 Keeping vehicle lifts in operative condition: Public entities.

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

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

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

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

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

(f) In any case in which a vehicle is operating on a fixed route with an inoperative lift, and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity shall promptly provide alternative transportation to individuals with disabilities who are unable to use the vehicle because its lift does not work.

§ 37.165 Lift and securement use.

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

(b) All common wheelchairs and their users shall be transported in the entity's vehicles or other conveyances. The

entity is not required to permit wheelchairs to ride in places other than designated securement locations in the vehicle, where such locations exist.

(c)(1) For vehicles complying with part 38 of this title, the entity shall use the securement system to secure wheelchairs as provided in that Part.

(2) For other vehicles transporting individuals who use wheelchairs, the entity shall provide and use a securement system to ensure that the wheelchair remains within the securement area.

(3) The entity may require that an individual permit his or her wheelchair to be secured.

(d) The entity may not deny transportation to a wheelchair or its user on the ground that the device cannot be secured or restrained satisfactorily by the vehicle's securement system.

(e) The entity may recommend to a user of a wheelchair that the individual transfer to a vehicle seat. The entity may not require the individual to transfer.

(f) Where necessary or upon request, the entity's personnel shall assist individuals with disabilities with the use of securement systems, ramps and lifts. If it is necessary for the personnel to leave their seats to provide this assistance, they shall do so.

(g) The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle. *Provided*, that an entity is not required to permit such individuals to use a lift Model 141 manufactured by EEC, Inc. If the entity chooses not to allow such individuals to use such a lift, it shall clearly notify consumers of this fact by signage on the exterior of the vehicle (adjacent to and of equivalent size with the accessibility symbol).

[56 FR 45621, Sept. 6, 1991, as amended at 58 FR 63103, Nov. 30, 1993]

§ 37.167 Other service requirements.

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

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

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

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

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

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

(e) The entity shall ensure that vehicle operators and other personnel make use of accessibility-related equipment or features required by part 38 of this title.

(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.

[56 FR 45621, Sept. 6, 1991, as amended at 58 FR 63103, Nov. 30, 1993]

§ 37.169 Interim requirements for over-the-road bus service operated by private entities.

(a) Private entities operating over-the-road buses, in addition to compliance with other applicable provisions of this part, shall provide accessible service as provided in this section.

(b) The private entity shall provide assistance, as needed, to individuals with disabilities in boarding and disembarking, including moving to and from the bus seat for the purpose of boarding and disembarking. The private entity shall ensure that personnel are trained to provide this assistance safely and appropriately.

(c) To the extent that they can be accommodated in the areas of the passenger compartment provided for passengers' personal effects, wheelchairs or other mobility aids and assistive devices used by individuals with disabilities, or components of such devices, shall be permitted in the passenger compartment. When the bus is at rest at a stop, the driver or other personnel shall assist individuals with disabilities with the stowage and retrieval of mobility aids, assistive devices, or other items that can be accommodated in the passenger compartment of the bus.

(d) Wheelchairs and other mobility aids or assistive devices that cannot be accommodated in the passenger compartment (including electric wheelchairs) shall be accommodated in the baggage compartment of the bus, unless the size of the baggage compartment prevents such accommodation.

(e) At any given stop, individuals with disabilities shall have the opportunity to have their wheelchairs or other mobility aids or assistive devices stowed in the baggage compartment before other baggage or cargo is loaded, but baggage or cargo already on the bus does not have to be off-loaded in order to make room for such devices.

(f) The entity may require up to 48 hours' advance notice only for providing boarding assistance. If the individual does not provide such notice, the entity shall nonetheless provide the service if it can do so by making a reasonable effort, without delaying the bus service.

§ 37.171 Equivalency requirement for demand responsive service operated by private entities not primarily engaged in the business of transporting people.

A private entity not primarily engaged in the business of transporting people which operates a demand responsive system shall ensure that its system, when viewed in its entirety, provides equivalent service to individuals with disabilities, including individuals who use wheelchairs, as it does to individuals without disabilities. The standards of § 37.105 shall be used to determine if the entity is providing equivalent service.

§ 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.

Subpart H—Over-the-Road Buses (OTRBs)

SOURCE: 63 FR 51690, Sept. 28, 1998, unless otherwise noted.

§ 37.181 Applicability dates.

This subpart applies to all private entities that operate OTRBs. The requirements of the subpart begin to apply to large operators beginning October 30, 2000 and to small operators beginning October 29, 2001.

§ 37.183 Purchase or lease of new OTRBs by operators of fixed-route systems.

The following requirements apply to private entities that are primarily in the business of transporting people, whose operations affect commerce, and that operate a fixed-route system, with respect to OTRBs delivered to them on or after the date on which this subpart applies to them:

(a) *Large operators.* If a large entity operates a fixed-route system, and purchases or leases a new OTRB for or in contemplation of use in that system, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) *Small operators.* If a small entity operates a fixed-route system, and purchases or leases a new OTRB for or in contemplation of use in that system, it must do one of the following two things:

(1) Ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; or

(2) Ensure that equivalent service, as defined in § 37.105, is provided to individuals with disabilities, including individuals who use wheelchairs. To meet this equivalent service standard, the service provided by the operator must permit a wheelchair user to travel in his or her own mobility aid.

§ 37.185 Fleet accessibility requirement for OTRB fixed-route systems of large operators.

Each large operator subject to the requirements of § 37.183 shall ensure that—

(a) By October 30, 2006 no less than 50 percent of the buses in its fleet with which it provides fixed-route service are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) By October 29, 2012, 100 percent of the buses in its fleet with which it provides fixed-route service are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) *Request for time extension.* An operator may apply to the Secretary for a time extension of the fleet accessibility deadlines of this section. If he or she grants the request, the Secretary sets a specific date by which the operator must meet the fleet accessibility requirement. In determining whether to grant such a request, the Secretary considers the following factors:

(1) Whether the operator has purchased or leased, since October 30, 2000, enough new OTRBs to replace 50 percent of the OTRBs with which it provides fixed-route service by October 30, 2006 or 100 percent of such OTRBs by October 29, 2012;

(2) Whether the operator has purchased or leased, between October 28, 1998 and October 30, 2000, a number of new inaccessible OTRBs significantly exceeding the number of buses it would normally obtain in such a period;

(3) The compliance with all requirements of this part by the operator over the period between October 28, 1998 and the request for time extension.

§ 37.187 Interline service.

(a) When the general public can purchase a ticket or make a reservation with one operator for a fixed-route trip

of two or more stages in which another operator provides service, the first operator must arrange for an accessible bus, or equivalent service, as applicable, to be provided for each stage of the trip to a passenger with a disability. The following examples illustrate the provisions of this paragraph (a):

Example 1. By going to Operator X's ticket office or calling X for a reservation, a passenger can buy or reserve a ticket from Point A through to Point C, transferring at intermediate Point B to a bus operated by Operator Y. Operator X is responsible for communicating immediately with Operator Y to ensure that Y knows that a passenger needing accessible transportation or equivalent service, as applicable, is traveling from Point B to Point C. By immediate communication, we mean that the ticket or reservation agent for Operator X, by phone, fax, computer, or other instantaneous means, contacts Operator Y the minute the reservation or ticketing transaction with the passenger, as applicable, has been completed. It is the responsibility of each carrier to know how to contact carriers with which it interlines (e.g., Operator X must know Operator Y's phone number).

Example 2. Operator X fails to provide the required information in a timely manner to Operator Y. Operator X is responsible for compensating the passenger for the consequent unavailability of an accessible bus or equivalent service, as applicable, on the B-C leg of the interline trip.

(b) Each operator retains the responsibility for providing the transportation required by this subpart to the passenger for its portion of an interline trip. The following examples illustrate the provisions of this paragraph (b):

Example 1. In Example 1 to paragraph (a) of this section, Operator X provides the required information to Operator Y in a timely fashion. However, Operator Y fails to provide an accessible bus or equivalent service to the passenger at Point B as the rules require. Operator Y is responsible for compensating the passenger as provided in § 37. 199.

Example 2. Operator X provides the required information to Operator Y in a timely fashion. However, the rules require Operator Y to provide an accessible bus on 48 hours' advance notice (i.e., as a matter of interim service under § 37.193(a) or service by a small mixed-service operator under § 37.191), and the passenger has purchased the ticket or made the reservation for the interline trip only 8 hours before Operator Y's bus leaves from Point B to go to Point C. In this situation, Operator Y is not responsible for providing an accessible bus to the passenger at Point B, any more than that it would be had the passenger directly contacted Operator Y to travel from Point B to Point C.

(c) All fixed-route operators involved in interline service shall ensure that they have the capacity to receive communications at all times concerning interline service for passengers with disabilities. The following examples illustrate the provisions of this paragraph (c):

Example 1. Operator Y's office is staffed only during normal weekday business hours. Operator Y must have a means of receiving communications from carriers with which it interlines (e.g., telephone answering machine, fax, computer) when no one is in the office.

Example 2. Operator Y has the responsibility to monitor its communications devices at reasonable intervals to ensure that it can act promptly on the basis of messages received. If Operator Y receives a message from Operator X on its answering machine on Friday night, notifying Y of the need for an accessible bus on Monday morning, it has the responsibility of making sure that the accessible bus is there on Monday morning. Operator Y is not excused from its obligation because no one checked the answering machine over the weekend.

§ 37.189 Service requirement for OTRB demand-responsive systems.

(a) This section applies to private entities primarily in the business of transporting people, whose operations affect commerce, and that provide demand-responsive OTRB service. Except as needed to meet the other requirements of this section, these entities are not required to purchase or lease accessible buses in connection with providing demand-responsive service.

(b) Demand-responsive operators shall ensure that, beginning one year from the date on which the requirements of this subpart begin to apply to the entity, any individual with a disability who requests service in an accessible OTRB receives such service. This requirement applies to both large and small operators.

(c) The operator may require up to 48 hours' advance notice to provide this service.

(d) If the individual with a disability does not provide the advance notice the operator requires under paragraph (a)

of this section, the operator shall nevertheless provide the service if it can do so by making a reasonable effort.

(e) To meet this requirement, an operator is not required to fundamentally alter its normal reservation policies or to displace another passenger who has reserved a seat on the bus. The following examples illustrate the provisions of this paragraph (e):

Example 1. A tour bus operator requires all passengers to reserve space on the bus three months before the trip date. This requirement applies to passengers with disabilities on the same basis as other passengers. Consequently, an individual passenger who is a wheelchair user would have to request an accessible bus at the time he or she made his reservation, at least three months before the trip date. If the individual passenger with a disability makes a request for space on the trip and an accessible OTRB 48 hours before the trip date, the operator could refuse the request because all passengers were required to make reservations three months before the trip date.

Example 2. A group makes a reservation to charter a bus for a trip four weeks in advance. A week before the trip date, the group discovers that someone who signed up for the trip is a wheelchair user who needs an accessible bus, or someone who later buys a seat in the block of seats the group has reserved needs an accessible bus. A group representative or the passenger with a disability informs the bus company of this need more than 48 hours before the trip date. The bus company must provide an accessible bus.

Example 3. While the operator's normal deadline for reserving space on a charter or tour trip has passed, a number of seats for a trip are unfilled. The operator permits members of the public to make late reservations for the unfilled seats. If a passenger with a disability calls 48 hours before the trip is scheduled to leave and requests a seat and the provision of an accessible OTRB, the operator must meet this request, as long as it does not displace another passenger with a reservation.

Example 4. A tour bus trip is nearly sold out three weeks in advance of the trip date. A passenger with a disability calls 48 hours before the trip is scheduled to leave and requests a seat and the provision of an accessible OTRB. The operator need not meet this request if it will have the effect of displacing a passenger with an existing reservation. If other passengers would not be displaced, the operator must meet this request.

§ 37.191 Special provision for small mixed-service operators.

(a) For purposes of this section, a small mixed-service operator is a small operator that provides both fixed-route and demand-responsive service and does not use more than 25 percent of its buses for fixed-route service.

(b) An operator meeting the criteria of paragraph (a) of this section may conduct all its trips, including fixed-route trips, on an advance-reservation basis as provided for demand-responsive trips in § 37.189. Such an operator is not required to comply with the accessible bus acquisition/equivalent service obligations of § 37.183(b).

§ 37.193 Interim service requirements.

(a) Until 100 percent of the fleet of a large or small operator uses to provide fixed-route service is composed of accessible OTRBs, the operator shall meet the following interim service requirements:

(1) Beginning one year from the date on which the requirements of this subpart begin to apply to the operator, it shall ensure that any individual with a disability that requests service in an accessible OTRB receives such service.

(i) The operator may require up to 48 hours' advance notice to provide this service.

(ii) If the individual with a disability does not provide the advance notice the operator requires, the operator shall nevertheless provide the service if it can do so by making a reasonable effort.

(iii) If the trip on which the person with a disability wishes to travel is already provided by an accessible bus, the operator has met this requirement.

(2) Before a date one year from the date on which this subpart applies to the operator, an operator which is unable to provide the service specified in paragraph (a) of this section shall comply with the requirements of § 37.169.

(3) Interim service under this paragraph (a) is not required to be provided by a small operator who is providing equivalent service to its fixed-route service as provided in § 37.183(b)(2).

(b) Some small fixed-route operators may never have a fleet 100 percent of which consists of accessible buses (e.g.,

a small fixed-route operator who exclusively or primarily purchases or leases used buses). Such an operator must continue to comply with the requirements of this section with respect to any service that is not provided entirely with accessible buses.

(c) Before a date one year from the date on which this subpart applies to an operator providing demand-responsive service, an operator which is unable to provide the service described in § 37.189 shall comply with the requirements of § 37.169.

§ 37.195 Purchase or lease of OTRBs by private entities not primarily in the business of transporting people.

This section applies to all purchases or leases of new vehicles by private entities which are not primarily engaged in the business of transporting people, with respect to buses delivered to them on or after the date on which this subpart begins to apply to them.

(a) *Fixed-route systems.* If the entity operates a fixed-route system and purchases or leases an OTRB for or in contemplation of use on the system, it shall meet the requirements of § 37.183 (a) or (b), as applicable.

(b) *Demand-responsive systems.* The requirements of § 37.189 apply to demand-responsive systems operated by private entities not primarily in the business of transporting people. If such an entity operates a demand-responsive system, and purchases or leases an OTRB for or in contemplation of use on the system, it is not required to purchase or lease an accessible bus except as needed to meet the requirements of § 37.189.

§ 37.197 Remanufactured OTRBs.

(a) This section applies to any private entity operating OTRBs that takes one of the following actions:

(1) On or after the date on which this subpart applies to the entity, it remanufactures an OTRB so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing; or

(2) Purchases or leases an OTRB which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after the date on which this subpart applies to the entity and during the period in which the useful life of the vehicle is extended.

(b) In any situation in which this subpart requires an entity purchasing or leasing a new OTRB to purchase or lease an accessible OTRB, OTRBs 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 an OTRB 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.

§ 37.199 [Reserved]

§ 37.201 Intermediate and rest stops.

(a) Whenever an OTRB makes an intermediate or rest stop, a passenger with a disability, including an individual using a wheelchair, shall be permitted to leave and return to the bus on the same basis as other passengers. The operator shall ensure that assistance is provided to passengers with disabilities as needed to enable the passenger to get on and off the bus at the stop (e.g., operate the lift and provide assistance with securement; provide other boarding assistance if needed, as in the case of a wheelchair user who has transferred to a vehicle seat because other wheelchair users occupied all securement locations).

(b) If an OTRB operator owns, leases, or controls the facility at which a rest or intermediate stop is made, or if an OTRB operator contracts with the person who owns, leases, or controls such a facility to provide rest stop services, the OTRB operator shall ensure the facility complies fully with applicable requirements of the Americans with Disabilities Act.

(c) If an OTRB equipped with an inaccessible restroom is making an express run of three hours or more without a

rest stop, and a passenger with a disability who is unable to use the inaccessible restroom requests an unscheduled rest stop, the operator shall make a good faith effort to accommodate the request. The operator is not required to make the stop. However, if the operator does not make the stop, the operator shall explain to the passenger making the request the reason for its decision not to do so.

§ 37.203 Lift maintenance.

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

(b) 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.

(c) Except as provided in paragraph (d) 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 trip and ensure that the lift is repaired before the vehicle returns to service.

(d) If there is no other vehicle available to take the place of an OTRB with an inoperable lift, such that taking the vehicle out of service before its next trip will reduce the transportation service the entity is able to provide, the entity may keep the vehicle in service with an inoperable lift for no more than five days from the day on which the lift is discovered to be inoperative.

§ 37.205 Additional passengers who use wheelchairs.

If a number of wheelchair users exceeding the number of securement locations on the bus seek to travel on a trip, the operator shall assign the securement locations on a first come-first served basis. The operator shall offer boarding assistance and the opportunity to sit in a vehicle seat to passengers who are not assigned a securement location. If the passengers who are not assigned securement locations are unable or unwilling to accept this offer, the operator is not required to provide transportation to them on the bus.

§ 37.207 Discriminatory practices.

It shall be considered discrimination for any operator to—

(a) Deny transportation to passengers with disabilities, except as provided in § 37.5(h);

(b) Use or request the use of persons other than the operator's employees (e.g., family members or traveling companions of a passenger with a disability, medical or public safety personnel) for routine boarding or other assistance to passengers with disabilities, unless the passenger requests or consents to assistance from such persons;

(c) Require or request a passenger with a disability to reschedule his or her trip, or travel at a time other than the time the passenger has requested, in order to receive transportation as required by this subpart;

(d) Fail to provide reservation services to passengers with disabilities equivalent to those provided other passengers; or

(e) Fail or refuse to comply with any applicable provision of this part.

§ 37.209 Training and other requirements.

OTRB operators shall comply with the requirements of §§ 37.161, 37.165–37.167, and 37.173. For purposes of § 37.173, ''training to proficiency'' is deemed to include, as appropriate to the duties of particular employees, training in proper operation and maintenance of accessibility features and equipment, boarding assistance, securement of mobility aids, sensitive and appropriate interaction with passengers with disabilities, handling and storage of mobility devices, and familiarity with the requirements of this subpart. OTRB operators shall provide refresher training to personnel as needed to maintain proficiency.

§ 37.211 Effect of NHTSA and FHWA safety rules.

OTRB operators are not required to take any action under this subpart that would violate an applicable National Highway Traffic Safety Administration or Federal Highway Administration safety rule.

§ 37.213 Information collection requirements.

(a) This paragraph (a) applies to demand-responsive operators under § 37.189 and fixed-route operators under § 37.193(a)(1) that are required to, and small mixed-service operators under § 37.191 that choose to, provide accessible OTRB service on 48 hours' advance notice.

(1) When the operator receives a request for an accessible bus or equivalent service, the operator shall complete lines 1–9 of the Service Request Form in Appendix A to this subpart. The operator shall transmit a copy of the form to the passenger no later than the end of the next business day following the receipt of the request. The passenger shall be required to make only one request, which covers all legs of the requested trip (e.g., in the case of a round trip, both the outgoing and return legs of the trip; in the case of a multi-leg trip, all connecting legs).

(2) The passenger shall be required to make only one request, which covers all legs of the requested trip (*e.g.*, in the case of a round trip, both the outgoing and return legs of the trip; in the case of a multi-leg trip, all connecting legs). The operator shall transmit a copy of the form to the passenger in one of the following ways:

(i) By first-class United States mail. The operator shall transmit the form no later than the end of the next business day following the request;

(ii) By telephone or email. If the passenger can receive the confirmation by this method, then the operator shall provide a unique confirmation number to the passenger when the request is made and provide a paper copy of the form when the passenger arrives for the requested trip; or

(iii) By facsimile transmission. If the passenger can receive the confirmation by this method, then the operator shall transmit the form within twenty-four hours of the request for transportation.

(3) The operator shall retain its copy of the completed form for five years. The operator shall make these forms available to Department of Transportation or Department of Justice officials at their request.

(4) Beginning October 29, 2001, for large operators, and October 28, 2002, for small operators, and on the last Monday in October in each year thereafter, each operator shall submit a summary of its forms to the Department of Transportation. The summary shall state the number of requests for accessible bus service and the number of times these requests were met. It shall also include the name, address, telephone number, and contact person name for the operator.

(b) This paragraph (b) applies to small fixed route operators who choose to provide equivalent service to passengers with disabilities under § 37.183(b)(2).

(1) The operator shall complete the Service Request Form in Appendix A to this subpart on every occasion on which a passenger with a disability needs equivalent service in order to be provided transportation.

(2) The passenger shall be required to make only one request, which covers all legs of the requested trip (*e.g.*, in the case of a round trip, both the outgoing and return legs of the trip; in the case of a multi-leg trip, all connecting legs). The operator shall transmit a copy of the form to the passenger, and whenever the equivalent service is not provided, in one of the following ways:

(i) By first-class United States mail. The operator shall transmit the form no later than the end of the next business day following the request for equivalent service;

(ii) By telephone or email. If the passenger can receive the confirmation by this method, then the operator shall provide a unique confirmation number to the passenger when the request for equivalent service is made and provide a paper copy of the form when the passenger arrives for the requested trip; or

(iii) By facsimile transmission. If the passenger can receive the confirmation by this method, then the operator shall transmit the form within twenty-four hours of the request for equivalent service.

(3) Beginning on October 28, 2002 and on the last Monday in October in each year therafter, each operator shall submit a summary of its forms to the Department of Transportation. The summary shall state the number of situations in which equivalent service was needed and the number of times such

service was provided. It shall also include the name, address, telephone number, and contact person name for the operator.

(c) This paragraph (c) applies to fixed-route operators.

(1) On March 26, 2001, each fixed-route large operator shall submit to the Department a report on how many passengers with disabilities used the lift to board accessible buses for the period of October 1999 to October 2000. For fixed-route operators, the report shall reflect separately the data pertaining to 48-hour advance reservation service and other service.

(2) Beginning on October 29, 2001 and on the last Monday in October in each year thereafter, each fixed-route operator shall submit to the Department, a report on how many passengers with disabilities used the lift to board accessible buses. For fixed-route operators, the report shall reflect separately the data pertaining to 48-hour advance reservation service and other service.

(d) This paragraph (d) applies to each over the road bus operator.

(1) On March 26, 2001, each operator shall submit to the Department, a summary report listing the number of new buses and used buses it has purchased or leased for the period of October 1998 through October 2000, and how many buses in each category are accessible. It shall also include the total number of buses in the operator's fleet and the name, address, telephone number, and contact person name for the operator.

(2) Beginning on October 29, 2001 and on the last Monday in October in each year thereafter, each operator shall submit to the Department, a summary report listing the number of new buses and used buses it has purchased or leased during the preceding year, and how many buses in each category are accessible. It shall also include the total number of buses in the operator's fleet and the name, address, telephone number, and contact person name for the operator.

(e) The information required to be submitted to the Department shall be sent to the following address: Federal Motor Carrier Safety Administration, Office of Data Analysis & Information System 400 7th Street, S.W., Washington, D.C. 20590.

[66 FR 9053, Feb. 6, 2001, as amended at 69 FR 40796, July 7, 2004]

§ 37.215 Review of requirements.

(a) Beginning October 28, 2005, the Department will review the requirements of § 37.189 and their implementation. The Department will complete this review by October 30, 2006.

(1) As part of this review, the Department will consider factors including, but not necessarily limited to, the following:

(i) The percentage of accessible buses in the demand-responsive fleets of large and small demand-responsive operators.

(ii) The success of small and large demand-responsive operators' service at meeting the requests of passengers with disabilities for accessible buses in a timely manner.

(iii) The ridership of small and large operators' demand-responsive service by passengers with disabilities.

(iv) The volume of complaints by passengers with disabilities.

(v) Cost and service impacts of implementation of the requirements of § 37.189.

(2) The Department will make one of the following decisions on the basis of the review:

(i) Retain § 37.189 without change; or

(ii) Modify the requirements of § 37.189 for large and/or small demand-responsive operators.

(b) Beginning October 30, 2006, the Department will review the requirements of §§ 37.183, 37.185, 37.187, 37.191 and 37.193(a) and their implementation. The Department will complete this review by October 29, 2007.

(1) As part of this review, the Department will consider factors including, but not necessarily limited to, the following:

(i) The percentage of accessible buses in the fixed-route fleets of large and small fixed-route operators.

(ii) The success of small and large fixed-route operators' interim or equivalent service at meeting the requests of passengers with disabilities for accessible buses in a timely manner.

(iii) The ridership of small and large operators' fixed-route service by passengers with disabilities.

(iv) The volume of complaints by passengers with disabilities.

(v) Cost and service impacts of implementation of the requirements of these sections.

(2) The Department will make one of the following decisions on the basis of the review:

(i) Retain §§37.183, 37.185, 37.187, 37.191, 37.193(a) without change; or

(ii) Modify the requirements of §§37.183, 37.185, 37.187, 37.191, 37.193(a) for large and/or small fixed-route operators.

APPENDIX A TO SUBPART H OF PART 37—SERVICE REQUEST FORM

Form for Advance Notice Requests and Provision of Equivalent Service

1. Operator's name _____
2. Address _____
_____
3. Phone number: _____
4. Passenger's name: _____
5. Address: _____
_____
6. Phone number: _____
7. Scheduled date(s) and time(s) of trip(s): _____
_____
8. Date and time of request: _____
9. Location(s) of need for accessible bus or equivalent service, as applicable: _____
10. Was accessible bus or equivalent service, as applicable, provided for trip(s)? Yes _____ no _____
11. Was there a basis recognized by U.S. Department of transportation regulations for not providing an accessible bus or equivalent service, as applicable, for the trip(s)? Yes _____ no _____

If yes, explain _____
_____

[66 FR 9054, Feb. 6, 2001]

APPENDIX A TO PART 37—MODIFICATIONS TO STANDARDS FOR ACCESSIBLE TRANSPORTATION FACILITIES

The Department of Transportation, in §37.9 of this part, adopts as its regulatory standards for accessible transportation facilities the revised Americans with Disabilities Act Guidelines (ADAGG) issued by the Access Board on July 23, 2004. The ADAGG is codified in the Code of Federal Regulations in Appendices B and D of 36 CFR part 1191. Note the ADAAG may also be found via a hyperlink on the Internet at the following address: *http://www.access-board.gov/ada-aba/final.htm*. Like all regulations, the ADAAG also can be found by using the electronic Code of Federal Regulations at *http://www.gpoaccess.gov/ecfr*. Because the ADAAG has been established as a Federal consensus standard by the Access Board, the Department is not republishing the regulations in their entirety, but is adopting them by cross-reference as permitted under 1 CFR 21.21(c)(4). In a few instances, the Department has modified the language of the ADAAG as it applies to entities subject to 49 CFR part 37. These entities must comply with the modified language in this Appendix rather than the language of Appendices B and D to 36 CFR part 1191.

206.3 LOCATION—MODIFICATION TO 206.3 OF APPENDIX B TO 36 CFR PART 1191

Accessible routes shall coincide with, or be located in the same area as general *circulation paths*. Where *circulation paths* are interior, required *accessible* routes shall also be interior. Elements such as ramps, elevators, or other circulation devices, fare vending or other ticketing areas, and fare collection areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.

406.8—MODIFICATION TO 406 OF APPENDIX D TO 36 CFR PART 1191

A curb ramp shall have a detectable warning complying with 705. The detectable warning shall extend the full width of the curb ramp (exclusive of flared sides) and shall extend either the full depth of the curb ramp or 24 inches (610 mm) deep minimum measured from the back of the curb on the ramp surface.

810.2.2 DIMENSIONS—MODIFICATION TO 810.2.2 OF APPENDIX D TO 36 CFR PART 1191

Bus boarding and alighting areas shall provide a clear length of 96 inches (2440 mm), measured perpendicular to the curb or vehicle roadway edge, and a clear width of 60 inches (1525 mm), measured parallel to the vehicle roadway. Public entities shall ensure that the construction of bus boarding and alighting areas comply with 810.2.2, to the extent the construction specifications are within their control.

810.5.3 PLATFORM AND VEHICLE FLOOR COORDINATION—MODIFICATION TO 810.5.3 OF APPENDIX D TO 36 CFR PART 1191

Station platforms shall be positioned to coordinate with vehicles in accordance with the applicable requirements of 36 CFR part 1192. Low-level platforms shall be 8 inches (205 mm) minimum above top of rail. In light rail, commuter rail, and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements of part 1192

or 49 CFR part 38, mini-high platforms, carborne or platform-mounted lifts, ramps or bridge plates or similarly manually deployed devices, meeting the requirements of 49 CFR part 38, shall suffice.

EXCEPTION: Where vehicles are boarded from sidewalks or street-level, low-level platforms shall be permitted to be less than 8 inches (205 mm).

[71 FR 63266, Oct. 30, 2006]

APPENDIX B TO PART 37—FTA REGIONAL OFFICES

Region I, Federal Transit Administration, 206 Federal Plaza, Suite 2940, New York, NY 10278

Region II, Federal Transit Administration, Transportation Systems Center, Kendall Square, 55 Broadway, Suite 921, Cambridge, MA 02142

Region III, Federal Transit Administration, 841 Chestnut Street, Suite 714, Philadelphia, PA 19107

Region IV, Federal Transit Administration, 1720 Peachtree Road NW., Suite 400, Atlanta, GA 30309

Region V, Federal Transit Administration, 55 East Monroe Street, Room 1415, Chicago, IL 60603

Region VI, Federal Transit Administration, 819 Taylor Street, Suite 9A32, Ft. Worth, TX 76102

Region VII, Federal Transit Administration, 6301 Rockville Road, Suite 303, Kansas City, MS 64131

Region VIII, Federal Transit Administration, Federal Office Building, 1961 Stout Street, 5th Floor, Denver, CO 80294

Region IX, Federal Transit Administration, 211 Main Street, Room 1160, San Francisco, CA 94105

Region X, Federal Transit Administration, 3142 Federal Building, 915 Second Avenue, Seattle, WA 98174

APPENDIX C TO PART 37—CERTIFICATIONS

Certification of Equivalent Service

The (name of agency) certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Such service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to:

(1) Response time;

(2) Fares;

(3) Geographic service area;

(4) Hours and days of service;

(5) Restrictions on trip purpose;

(6) Availability of information and reservation capability; and

(7) Constraints on capacity or service availability.

In accordance with 49 CFR 37.77, public entities operating demand responsive systems for the general public which receive financial assistance under section 18 of the Federal Transit Act must file this certification with the appropriate state program office before procuring any inaccessible vehicle. Such public entities not receiving FTA funds shall also file the certification with the appropriate state program office. Such public entities receiving FTA funds under any other section of the FT Act must file the certification with the appropriate FTA regional office. This certification is valid for no longer than one year from its date of filing.

(name of authorized official)

(title)

(signature)

MPO Certification of Paratransit Plan

The (name of Metropolitan Planning Organization) hereby certifies that it has reviewed the ADA paratransit plan prepared by (name of submitting entity (ies)) as required under 49 CFR part 37. 139(h) and finds it to be in conformance with the transportation plan developed under 49 CFR part 613 and 23 CFR part 450 (the FTA/FHWA joint planning regulation). This certification is valid for one year.

signature

name of authorized official

title

date

Existing Paratransit Service Survey

This is to certify that (name of public entity (ies)) has conducted a survey of existing paratransit services as required by 49 CFR 37.137 (a).

signature

name of authorized official

title

date

Included Service Certification

This is to certify that service provided by other entities but included in the ADA paratransit plan submitted by (name of submitting entity (ies)) meets the requirements of

49 CFR part 37, subpart F providing that ADA eligible individuals have access to the service; the service is provided in the manner represented; and, that efforts will be made to coordinate the provision of paratransit service offered by other providers.

signature

name of authorized official

title

date

Joint Plan Certification I

This is to certify that (name of entity covered by joint plan) is committed to providing ADA paratransit service as part of this coordinated plan and in conformance with the requirements of 49 CFR part 37, subpart F.

signature

name of authorized official

title

date

Joint Plan Certification II

This is to certify that (name of entity covered by joint plan) will, in accordance with 49 CFR 37.141, maintain current levels of paratransit service until the coordinated plan goes into effect.

signature

name of authorized official

title

date

State Certification that Plans have been Received

This is to certify that all ADA paratransit plans required under 49 CFR 37.139 have been received by (state DOT)

signature

name of authorized official

title

date

APPENDIX D TO PART 37—CONSTRUCTION AND INTERPRETATION OF PROVISIONS OF 49 CFR PART 37

This appendix explains the Department's construction and interpretation of provisions of 49 CFR part 37. It is intended to be used as definitive guidance concerning the meaning and implementation of these provisions. The appendix is organized on a section-by-section basis. Some sections of the rule are not discussed in the appendix, because they are self-explanatory or we do not currently have interpretive material to provide concerning them.

The Department also provides guidance by other means, such as manuals and letters. The Department intends to update this Appendix periodically to include guidance, provided in response to inquiries about specific situations, that is of general relevance or interest.

AMENDMENTS TO 49 CFR PART 27

Section 27.67(d) has been revised to reference the Access Board facility guidelines (found in appendix A to part 37) as well as the Uniform Federal Accessibility Standard (UFAS). This change was made to ensure consistency between requirements under section 504 and the ADA. Several caveats relating to the application of UFAS (e.g., that spaces not used by the public or likely to result in the employment of individuals with disabilities would not have to meet the standards) have been deleted. It is the Department's understanding that provisions of the Access Board standards and part 37 make them unnecessary.

The Department is aware that there is a transition period between the publication of this rule and the effective date of many of its provisions (e.g., concerning facilities and paratransit services) during which section 504 remains the basic authority for accessibility modifications. In this interval, the Department expects recipients' compliance with section 504 to look forward to compliance with the ADA provisions. That is, if a recipient is making a decision about the shape of its paratransit service between the publication of this rule and January 26, 1992, the decision should be in the direction of service that will help to comply with post-January 1992 requirements. A recipient that severely curtailed its present paratransit service in October, and then asked for a three- or five-year phase-in of service under its paratransit plan, would not be acting consistent with this policy.

Likewise, the Department would view with disfavor any attempt by a recipient to accelerate the beginning of the construction, installation or alteration of a facility to before January 26, 1992, to ''beat the clock'' and avoid the application of this rule's facility

standards. The Department would be very reluctant to approve grants, contracts, exemption requests etc., that appear to have this effect. The purpose of the Department's administration of section 504 is to ensure compliance with the national policy stated in the ADA, not to permit avoidance of it.

SUBPART A—GENERAL

Section 37.3 Definitions

The definition of ''commuter authority'' includes a list of commuter rail operators drawn from a statutory reference in the ADA. It should be noted that this list is not exhaustive. Other commuter rail operators (e.g., in Chicago or San Francisco) would also be encompassed by this definition.

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

The definitions of ''designated public transportation'' and ''specified public transportation'' exclude transportation by aircraft. Persons interested in matters concerning access to air travel for individuals with disabilities should refer to 14 CFR part 382, the Department's regulation implementing the Air Carrier Access Act. Since the facility requirements of this part refer to facilities involved in the provision of designated or specified public transportation, airport facilities are not covered by this part. DOJ makes clear that public and private airport facilities are covered under its title II and title III regulations, respectively.

The examples given in the definition of ''facility'' all relate to ground transportation. We would point out that, since transportation by passenger vessels is covered by this rule and by DOJ rules, such vessel-related facilities as docks, wharfs, vessel terminals, etc. fall under this definition. It is intended that specific requirements for vessels and related facilities will be set forth in future rulemaking.

The definitions of ''fixed route system'' and ''demand responsive system'' derive directly from the ADA's definitions of these terms. Some systems, like a typical city bus system or a dial-a-ride van system, fit clearly into one category or the other. Other systems may not so clearly fall into one of the categories. Nevertheless, because how a system is categorized has consequences for the requirements it must meet, entities must determine, on a case-by-case basis, into which category their systems fall.

In making this determination, one of the key factors to be considered is whether the individual, in order to use the service, must request the service, typically by making a call.

With fixed route service, no action by the individual is needed to initiate public transportation. If an individual is at a bus stop at the time the bus is scheduled to appear, then that individual will be able to access the transportation system. With demand-reponsive service, an additional step must be taken by the individual before he or she can ride the bus, i.e., the individual must make a telephone call.

(S. Rept. 101–116 at 54).

Other factors, such as the presence or absence of published schedules, or the variation of vehicle intervals in anticipation of differences in usage, are less important in making the distinction between the two types of service. If a service is provided along a given route, and a vehicle will arrive at certain times regardless of whether a passenger actively requests the vehicle, the service in most cases should be regarded as fixed route rather than demand responsive.

At the same time, the fact that there is an interaction between a passenger and transportation service does not necessarily make the service demand responsive. For many types of service (e.g., intercity bus, intercity rail) which are clearly fixed route, a passenger has to interact with an agent to buy a ticket. Some services (e.g., certain commuter bus or commuter rail operations) may use flag stops, in which a vehicle along the route does not stop unless a passenger flags the vehicle down. A traveler staying at a hotel usually makes a room reservation before hopping on the hotel shuttle. This kind of interaction does not make an otherwise fixed route service demand responsive.

On the other hand, we would regard a system that permits user-initiated deviations from routes or schedules as demand-responsive. For example, if a rural public transit system (e.g., a section 18 recipient) has a few fixed routes, the fixed route portion of its system would be subject to the requirements of subpart F for complementary paratransit service. If the entity changed its system so that it operated as a route-deviation system,

we would regard it as a demand responsive system. Such a system would not be subject to complementary paratransit requirements.

The definition of ''individual with a disability'' excludes someone who is currently engaging in the illegal use of drugs, when a covered entity is acting on the basis of such use. This concept is more important in employment and public accommodations contexts than it is in transportation, and is discussed at greater length in the DOJ and EEOC rules. Essentially, the definition says that, although drug addiction (i.e., the status or a diagnosis of being a drug abuser) is a disability, no one is regarded as being an individual with a disability on the basis of current illegal drug use.

Moreover, even if an individual has a disability, a covered entity can take action against the individual if that individual is currently engaging in illegal drug use. For example, if a person with a mobility or vision impairment is ADA paratransit eligible, but is caught possessing or using cocaine or marijuana on a paratransit vehicle, the transit provider can deny the individual further eligibility. If the individual has successfully undergone rehabilitation or is no longer using drugs, as explained in the preamble to the DOJ rules, the transit provider could not continue to deny eligibility on the basis that the individual was a former drug user or still was diagnosed as a person with a substance abuse problem.

We defined ''paratransit'' in order to note its specialized usage in the rule. Part 37 uses this term to refer to the complementary paratransit service comparable to public fixed route systems which must be provided. Typically, paratransit is provided in a demand responsive mode. Obviously, the rule refers to a wide variety of demand responsive services that are not ''paratransit,'' in this specialized sense.

The ADA's definition of ''over-the-road bus'' may also be somewhat narrower than the common understanding of the term. The ADA definition focuses on a bus with an elevated passenger deck over a baggage compartment (i.e., a ''Greyhound-type'' bus). Other types of buses commonly referred to as ''over-the-road buses,'' which are sometimes used for commuter bus or other service, do not come within this definition. Only buses that do come within the definition are subject to the over-the-road bus exception to accessibility requirements in Title III of the ADA.

For terminological clarity, we want to point out that two different words are used in ADA regulations to refer to devices on which individuals with hearing impairments communicate over telephone lines. DOJ uses the more traditional term ''telecommunications device for the deaf'' (TDD). The Access Board uses a newer term, ''text telephone.'' The DOT rule uses the terms interchangably.

The definition of ''transit facility'' applies only with reference to the TDD requirement of appendix A to this Part. The point of the definition is to exempt from TDD requirements open structures, like bus shelters, or facilities which are not used primarily as transportation stops or terminals. For example, a drug store in a small town may sell intercity bus tickets, and people waiting for the bus may even wait for the bus inside the store. But the drug store's raison d'etre is not to be a bus station. Its transportation function is only incidental. Consequently, its obligations with respect to TDDs would be those required of a place of public accommodation by DOJ rules.

A ''used vehicle'' means a vehicle which has prior use; prior, that is, to its acquisition by its present owner or lessee. The definition is not relevant to existing vehicles in one's own fleet, which were obtained before the ADA vehicle accessibility requirements took effect.

A ''vanpool'' is a voluntary commuter ridesharing arrangement using a van with a seating capacity of more than seven persons, including the driver. Carpools are not included in the definition. There are some systems using larger vehicles (e.g., buses) that operate, in effect, as vanpools. This definition encompasses such systems. Vanpools are used for daily work trips, between commuters' homes (or collection points near them) and work sites (or drop points near them). Drivers are themselves commuters who are either volunteers who receive no compensation for their efforts or persons who are reimbursed by other riders for the vehicle, operating, and driving costs.

The definition of ''wheelchair'' includes a wide variety of mobility devices. This inclusiveness is consistent with the legislative history of the ADA (See S. Rept. 101–116 at 48). While some mobility devices may not look like many persons' traditional idea of a wheel chair, three and four wheeled devices, of many varied designs, are used by individuals with disabilities and must be transported. The definition of ''common wheelchair,'' developed by the Access Board, is intended to help transit providers determine which wheelchairs they have to carry. The definition involves an ''envelope'' relating to the Access Board requirements for vehicle lifts.

A lift conforming to Access Board requirements is 30″×48″ and capable of lifting a wheelchair/occupant combination of up to 600 pounds. Consequently, a common wheelchair is one that fits these size and weight dimensions. Devices used by individuals with disabilities that do not fit this envelope (e.g., may ''gurneys'') do not have to be carried.

Section 37.5 Nondiscrimination

This section states the general nondiscrimination obligation for entities providing transportation service. It should be noted that virtually all public and private entities covered by this regulation are also covered by DOJ regulations, which have more detailed statements of general nondiscrimination obligations.

Under the ADA, an entity may not consign an individual with disabilities to a separate, ''segregated,'' service for such persons, if the individual can in fact use the service for the general public. This is true even if the individual takes longer, or has more difficulty, than other persons in using the service for the general public.

One instance in which this principal applies concerns the use of designated priority seats (e.g., the so-called ''elderly and handicapped'' seats near the entrances to buses). A person with a disability (e.g., a visual impairment) may choose to take advantage of this accommodation or not. If not, it is contrary to rule for the entity to insist that the individual must sit in the priority seats.

The prohibition on special charges applies to charges for service to individuals with disabilities that are higher than charges for the same or comparable services to other persons. For example, if a shuttle service charges $20.00 for a ride from a given location to the airport for most people, it could not charge $40.00 because the passenger had a disability or needed to use the shuttle service's lift-equipped van. Higher mileage charges for using an accessible vehicle would likewise be inconsistent with the rule. So would charging extra to carry a service animal accompanying an individual with a disability.

If a taxi company charges $1.00 to stow luggage in the trunk, it cannot charge $2.00 to stow a folding wheelchair there. This provision does not mean, however, that a transportation provider cannot charge nondiscriminatory fees to passengers with disabilities. The taxi company in the above example can charge a passenger $1.00 to stow a wheelchair in the trunk; it is not required to waive the charge. This section does not prohibit the fares for paratransit service which transit providers are allowed to charge under §37.131(d).

A requirement for an attendant is inconsistent with the general nondiscrimination principle that prohibits policies that unnecessarily impose requirements on individuals with disabilities that are not imposed on others. Consequently, such requirements are prohibited. An entity is not required to provide attendant services (e.g., assistance in toileting, feeding, dressing), etc.

This provision must also be considered in light of the fact that an entity may refuse service to someone who engages in violent, seriously disruptive, or illegal conduct. If an entity may legitimately refuse service to someone, it may condition service to him on actions that would mitigate the problem. The entity could require an attendant as a condition of providing service it otherwise had the right to refuse.

The rule also points out that involuntary conduct related to a disability that may offend or annoy other persons, but which does not pose a direct treat, is not a basis for refusal of transportation. For example, some persons with Tourette's syndrome may make involuntary profane exclamations. These may be very annoying or offensive to others, but would not be a ground for denial of service. Nor would it be consistent with the nondiscrimination requirements of this part to deny service based on fear or misinformation about the disability. For example, a transit provider could not deny service to a person with HIV disease because its personnel or other passengers are afraid of being near people with that condition.

This section also prohibits denials of service or the placing on services of conditions inconsistent with this part on individuals with disabilities because of insurance company policies or requirements. If an insurance company told a transit provider that it would withdraw coverage, or raise rates, unless a transit provider refused to carry persons with disabilities, or unless the provider refused to carry three-wheeled scooters, this would not excuse the provider from providing the service as mandate by this part. This is not a regulatory requirement on insurance companies, but simply says that covered entities must comply with this part, even in the face of difficulties with their insurance companies.

Section 37.7 Standards for Accessible Vehicles

This section makes clear that, in order to meet accessibility requirements of this rule, vehicles must comply with Access Board standards, incorporated in DOT rules as 49 CFR part 38. Paragraph (b) of §37.7 spells out a procedure by which an entity (public or private) can deviate from provisions of part 38 with respect to vehicles. The entity can make a case to the Administrator that it is unable to comply with a particular portion of part 38, as written, for specified reasons, and that it is providing comparable compliance by some alternative method. The entity would have to describe how its alternative mode of compliance would meet or exceed the level of access to or usability of the vehicle that compliance with part 38 would otherwise provide.

It should be noted that equivalent facilitation does not provide a means to get a waiver of accessibility requirements. Rather, it is a way in which comparable (not a lesser degree of) accessibility can be provided by other means. The entity must consult with

the public through some means of public participation in devising its alternative form of compliance, and the public input must be reflected in the submission to the Administrator (or the Federal Railroad Administrator in appropriate cases, such as a request concerning Amtrak). The Administrator will make a case-by-case decision about whether compliance with part 38 was achievable and, if not, whether the proffered alternative complies with the equivalent facilitation standard. DOT intends to consult with the Access Board in making these determinations.

This equivalent facilitation provision can apply to buses or other motor vehicles as well as to rail cars and vehicles. An example of what could be an equivalent facilitation would concern rail cars which would leave too wide a horizontal gap between the door and the platform. If the operator used a combination of bridgeplates and personnel to bridge the gap, it might be regarded as an equivalent facilitation in appropriate circumstances.

Section 37.7(c) clarifies which specifications must be complied with for over-the-road buses purchased by public entities (under subpart D of part 37) or private entities standing in the shoes of the public entity (as described in §37.23 of part 37). This section is necessary to make clear that over-the-road coaches must be accessible, when they are purchased by or in furtherance of a contract with a public entity. While the October 4, 1990 rule specified that over-the-road coaches must be accessible under these circumstances, we had not previously specified what constitutes accessibility.

Accordingly, this paragraph specifies that an over-the-road bus must have a lift which meets the performance requirements of a regular bus lift (see §38.23) and must meet the interim accessibility features specified for all over-the-road buses in part 3, subpart G.

Section 37.9 Standards for Transportation Facilities

This section makes clear that, in order to meet accessibility requirements of this rule, vehicles must comply with appendix A to part 37, which incorporates the Access Board facility guidelines.

Paragraph (b) of §37.9 provides that, under certain circumstances, existing accessibility modifications to key station facilities do not need to be modified further in order to conform to appendix A. This is true even if the standards under which the facility was modified differ from the Access Board guidelines or provide a lesser standard of accessibility.

To qualify for this ''grandfathering,'' alterations must have been before January 26, 1992. As in other facility sections of the rule, an alteration is deemed to begin with the issuance of a notice to proceed or work order. The existing modifications must conform to ANSI A–117.1, Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped 1980, or the Uniform Federal Accessibility Standard. (UFAS).

For example, if an entity used a Federal grant or loan or money to make changes to a building, it would already have had to comply with the Uniform Federal Accessibility Standards. Likewise, if a private entity, acting without any Federal money in the project, may have complied with the ANSI A117.1 standard. So long as the work was done in conformity with the standard that was in effect when the work was done, the alteration will be considered accessible.

However, because one modification was made to a facility under one of these standards, the entity still has a responsibility to make other modifications needed to comply with applicable accessibility requirements. For example, if an entity has made some modifications to a key station according to one of these older standards, but the modifications do not make the key station entirely accessible as this rule requires, then additional modifications would have to be made according to the standards of appendix A. Suppose this entity has put an elevator into the station to make it accessible to individuals who use wheelchairs. If the elevator does not fully meet appendix A standards, but met the applicable ANSI standard when it was installed, it would not need further modifications now. But if it had not already done so, the entity would have to install a tactile strip along the platform edge in order to make the key station fully accessible as provided in this rule. The tactile strip would have to meet appendix A requirements.

The rule specifically provides that ''grandfathering'' applies only to alterations of individual elements and spaces and only to the extent that provisions covering those elements or spaces are found in UFAS or AHSI A117.1. For example, alterations to the telephones in a key station may have been carried out in order to lower them to meet the requirements of UFAS, but telecommunications devices for the deaf (TDDs) were not installed. (Neither UFAS nor the ANSI standard include requirements concerning TDDs). However, because appendix A does contain TDD requirements, the key station must now be altered in accordance with the standards for TDDs. Similarly, earlier alteration of an entire station in accordance with UFAS or the ANSI standard would not relieve an entity from compliance with any applicable provision concerning the gap between the platform between the platform and the vehicle in a key station, because neither of these two standards addresses the interface between vehicle and platform.

New paragraph (c) of this section clarifies a provision of the Access Board's standards concerning the construction of bus stop pads at bus stops. The final Access Board standard (found at section 10.2.1(1) of appendix A to part 37) has been rewritten slightly to clear up confusion about the perceived necessary construction of a bus stop pad. Section 10.2.1(1) does not require that anyone build a bus stop pad; it does specify what a bus stop pad must look like, if it is constructed. The further clarifying language in §37.9(c) explains that public entities must exert control over the construction of bus stop pads if they have the ability to do so. The Access Board, as well as DOT, recognize that most physical improvements related to bus stops are out of the control of the transit provider. Paragraph (c) of §37.9 merely notes that where a transit provider does have control over the construction, it must exercise that control to ensure that the pad meets these specifications.

One further clarification concerning the implication of this provision deals with a bus loading island at which buses pull up on both sides of the island. It would be possible to read the bus pad specification to require the island to be a minimum of 84 inches wide (two widths of a bus stop pad), so that a lift could be deployed from buses on both sides of the island at the same time. A double-wide bus pad, however, is likely to exceed available space in most instances.

Where there is space, of course, building a double-wide pad is one acceptable option under this rule. However, the combination of a pad of normal width and standard operational practices may also suffice. (Such practices could be offered as an equivalent facilitation.) For example, buses on either side of the island could stop at staggered locations (i.e., the bus on the left side could stop several feet ahead of the bus on the right side), so that even when buses were on both sides of the island at once, their lifts could be deployed without conflict. Where it is possible, building the pad a little longer than normal size could facilitate such an approach. In a situation where staggered stop areas are not feasible, an operational practice of having one bus wait until the other's lift cycle had been completed could do the job. Finally, the specification does not require that a pad be built at all. If there is nothing that can be done to permit lift deployment on both sides of an island, the buses can stop on the street, or some other location, so long as the lift is deployable.

Like §37.7, this section contains a provision allowing an entity to request approval for providing accessibility through an equivalent facilitation.

Section 37.11 Administrative Enforcement

This section spells out administrative means of enforcing the requirements of the ADA. Recipients of Federal financial assistance from DOT (whether public or private entities) are subject to DOT's section 504 enforcement procedures. The existing procedures, including administrative complaints to the DOT Office of Civil Rights, investigation, attempts at conciliation, and final resort to proceedings to cut off funds to a noncomplying recipient, will continue to be used.

In considering enforcement matters, the Department is guided by a policy that emphasizes compliance. The aim of enforcement action, as we see it, is to make sure that entities meet their obligations, not to impose sanctions for their own sake. The Department's enforcement priority is on failures to comply with basic requirements and ''pattern or practice'' kinds of problems, rather than on isolated operational errors.

Under the DOJ rules implementing title II of the ADA (28 CFR part 35), DOT is a ''designated agency'' for enforcement of complaints relating to transportation programs of public entities, even if they do not receive Federal financial assistance. When it receives such a complaint, the Department will investigate the complaint, attempt conciliation and, if conciliation is not possible, take action under section 504 and/or refer the matter to the DOJ for possible further action.

Title III of the ADA does not give DOT any administrative enforcement authority with respect to private entities whose transportation services are subject to part 37. In its title III rule (28 CFR part 36), DOJ assumes enforcement responsibility for all title III matters. If the Department of Transportation receives complaints of violations of part 37 by private entities, it will refer the matters to the DOJ.

It should be pointed out that the ADA includes other enforcement options. Individuals have a private right of action against entities who violate the ADA and its implementing regulations. The DOJ can take violators to court. These approaches are not mutually exclusive with the administrative enforcement mechanisms described in this section. An aggrieved individual can complain to DOT about an alleged transportation violation and go to court at the same time. Use of administrative enforcement procedures is not, under titles II and III, an administrative remedy that individuals must exhaust before taking legal action.

We also would point out that the ADA does not assert any blanket preemptive authority over state or local nondiscrimination laws and enforcement mechanisms. While requirements of the ADA and this regulation would preempt conflicting state or local provisions (e.g., a building code or zoning ordinance that prevents compliance with appendix A or other facility accessibility requirements, a provision of local law that said bus drivers

could not leave their seats to help secure wheelchair users), the ADA and this rule do not prohibit states and localities from legislating in areas relating to disability. For example, if a state law requires a higher degree of service than the ADA, that requirement could still be enforced. Also, states and localities may continue to enforce their own parallel requirements. For example, it would be a violation of this rule for a taxi driver to refuse to pick up a person based on that person's disability. Such a refusal may also be a violation of a county's taxi rules, subjecting the violator to a fine or suspension of operating privileges. Both ADA and local remedies could proceed in such a case.

Labor-management agreements cannot stand in conflict with the requirements of the ADA and this rule. For example, if a labor-management agreement provides that vehicle drivers are not required to provide assistance to persons with disabilities in a situation in which this rule requires such assistance, then the assistance must be provided notwithstanding the agreement. Labor and management do not have the authority to agree to violate requirements of Federal law.

Section 37.13 Effective Date for Certain Vehicle Lift Specifications.

This section contains an explicit statement of the effective date for vehicle lift platform specifications. The Department has decided to apply the new part 38 lift platform specifications to solicitations after January 25, 1992. As in the October 4, 1990, rule implementing the acquisition requirements; the date of a solicitation is deemed to be the closing date for the submission of bids or offers in a procurement.

SUBPART B—APPLICABILITY

Section 37.21 Applicability—General

This section emphasizes the broad applicability of part 37. Unlike section 504, the ADA and its implementing rules apply to entities whether or not they receive Federal financial assistance. They apply to private and public entities alike. For entities which do receive Federal funds, compliance with the ADA and part 37 is a condition of compliance with section 504 and 49 CFR part 27, DOT's section 504 rule.

Virtually all entities covered by this rule also are covered by DOJ rules, either under 28 CFR part 36 as state and local program providers or under 28 CFR part 35 as operators of places of public accommodation. Both sets of rules apply; one does not override the other. The DOT rules apply only to the entity's transportation facilities, vehicles, or services; the DOJ rules may cover the entity's activities more broadly. For example, if a public entity operates a transit system and a zoo, DOT's coverage would stop at the transit system's edge, while DOJ's rule would cover the zoo as well.

DOT and DOJ have coordinated their rules, and the rules have been drafted to be consistent with one another. Should, in the context of some future situation, there be an apparent inconsistency between the two rules, the DOT rule would control within the sphere of transportation services, facilities and vehicles.

Section 37.23 Service Under Contract

This section requires private entities to ''stand in the shoes'' of public entities with whom they contract to provide transportation services. It ensures that, while a public entity may contract out its service, it may not contract away its ADA responsibilities. The requirement applies primarily to vehicle acquisition requirements and to service provision requirements.

If a public entity wishes to acquire vehicles for use on a commuter route, for example, it must acquire accessible vehicles. It may acquire accessible over-the-road buses, it may acquire accessible full-size transit buses, it may acquire accessible smaller buses, or it may acquire accessible vans. It does not matter what kind of vehicles it acquires, so long as they are accessible. On the other hand, if the public entity wants to use inaccessible buses in its existing fleet for the commuter service, it may do so. All replacement vehicles acquired in the future must, of course, be accessible.

Under this provision, a private entity which contracts to provide this commuter service stands in the shoes of the public entity and is subject to precisely the same requirements (it is not required to do more than the public entity). If the private entity acquires vehicles used to provide the service, the vehicles must be accessible. If it cannot, or chooses not to, acquire an accessible vehicle of one type, it can acquire an accessible vehicle of another type. Like the public entity, it can provide the service with inaccessible vehicles in its existing fleet.

The import of the provision is that it requires a private entity contracting to provide transportation service to a public entity to follow the rules applicable to the public entity. For the time being, a private entity operating in its own right can purchase a new over-the-road bus inaccessible to individuals who use wheelchairs. When that private entity operates service under contract to the public entity, however, it is just as obligated as the public entity itself to purchase an accessible bus for use in that service, whether or not it is an over-the-road bus.

The ''stand in the shoes'' requirement applies not only to vehicles acquired by private entities explicitly under terms of an executed contract to provide service to a public entity, but also to vehicles acquired ''in contemplation of use'' for service under such a

contract. This language is included to ensure good faith compliance with accessibility requirements for vehicles acquired before the execution of a contract. Whether a particular acquisition is in contemplation of use on a contract will be determined on a case-by-case basis. However, acquiring a vehicle a short time before a contract is executed and then using it for the contracted service is an indication that the vehicle was acquired in contemplation of use on the contract, as is acquiring a vehicle obstensibly for other service provided by the entity and then regularly rotating it into service under the contract.

The ''stand in the shoes'' requirement is applicable only to the vehicles and service (public entity service requirements, like §37.163, apply to a private entity in these situations) provided under contract to a public entity. Public entity requirements clearly do not apply to all phases of a private entity's operations, just because it has a contract with a public entity. For example, a private bus company, if purchasing buses for service under contract to a public entity, must purchase accessible buses. The same company, to the extent permitted by the private entity provisions of this part, may purchase inaccessible vehicles for its tour bus operations.

The Department also notes that the ''stands in the shoes'' requirement may differ depending on the kind of service involved. The public entity's ''shoes'' are shaped differently, for example, depending on whether the public entity is providing fixed route or demand responsive service to the general public. In the case of demand responsive service, a public entity is not required to buy an accessible vehicle if its demand responsive system, when viewed in its entirety, provides service to individuals with disabilities equivalent to its service to other persons. A private contractor providing a portion of this paratransit service would not necessarily have to acquire an accessible vehicle if this equivalency test is being met by the system as a whole. Similarly, a public entity can, after going through a ''good faith efforts'' search, acquire inaccessible buses. A private entity under contract to the public can do the same. ''Stand in the shoes'' may also mean that, under some circumstances, a private contractor need not acquire accessible vehicles. If a private company contracts with a public school district to provide school bus service, it is covered, for that purpose, by the exemption for public school transportation.

In addition, the requirement that a private entity play by the rules applicable to a public entity can apply in situations involving an ''arrangement or other relationship'' with a public entity other than the traditional contract for service. For example, a private utility company that operates what is, in essence, a regular fixed route public transportation system for a city, and which receives section 3 or 9 funds from FTA via an agreement with a state or local government agency, would fall under the provisions of this section. The provider would have to comply with the vehicle acquisition, paratransit, and service requirements that would apply to the public entity through which it receives the FTA funds, if that public entity operated the system itself. The Department would not, however, construe this section to apply to situations in which the degree of FTA funding and state and local agency involvement is considerably less, or in which the system of transportation involved is not a *de facto* surrogate for a traditional public entity fixed route transit system serving a city (e.g., a private non-profit social service agency which receives FTA section 16(b)(2) funds to purchase a vehicle).

This section also requires that a public entity not diminish the percentage of accessible vehicles in its fleet through contracting. For example, suppose a public entity has 100 buses in its fleet, of which 20 are accessible, meaning that 20 percent of its fleet is accessible. The entity decides to add a fixed route, for which a contractor is engaged. The contractor is supplying ten of its existing inaccessible buses for the fixed route. To maintain the 20 percent accessibility ratio, there would have to be 22 accessible buses out of the 110 buses now in operation in carrying out the public entity's service. The public entity could maintain its 20 percent level of accessibility through any one or more of a number of means, such as having the contractor to provide two accessible buses, retrofitting two if its own existing buses, or accelerating replacement of two of its own inaccessible buses with accessible buses.

This rule applies the ''stand in the shoes'' principle to transactions wholly among private entities as well. For example, suppose a taxi company (a private entity primarily engaged in the business of transporting people) contracts with a hotel to provide airport shuttle van service. With respect to that service, the taxi company would be subject to the requirements for private entities not primarily in the business of transporting people, since it would be ''standing in the shoes'' of the hotel for that purpose.

Section 37.25 University Transportation Systems

Private university-operated transportation systems are subject to the requirements of this rule for private entities not primarily engaged in the business of transporting people. With one important exception, public university-operated transportation systems are subject to the requirements of the rule for public entities. The nature of the systems involved—demand-responsive or fixed

route—determines the precise requirements involved.

For public university fixed route systems, public entity requirements apply. In the case of fixed route systems, the requirements for commuter bus service would govern. This has the effect of requiring the acquisition of accessible vehicles and compliance with most other provisions of the rule, but does not require the provision of complementary paratransit or submitting a paratransit plan. As a result, private and public universities will have very similar obligations under the rule.

Section 37.27 Transportation for Elementary and Secondary Education Systems

This section restates the statutory exemption from public entity requirements given to public school transportation. This extension also applies to transportation of preschool children to Head Start or special education programs which receive Federal assistance. It also applies to arrangements permitting pre-school children of school bus drivers to ride a school bus or allowing teenage mothers to be transported to day care facilities at a school or along a school bus route so that their mothers may continue to attend school (See H. Rept. 101–485, pt. 1 at 27). The situation for private schools is more complex. According to the provision, a private elementary or secondary school's transportation system is exempt from coverage under this rule if all three of the following conditions are met: (1) The school receives Federal financial assistance; (2) the school is subject to section 504; and (3) the school's transportation system provides transportation services to individuals with disabilities, including wheelchair users, equivalent to those provided to individuals without disabilities. The test of equivalency is the same as that for other private entities, and is described under §37.105. If the school does not meet all these criteria, then it is subject to the requirements of Part 37 for private entities not primarily engaged in the business of transporting people.

The Department notes that, given the constitutional law on church-state separation, it is likely that church-affiliated private schools do not receive Federal financial assistance. To the extent that these schools' transportation systems are operated by religious entities or entities controlled by religious organizations, they are not subject to the ADA at all, so this section does not apply to them.

Section 37.29 Private Providers of Taxi Service

This section first recites that providers of taxi service are private entities primarily engaged in the business of transporting people which provide demand responsive service. For purposes of this section, other transportation services that involve calling for a car and a driver to take one places (e.g., limousine services, of the kind that provide luxury cars and chauffeurs for senior proms and analogous adult events) are regarded as taxi services.

Under the ADA, no private entity is required to purchase an accessible automobile. If a taxi company purchases a larger vehicle, like a van, it is subject to the same rules as any other private entity primarily engaged in the business of transporting people which operates a demand responsive service. That is, unless it is already providing equivalent service, any van it acquires must be accessible. Equivalent service is measured according to the criteria of §37.105. Taxi companies are not required to acquire vehicles other than automobiles to add accessible vehicles to their fleets.

Taxi companies are subject to nondiscrimination obligations. These obligations mean, first, that a taxi service may not deny a ride to an individual with a disability who is capable of using the taxi vehicles. It would be discrimination to pass up a passenger because he or she was blind or used a wheelchair, if the wheelchair was one that could be stowed in the cab and the passenger could transfer to a vehicle seat. Nor could a taxi company insist that a wheelchair user wait for a lift-equipped van if the person could use an automobile.

It would be discrimination for a driver to refuse to assist with stowing a wheelchair in the trunk (since taxi drivers routinely assist passengers with stowing luggage). It would be discrimination to charge a higher fee or fare for carrying a person with a disability than for carrying a non-disabled passenger, or a higher fee for stowing a wheelchair than for stowing a suitcase. (Charging the same fee for stowing a wheelchair as for stowing a suitcase would be proper, however.) The fact that it may take somewhat more time and effort to serve a person with a disability than another passenger does not justify discriminatory conduct with respect to passengers with disabilities.

State or local governments may run user-side subsidy arrangements for the general public (e.g., taxi voucher systems for senior citizens or low-income persons). Under the DOJ title II rule, these programs would have to meet ''program accessibility'' requirements, which probably would require that accessible transportation be made available to senior citizens or low-income persons with disabilities. This would not directly require private taxi providers who accept the vouchers to purchase accessible vehicles beyond the requirements of this rule, however.

Section 37.31 Vanpools

This provision applies to public vanpool systems the requirements for public entities operating demand responsive systems for the

general public. A public vanpool system is one operated by a public entity, or in which a public entity owns or purchases or leases the vehicles. Lesser degrees of public involvement with an otherwise private ridesharing arrangement (e.g., provision of parking spaces, HOV lanes, coordination or clearinghouse services) do not convert a private into a public system.

The requirement for a public vanpool system is that it purchase or lease an accessible vehicle unless it can demonstrate that it provides equivalent service to individuals with disabilities, including individuals who use wheelchairs, as it provides to individuals without disabilities. For a public vanpool system, the equivalency requirement would be met if an accessible vehicle is made available to and used by a vanpool when an individual with a disability needs such a vehicle to participate. Public vanpool systems may meet this requirement through obtaining a percentage of accessible vehicles that is reasonable in light of demand for them by participants, but this is not required, so long as the entity can respond promptly to requests for participation in a vanpool with the provision of an accessible van when needed.

There is no requirement for private vanpools, defined as a voluntary arrangement in which the driver is compensated only for expenses.

Section 37.33 Airport Transportation Systems

Fixed route transportation systems operated by public airports are regarded by this section as fixed route commuter bus systems. As such, shuttles among terminals and parking lots, connector systems among the airport and a limited number of other local destinations must acquire accessible buses, but are not subject to complementary paratransit requirements. (If a public airport operates a demand responsive system for the general public, it would be subject to the rules for demand responsive systems for the general public.)

It should be noted that this section applies only to transportation services that are operated by public airports themselves (or by private contractors who stand in their shoes). When a regular urban mass transit system serves the airport, the airport is simply one portion of its service area, treated for purposes of this rule like the rest of its service area.

Virtually all airports are served by taxi companies, who are subject to §37.29 at airports as elsewhere. In addition, many airports are served by jitney or shuttle systems. Typically, these systems operate in a route-deviation or similar variable mode in which there are passenger-initiated decisions concerning destinations. We view such systems as demand responsive transportation operated by private entities primarily engaged in the business of transporting people.

Since many of these operators are small businesses, it may be difficult for them to meet equivalency requirements on their own without eventually having all or nearly all accessible vehicles, which could pose economic problems. One suggested solution to this problem is for the operators serving a given airport to form a pool or consortium arrangement, in which a number of shared accessible vehicles would meet the transportations of individuals with disabilities. As in other forms of transportation, such an arrangement would have to provide service in a nondiscriminatory way (e.g., in an integrated setting, no higher fares for accessible service).

Section 37.35 Supplemental Service for Other Transportation Modes

This section applies to a number of situations in which an operator of another transportation mode uses bus or other service to connect its service with limited other points.

One instance is when an intercity railroad route is set up such that the train stops outside the major urban center which is the actual destination for many passengers. Examples mentioned to us include bus service run by Amtrak from a stop in Columbus, Wisconsin, to downtown Madison, or from San Jose to San Francisco. Such service is fixed route, from the train station to a few points in the metropolitan area, with a schedule keyed to the train schedule. It would be regarded as commuter bus service, meaning that accessible vehicles would have to be acquired but complementary paratransit was not required.

Another instance is one in which a commuter rail operator uses fixed route bus service as a dedicated connection to, or extension of, its rail service. The service may go to park and ride lots or other destinations beyond the vicinity of the rail line. Again, this service shares the characteristics of commuter bus service that might be used even if the rail line were not present, and does not attempt to be a comprehensive mass transit bus service for the area.

Of course, there may be instances in which a rail operator uses demand responsive instead of fixed route service for a purpose of this kind. In that case, the demand responsive system requirements of the rule would apply.

Private entities (i.e., those operating places of public accommodation) may operate similar systems, as when a cruise ship operator provides a shuttle or connector between an airport and the dock. This service is covered by the rules governing private entities not primarily engaged in the business of transporting people. Fixed route or demand responsive rules apply, depending on the characteristics of the system involved.

One situation not explicitly covered in this section concerns *ad hoc* transportation arranged, for instance, by a rail operator when the train does not wind up at its intended destination. For example, an Amtrak train bound for Philadelphia may be halted at Wilmington by a track blockage between the two cities. Usually, the carrier responds by providing bus service to the scheduled destination or to the next point where rail service can resume.

The service that the carrier provides in this situation is essentially a continuation by other means of its primary service. We view the obligation of the rail operator as being to ensure that all passengers, including individuals with disabilities, are provided service to the destination in a nondiscriminatory manner. This includes, for instance, providing service in the most integrated setting appropriate to the needs of the individual and service that gets a passenger with a disability to the destination as soon as other passengers.

Section 37.37 Other Applications

The ADA specifically defines ''public entity.'' Anything else is a ''private entity.'' The statute does not include in this definition a private entity that receives a subsidy or franchise from a state or local government or is regulated by a public entity. Only through the definition of ''operates'' (see discussion of §37.23) do private entities' relationships to public entities subject private entities to the requirements for public entities. Consequently, in deciding which provisions of the rule to apply to an entity in other than situations covered by §37.23, the nature of the entity—public or private—is determinative.

Transportation service provided by public accommodations is viewed as being provided by private entities not primarily engaged in the business of transporting people. Either the provisions of this part applicable to demand responsive or fixed route systems apply, depending on the nature of a specific system at a specific location. The distinction between fixed route and demand responsive systems is discussed in connection with the definitions section above. It is the responsibility of each private entity, in the first instance, to assess the nature of each transportation system on a case-by-case basis and determine the applicable rules.

On the other hand, conveyances used for recreational purposes, such as amusement park rides, ski lifts, or historic rail cars or trolleys operated in museum settings, are not viewed as transportation under this rule at all. Other conveyances may fit into this category as well.

The criterion for determining what requirements apply is whether the conveyances are primarily an aspect of the recreational experience itself or a means of getting from Point A to Point B. At a theme park, for instance, a large roller coaster (though a ''train'' of cars on a track) is a public accommodation not subject to this rule; the tram that transports the paying customers around the park, with a stop at the roller coaster, is a transportation system subject to the ''private, not primarily'' provisions of this part.

Employer-provided transportation for employees is not covered by this part, but by EEOC rules under title I of the ADA. (Public entities are also subject to DOJ's title II rules with respect to employment.) This exclusion from part 37 applies to transportation services provided by an employer (whether access to motor pool vehicles, parking shuttles, employer-sponsored van pools) that is made available solely to its own employees. If an employer provides service to its own employees and other persons, such as workers of other employers or customers, it would be subject to the requirements of this part from private entities not primarily engaged in the business of transporting people or public entities, as applicable.

The rule looks to the private entity actually providing the transportation service in question in determining whether the ''private, primarily'' or ''private, not primarily'' rules apply. For example, Conglomerate, Inc., owns a variety of agribusiness, petrochemical, weapons system production, and fast food corporations. One of its many subsidiaries, Green Tours, Inc., provides charter bus service for people who want to view national parks, old-growth forests, and other environmentally significant places. It is probably impossible to say in what business Conglomerate, Inc. is primarily engaged, but it clearly is not transporting people. Green Tours, Inc., on the other hand, is clearly primarily engaged in the business of transporting people, and the rule treats it as such.

On the other hand, when operating a transportation service off to the side of to the main business of a public accommodation (e.g., a hotel shuttle), the entity as a whole would be considered. Even if some dedicated employees are used to provide the service, shuttles and other systems provided as a means of getting to, from, or around a public accommodation remain solidly in the ''private, not primarily'' category.

SUBPART C—TRANSPORTATION FACILITIES

Section 37.41 Construction of Transportation Facilities by Public Entities

Section 37.41 contains the general requirement that all new facilities constructed after January 25, 1992, be accessible to and usable by individuals with disabilities. This provision tracks the statute closely, and is analogous to a provision in the DOJ regulations for private entities. Section 226 of the

ADA provides little discretion in this requirement.

The requirement is keyed to construction which ''begins'' after January 25, 1992. The regulation defines ''begin'' to mean when a notice to proceed order has been issued. This term has a standard meaning in the construction industry, as an instruction to the contractor to proceed with the work.

Questions have been raised concerning which standards apply before January 26, 1992. There are Federal requirements that apply to all recipients of federal money, depending on the circumstances.

First, if an entity is a Federal recipient and uses Federal dollars to construct the facility, regulations implementing section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), require the recipient to comply with the Uniform Federal Accessibility Standards.

Second, since the Civil Rights Restoration Act of 1987 (Pub. L. 100–259), an operation of a recipient of federal funds would also have to comply with section 504, even though the activity was not paid for with Federal funds. Thus, the Uniform Federal Accessibility Standards would apply to this construction as well.

As mentioned above, the Department intends, in the period before January 26, 1991, to view compliance with section 504 in light of compliance with ADA requirements (this point applies to alterations as well as new construction). Consequently, in reviewing requests for grants, contract approvals, exemptions, etc., (whether with respect to ongoing projects or new, experimental, or one-time efforts), the Department will, as a policy matter, seek to ensure compliance with ADA standards.

Section 37.43 Alteration of Transportation Facilities by Public Entities

This section sets out the accessibility requirements that apply when a public entity undertakes an alteration of an existing facility. In general, the section requires that any alteration, to the maximum extent feasible, results in the altered area being accessible to and usable by individuals with disabilities, including persons who use wheelchairs. The provisions follow closely those adopted by the DOJ, in its regulations implementing title III of the ADA.

The section requires specific activities whenever an alteration of an existing facility is undertaken.

First, if the alteration is made to a primary function area, (or access to an area containing a primary function), the entity shall make the alteration in such a way as to ensure that the path of travel to the altered area and the restrooms, telephones and drinking fountains servicing the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Second, alterations to drinking fountains, telephones, and restrooms do not have to be completed if the cost and scope of making them accessible is disproportionate.

Third, the requirement goes into effect for alterations begun after January 25, 1992.

Fourth, the term ''maximum extent feasible'' means that all changes that are possible must be made. The requirement to make changes to the maximum extent feasible derives from clear legislative history. The Senate Report states—

The phrase ''to the maximum extent feasible'' has been included to allow for the occasional case in which the nature of an existing facility is such as to make it virtually impossible to renovate the building in a manner that results in its being entirely accessible to and usable by individuals with disabilities. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

Thus, for example the term ''to the maximum extent feasible'' should be construed as not requiring entities to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member unless the load-bearing structural member is otherwise being removed or altered as part of the alteration. (S. Rept. 101–116, at 68).

Fifth, primary function means a major activity for which the facility is intended. Primary function areas include waiting areas, ticket purchase and collection areas, train or bus platforms, baggage checking and return areas, and employment areas (with some exceptions stated in the rule, for areas used by service personnel that are very difficult to access).

Sixth, ''path of travel'' means 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 and includes restrooms, telephones, and drinking fountains serving the altered area. If changes to the path of travel are disproportionate, then only those changes which are not disproportionate are to be completed.

Seven, the final rule specifies that costs exceeding 20 percent would be disproportionate. This is consistent with the DOJ. In determining costs, the Department intends costs to be based on changes to the passenger service area that is scheduled for alteration.

Finally, the Department has defined the term ''begin'', in the context of begin an alteration that is subject to the alteration provision to mean when a notice to proceed or work order is issued. Two terms are used (instead of only notice to proceed in the context of new construction) because many alterations may be carried out by the entity itself, in which case the only triggering

event would be a work order or similar authorization to begin.

In looking at facility concepts like ''disproportionality'' and ''to the maximum extent feasible,'' the Department will consider any expenses related to accessibility for passengers. It is not relevant to consider non-passenger related improvements (e.g., installing a new track bed) or to permit ''gold-plating'' (attributing to accessibility costs the expense of non-related improvements, such as charging to accessibility costs the price of a whole new door, when only adding a new handle to the old door was needed for accessibility).

Section 37.47 Key Stations in Light and Rapid Rail Systems

Section 37.49 Designation of Responsible Person(s) for Intercity and Commuter Rail Stations

This section sets forth a mechanism for determining who bears the legal and financial responsibility for accessibility modifications to a commuter and/or intercity rail station. The final provision of the section is the most important. It authorizes all concerned parties to come to their own agreement concerning the allocation of responsibility. Such an agreement can allocate responsibility in any way acceptable to the parties. The Department strongly encourages parties to come to such an agreement.

In the absence of such an agreement, a statutory/regulatory scheme allocates responsibility. In the first, and simplest, situation posed by the statute, a single public entity owns more than 50 percent of the station. In this case, the public entity is the responsible person and nobody else is required to bear any of the responsibility.

In the second situation, a private entity owns more than 50 percent of the station. The private entity need not bear any of the responsibility for making the station accessible. A public entity owner of the station, who does not operate passenger railroad service through the station, is not required to bear any of the responsibility for making the station accessible. The total responsibility is divided between passenger railroads operating service through the station, on the basis of respective passenger boardings. If there is only one railroad operating service through the station, it bears the total responsibility.

The Department believes that reference to passenger boardings is the most equitable way of dividing responsibility among railroads, since the number of people drawn to the station by each is likely to reflect ''cost causation'' quite closely. The Department notes, however, that, as passenger boarding percentages change over time, the portion of responsibility assigned to each party also may change. Station modifications may involve long-term capital investment and planning, while passenger boarding percentages are more volatile. Some railroads may stop serving a station, while others may begin service, during the period of time before modifications to the station are complete. To help accommodate such situations, the rule refers to passenger boardings ''over the entire period during which the station is made accessible.''

This language is intended to emphasize that as circumstances change, the parties involved have the responsibility to adjust their arrangements for cost sharing. For example, suppose Railroad A has 30 percent of the passenger boardings in year 1, but by year 10 has 60 percent of the boardings. It would not be fair for Railroad A to pay only 30 percent of the costs of station modifications occurring in later years. Ultimately, the total cost burden for modifying the station over (for example) 20 years would be allocated on the share of the total number or boardings attributable to each railroad over the whole 20 year period, in order to avoid such unfairness.

The third, and most complicated, situation is one in which no party owns 50 percent of the station. For example, consider the following hypothetical situation:

Party	Ownership percentage	Boardings percentage
Private freight RR	40	0
City	30	0
Amtrak	0	25
Commuter A	30	50
Commuter B	0	25

The private freight railroad drops out of the calculation of who is responsible. All of the responsibility would be allocated among four public entities: the city (a public entity who does not operate railroad service), Amtrak, and the two commuter railroads. Half the responsibility would go to public entity owners of the station (whether or not they are railroads who run passenger service through the station). The other half of the responsibility would go to railroads who run passenger service through the station (whether or not they are station owners).

On the ownership side of the equation, the city and Commuter A each own half of that portion of the station that is not owned by the private freight railroad. Therefore, the two parties divide up the ownership half of the responsibility equally. Based on their ownership interest, each of these two parties bears 25 percent of the responsibility for the entire station. Note that, should ownership percentages or owners change over the period during which the station is to be made accessible, these percentages may change. It is ownership percentage over this entire period that ultimately determines the percentage of responsibility.

On the passenger rail operations side of the equation, 50 percent of passenger boardings are attributable to Commuter A and 25 percent each to Commuter B and Amtrak. Therefore, half of this portion of the responsibility belongs to Commuter A, while a quarter share each goes to the other railroads. This means that, based on passenger boardings, 25 percent of the responsibility goes to Commuter A, 12.5 percent to Commuter B, and 12.5 percent to Amtrak. Again, it is the proportion of passenger boardings over the entire length of the period during which the station is made accessible that ultimately determines the percentage of responsibility.

In this hypothetical, Commuter A is responsible for a total of 50 percent of the responsibility for the station. Commuter A is responsible for 25 percent of the responsibility because of its role as a station owner and another 25 percent because of its operation of passenger rail service through the station.

The Department recognizes that there will be situations in which application of this scheme will be difficult (e.g., involving problems with multiple owners of a station whose ownership percentages may be difficult to ascertain). The Department again emphasizes that agreement among the parties is the best way of resolving these problems, but we are willing to work with the parties to ensure a solution consistent with this rule.

Section 37.51 Key Stations in Commuter Rail Systems

These sections require that key stations in light, rapid, and commuter rail systems be made accessible as soon as practicable, but no later than July 26, 1993. Being made accessible, for this purpose, means complying with the applicable provisions of appendix A to this part. ''As soon as practicable'' means that, if modification can be made before July 26, 1993, they must be. A rail operator that failed to make a station accessible by July 1993 would be in noncompliance with the ADA and this rule, except in a case where an extension of time had been granted.

What is a key station? A key station is one designated as such by the commuter authority or light/rapid rail operator, through the planning process and public participation process set forth in this section. The five criteria listed in the regulation are intended to guide the selection process but, while the entity must take these criteria into account (and this consideration must be reflected in the planning process and documents), they are not mandatory selection standards. That is, it is not required that every station that meets one of the criteria be designated as a key station. Since the criteria are not mandatory selection standards, the understanding of their terms is also a matter appropriately left to the planning process. A tight, legalistic definition is not necessary in the context of factors intended for consideration. For instance, what constitutes a major activity center or how close a station needs to be to another station to not be designated as key depend largely on local factors that it would not be reasonable to specify in this rule.

Given the wide discretion permitted to rail operators in identifying key stations, there would be no objection to identifying as a key station a new (presumably accessible) station now under construction. Doing so would involve consideration of the key station criteria and would be subject to the planning/public participation process.

If an extension to a rail system (e.g., a commuter system) is made, such that the system comes to include existing inaccessible stations that have not previously been part of the system, the Department construes the ADA to require application of key station accessibility in such a situation. The same would be true for a new start commuter rail system that began operations using existing stations. Key station planning, designation of key stations, and with being consistent with the ADA would be required. The Department would work with the commuter authority involved on a case-by-case basis to determine applicable time limits for accessibility, consistent with the time frames of the ADA.

The entity must develop a compliance plan, subject to the public participation and planning process set forth in paragraph (d) of each of these sections. Note that this plan must be completed by July 26, 1992, not January 26, 1992, as in the case of paratransit plans. The key station plans must be submitted to FTA at that time. (The statute does not require FTA approval of the plans, however.).

A rail operator may request an extension of the July 1993 completion deadline for accessibility modifications to one or more key stations. The extension for light and rapid rail stations can be up to July 2020, though two thirds of the key stations (per the legislative history of the statute, selected in a way to maximize accessibility to the whole system) must be accessible by July 2010.

Commuter rail stations can be extended up to July 2010.

Requests for extension of time must be submitted by July 26, 1992. FTA will review the requests on a station-by-station basis according to the statutory criterion, which is whether making the station accessible requires extraordinarily expensive alterations. An extraordinarily expensive alteration is raising the entire platform, installing an elevator, or making another alteration of similar cost and magnitude. If another means of making a station accessible (e.g., installation of a mini-high platform in a station

where it is not necessary to install an elevator or to provide access to the platform for wheelchair users), then an extension can be granted only if the rail operator shows that the cost and magnitude of the alteration is similar to that of an elevator installation or platform raising.

The rule does not include a specific deadline for FTA consideration of an extension request. However, since we are aware that, in the absence of an extension request, accessibility must be completed by July 1993, we will endeavor to complete review of plans as soon as possible, to give as much lead time as possible to local planning and implementation efforts.

Once an extension is granted, the extension applies to all accessibility modifications in the station. However, the rail operator should not delay non-extraordinarily expensive modifications to the station. The key station plan and any extension request should include a schedule for phasing in non-extraordinarily expensive modifications to the station. For example, even if a key station is not going to be accessible to wheelchair users for 15 years, pending the installation of an elevator, the rail operator can improve its accessibility to persons with visual impairments by installing tactile strips.

An extension cannot be granted except for a particular station which needs an extraordinarily expensive modification. An extension cannot be granted non-extraordinarily expensive changes to Station B because the extraordinarily expensive changes to Station A will absorb many resources. Non-extraordinarily expensive changes, however costly considered collectively for a system, are not, under the statute, grounds for granting an extension to one or more stations or the whole system. Only particular stations where an extraordinarily expensive modification must be made qualify for extensions.

The FTA Administrator can approve, modify, or disapprove any request for an extension. For example, it is not a forgone conclusion that a situation for which an extension is granted will have the maximum possible extension granted. If it appears that the rail operator can make some stations accessible sooner, FTA can grant an extension for a shorter period (e.g., 2005 for a particular station rather than 2010).

Section 37.53 Exception for New York and Philadelphia

Consistent with the legislative history of the ADA, this section formally recognizes the selection of key stations in two identified litigation settlement agreements in New York and Philadelphia as in compliance with the ADA. Consequently, the entities involved can limit their key station planning process to issues concerning the timing of key station accessibility. The section references also §37.9, which provides that key station accessibility alterations which have already been made, or which are begun before January 26, 1992, and which conform to specified prior standards, do not have to be re-modified. On the other hand, alterations begun after January 25, 1992 (including forthcoming key station modifications under the New York and Philadelphia agreements), must meet the requirements of appendix A to this part.

This is an exception only for the two specified agreements. There are no situations in which other cities can take advantage of this provision. Nor are the provisions of the two agreements normative for other cities. Other cities must do their own planning, with involvement from local citizens, and cannot rely on agreements unique to New York and Philadelphia to determine the appropriate number of percentage of key stations or other matters.

Section 37.57 Required Cooperation

This section implements §242(e)(2)(C) of the ADA, which treats as discrimination a failure, by an owner or person in control of an intercity rail station, to provide reasonable cooperation to the responsible persons' efforts to comply with accessibility requirements. For example, the imposition by the owner of an unreasonable insurance bond from the responsible person as a condition of making accessibility modifications would violate this requirement. See H. Rept. 101–485 at 53.

The statute also provides that failure of the owner or person in control to cooperate does not create a defense to a discrimination suit against the responsible person, but the responsible person would have a third party action against the uncooperative owner or person in control. The rule does not restate this portion of the statute in the regulation, since it would be implemented by the courts if such an action is brought. Since cooperation is also a regulatory requirement, however, the Department could entertain a section 504 complaint against a recipient of Federal funds who failed to cooperate.

The House Energy and Commerce Committee provided as an example of an action under this provision a situation in which a failure to cooperate leads to a construction delay, which in turn leads to a lawsuit by an individual with disabilities against the responsible person for missing an accessibility deadline. The responsible person could not use the lack of cooperation as a defense in the lawsuit, but the uncooperative party could be made to indemnify the responsible person for damages awarded the plaintiff. Also, a responsible person could obtain an injunction to force the recalcitrant owner or controller of the station to permit accessibility work to proceed. (*Id.*)

This provision does not appear to be intended to permit a responsible person to seek

contribution for a portion of the cost of accessibility work from a party involved with the station whom the statute and §37.49 do not identify as a responsible person. It simply provides a remedy for a situation in which someone impedes the responsible person's efforts to comply with accessibility obligations.

Section 37.59 Differences in Accessibility Completion Date Requirements

Portions of the same station may have different accessibility completion date requirements, both as the result of different statutory time frames for different kinds of stations and individual decisions made on requests for extension. The principle at work in responding to such situations is that if part of a station may be made accessible after another part, the ''late'' part of the work should not get in the way of people's use of modifications resulting from the ''early'' part.

For example, the commuter part of a station may have to be made accessible by July 1993 (e.g., there is no need to install an elevator, and platform accessibility can be achieved by use of a relatively inexpensive mini-high platform). The Amtrak portion of the same station, by statute, is required to be accessible as soon as practicable, but no later than July 2010. If there is a common entrance to the station, that commuter rail passengers and Amtrak passengers both use, or a common ticket counter, it would have to be accessible by July 1993. If there were a waiting room used by Amtrak passengers but not commuter passengers (who typically stand and wait on the platform at this station), it would not have to be accessible by July 1993, but if the path from the common entrance to the commuter platform went through the waiting room, the path would have to be an accessible path by July 1993.

Section 37.61 Public Transportation Programs and Activities in Existing Facilities

This section implements section 228(a) of the ADA and establishes the general requirement for entities to operate their transportation facilities in a manner that, when viewed in its entirety, is accessible to and usable by individuals with disabilities. The section clearly excludes from this requirement access by persons in wheelchairs, unless these changes would be necessitated by the alterations or key station provisions.

This provision is intended to cover activities and programs of an entity that do not rise to the level of alteration. Even if an entity is not making alterations to a facility, it has a responsibility to conduct its program in an accessible manner. Examples of possible activities include user friendly farecards, schedules, of edge detection on rail platforms, adequate lighting, telecommunication display devices (TDDs) or text telephones, and other accommodations for use by persons with speech and hearing impairments, signage for people with visual impairments, continuous pathways for persons with visual and ambulatory impairments, and public address systems and clocks.

The Department did not prescribe one list of things that would be appropriate for all stations. For example, we believe that tactile strips are a valuable addition to platforms which have drop-offs. We also believe that most larger systems, to the extent they publish schedules, should make those schedules readily available in alternative formats. We encourage entities to find this another area which benefits from its commitment to far-reaching public participation efforts.

SUBPART D—ACQUISITION OF ACCESSIBLE VEHICLES BY PUBLIC ENTITIES

Section 37.71 Purchase or Lease of New Non-Rail Vehicles by Public Entities Operating Fixed Route Systems

This section sets out the basic acquisition requirements for a public entity purchasing a new vehicle. Generally, the section requires any public entity who purchases or leases a new vehicle to acquire an accessible vehicle. There is a waiver provision if lifts are unavailable and these provisions track the conditions in the ADA. One statutory condition, that the public entity has made a good faith effort to locate a qualified manufacturer to supply the lifts, presumes a direct relationship between the transit provider and the lift manufacturer. In fact, it is the bus manufacturer, rather than the transit provider directly, who would have the task of looking for a supplier of lifts to meet the transit provider's specifications. The task must still be performed, but the regulation does not require the transit provider to obtain actual information about available lifts. Rather the bus manufacturer obtains the information and provides this assurance to the entity applying for the waiver, and the entity may rely on this representation. More specifically, the regulation requires that each waiver request must include a copy of the written solicitation (showing that it requested lift-equipped vehicles) and written responses from lift manufacturers to the vehicle manufacturer documenting their inability to provide the lifts. The information from the lift manufacturer must also include when the lifts will be available.

In addition, the waiver request must include copies of advertisements in trade publications and inquiries to trade associations seeking lifts for the buses. The public entity also must include a full justification for the assertion that a delay in the bus procurement sufficient to obtain a lift-equipped bus would significantly impair transportation

services in the community. There is no length of time that would be a *per se* delay constituting a ''significant impairment''. It will be more difficult to obtain a waiver if a relatively short rather than relatively lengthy delay is involved. A showing of timetables, absent a showing of significant impairment of actual transit services, would not form a basis for granting a waiver.

Any waiver granted by the Department under this provision will be a conditional waiver. The conditions are intended to ensure that the waiver provision does not create a loophole in the accessible vehicle acquisition requirement that Congress intended to impose. The ADA requires a waiver to be limited in duration and the rule requires a termination date to be included. The date will be established on the basis of the information the Department receives concerning the availability of lifts in the waiver request and elsewhere. In addition, so that a waiver does not become open-ended, it will apply only to a particular procurement. If a transit agency wants a waiver for a subsequent delivery of buses in the procurement, or another procurement entirely, it will have to make a separate waiver request.

For example, if a particular order of buses is delivered over a period of time, each delivery would be the potential subject of a waiver request. First, the entity would request a waiver for the first shipment of buses. If all of the conditions are met, the waiver would be granted, with a date specified to coincide with the due date of the lifts. When the lifts become available those buses would have to be retrofitted with the lifts. A subsequent delivery of buses—on the same order—would have to receive its own waiver, subject to the same conditions and specifications of the first waiver.

The purpose of the waiver, as the Department construes it, is to address a situation in which (because of a sudden increase in the number of lift-equipped buses requested) lift manufacturers are unable to produce enough lifts to meet the demand in a timely fashion.

Section 37.73 Purchase or Lease of Used Non-Rail Vehicles by Public Entities Operating a Fixed Route System

The basic rule is that an acquisition of a used vehicle would have to be for an accessible vehicle.

There is an exception, however, for situations in which the transit provider makes a good faith effort to obtain accessible used vehicles but does not succeed in finding them. The ADA requires transit agencies to purchase accessible used vehicles, providing a ''demonstrated good faith efforts'' exception to the requirement. The reports of the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor offered the following guidance on what ''good faith efforts'' involve:

The phrase ''demonstrated good faith efforts'' is intended to require a nationwide search and not a search limited to a particular region. For instance, it would not be enough for a transit operator to contact only the manufacturer where the transit authority usually does business to see if there are accessible used buses. It involves the transit authority advertising in a trade magazine, i.e., Passenger Transport, or contacting the transit trade association, American Public Transit Association (APTA), to determine whether accessible used vehicles are available. It is the Committee's expectation that as the number of buses with lifts increases, the burden on the transit authority to demonstrate its inability to purchase accessible vehicles despite good faith efforts will become more and more difficult to satisfy. S. Rept. 101–116 at 49; H. Rept. 101–485 at 90.

Consistent with this guidance, this section requires that good faith efforts include specifying accessible vehicles in bid solicitations. The section also requires that the entity retain for two years documentation of that effort, and that the information be available to FTA and the public.

It does not meet the good faith efforts requirement to purchase inaccessible, rather than accessible, used buses, just because the former are less expensive, particularly if the difference is a difference attributable to the presence of a lift. There may be situations in which good faith efforts involve buying fewer accessible buses in preference to more inaccessible buses.

The public participation requirements involved in the development of the paratransit plans for all fixed route operators requires an ongoing relationship, including extensive outreach, to the community likely to be using its accessible service. We believe that it will be difficult to comply with the public participation requirements and not involve the affected community in the decisions concerning the purchase or lease of used accessible vehicles.

There is an exception to these requirements for donated vehicles. Not all ''zero dollar'' transfers are donations, however. The legislative history to this provision provides insight.

It is not the Committee's intent to make the vehicle accessibility provisions of this title applicable to vehicles donated to a public entity. The Committee understands that it is not usual to donate vehicles to a public entity. However, there could be instances where someone could conceivably donate a bus to a public transit operator in a will. In such a case, the transit operators should not be prevented from accepting a gift.

The Committee does not intend that this limited exemption for donated vehicles be used to circumvent the intent of the ADA. For example, a local transit authority could

not arrange to be the recipient of donated inaccessible buses. This would be a violation of the ADA. S. Rpt. 101–116, at 46; H. Rpt. 101–486, at 87.

Entities interested in accepting donated vehicles must submit a request to FTA to verify that the transaction is a donation.

There is one situation, in which a vehicle has prior use is not treated as a used vehicle. If a vehicle has been remanufactured, and it is within the period of the extension of its useful life, it is not viewed as a used vehicle (see H. Rept. 101–485, Pt 1 at 27). During this period, such a vehicle may be acquired by another entity without going through the good faith efforts process. This is because, at the time of its remanufacture, the bus would have been made as accessible if feasible. When the vehicle has completed its extended useful life (e.g., the beginning of year six when its useful life has extended five years), it becomes subject to used bus requirements.

Section 37.75 Remanufacture of Non-Rail Vehicles and Purchase or Lease of Remanufactured Non-rail Vehicles by Public Entities Operating Fixed Route Systems

This section tracks the statute closely, and contains the following provisions. First, it requires any public entity operating a fixed route system to purchase an accessible vehicle if the acquisition occurs after August 25, 1990, if the vehicle is remanufactured after August 25, 1990, or the entity contracts or undertakes the remanufacture of a vehicle after August 25, 1990. The ADA legislative history makes it clear that remanufacture is to include changes to the structure of the vehicle which extend the useful life of the vehicle for five years. It clearly is not intended to capture things such as engine overhauls and the like.

The term remanufacture, as used in the ADA context, is different from the use of the term in previously issued FTA guidance. The term has a specific meaning under the ADA: there must be structural work done to the vehicle and the work must extend the vehicle's useful life by five years.

The ADA imposes no requirements on what FTA traditionally considers bus rehabilitation. Such work involves rebuilding a bus to original specifications and focuses on mechanical systems and interiors. Often this work includes replacing components. It is less extensive than remanufacture.

The statute, and the rule, includes an exception for the remanufacture of historical vehicles. This exception applies to the remanufacture of or purchase of a remanufactured vehicle that (1) is of historic character; (2) operates solely on a segment of a fixed route system which is on the National Register of Historic Places; and (3) making the vehicle accessible would significantly alter the historic character of the vehicle. The exception only extends to the remanufacture that would alter the historic character of the vehicle. All modifications that can be made without altering the historic character (such as slip resistant flooring) must be done.

Section 37.77 Purchase or Lease of New Non-Rail Vehicles by Public Entities Operating a Demand Responsive System for the General Public

Section 224 of the ADA requires that a public entity operating a demand responsive system purchase or lease accessible new vehicles, for which a solicitation is made after August 25, 1990, unless 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 provided to individuals without disabilities. This section is the same as the October 4, 1990 final rule which promulgated the immediately effective acquisition requirements of the ADA.

The Department has been asked to clarify what ''accessible when viewed in its entirety'' means in the context of a demand responsive system being allowed to purchase an inaccessible vehicle. First, it is important to note that this exception applies only to demand responsive systems (and not fixed route systems). The term ''equivalent service'' was discussed during the passage of the ADA. Material from the legislative history indicates that ''when viewed in its entirety/equivalent service'' means that ''when all aspects of a transportation system are analyzed, equal opportunities for each individual with a disability to use the transportation system must exist. (H. Rept. 101–184, Pt. 2, at 95; S. Rept. 101–116 at 54). For example, both reports said that ''the time delay between a phone call to access the demand responsive system and pick up the individual is not greater because the individual needs a lift or ramp or other accommodation to access the vehicle.'' (*Id.*)

Consistent with this, the Department has specified certain service criteria that are to be used when determining if the service is equivalent. As in previous rulemakings on this provision, the standards (which include service area, response time, fares, hours and days of service, trip purpose restrictions, information and reservations capability, and other capacity constraints) are not absolute standards. They do not say, for example, that a person with a disability must be picked up in a specified number of hours. The requirement is that there must be equivalent service for all passengers, whether or not they have a disability. If the system provides service to persons without disabilities within four hours of a call for service, then passengers with disabilities must be afforded the same service.

The Department has been asked specifically where an entity should send its ''equivalent level of service'' certifications.

We provide the following: Equivalent level of service certifications should be submitted to the state program office if you are a public entity receiving FTA funds through the state. All other entities should submit their equivalent level of service certifications to the FTA regional office (listed in appendix B of this part). Certifications must be submitted before the acquisition of the vehicles.

Paragraph (e) of this section authorizes a waiver for the unavailability of lifts. Since demand responsive systems need not purchase accessible vehicles if they can certify equivalent service, the Department has been asked what this provision is doing in this section.

Paragraph (e) applies in the case in which an entity operates a demand responsive system, which is not equivalent, and the entity cannot find accessible vehicles to acquire. In this case, the waiver provisions applicable to a fixed route entity purchasing or leasing inaccessible new vehicles applies to the demand responsive operator as well.

Section 37.79 Purchase or Lease of New Rail Vehicles by Public Entities Operating Rapid or Light Rail Systems

This section echoes the requirement of §37.71—all new rail cars must be accessible.

Section 37.81 Purchase or Lease of Used Rail Vehicles by Public Entities Operating Rapid or Light Rail Systems

This section lays out the requirements for a public entity acquiring a used rail vehicle. The requirements and standards are the same as those specified for non-rail vehicles in §37.73. While we recognize it may create difficulties for entities in some situations, the statute does not include any extension or short-term leases. The Department will consider, in a case-by-case basis, how the good faith efforts requirement would apply in the case of an agreement between rail carriers to permit quick-response, short-term leases of cars over a period of time.

Section 37.83 Remanufacture of Rail Vehicles and Purchase or Lease of Remanufactured Rail Vehicles by Public Entities Operating Rapid or Light Rail System

This section parallels the remanufacturing section for buses, including the exception for historical vehicles. With respect to an entity having a class of historic vehicles that may meet the standards for the historic vehicle exception (e.g., San Francisco cable cars), the Department would not object to a request for application of the exception on a system-wide, as approved to car-by-car, basis.

Section 37.85 Purchase or Lease of New Intercity and Commuter Rail Cars

This section incorporates the statutory requirement that new intercity and commuter rail cars be accessible. The specific accessibility provisions of the statute (for example, there are slightly different requirements for intercity rail cars versus commuter rail cars) are specified in part 38 of this regulation. These standards are adopted from the voluntary guidelines issues by the Access Board. The section basically parallels the acquisition requirements for buses and other vehicles. It should be noted that the definition of commuter rail operator clearly allows for additional operators to qualify as commuter, since the definition describes the functional characteristics of an operator, as well as listing existing commuter rail operators.

We would point out that the ADA applies this requirement to all new vehicles. This includes not only vehicles and systems that currently are being operated in the U.S., but new, experimental, or imported vehicles and systems. The ADA does not stand in the way of new technology, but it does require that new technology, and the benefits it brings, be accessible to all persons, including those with disabilities. This point applies to all vehicle acquisition provisions of this regulation, whether for rail or non-rail, private or public, fixed route or demand responsive vehicles and systems.

Section 37.87 Purchase or Lease of Used Intercity and Commuter Rail Cars

The section also parallels closely the requirements in the ADA for the purchase or lease of accessible used rail vehicles. We acknowledge that, in some situations, the statutory requirement for to make good faith efforts to acquire accessible used vehicles may create difficulties for rail operators attempting to lease rail cars quickly for a short time (e.g., as fill-ins for cars which need repairs). In some cases, it may be possible to mitigate these difficulties through means such as making good faith efforts with respect to an overall agreement between two rail operators to make cars available to one another when needed, rather than each time a car is provided under such an agreement.

Section 37.89 Remanufacture of Intercity and Commuter Rail Cars

This section requires generally that remanufactured cars be made accessible, to the maximum extent feasible. Feasible is defined in paragraph (c) of the section to be ''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.'' Increased cost is not a reason for viewing other

sections of this subpart concerning remanufactured vehicles.

In addition, this section differs from the counterpart sections for non-rail vehicles and light and rapid rail vehicles in two ways. First, the extension of useful life needed to trigger the section is ten rather than five years. Second, there is no historic vehicle exception. Both of these differences are statutory.

Remanufacture of vehicles implies work that extends their expected useful life of the vehicle. A mid-life overhaul, not extending the total useful life of the vehicle, would not be viewed as a remanufacture of the vehicle.

Section 37.93 One Car Per Train Rule

This section implements the statutory directive that all rail operators (light, rapid, commuter and intercity) have at least one car per train accessible to persons with disabilities, including individuals who use wheelchairs by July 26, 1995. (See ADA sections 242(a)(1), 242(b)(1), 228(b)(1).) Section 37.93 contains this general requirement. In some cases, entities will meet the one-car-per train rule through the purchase of new cars. In this case, since all new rail vehicles have to be accessible, compliance with this provision is straightforward.

However, certain entities may not be purchasing any new vehicles by July 26, 1995, or may not be purchasing enough vehicles to ensure that one car per train is accessible. In these cases, these entities will have to retrofit existing cars to meet this requirement. What a retrofitted car must look like to meet the requirement has been decided by the Access Board. These standards are contained in part 38 of this rule.

We would point that, consistent with the Access Board standards, a rail system using mini-high platforms or wayside lifts is not required, in most circumstances, to ''double-stop'' in order to give passengers a chance to board the second or subsequent car in a train at the mini-high platform or way-side lift. The only exception to this would be a situation in which all the wheelchair positions spaces in the first car were occupied. In this case, the train would have to double-stop to allow a wheelchair user to board, rather than passing the person by when there was space available in other than the first car.

Section 37.95 Ferries and Other Passenger Vessels

Although at this time there are no specific requirements for vessels, ferries and other passenger vessels operated by public entities are subject to the requirements of §37.5 of this part and applicable requirements of 28 CFR part 35, the DOJ rule under title II of the ADA.

SUBPART E—ACQUISITION OF ACCESSIBLE VEHICLES BY PRIVATE ENTITIES

Section 37.101 Purchase or Lease of Non-Rail Vehicles by Private Entities Not Primarily Engaged in the Business of Transporting People

Section 37.103 Purchase or Lease of New Non-Rail Vehicles by Private Entities Primarily Engaged in the Business of Transporting People

Section 37.105 Equivalent Service Standard

The first two sections spell out the distinctions among the different types of service elaborated in the ADA and requirements that apply to them. For clarity, we provide the following chart.

PRIVATE ENTITIES "NOT PRIMARILY ENGAGED"

System type	Vehicle capacity	Requirement
Fixed Route	Over 16	Acquire accessible vehicle.
Fixed Route	16 or less	Acquire accessible vehicle, or equivalency.
Demand Responsive.	Over 16	Acquire accessible vehicle, or equivalency.
Demand Responsive.	16 or less	Equivalency—see §37.171.

PRIVATE ENTITIES "PRIMARILY ENGAGED"

System type	Vehicle type/capacity	Requirement
Fixed route	All new vehicles except auto, van with less than 8 capacity, or over the road bus.	Acquire accessible vehicle.
Demand responsive.	Same as above	Acquire accessible vehicle, or equivalency.
Either fixed route or demand responsive.	New vans with a capacity of less than 8.	Same as above.

Equivalency, for purposes of these requirements, is spelled out in §37.105. It is important to note that some portions of this section (referring to response time, reservations capacity, and restrictions on trip purpose) apply only to demand responsive systems. Another provision (schedules/headways) applies only to fixed route systems. This is because these points of comparison apply only to one or the other type system. The remaining provisions apply to both kinds of systems.

In applying the provisions this section, it is important to note that they are only points of comparison, not substantive criteria. For example, unlike the response time criterion of §37.131, this section does not require that a system provide any particular

response time. All it says is that, in order for there to be equivalency, if the demand responsive system gets a van to a non-disabled person in 2 hours, or 8 hours, or a week and a half after a call for service, the system must get an accessible van to a person with a disability in 2 hours, or 8 hours, or a week and a half.

The vehicle acquisition and equivalency provisions work together in the following way. A private entity is about to acquire a vehicle for a transportation service in one of the categories to which equivalency is relevant. The entity looks at its present service (considered without regard to the vehicle it plans to acquire). Does the present service meet the equivalency standard? (In answering this question, the point of reference is the next potential customer who needs an accessible vehicle. The fact that such persons have not called in the past is irrelevant). If not, the entity is required to acquire an accessible vehicle. If so, the entity may acquire an accessible or an inaccessible vehicle. This process must be followed every time the entity purchases or leases a vehicle. Given changes in the mixes of both customers and vehicles, the answer to the question about equivalency will probably not be the same for an entity every time it is asked.

One difference between the requirements for ''private, not primarily'' and ''private, primarily'' entities is that the requirements apply to all vehicles purchased or leased for the former, but only to new vehicles for the latter. This means that entities in the latter category are not required to acquire accessible vehicles when they purchase or lease used vehicles. Another oddity in the statute which entities should note is that the requirement for ''private, primarily'' entities to acquire accessible vans with less than eight passenger capacity (or provide equivalent service) does not become effective until after February 25, 1992 (This also date also applies no private entities ''primarily engaged'' which purchase passenger rail cars). All other vehicle acquisition requirements became effective after August 25, 1990.

The Department views the line between ''private, primarily'' and ''private, not primarily'' entities as being drawn with respect to the bus, van, or other service which the entity is providing. For example, there is an obvious sense in which an airline or car rental company is primarily engaged in the business of transporting people. If the airline or car rental agency runs a shuttle bus from the airport terminal to a downtown location or a rental car lot, however, the Department views that shuttle service as covered by the ''private, not primarily'' requirements of the rule (see discussion of the Applicability sections above). This is because the airline or car rental agency is not primarily engaged in the business of providing transportation by bus or van. The relationship of the bus or van service to an airline's main business is analogous to that of a shuttle to a hotel. For this purpose, it is of only incidental interest that the main business of the airline is flying people around the country instead of putting them up for the night.

Section 37.109 Ferries and Other Passenger Vessels

Although at this time there are no specific requirements for vessels, ferries and other passenger vessels operated by private entities are subject to the requirements of §37.5 of this part and applicable requirements of 28 CFR part 36, the DOJ rule under title III of the ADA.

Subpart F—Paratransit as a Complement to Fixed Route Service

Section 37.121 Requirement for Comparable Complementary Paratransit Service

This section sets forth the basic requirement that all public entities who operate a fixed route system have to provide paratransit service that is both comparable and complementary to the fixed route service. By ''complementary,'' we mean service that acts as a ''safety net'' for individuals with disabilities who cannot use the fixed route system. By ''comparable,'' we mean service that meets the service criteria of this subpart.

This requirement applies to light and rapid rail systems as well as to bus systems, even when rail and bus systems share all or part of the same service area. Commuter bus, commuter rail and intercity rail systems do not have to provide paratransit, however. The remaining provisions of subpart F set forth the details of the eligibility requirements for paratransit, the service criteria that paratransit systems must meet, the planning process involved, and the procedures for applying for waivers based on undue financial burden.

Paratransit may be provided by a variety of modes. Publicly operated dial-a-ride vans, service contracted out to a private paratransit provider, user-side subsidy programs, or any combination of these and other approaches is acceptable. Entities who feel it necessary to apply for an undue financial burden waiver should be aware that one of the factors FTA will examine in evaluating waiver requests is efficiencies the provider could realize in its paratransit service. Therefore, it is important for entities in this situation to use the most economical and efficient methods of providing paratransit they can devise.

It is also important for them to establish and consistently implement strong controls against fraud, waste and abuse in the paratransit system. Fraud, waste and abuse can drain significant resources from a system and control of these problems is an important ''efficiency for any paratransit system.

It will be difficult for the Department to grant an undue financial burden waiver to entities which do not have a good means of determining if fraud, waste and abuse are problems and adequate methods of combating these problems, where they are found to exist.

Section 37.123 ADA Paratransit Eligibility—Standards

General Provisions

This section sets forth the minimum requirements for eligibility for complementary paratransit service. All fixed route operators providing complementary paratransit must make service available at least to individuals meeting these standards. The ADA does not prohibit providing paratransit service to anyone. Entities may provide service to additional persons as well. Since only service to ADA eligible persons is required by the rule, however, only the costs of this service can be counted in the context of a request for an undue financial burden waiver.

When the rule says that ADA paratransit eligibility shall be strictly limited to persons in the eligible categories, then, it is not saying that entities are in any way precluded from serving other people. It is saying that the persons who must be provided service, and counting the costs of providing them service, in context of an undue burden waiver, are limited to the regulatory categories.

TEMPORARY DISABILITIES

Eligibility may be based on a temporary as well as a permanent disability. The individual must meet one of the three eligibility criteria in any case, but can do so for a limited period of time. For example, if an individual breaks both legs and is in two casts for several weeks, becomes a wheelchair user for the duration, and the bus route that would normally take him to work is not accessible, the individual could be eligible under the second eligibility category. In granting eligibility to such a person, the entity should establish an expiration date for eligibility consistent with the expected end of the period disability.

TRIP-BY-TRIP ELIGIBILITY

A person may be ADA paratransit eligible for some trips but not others. Eligibility does not inhere in the individual or his or her disability, as such, but in meeting the functional criteria of inability to use the fixed route system established by the ADA. This inability is likely to change with differing circumstances.

For example, someone whose impairment-related condition is a severe sensitivity to temperatures below 20 degrees is not prevented from using fixed route transit when the temperature is 75 degrees. Someone whose impairment-related condition is an inability to maneuver a wheelchair through snow is not prevented from using fixed route transit when there is no snow on the ground. Someone with a cognitive disability may have learned to take the same bus route to a supported employment job every day. This individual is able to navigate the system for work purposes and therefore would not be eligible for paratransit for work trips. But the individual may be unable to get to other destinations on the bus system without getting lost, and would be eligible for paratransit for non-work trips. Someone who normally drives his own car to a rail system park and ride lot may have a specific impairment related condition preventing him from getting to the station when his car is in the shop. A person who can use accessible fixed route service can go to one destination on an accessible route; another destination would require the use of an inaccessible route. The individual would be eligible for the latter but not the former.

In many cases, though the person is eligible for some trips but not others, eligibility determinations would not have to be made literally on a trip-by-trip basis. It may often be possible to establish the conditions on eligibility as part of the initial eligibility determination process. Someone with a temperature sensitivity might be granted seasonal eligibility. Somebody who is able to navigate the system for work but not non-work trips could have this fact noted in his or her eligibility documentation. Likewise, someone with a variable condition (e.g., multiple sclerosis, HIV disease, need for kidney dialysis) could have their eligibility based on the underlying condition, with paratransit need for a particular trip dependent on self-assessment or a set of medical standards (e.g., trip within a certain amount of time after a dialysis session). On the other hand, persons in the second eligibility category (people who can use accessible fixed route service where it exists) would be given service on the basis of the particular route they would use for a given trip.

Because entities are not precluded from providing service beyond that required by the rule, an entity that believes it is too difficult to administer a program of trip-by-trip eligibility is not required to do so. Nothing prevents an entity from providing all requested trips to a person whom the ADA requires to receive service for only some trips. In this case, if the entity intends to request an undue financial burden waiver, the entity, as provided in the undue burden provisions of this rule, must estimate, by a statistically valid technique, the percentage of its paratransit trips that are mandated by the ADA. Only that percentage of its total costs will be counted in considering the undue burden waiver request.

CATEGORY 1 ELIGIBILITY

The first eligibility category includes, among others, persons with mental or visual impairments who, as a result, cannot ''navigate the system.'' This eligibility category includes people who cannot board, ride, or disembark from an accessible vehicle ''without the assistance of another individual.'' This means that, if an individual needs an attendant to board, ride, or disembark from an accessible fixed route vehicles (including ''navigating the system''), the individual is eligible for paratransit. One implication of this language is that an individual does not lose paratransit eligibility based on ''inability to navigate the system'' because the individual chooses to travel with a friend on the paratransit system (even if the friend could help the person navigate the fixed route system). Eligibility in this category is based on ability to board, ride, and disembark independently.

Mobility training (e.g., of persons with mental or visual impairments) may help to improve the ability of persons to navigate the system or to get to a bus stop. Someone who is successfully mobility trained to use the fixed route system for all or some trips need not be provided paratransit service for those trips. The Department encourages entities to sponsor such training as a means of assisting individuals to use fixed route rather than paratransit.

CATEGORY 2 ELIGIBILITY

The second eligibility criterion is the broadest, with respect to persons with mobility impairments, but its impact should be reduced over time as transit systems become more accessible. This category applies to persons who could use accessible fixed route transportation, but accessible transportation is not being used at the time, and on the route, the persons would travel. This concept is route based, not system based.

Speaking first of bus systems, if a person is traveling from Point A to Point B on route 1, and route 1 is accessible, the person is not eligible for paratransit for the trip. This is true even though other portions of the system are still inaccessible. If the person is traveling from Point A to Point C on route 2, which is not accessible, the person is eligible for that trip. If the person is traveling from Point A to Point B on accessible route 1, with a transfer at B to go on inaccessible route 3 to Point D, then the person is eligible for the second leg of the trip. (The entity could choose to provide a paratransit trip from A to D or a paratransit or on-call bus trip from B to D.)

For purposes of this standard, we view a route as accessible when all buses scheduled on the route are accessible. Otherwise, it is unlikely that an accessible vehicle could be provided ''within a reasonable period of [a] time'' when the individual wants to travel, as the provision requires. We recognize that some systems' operations may not be organized in a way that permits determining whether a given route is accessible, even though a route-by-route determination appears to be contemplated by the statute. In such cases, it may be that category 2 eligibility would persist until the entire system was eligible.

With respect to a rail system, an individual is eligible under this standard if, on the route or line he or she wants to use, there is not yet one car per train accessible or if key stations are not yet accessible. This eligibility remains even if bus systems covering the area served by the rail system have become 100 percent accessible. This is necessary because people use rail systems for different kinds of trips than bus systems. It would often take much more in the way of time, trouble, and transfers for a person to go on the buses of one or more transit authorities than to have a direct trip provided by the rail operator. Since bus route systems are often designed to feed rail systems rather than duplicate them, it may often be true that ''you can't get there from here'' relying entirely on bus routes or the paratransit service area that parallels them.

If the lift on a vehicle cannot be deployed at a particular stop, an individual is eligible for paratransit under this category with respect to the service to the inaccessible stop. If on otherwise accessible route 1, an individual wants to travel from Point A to Point E, and the lift cannot be deployed at E, the individual is eligible for paratransit for the trip. (On-call bus would not work as a mode of providing this trip, since a bus lift will not deploy at the stop.) This is true even though service from Point A to all other points on the line is fully accessible. In this circumstance, the entity should probably think seriously about working with the local government involved to have the stop moved or made accessible.

When we say that a lift cannot be deployed, we mean literally that the mechanism will not work at the location to permit a wheelchair user or other person with a disability to disembark or that the lift will be damaged if it is used there. It is not consistent with the rule for a transit provider to declare a stop off-limits to someone who uses the lift while allowing other passengers to use the stop. However, if temporary conditions not under the operator's control (e.g., construction, an accident, a landslide) make it so hazardous for anyone to disembark that the stop is temporarily out of service for all passengers may the operator refuse to allow a passenger to disembark using the lift.

CATEGORY 3 ELIGIBILITY

The third eligibility criterion concerns individuals who have a specific impairment-related condition which prevents them from getting to or from a stop or station. As noted in the legislative history of the ADA, this is intended to be a ''very narrow exception'' to the general rule that difficulty in traveling to or from boarding or disembarking locations is not a basis for eligibility.

What is a specific impairment-related condition? The legislative history mentions four examples: Chronic fatigue, blindness, a lack of cognitive ability to remember and follow directions, or a special sensitivity to temperature. Impaired mobility, severe communications disabilities (e.g., a combination of serious vision and hearing impairments), cardiopulmonary conditions, or various other serious health problems may have similar effects. The Department does not believe that it is appropriate, or even possible, to create an exhaustive list.

What the rule uses as an eligibility criterion is not just the existence of a specific impairment-related condition. To be a basis for eligibility, the condition must prevent the individual from traveling to a boarding location or from a disembarking location. The word ''prevent'' is very important. For anyone, going to a bus stop and waiting for a bus is more difficult and less comfortable than waiting for a vehicle at one's home. This is likely to be all the more true for an individual with a disability. But for many persons with disabilities, in many circumstances, getting to a bus stop is possible. If an impairment related condition only makes the job of accessing transit more difficult than it might otherwise be, but does not prevent the travel, then the person is not eligible.

For example, in many areas, there are not yet curb cuts. A wheelchair user can often get around this problem by taking a less direct route to a destination than an ambulatory person would take. That involves more time, trouble, and effort than for someone without a mobility impairment. But the person can still get to the bus stop. On the basis of these architectural barriers, the person would not be eligible.

Entities are cautioned that, particularly in cases involving lack of curb cuts and other architectural barrier problems, assertions of eligibility should be given tight scrutiny. Only if it is apparent from the facts of a particular case that an individual cannot find a reasonable alternative path to a location should eligibility be granted.

If we add a foot of snow to the scenario, then the same person taking the same route may be unable to get to the bus stop. It is not the snow alone that stops him; it is the interaction of the snow and the fact that the individual has a specific-impairment related condition that requires him to push a wheelchair through the snow that prevents the travel.

Inevitably, some judgment is required to distinguish between situations in which travel is prevented and situations in which it is merely made more difficult. In the Department's view, a case of ''prevented travel'' can be made not only where travel is literally impossible (e.g., someone cannot find the bus stop, someone cannot push a wheelchair through the foot of snow or up a steep hill) but also where the difficulties are so substantial that a reasonable person with the impairment-related condition in question would be deterred from making the trip.

The regulation makes the interaction between an impairment-related condition and the environmental barrier (whether distance, weather, terrain, or architectural barriers) the key to eligibility determinations. This is an individual determination. Depending on the specifics of their impairment-related condition, one individual may be able to get from his home to a bus stop under a given set of conditions, while his next-door neighbor may not.

COMPANIONS

The ADA requires entities to provide paratransit to one person accompanying the eligible individual, with others served on a space-available basis. The one individual who is guaranteed space on the vehicle can be anyone—family member, business associate, friend, date, etc. The provider cannot limit the eligible individual's choice of type of companion. The transit authority may require that the eligible individual reserve a space for the companion when the individual reserves his or her own ride. This one individual rides even if this means that there is less room for other eligible individuals. Additional individuals beyond the first companion are carried only on a space available basis; that is, they do not displace other ADA paratransit eligible individuals.

A personal care attendant (i.e., someone designated or employed specifically to help the eligible individual meet his or her personal needs) always may ride with the eligible individual. If there is a personal care attendant on the trip, the eligible individual may still bring a companion, plus additional companions on a space available basis. The entity may require that, in reserving the trip, the eligible individual reserve the space for the attendant.

To prevent potential abuse of this provision, the rule provides that a companion (e.g., friend or family member) does not count as a personal care attendant unless the eligible individual regularly makes use of a personal care attendant and the companion is actually acting in that capacity. As noted under §37.125, a provider may require that, as part of the initial eligibility

certification process, an individual indicate whether he or she travels with a personal care attendant. If someone does not indicate the use of an attendant, then any individual accompanying him or her would be regarded simply as a companion.

To be viewed as ''accompanying'' the eligible individual, a companion must have the same origin and destination points as the eligible individual. In appropriate circumstances, entities may also wish to provide service to a companion who has either an origin or destination, but not both, with the eligible individual (e.g., the individual's date is dropped off at her own residence on the return trip from a concert).

Section 37.125 ADA Paratransit Eligibility—Process

This section requires an eligibilty process to be established by each operator of complementary paratransit. The details of the process are to be devised through the planning and public participation process of this subpart. The process may not impose unreasonable administrative burdens on applicants, and, since it is part of the entity's nondiscrimination obligations, may not involve ''user fees'' or application fees to the applicant.

The process may include functional criteria related to the substantive eligibility criteria of §37.123 and, where appropriate, functional evaluation or testing of applicants. The substantive eligibility process is not aimed at making a medical or diagnostic determination. While evaluation by a physician (or professionals in rehabilitation or other relevant fields) may be used as part of the process, a diagnosis of a disability is not dispositive. What is needed is a determination of whether, as a practical matter, the individual can use fixed route transit in his or her own circumstances. That is a transportation decision primarily, not a medical decision.

The goal of the process is to ensure that only people who meet the regulatory criteria, strictly applied, are regarded as ADA paratransit eligible. The Department recognizes that transit entities may wish to provide service to other persons, which is not prohibited by this rule. However, the eligibility process should clearly distinguish those persons who are ADA eligible from those who are provided service on other grounds. For example, eligibility documentation must clearly state whether someone is ADA paratransit eligible or eligible on some other basis.

Often, people tend to think of paratransit exclusively in terms of people with mobility impairments. Under the ADA, this is not accurate. Persons with visual impairments may be eligible under either the first or third eligibility categories. To accommodate them, all documents concerning eligibility must be made available in one or more accessible formats, on request. Accessible formats include computer disks, braille documents, audio cassettes, and large print documents. A document does not necessarily need to be made available in the format a requester prefers, but it does have to be made available in a format the person can use. There is no use giving a computer disk to someone who does not have a computer, for instance, or a braille document to a person who does not read braille.

When a person applies for eligibility, the entity will provide all the needed forms and instructions. These forms and instructions may include a declaration of whether the individual travels with a personal care attendant. The entity may make further inquiries concerning such a declaration (e.g., with respect to the individual's actual need for a personal care attendant).

When the application process is complete—all necessary actions by the applicant taken—the entity should process the application in 21 days. If it is unable to do so, it must begin to provide service to the applicant on the 22nd day, as if the application had been granted. Service may be terminated only if and when the entity denies the application. All determinations shall be in writing; in the case of a denial, reasons must be specified. The reasons must specifically relate the evidence in the matter to the eligibility criteria of this rule and of the entity's process. A mere recital that the applicant can use fixed route transit is not sufficient.

For people granted eligibility, the documentation of eligibility shall include at least the following information:

—The individual's name
—The name of the transit provider
—The telephone number of the entity's paratransit coordinator
—An expiration date for eligibility
—Any conditions or limitations on the individual's eligibility, including the use of a personal care attendant.

The last point refers to the situation in which a person is eligible for some trips but not others. Or if the traveler is authorized to have a personal care attendant ride free of charge. For example, the documentation may say that the individual is eligible only when the temperature falls below a certain point, or when the individual is going to a destination not on an accessible bus route, or for non-work trips, etc.

As the mention of an expiration date implies, certification is not forever. The entity may recertify eligibility at reasonable intervals to make sure that changed circumstances have not invalidated or changed the individual's eligibility. In the Department's view, a reasonable interval for recertification is probably between one and three

years. Less than one year would probably be too burdensome for consumers; over three years would begin to lose the point of doing recertifications. The recertification interval should be stated in the entity's plan. Of course, a user of the service can apply to modify conditions on his or her eligibility at any time.

The administrative appeal process is intended to give applicants who have been denied eligibility the opportunity to have their cases heard by some official other than the one who turned them down in the first place. In order to have appropriate separation of functions—a key element of administrative due process—not only must the same person not decide the case on appeal, but that person, to the extent practicable, should not have been involved in the first decision (e.g., as a member of the same office, or a supervisor or subordinate of the original decisionmaker). When, as in the case of a small transit operator, this degree of separation is not feasible, the second decisionmaker should at least be ''bubbled'' with respect to the original decision (i.e., not have participated in the original decision or discussed it with the original decisionmaker). In addition, there must be an opportunity to be heard in person as well as the chance to present written evidence and arguments. All appeals decisions must be in writing, stating the reasons for the decision.

To prevent the filing of stale claims, the entity may establish a 60 day ''statute of limitations'' on filing of appeals, the time starting to run on the date the individual is notified on the negative initial decision. After the appeals process has been completed (i.e., the hearing and/or written submission completed), the entity should make a decision within 30 days. If it does not, the individual must be provided service beginning the 31st day, until and unless an adverse decision is rendered on his or her appeal.

Under the eligibility criteria of the rule, an individual has a right to paratransit if he or she meets the eligibility criteria. As noted in the discussion of the nondiscrimination section, an entity may refuse service to anindividual with a disability who engages in violent, seriously disruptive, or illegal conduct, using the same standards for exclusion that would apply to any other person who acted in such an inappropriate way.

The rule also allows an entity to establish a process to suspend, for a reasonable period of time, the provision of paratransit service to an ADA eligible person who establishes a pattern or practice of missing scheduled trips. The purpose of this process would be to deter or deal with chronic ''no-shows.'' The sanction system—articulated criteria for the imposition of sanctions, length of suspension periods, details of the administrative process, etc.—would be developed through the public planning and participation process for the entity's paratransit plan, and the result reflected in the plan submission to FTA.

It is very important to note that sanctions could be imposed only for a ''pattern or practice'' of missed trips. A pattern or practice involves intentional, repeated or regular actions, not isolated, accidental, or singular incidents. Moreover, only actions within the control of the individual count as part of a pattern or practice. Missed trips due to operator error are not attributable to the individual passenger for this purpose. If the vehicle arrives substantially after the scheduled pickup time, and the passenger has given up on the vehicle and taken a taxi or gone down the street to talk to a neighbor, that is not a missed trip attributable to the passenger. If the vehicle does not arrive at all, or is sent to the wrong address, or to the wrong entrance to a building, that is not a missed trip attributable to the passenger. There may be other circumstances beyond the individual's control (e.g., a sudden turn for the worse in someone with a variable condition, a sudden family emergency) that make it impracticable for the individual to travel at the scheduled time and also for the individual to notify the entity in time to cancel the trip before the vehicle comes. Such circumstances also would not form part of a sanctionable pattern or practice.

Once an entity has certified someone as eligible, the individual's eligibility takes on the coloration of a property right. (This is not merely a theoretical statement. If one depends on transportation one has been found eligible for to get to a job, and the eligibility is removed, one may lose the job. The same can be said for access to medical care or other important services.) Consequently, before eligibility may be removed ''for cause'' under this provision, the entity must provide administrative due process to the individual.

If the entity proposes to impose sanctions on someone, it must first notify the individual in writing (using accessible formats where necessary). The notice must specify the basis of the proposed action (e.g., Mr. Smith scheduled trips for 8 a.m. on May 15, 2 p.m. on June 3, 9 a.m. on June 21, and 9:20 p.m. on July 10, and on each occasion the vehicle appeared at the scheduled time and Mr. Smith was nowhere to be found) and set forth the proposed sanction (e.g., Mr. Smith would not receive service for 15 days).

The entity would provide the individual an opportunity to be heard (i.e., an in-person informal hearing before a decisionmaker) as well as to present written and oral information and arguments. All relevant entity records and personnel would be made available to the individual, and other persons could testify. It is likely that, in many cases, an important factual issue would be whether a missed trip was the responsibility

of the provider or the passenger, and the testimony of other persons and the provider's records or personnel are likely to be relevant in deciding this issue. While the hearing is intended to be informal, the individual could bring a representative (e.g., someone from an advocacy organization, an attorney).

The individual may waive the hearing and proceed on the basis of written presentations. If the individual does not respond to the notice within a reasonable time, the entity may make, in effect, a default finding and impose sanctions. If there is a hearing, and the individual needs paratransit service to attend the hearing, the entity must provide it. We would emphasize that, prior to a finding against the individual after this due process procedure, the individual must continue to receive service. The entity cannot suspend service while the matter is pending.

The entity must notify the individual in writing about the decision, the reasons for it, and the sanctions imposed, if any. Again, this information would be made available in accessible formats. In the case of a decision adverse to the individual, the administrative appeals process of this section would apply. The sanction would be stayed pending an appeal.

There are means other than sanctions, however, by which a transit provider can deal with a ''no-show'' problem in its system. Providers who use ''real time scheduling'' report that this technique is very effective in reducing no-shows and cancellations, and increasing the mix of real time scheduling in a system can probably be of benefit in this area. Calling the customer to reconfirm a reasonable time before pickup can head off some problems, as can educating consumers to call with cancellations ahead of time. Training of dispatch and operator personnel can help to avoid miscommunications that lead to missed trips.

Section 37.127 Complementary Paratransit for Visitors

This section requires each entity having a complementary paratransit system to provide service to visitors from out of town on the same basis as it is provided to local residents. By ''on the same basis,'' we mean under all the same conditions, service criteria, etc., without distinction. For the period of a visit, the visitor is treated exactly like an eligible local user, without any higher priority being given to either.

A visitor is defined as someone who does not reside in the jurisdiction or jurisdictions served by the public entity or other public entities with which it coordinates paratransit service. For example, suppose a five-county metropolitan area provides coordinated paratransit service under a joint plan. A resident of any of the five counties would not be regarded as a visitor in any of them. Note that the rule talks in terms of ''jurisdiction'' rather than ''service area.'' If an individual lives in XYZ County, but outside the fixed route service area of that county's transit provider, the individual is still not a visitor for purposes of paratransit in PQR County, if PQR is one of the counties with which XYZ provides coordinated paratransit service.

A visitor can become eligible in one of two ways. The first is to present documentation from his or her ''home'' jurisdiction's paratransit system. The local provider will give ''full faith and credit'' to the ID card or other documentation from the other entity. If the individual has no such documentation, the local provider may require the provision of proof of visitor status (i.e., proof of residence somewhere else) and, if the individual's disability is not apparent, proof of the disability (e.g., a letter from a doctor or rehabilitation professional). Once this documentation is presented and is satisfactory, the local provider will make service available on the basis of the individual's statement that he or she is unable to use the fixed route transit system.

The local provider need serve someone based on visitor eligibility for no more than 21 days. After that, the individual is treated the same as a local person for eligibility purposes. This is true whether the 21 days are consecutive or parceled out over several shorter visits. The local provider may require the erstwhile visitor to apply for eligibility in the usual local manner. A visitor who expects to be around longer than 21 days should apply for regular eligibility as soon as he arrives. The same approach may be used for a service of requested visits totaling 21 days or more in a relating compact period of time. Preferably, this application process should be arranged before the visitor arrives, by letter, telephone or fax, so that a complete application can be processed expeditiously.

Section 37.129 Types of Service

The basic mode of service for complementary paratransit is demand responsive, origin-to-destination service. This service may be provided for persons in any one of the three eligibility categories, and must always be provided to persons in the first category (e.g., people who cannot navigate the system). The local planning process should decide whether, or in what circumstances, this service is to be provided as door-to-door or curb-to-curb service.

For persons in the second eligibility category (e.g., persons who can use accessible buses, but do not have an accessible bus route available to take them to their destination), origin-to-destination service can be used. Alternatively, the entity can provide either of two other forms of service. One is on-call bus, in which the individual calls

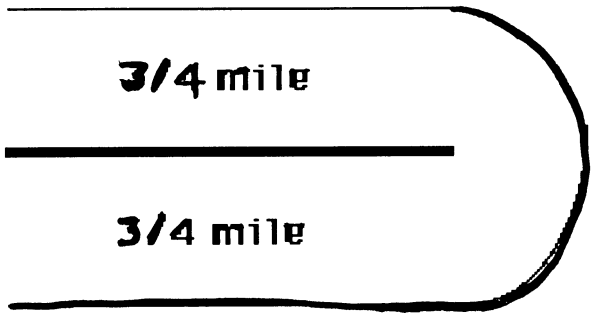
the provider and arranges for one or more accessible buses to arrive on the routes he needs to use at the appropriate time. On-call bus service must meet all the service criteria of §37.131, except that on-call buses run only on fixed routes and the fare charged can be only the fixed route fare that anyone pays on the bus (including discounts).

The second option is ''feeder paratransit'' to an accessible fixed route that will take the individual to his or her destination. Feeder paratransit, again, would have to meet all the criteria of §37.131. With respect to fares, the paratransit fare could be charged, but the individual would not be double charged for the trip. That is, having paid the paratransit fare, the transfer to the fixed route would be free.

For persons in the third eligibility category (e.g., persons who can use fixed route transit but who, because of a specific impairment-related condition, cannot get to or from a stop), the ''feeder paratransit'' option, under the conditions outlined above, is available. For some trips, it might be necessary to arrange for feeder service at both ends of the fixed route trip. Given the more complicated logistics of such arrangements, and the potential for a mistake that would seriously inconvenience the passenger, the transit provider should consider carefully whether such a ''double feeder'' system, while permissible, is truly workable in its system (as opposed to a simpler system that used feeder service only at one end of a trip when the bus let the person off at a place from which he or she could independently get to the destination). There may be some situations in which origin to destination service is easier and less expensive.

Section 37.131 Service Criteria for Complementary Paratransit Service Area

The basic bus system service area is a corridor with a width of ¾ of a mile on each side of each fixed route. At the end of a route, there is a semicircular ''cap'' on the corridor, consisting of a three-quarter mile radius from the end point of the route to the parallel sides of the corridor.



Complementary paratransit must provide service to any origin or destination point within a corridor fitting this description around any route in the bus system. Note that this does not say that an eligible user must live within a corridor in order to be eligible. If an individual lives outside the corridor, and can find a way of getting to a pickup point within the corridor, the service must pick him up there. The same holds true at the destination end of the trip.

Another concept involved in this service criterion is the core service area. Imagine a bus route map of a typical city. Color the bus routes and their corridors blue, against the white outline map. In the densely populated areas of the city, the routes (which, with their corridors attached, cut 1½ mile swaths) merge together into a solid blue mass. There are few, if any, white spots left uncovered, and they are likely to be very small. Paratransit would serve all origins and destinations in the solid blue mass.

But what of the little white spots surrounded by various bus corridors? Because it would make sense to avoid providing service to such small isolated areas, the rule requires paratransit service there as well. So color them in too.

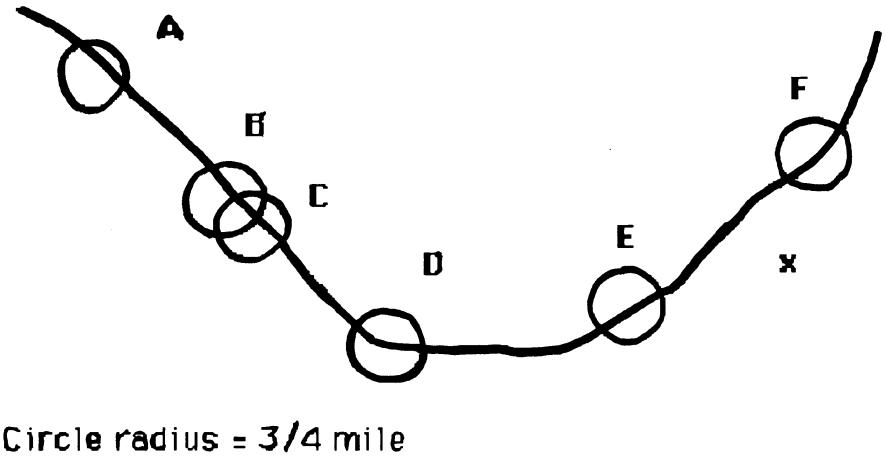
Outside the core area, though, as bus routes follow radial arteries into the suburbs and exurbs (we know real bus route maps are more complicated than this, but we simplify for purposes of illustration), there are increasingly wide white areas between the blue corridors, which may have corridors on either side of them but are not small areas completely surrounded by corridors. These white spaces are not part of the paratransit service area and the entity does not have to

serve origins and destinations there. However, if, through the planning process, the entity wants to enlarge the width of one or more of the blue corridors from the ¾ of a mile width, it can do so, to a maximum of 1½ miles on each side of a route. The cost of service provided within such an expanded corridor can be counted in connection with an undue financial burden waiver request.

There may be a part of the service area where part of one of the corridors overlaps a political boundary, resulting in a requirement to serve origins and destinations in a neighboring jurisdiction which the entity lacks legal authority to service. The entity is not required to serve such origins and destinations, even though the area on the other side of the political boundary is within a corridor. This exception to the service area criterion does not automatically apply whenever there is a political boundary, only when there is a legal bar to the entity providing service on the other side of the boundary.

The rule requires, in this situation, that the entity take all practicable steps to get around the problem so that it can provide service throughout its service area. The entity should work with the state or local governments involved, via coordination plans, reciprocity agreements, memoranda of understanding or other means to prevent political boundaries from becoming barriers to the travel of individuals with disabilities.

The definition of the service area for rail systems is somewhat different, though many of the same concepts apply.



Around each station on the line (whether or not a key station), the entity would draw a circle with a radius of ¾ mile. Some circles may touch or overlap. The series of circles is the rail system's service area. (We recognize that, in systems where stations are close together, this could result in a service area that approached being a corridor like that of a bus line.) The rail system would provide paratransit service from any point in one circle to any point in any other circle. The entity would not have to provide service to two points within the same circle, since a trip between two points in the vicinity of the same station is not a trip that typically would be taken by train. Nor would the entity have to provide service to spaces between the circles. For example, a train trip would not get close to point x; one would have to take a bus or other mode of transportation to get from station E or F to point x. A paratransit system comparable to the rail service area would not be required to take someone there either.

Rail systems typically provide trips that are not made, or cannot be made conveniently, on bus systems. For example, many rail systems cross jurisdictional boundaries that bus systems often do not. One can travel from Station A to a relatively distant Station E on a rail system in a single trip, while a bus trip between the same points, if possible at all, may involve a number of indirect routings and transfers, on two bus systems that may not interface especially well.

Rail operators have an obligation to provide paratransit equivalents of trips between circles to persons who cannot use fixed route rail systems because they cannot navigate the system, because key stations or trains

are not yet accessible, or because they cannot access stations from points within the circles because of a specific impairment-related condition. For individuals who are eligible in category 2 because they need an accessible key station to use the system, the paratransit obligation extends only to transportation among ''circles'' centered on designated key stations (since, even when the key station plan is fully implemented, these individuals will be unable to use non-key stations).

It is not sufficient for a rail operator to refer persons with disabilities to an accessible bus system in the area. The obligation to provide paratransit for a rail system is independent of the operations of any bus system serving the same area, whether operated by the same entity that operates the rail system or a different entity. Obviously, it will be advantageous for bus and rail systems to coordinate their paratransit efforts, but a coordinated system would have to ensure coverage of trips comparable to rail trips that could not conveniently be taken on the fixed route bus system.

RESPONSE TIME

Under this provision, an entity must make its reservation service available during the hours its administrative offices are open. If those offices are open 9 to 5, those are the hours during which the reservations service must be open, even if the entity's transit service operated 6 a.m. to midnight. On days prior to a service day on which the administrative offices are not open at all (e.g., a Sunday prior to a Monday service day), the reservation service would also be open 9 to 5. Note that the reservation service on any day does not have to be provided directly by a ''real person.'' An answering machine or other technology can suffice.

Any caller reaching the reservation service during the 9 to 5 period, in this example, could reserve service for any time during the next 6 a.m. to 12 midnight service day. This is the difference between ''next day scheduling'' and a system involving a 24-hour prior reservation requirement, in which a caller would have to reserve a trip at 7 a.m. today if he or she wanted to travel at 7 a.m. tomorrow. The latter approach is not adequate under this rule.

The entity may use real time scheduling for all or part of its service. Like the Moliere character who spoke prose all his life without knowing it, many entities may already be using some real time scheduling (e.g., for return trips which are scheduled on a when-needed basis, as opposed to in advance). A number of transit providers who have used real time scheduling believe that it is more efficient on a per-trip basis and reduces cancellations and no-shows significantly. We encourage entities to consider this form of service.

Sometimes users want to schedule service well in advance, to be sure of traveling when they want to. The rule tells providers to permit reservations to be made as much as 14 days in advance. In addition, though an entity may negotiate with a user to adjust pick-up and return trip times to make scheduling more efficient, the entity cannot insist on scheduling a trip more than one hour earlier or later than the individual desires to travel. Any greater deviation from desired trip would exceed the bounds of comparability.

FARES

To calculate the proper paratransit fare, the entity would determine the route(s) that an individual would take to get from his or her origin to his or her destination on the fixed route system. At the time of day the person was traveling, what is the fare for that trip on those routes? Applicable charges like transfer fees or premium service charges may be added to the amount, but discounts (e.g., the half-fare discount for off-peak fixed route travel by elderly and handicapped persons) would not be subtracted. The transit provider could charge up to twice the resulting amount for the paratransit trip.

The mode through which paratransit is provided does not change the method of calculation. For example, if paratransit is provided via user side subsidy taxi service rather than publicly operated dial-a-ride van service, the cost to the user could still be only twice the applicable fixed route fare. The system operates the same regardless of whether the paratransit trip is being provided in place of a bus or a rail trip the user cannot make on the fixed route system. Where bus and rail systems are run by the same provider (or where the same bus provider runs parallel local and express buses along the same route), the comparison would be made to the mode on which a typical fixed route user would make the particular trip, based on schedule, length, convenience, avoidance of transfers, etc.

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

One exception to the fare requirement is made for social service agency (or other organization-sponsored) trips. This exception, which allows the transit provider to negotiate a price with the agency that is more than twice the relevant fixed route fare, applies to ''agency trips,'' by which we mean trips which are guaranteed to the agency for its use. That is, if an agency wants 12 slots for a trip to the mall on Saturday for clients with disabilities, the agency makes the reservation for the trips in its name, the agency will be paying for the transportation, and the trips are reserved to the agency, for whichever 12 people the agency designates, the provider may then negotiate any price it

can with the agency for the trips. We distinguish this situation from one in which an agency employee, as a service, calls and makes an individual reservation in the name of a client, where the client will be paying for the transportation.

RESTRICTIONS AND PRIORITIES BASED ON TRIP PURPOSE

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

HOURS AND DAYS OF SERVICE

This criterion says simply that if a person can travel to a given destination using a given fixed route at a given time of day, an ADA paratransit eligible person must be able to travel to that same destination on paratransit at that time of day. This criterion recognizes that the shape of the service area can change. Late at night, for example, it is common for certain routes not to be run. Those routes, and their paratransit corridors, do not need to be served with paratransit when the fixed route system is not running on them. One couldn't get to destinations in that corridor by fixed route at those times, so paratransit service is not necessary either.

It should be pointed out that service during low-demand times need not be by the same paratransit mode as during higher usage periods. For example, if a provider uses its own paratransit vans during high demand periods, it could use a private contractor or user-side subsidy provider during low demand periods. This would presumably be a more efficient way of providing late night service. A call-forwarding device for communication with the auxiliary carrier during these low demand times would be perfectly acceptable, and could reduce administrative costs.

CAPACITY CONSTRAINTS

This provision specifically prohibits two common mechanisms that limit use of a paratransit system so as to constrain demand on its capacity. The first is a waiting list. Tyically, a waiting list involves a determination by a provider that it can provide service only to a given number of eligible persons. Other eligible persons are not able to receive service until one of the people being served moves away or otherwise no longer uses the service. Then the persons on the waiting list can move up. The process is analogous to the wait that persons in some cities have to endure to be able to buy season tickets to a sold-out slate of professional football games.

The second mechanism specifically mentioned is a number limit on the trips a passenger can take in a given period of time. It is a kind of rationing in which, for example, if one has taken his quota of 30 trips this month, he cannot take further trips for the rest of the month.

In addition, this paragraph prohibits any operational pattern or practice that significantly limits the availability of service of ADA paratransit eligible persons. As discussed under §37.125 in the context of missed trips by passengers, a ''pattern or practice'' involves, regular, or repeated actions, not isolated, accidental, or singular incidents. A missed trip, late arrival, or trip denial now and then does not trigger this provision.

Operational problems outside the control of the entity do not count as part of a pattern or practice under this provision. For example, if the vehicle has an accident on the way to pick up a passenger, the late arrival would not count as part of a pattern or practice. If something that could not have been anticipated at the time the trip was scheduled (e.g., a snowstorm, an accident or hazardous materials incident that traps the paratransit vehicle, like all traffic on a certain highway, for hours), the resulting missed trip would not count as part of a pattern or practice. On the other hand, if the entity regularly does not maintain its vehicles well, such that frequent mechanical breakdowns result in missed trips or late arrivals, a pattern or practice may exist. This is also true in a situation in which scheduling practices fail to take into account regularly occurring traffic conditions (e.g., rush hour traffic jams), resulting in frequent late arrivals.

The rule mentions three specific examples of operational patterns or practices that would violate this provision. The first is a pattern or practice of substantial numbers of significantly untimely pickups (either for initial or return trips). To violate this provision, there must be both a substantial number of late arrivals and the late arrivals in question must be significant in length. For example, a DOT Inspector General's (IG) report on one city's paratransit system disclosed that around 30 percent of trips were between one and five hours late. Such a situation would trigger this provision. On the other hand, only a few instances of trips one to five hours late, or many instances of trips a few minutes late, would not trigger this provision.

The second example is substantial numbers of trip denials or missed trips. For example, if on a regular basis the reservation phone lines open at 5 a.m. and callers after 7 a.m. are all told that they cannot travel, or the phone lines shut down after 7 a.m. and a recorded message says to call back the next

day, or the phone lines are always so busy that no one can get through, this provision would be triggered. (Practices of this kind would probably violate the response time criterion as well.) Also, if, on a regular basis, the entity misses a substantial number of trips (e.g., a trip is scheduled, the passenger is waiting, but the vehicle never comes, goes to the wrong address, is extremely late, etc.), it would violate this provision.

The third example is substantial numbers of trips with excessive trip lengths. Since paratransit is a shared ride service, paratransit rides between Point A and Point B will usually take longer, and involve more intermediate stops, than a taxi ride between the same two points. However, when the number of intermediate stops and the total trip time for a given passenger grows so large as to make use of the system prohibitively inconvenient, then this provision would be triggered. For example, the IG report referred to above mentioned a situation in which 9 percent of riders had one way trips averaging between two and four hours, with an average of 16 intermediate stops. Such a situation would probably trigger this provision.

Though these three examples probably cover the most frequently cited problems in paratransit operations that directly or indirectly limit the provision of service that is theoretically available to eligible persons, the list is not exhaustive. Other patterns or practices could trigger this provision. For example, the Department has heard about a situation in which an entity's paratransit contractor was paid on a per-trip basis, regardless of the length of the trip. The contractor therefore had an economic incentive to provide as many trips as possible. As a result, the contractor accepted short trips and routinely denied longer trips. This would be a pattern or practice contrary to this provision (and contrary to the service area provision as well).

ADDITIONAL SERVICE

This provision emphasizes that entities may go beyond the requirements of this section in providing service to ADA paratransit individuals. For example, no one is precluded from offering service in a larger service area, during greater hours than the fixed route system, or without charge. However, costs of such additional service do not count with respect to undue financial burden waiver requests. Where a service criterion itself incorporates a range of actions the entity may take (e.g., providing wide corridors outside the urban core, using real time scheduling), however, costs of providing that optional service may be counted for undue financial burden waiver request purposes.

Section 37.133 Subscription Service

As part of its paratransit service, an entity may include a subscription service component. However, at any given time of day, this component may not absorb more than 50 percent of available capacity on the total system. For example, if, at 8 a.m., the system can provide 400 trips, no more than 200 of these can be subscription trips.

The one exception to this rule would occur in a situation in which there is excess non-subscription capacity available. For example, if over a long enough period of time to establish a pattern, there were only 150 non-subscription trips requested at 8 a.m., the provider could begin to provide 250 subscription trips at that time. Subsequently, if non-subscription demand increased over a period of time, such that the 50 trips were needed to satisfy a regular non-subscription demand at that time, and overall system capacity had not increased, the 50 trips would have to be returned to the non-subscription category. During times of high subscription demand, entities could use the trip time negotiation discretion of §37.131(c)(2) to shift some trips to other times.

Because subscription service is a limited subcomponent of paratransit service, the rule permits restrictions to be imposed on its use that could not be imposed elsewhere. There may be a waiting list for provision of subscription service or the use of other capacity constraints. Also, there may be restrictions or priorities based on trip purpose. For example, subscription service under peak work trip times could be limited to work trips. We emphasize that these limitations apply only to subscription service. It is acceptable for a provider to put a person on a waiting list for access to subscription service at 8 a.m. for work trips; the same person could not be wait-listed for access to paratransit service in general.

Section 37.135 Submission of Paratransit Plans

This section contains the general requirements concerning the submission of paratransit plans. Each public entity operating fixed route service is required to develop and submit a plan for paratransit service. Where you send your plans depends on the type of entity you are. There are two categories of entities which should submit their plans to states—(1) FTA recipients and (2) entities who are administered by the state on behalf of FTA.

These FTA grantees submit their plans to the states because the agency would like the benefit of the states' expertise before final review. The states' role is as a commenter, not as a reviewer.

This section also specifies annual progress reports concerning the meeting of previously approved milestones, any slippage (with the reasons for it and plans to catch up), and any

significant changes in the operator's environment, such as the withdrawal from the marketplace of a private paratransit provider or whose service the entity has relied upon to provide part of its paratransit service.

Paragraph (d) of this section specifies a maximum time period for the phase-in of the implementation of paratransit plans. The Department recognizes that it is not reasonable to expect paratransit systems to spring into existence fully formed, like Athena from the head of Zeus. Under this paragraph, all entities must be in full compliance with all paratransit provisions by January 26, 1997, unless the entity has received a waiver from FTA based on undue financial burden (which applies only to the service criteria of §37.131, not to eligibility requirements or other paratransit provisions).

While the rule assumes that most entities will take a year to fully implement these provisions, longer than a year requires the paratransit plans to submit milestones that are susceptible to objective verification. Not all plans will be approved with a five-year lead-in period. Consistent with the proposed rule, the Department intends to look at each plan individually to see what is required for implementation in each case. DOT may approve only a shorter phase-in period in a given case.

Section 37.137 Paratransit Plan Development

Section 35.137 establishes three principal requirements in the development of paratransit plans.

First is the requirement to survey existing paratransit services within the service area. This is required by section 223(c)(8) of the ADA. While the ADA falls short of explicitly requiring coordination, clearly this is one of the goals. The purpose of the survey is to determine what is being provided already, so that a transit provider can accurately assess what additional service is needed to meet the service criteria for comparable paratransit service. The plan does not have to discuss private paratransit providers whose services will not be used to help meet paratransit requirements under this rule. However, the public entity will need to know specifically what services are being provided by whom if the entity is to count the transportation toward the overall need.

Since the public entity is required to provide paratransit to all ADA paratransit eligible individuals, there is some concern that currently provided service may be cut back or eliminated. It is possible that this may happen and such action would have a negative effect on transportation provided to persons with disabilities in general. The Department urges each entity required to submit a plan to work with current providers of transportation, not only to determine what transportation services they provide, but also to continue to provide service into the foreseeable future.

Second, §37.137 specifies requirements for public participation. First, the entity must perform outreach, to ensure that a wide range of persons anticipated to use the paratransit service know about and have the opportunity to participate in the development of the plan. Not only must the entity identify who these individuals or groups are, the entity also must contact the people at an early stage in the development process.

The other public participation requirements are straightforward. There must be a public hearing and an opportunity to comment. The hearing must be accessible to those with disabilities, and notice of the hearing must be accessible as well. There is a special efforts test identified in this paragraph for comments concerning a multi-year phase-in of a paratransit plan.

The final general requirement of the section specifies that efforts at public participation must be made permanent through some mechanism that provides for participation in all phases of paratransit plan development and submission. The Department is not requiring that there be an advisory committee established, although this is one method of institutionalizing participation. The Department is not as interested in the specific structure used to ensure public participation as we are interested in the effectiveness of the effort.

The Department believes that public participation is a key element in the effective implementation of the ADA. The ADA is an opportunity to develop programs that will ensure the integration of all persons into not just the transportation system of America, but all of the opportunities transportation makes possible. This opportunity is not without tremendous challenges to the transit providers. It is only through dialogue, over the long term, that usable, possible plans can be developed and implemented.

Section 37.139 Plan Contents

This section contains substantive categories of information to be contained in the paratransit plan: Information on current and changing fixed route service; inventory of existing paratransit service; discussion of the discrepancies between existing paratransit and what is required under this regulation; a discussion of the public participation requirements and how they have been met; the plan for paratransit service; the budget for paratransit services; efforts to coordinate with other transportation providers; a description of the process in place or to be used to register ADA paratransit eligible individuals; a description of the documentation provided to each individual verifying eligibility; and a request for a waiver based on undue financial burden, if

applicable. The final rule contains a reorganized and slightly expanded section on plan contents, reflecting requests to be more explicit, rather than less explicit.

The list of required elements is the same for all entities required to submit paratransit plans. There is no document length requirement, however. Each entity (or group plan) is unique and we expect the plans to reflect this. While we would like the plan elements presented in the order listed in this section, the contents most likely will vary greatly, depending on the size, geographic area, budget, complexity of issues, etc. of the particular submitting agency.

This section and §37.139 provide for a maximum phase-in period of five years, with an assumed one-year phase-in for all paratransit programs. (The required budget has been changed to five years as well.) The Department has established a maximum five-year phase-in in the belief that not all systems will require that long, but that some, particularly those which had chosen to meet compliance with section 504 requirements with accessible fixed route service, may indeed need five years.

We are confident that, through the public participation process, entities can develop a realistic plan for full compliance with the ADA. To help ensure this, the paratransit plan contents section now requires that any plan which projects full compliance after January 26, 1993 must include milestones which can be measured and which result in steady progress toward full compliance. For example, it is possible that the first part of year one is used to ensure comprehensive registration of all eligible persons with disabilities, training of transit provider staffs and the development and dissemination of information to users and potential users in accessible formats and some modest increase in paratransit service is provided. A plan would not be permitted to indicate that no activity was possible in the first year, but proportionately more progress could be planned for later years than for the first year. Implementation must begin in January 1992.

Each plan, including its proposed phase-in period, will be the subject of examination by FTA. Not all providers who request a five-year phase-in will receive approval for a five-year phase-in. The plan must be careful, therefore, to explain what current services are, what the projections are, and what methods are in place to determine and provide accountability for progress toward full compliance.

We have been asked for assistance in assessing what the demand for paratransit service will be. FTA's ADA Paratransit Manual provides detailed assistance in this and many other areas of the plan development process.

The ADA itself contained a figure of 43 million persons with disabilities. It should be pointed out that many of these may not necessarily be eligible for ADA paratransit service. The Department's regulatory impact analysis discussing the probable costs involved in implementing this rule places the possible percentage of population who would be eligible for paratransit service at between 1.4 and 1.9 percent. This figure can vary depending on the type and variety of services you have available, or on such things as climate, proximity to medical care, family, etc. that a person with a disability may need. Clearly estimating demand is one of the most critical elements in the plan, since it will be used to make decisions about all of the various service criteria.

Section 37.139 contains a new paragraph (j), spelling out in more detail requirements related to the annual submission of plans. Since there is now the possibility for five-year phase-ins, the annual plan demonstrates the progress made to date, and explains any delays.

Section 37.141 Requirements If a Joint Plan is Submitted

The Department believes that, particularly in large, multi-provider regions, a coordinated regional paratransit plan and system are extremely important. Such coordination can do much to ensure that the most comprehensive transportation can be provided with the most efficient use of available resources. We recognize that the effort of putting together such a coordinated system can be a lengthy one. This section is intended to facilitate the process of forming such a coordinated system.

If a number of entities wish to submit a joint plan for a coordinated system, they must, like other entities, submit a document by January 26, 1992. At a minimum, this document must include the following:

(1) A general statement that the participating entities intend to file a joint coordinated plan;

(2) A certification from each participating entity that it is committed to providing paratransit as a part of a coordinated plan;

(3) A certification from each participating entity that it will maintain at least current levels of paratransit service until the coordinated paratransit service called for by the joint plan is implemented;

(4) As many elements of the plan as possible.

These provisions ensure that significant planning will precede, and plan implementation will begin by, January 26, 1992, without precluding entities from cooperating because it was not possible to complete coordinating different public entities by that date. The entities involved in a joint plan are required to submit all elements of their plan by July 26, 1992.

The final provision in the section notes that an entity may later join a coordinated plan, even if it has filed its own plan on January 26, 1992. An entity must submit its own plan by January 26, 1992, if it has not provided a certification of participation in a joint plan.). In this case, the entity must provide the assurances and certifications required of all of the other participating entities.

The Department fully expects that many jurisdictions filing joint plans will be able to do so by January 26, 1992. For those who cannot, the regulatory provision ensures that there will be no decrease in paratransit service. Further, since we anticipate coordinated service areas to provide more effective service, complete implementation of a joint plan could be more rapid than if each entity was providing service on its own.

Entities submitting a joint plan do not have any longer than any other entities to fully implement complementary paratransit service. In any case, all plans (joint or single) must be fully implemented by January 26, 1997, absent a waiver for undue financial burden (which would, in the case of a joint plan, be considered on a joint basis).

Section 37.143 Paratransit Plan Implementation

As already discussed under §37.135, the states will receive FTA recipient plans for section 18 recipients administered by the State or any small urbanized area recipient of section 9 funds administered by a state. Public entities who do not receive FTA funds will submit their plans directly to the applicable Regional Office (listed in appendix B to the rule).

The role of the state is to accept the plans on behalf of FTA, to ensure that all plans are submitted to it and forward the plans, with any comments on the plans, to FTA. This comment is very important for FTA to receive, since states administer these programs on behalf of FTA. Each state's specific knowledge of FTA grantees it administers will provide helpful information to FTA in making its decisions.

The rule lists five questions the states must answer when they forward the plans. These questions are gauged to capitalize on the working knowledge the states possess on the grantees. FTA will send a more specific letter of instruction to each state explaining its role.

Section 37.147 FTA Review of Plans

This provision spells out factors FTA will consider in reviewing each plan, including whether the submission is complete, whether the plan complies with the substance of the ADA regulation, whether the entity complied with the public participation requirements in developing the plan, efforts by the entity to coordinate with other entities in a plan submission, and any comments submitted by the states.

These elements are not the only items that will be reviewed by FTA. Every portion of the plan will be reviewed and assessed for compliance with the regulation. This section merely highlights those provisions thought most important by the Department.

Section 37.151 Waiver for Undue Financial Burden

The Department has adopted a five-year phase-in for paratransit service. Under this scheme, each entity required to provide paratransit service will be able to design a phase-in of its service specifically geared to local circumstances. While all jurisdictions will not receive approval for plans with a five year phase-in, each entity will be able to request what it needs based on local circumstances. Generally, the section allows an entity to request a wavier at any time it determines that it will not be able to meet a five-year phase-in or make measured progress toward its full compliance date specified in its original plan.

A waiver for undue financial burden should be requested if one of the following circumstances applies. First, when the entity submits its first plan on January 26, 1992, if the entity knows it will not be able to reach full compliance within five years, or if the entity cannot make measured progress the first year it may submit a waiver request. The entity also should apply for a waiver, if, during plan implementation, there are changed circumstances which make it unlikely that compliance will be possible.

The concept of measured progress should be given its plain meaning. It is not acceptable to submit a plan which shows significant progress in implementing a plan in years four and five, but no progress in years one and two. Similarly, the progress must be susceptible to objective verification. An entity cannot merely ''work toward'' developing a particular aspect of a plan.

The Department intends that undue burden waiver requests will be given close scrutiny, and waiver will not be granted highly. In reviewing requests, however, as the legislative history indicates, FTA will look at the individual financial constraints within which each public entity operates its fixed route system. ''Any determination of undue financial burden cannot have assumed the collection of additional revenues, such as those received through increases in local taxes or legislative appropriations, which would not have otherwise been made available to the fixed route operator.'' (H. Rept. 101–485, Pt. 1, at 31)

Section 37.153 FTA Waiver Determination

If the FTA Administrator grants a waiver for undue financial burden, the waiver will be for a specified period of time and the Administrator will determine what the entity must do to meet its responsibilities under the ADA. Each determination will involve a judgment of what is appropriate on a case-by-case basis. Since each waiver will be granted based on individual circumstances, the Department does not deem it appropriate to specify a generally applicable duration for a waiver.

When a waiver is granted, the rule calls for entities to look first at limiting the number of trips provided to each individual as a means of providing service that does not create an undue burden. This capacity constraint, unlike manipulations of other service criteria, will not result in a degradation of the quality of service. An entity intending to submit an undue burden waiver request should take this approach into account in its planning process.

It should be noted that requiring an entity to provide paratransit service at least during core hours along key routes is one option that the Administrator has available in making a decision about the service to be provided. This requirement stems from the statutory provision that the Administrator can require the entity to provide a minimum level of service, even if to do so would be an undue financial burden. Certainly part of a request for a waiver could be a locally endorsed alternative to this description of basic service. The rule states explicitly the Administrator's discretion to return the application for more information if necessary.

Section 37.155 Factors in Decision To Grant an Undue Financial Burden Waiver

Factors the Administrator will consider in making a decision whether to grant an undue financial burden waiver request include effects on current fixed route service, reductions in other services, increases in fares, resources available to implement complementary paratransit over the period of the plan, current level of accessible service (fixed route and paratransit), cooperation among transit providers, evidence of increased efficiencies that have been or could be used, any unique circumstances that may affect the entity's ability to provide paratransit service, the level of per capita service being provided, both to the population as a whole and what is being or anticipated to be provided to persons who are eligible and registered to receive ADA paratransit service.

This final element allows some measure of comparability, regardless of the specific service criteria and should assist in a general assessment of level of effort.

It is only the costs associated with providing paratransit service to ADA-paratransit eligible persons that can be counted in assessing whether or not there is an undue financial burden. Two cost factors are included in the considerations which enhance the Administrator's ability to assess real commitment to these paratransit provisions.

First, the Department will allow a statistically valid methodology for estimating number of trips mandated by the ADA. While the regulation calls for a trip-by-trip determination of eligibility, this provision recognizes that this is not possible for some systems, particularly the large systems. Since only those trips provided to a person when he or she is ADA eligible may be counted in determining an undue financial burden, this provision is necessary.

Second, in determining costs to be counted toward providing paratransit service, paragraph (b)(3) allows an entity to include in its paratransit budget dollars to which it is legally entitled, but which, as a matter of state or local funding arrangements, are provided to another entity that is actually providing the paratransit service.

For example, a state government may provide a certain formula allocation of the revenue from a certain tax to each jurisdiction for use in providing transportation service at the local level. The funds, depending on local arrangements, may flow either to a transit authority—a regulated entity under this rule—or to a city or county government. If the funds go to the transit authority, they clearly may be counted in an undue burden calculation. In addition, however, this provision also allows funds that flow through the city or county government to be counted in the undue burden calculation, since they are basically the same funds and should not be treated differently based on the accident of previously-determined local arrangements. On the other hand, this provision does not allow funds of a private non-profit or other organization who uses Department of Health and Human Services grant or private contributions to be counted toward the entity's financial commitment to paratransit.

SUBPART G—PROVISION OF SERVICE

Section 37.161 Maintenance of Accessible Features—General

This section applies to all entities providing transportation services, public and private. It requires those entities to maintain in operative condition those features or facilities and equipment that make facilities and vehicles accessible to and usable by individuals with disabilities.

The ADA requires that, to the maximum extent feasible, facilities be accessible to and usable by individuals with disabilities. This section recognizes that it is not sufficient to provide features such as lift-equipped vehicles, elevators, communications systems to provide information to people with vision or

hearing impairments, etc. if these features are not maintained in a manner that enables individuals with disabilities to use them. Inoperative lifts or elevators, locked accessible doors, accessible paths of travel that are blocked by equipment or boxes of materials are not accessible to or usable by individuals with disabilities.

The rule points out that temporary obstructions or isolated instances of mechanical failure would not be considered violations of the ADA or this rule. Repairs must be made ''promptly.'' The rule does not, and probably could not, state a time limit for making particular repairs, given the variety of circumstances involved. However, repairing accessible features must be made a high priority. Allowing obstructions or out of order accessibility equipment to persist beyond a reasonable period of time would violate this Part, as would mechanical failures due to improper or inadequate maintenance. Failure of the entity to ensure that accessible routes are free of obstruction and properly maintained, or failure to arrange prompt repair of inoperative elevators, lifts, or other accessibility-related equipment, would also violate this part.

The rule also requires that accommodations be made to individuals with disabilities who would otherwise use an inoperative accessibility feature. For example, when a rail system discovers that an elevator is out of order, blocking access to one of its stations, it could accommodate users of the station by announcing the problem at other stations to alert passengers and offer accessible shuttle bus service around the temporarily inaccessible station. If a public address system were out of order, the entity could designate personnel to provide information to customers with visual impairments.

Section 37.163 Keeping Vehicle Lifts in Operative Condition—Public Entities

This section applies only to public entities. Of course, like vehicle acquisition requirements and other provisions applying to public entities, these requirements also apply when private entities ''stand in the shoes'' of public entities in contracting situations, as provided in §37.23.

This section's first requirement is that the entity establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.

Vehicle and equipment maintenance is an important component of successful accessible service. In particular, an aggressive preventive maintenance program for lifts is essential. Lifts remain rather delicate pieces of machinery, with many moving parts, which often must operate in a harsh environment of potholes, dust and gravel, variations in temperature, snow, slush, and deicing compounds. It is not surprising that they sometimes break down.

The point of a preventive maintenance program is to prevent breakdowns, of course. But it is also important to catch broken lifts as soon as possible, so that they can be repaired promptly. Especially in a bus system with relatively low lift usage, it is possible that a vehicle could go for a number of days without carrying a passenger who uses the lift. It is highly undesirable for the next passenger who needs a lift to be the person who discovers that the lift is broken, when a maintenance check by the operator could have discovered the problem days earlier, resulting in its repair.

Therefore, the entity must have a system for regular and frequent checks, sufficient to determine if lifts are actually operative. This is not a requirement for the lift daily. (Indeed, it is not, as such, a requirement for lift cycling at all. If there is another means available of checking the lift, it may be used.) If alternate day checks, for example, are sufficient to determine that lifts are actually working, then they are permitted. If a lift is used in service on a given day, that may be sufficient to determine that the lift is operative with respect to the next day. It would be a violation of this part, however, for the entity to neglect to check lifts regularly and frequently, or to exhibit a pattern of lift breakdowns in service resulting in stranded passengers when the lifts had not been checked before the vehicle failed to provide required accessibility to passengers that day.

When a lift breaks down in service, the driver must let the entity know about the problem by the most immediate means available. If the vehicle is equipped with a radio or telephone, the driver must call in the problem on the spot. If not, then the driver would have to make a phone call at the first opportunity (e.g., from a phone booth during the turnaround time at the end of the run). It is not sufficient to wait until the end of the day and report the problem when the vehicle returns to the barn.

When a lift is discovered to be inoperative, either because of an in-service failure or as the result of a maintenance check, the entity must take the vehicle out of service before the beginning of its next service day (with the exception discussed below) and repair the lift before the vehicle is put back into service. In the case of an in-service failure, this means that the vehicle can continue its runs on that day, but cannot start a new service day before the lift is repaired. If a maintenance check in the evening after completion of a day's run or in the morning before a day's runs discloses the problem, then the bus would not go into service until the repair had taken place.

The Department realizes that, in the years before bus fleets are completely accessible, taking buses with lifts out of service for repairs in this way would probably result in an

inaccessible spare bus being used on the route, but at least attention would have to be paid quickly to the lift repair, resulting in a quicker return to service of a working accessible bus.

The rule provides an exception for those situations in which there is no spare vehicle (either accessible or inaccessible) available to take the place of the vehicle with an operative lift, such that putting the latter vehicle into the shop would result in a reduction of service to the public (e.g., a scheduled run on a route could not be made). The Department would emphasize that the exception does not apply when there is any spare vehicle available.

Where the exception does apply, the provider may keep the vehicle with the inoperative lift in service for a maximum of three days (for providers operating in an area of over 50,000 population) or five days (for providers operating in an area of 50,000 population or less). After these times have elapsed, the vehicle must go into the shop, not to return until the lift is repaired. Even during the three- or five-day period, if an accessible spare bus becomes available at any time, it must be used in place of the bus with the inoperative lift or an inaccessible spare that is being used in its place.

In a fixed route system, if a bus is operating without a working lift (either on the day when the lift fails in service or as the result of the exception discussed above) and headways between accessible buses on the route on which the vehicle is operating exceed 30 minutes, the entity must accommodate passengers who would otherwise be inconvenienced by the lack of an accessible bus. This accommodation would be by a paratransit or other special vehicle that would pick up passengers with disabilities who cannot use the regular bus because its lift is inoperative. Passengers who need lifts in this situation would, in effect, be ADA paratransit eligible under the second eligibility category. However, since they would have no way of knowing that the bus they sought to catch would not be accessible that day, the transit authority must actively provide alternative service to them. This could be done, for example, by having a ''shadow'' accessible service available along the route or having the bus driver call in the minute he saw an accessible passenger he could not pick up (including the original passenger stranded by an in-service lift failure), with a short (i.e., less than 30-minute) response from an accessible vehicle dispatched to pick up the stranded passenger. To minimize problems in providing such service, when a transit authority is using the ''no spare vehicles'' exception, the entity could place the vehicle with the inoperative lift on a route with headways between accessible buses shorter than 30 minutes.

Section 37.165 Lift and Securement Use

This provision applies to both public and private entities.

All people using common wheelchairs (an inclusive term for mobility devices that fit on lifts meeting Access Board guideline dimensions—30″ by 48″ and a maximum of 600 pounds for device and user combined—which includes three-wheeled scooters and other so-called non-traditional mobility devices) are to be allowed to ride the entity's vehicles.

Entities may require wheelchair users to ride in designated securement locations. That is, the entity is not required to carry wheelchair users whose wheelchairs would have to park in an aisle or other location where they could obstruct other persons' passage or where they could not be secured or restrained. An entity's vehicle is not required to pick up a wheelchair user when the securement locations are full, just as the vehicle may pass by other passengers waiting at the stop if the bus is full.

The entity may require that wheelchair users make use of securement systems for their mobility devices. The entity, in other words, can require wheelchair users to ''buckle up'' their mobility devices. The entity is required, on a vehicle meeting part 38 standards, to use the securement system to secure wheelchairs as provided in that part. On other vehicles (e.g., existing vehicles with securement systems which do not comply with Part 38 standards), the entity must provide and use a securement system to ensure that the mobility device remains within the securement area. This latter requirement is a mandate to use best efforts to restrain or confine the wheelchair to the securement area. The entity does the best it can, given its securement technology and the nature of the wheelchair. The Department encourages entities with relatively less adequate securement systems on their vehicles, where feasible, to retrofit the vehicles with better securement systems, that can successfully restrain a wide variety of wheelchairs. It is our understanding that the cost of doing so is not enormous.

An entity may not, in any case, deny transportation to a common wheelchair and its user because the wheelchair cannot be secured or restrained by a vehicle's securement system, to the entity's satisfaction.

Entities have often recommended or required that a wheelchair user transfer out of his or her own device into a vehicle seat. Under this rule, it is no longer permissible to require such a transfer. The entity may provide information on risks and make a recommendation with respect to transfer, but the final decision on whether to transfer is up to the passenger.

The entity's personnel have an obligation to ensure that a passenger with a disability is able to take advantage of the accessibility

and safety features on vehicles. Consequently, the driver or other personnel must provide assistance with the use of lifts, ramps, and securement devices. For example, the driver must deploy the lift properly and safely. If the passenger cannot do so independently, the driver must assist the passenger with using the securement device. On a vehicle which uses a ramp for entry, the driver may have to assist in pushing a manual wheelchair up the ramp (particularly where the ramp slope is relatively steep). All these actions my involve a driver leaving his seat. Even in entities whose drivers traditionally do not leave their seats (e.g., because of labor-management agreements or company rules), this assistance must be provided. This rule overrides any requirements to the contrary.

Wheelchair users—especially those using electric wheelchairs often have a preference for entering a lift platform and vehicle in a particular direction (e.g., backing on or going on frontwards). Except where the only way of successfully maneuvering a device onto a vehicle or into its securement area, or an overriding safety concern (i.e., a direct threat) requires one way of doing this or another, the transit provider should respect the passenger's preference. We note that most electric wheelchairs are usually not equipped with rearview mirrors, and that many persons who use them are not able to rotate their heads sufficiently to see behind. When an electric wheelchair must back up a considerable distance, this can have unfortunate results for other people's toes.

People using canes or walkers and other standees with disabilities who do not use wheelchairs but have difficulty using steps (e.g., an elderly person who can walk on a plane without use of a mobility aid but cannot raise his or her legs sufficiently to climb bus steps) must also be permitted to use the lift, on request.

Section 37.167 Other Service Requirements

The requirements in this section apply to both public and private entities.

On fixed route systems, the entity must announce stops. These stops include transfer points with other fixed routes. This means that any time a vehicle is to stop where a passenger can get off and transfer to another bus or rail line (or to another form of transportation, such as commuter rail or ferry), the stop would be announced. The announcement can be made personally by the vehicle operator or can be made by a recording system. If the vehicle is small enough so that the operator can make himself or herself heard without a P.A. system, it is not necessary to use the system.

Announcements also must be made at major intersections or destination points. The rule does not define what major intersections or destination points are. This is a judgmental matter best left to the local planning process. In addition, the entity must make announcements at sufficient intervals along a route to orient a visually impaired passenger to his or her location. The other required announcements may serve this function in many instances, but if there is a long distance between other announcements, fill-in orientation announcements would be called for. The entity must announce any stop requested by a passenger with a disability, even if it does not meet any of the other criteria for announcement.

When vehicles from more than one route serve a given stop or station, the entity must provide a means to assist an individual with a visual impairment or other disability in determining which is the proper vehicle to enter. Some entities have used external speakers. FTA is undertaking a study to determine what is the best available technology in this area. Some transit properties have used colored mitts, or numbered cards, to allow passengers to inform drivers of what route they wanted to use. The idea is to prevent, at a stop where vehicles from a number of routes arrive, a person with a visual impairment from having to ask every driver whether the bus is the right one. The rule does not prescribe what means is to be used, only that some effective means be provided.

Service animals shall always be permitted to accompany their users in any private or public transportation vehicle or facility. One of the most common misunderstandings about service animals is that they are limited to being guide dogs for persons with visual impairments. Dogs are trained to assist people with a wide variety of disabilities, including individuals with hearing and mobility impairments. Other animals (e.g., monkeys) are sometimes used as service animals as well. In any of these situations, the entity must permit the service animal to accompany its user.

Part 38 requires a variety of accessibility equipment. This section requires that the entity use the equipment it has. For example, it would be contrary to this provision for a transit authority to bolt its bus lifts shut because transit authority had difficulty maintaining the lifts. It does little good to have a public address system on a vehicle if the operator does not use it to make announcements (except, as noted above, in the situation where the driver can make himself or herself heard without recourse to amplification.)

Entities must make communications and information available, using accessible formats and technology (e.g., Braille, large print, TDDs) to obtain information about transportation services. Someone cannot adequately use the bus system if schedule and route information is not available in a form he or she can use. If there is only one phone line on which ADA paratransit eligible

individuals can reserve trips, and the line is chronically busy, individuals cannot schedule service. Such obstacles to the use of transportation service are contrary to this section. (The latter could, in some circumstances, be viewed as a capacity constraint.)

It is inconsistent with this section for a transit provider to refuse to let a passenger use a lift at any designated stop, unless the lift is physically unable to deploy or the lift would be damaged if it did deploy (see discussion under §37.123). In addition, if a temporary situation at the stop (e.g., construction, an accident, a landslide) made the stop unsafe for anyone to use, the provider could decline to operate the lift there (just as it refused to open the door for other passengers at the same point). The provider could not, however, declare a stop ''off limits'' to persons with disabilities that is used for other persons. If the transit authority has concerns about barriers or safety hazards that peculiarly affect individuals with disabilities that would use the stop, it should consider making efforts to move the stop.

Under DOT hazardous materials rules, a passenger may bring a portable medical oxygen supply on board a vehicle. Since the hazardous materials rules permit this, transit providers cannot prohibit it. For further information on hazardous materials rules, as they may affect transportation of assistive devices, entities may contact the Department's Research and Special Programs Administration, Office of Hazardous Materials Transportation (202–366–0656).

One concern that has been expressed is that transportation systems (particularly some rail systems) may make it difficult for persons with disabilities to board or disembark from vehicles by very rapidly closing doors on the vehicles before individuals with disabilities (who may move more slowly through crowds in the vehicle or platform than other persons) have a chance to get on or off the vehicle. Doing so is contrary to the rule; operators must make appropriate provision to give individuals with disabilities adequate time to board or disembark.

Section 37.169 Interim Requirements for Over-the-Road Bus Service Operated by Private Entities

Private over-the-road bus (OTRB) service is, first of all, subject to all the other private entity requirements of the rule. The requirements of this section are in addition to the other applicable provisions.

Boarding assistance is required. The Department cannot require any particular boarding assistance devices at this time. Each operator may decide what mode of boarding assistance is appropriate for its operation. We agree with the discussion in the DOJ Title II rule's preamble that carrying is a disfavored method of providing assistance to an individual with a disability. However, since accessible private OTRBs cannot be required by this rule, there may be times when carrying is the only available means of providing access to an OTRB, if the entity does not exercise its discretion to provide an alternative means. It is required by the rule that any employee who provides boarding assistance—above all, who may carry or otherwise directly physically assist a passenger—must be trained to provide this assistance appropriately and safely.

The baggage priority provision for wheelchairs and other assistive devices involves a similar procedure to that established in the Department's Air Carrier Access Act rule (14 CFR part 382). In brief, it provides that, at any given stop, a person with a wheelchair or other assistive device would have the device loaded before other items at this stop. An individual traveling with a wheelchair is not similarly situated to a person traveling with luggage. For the wheelchair user, the wheelchair is an essential mobility device, without which travel is impossible. The rationale of this provision is that, while no one wants his or her items left behind, carrying the wheelchair is more important to its user than ordinary luggage to a traveler. If it comes to an either/or choice (the wheelchair user's luggage would not have any priority over other luggage, however). There would be no requirement, under this provision, for ''bumping'' baggage already on the bus from previous stops in order to make room for the wheelchair.

The entity could require advance notice from a passenger in only one circumstance. If a passenger needed boarding assistance, the entity could require up to 48 hours' advance notice for the purpose of providing needed assistance. While advance notice requirements are generally undesirable, this appears to be a case in which a needed accommodation may be able to be provided successfully only if the transportation provider knows in advance that some extra staffing is needed to accomplish it. While the primary need for advance notice appears to be in the situation of an unstaffed station, there could be other situations in which advance notice was needed in order to ensure that the accommodation could be made. Entities should not ask for advance notice in all cases, but just in those cases in which it is really needed for this purpose. Even if advance notice is not provided, the entity has the obligation to provide boarding assistance if it can be provided with available staff.

Section 37.171 Equivalency Requirement for Demand Responsive Service Operated by Private Entities Not Primarily in the Business of Transporting People

This provision is a service requirement closely related to the private entity requirements for §§37.101–37.105 of this part. Entities in this category are always required to provide equivalent service, regardless of what they are doing with respect to the acquisition of vehicles. The effect of this provision may be to require some entities to arrange, either through acquiring their own accessible vehicles or coordinating with other providers, to have accessible vehicles available to meet the equivalency standards of §37.105 or otherwise to comply with those standards.

Section 37.173 Training

A well-trained workforce is essential in ensuring that the accessibility-related equipment and accommodations required by the ADA actually result in the delivery of good transportation service to individuals with disabilities. The utility of training was recognized by Congress as well. (*See* S. Rept. 100–116 at 48.) At the same time, we believe that training should be conducted in an efficient and effective manner, with appropriate flexibility allowed to the organizations that must carry it out. Each transportation provider is to design a training program which suits the needs of its particular operation. While we are confident of this approach, we are mindful that the apparent lack of training has been a source of complaint to FTA and transit providers. Good training is difficult and it is essential.

Several points of this section deserve emphasis. First, the requirements for training apply to private as well as to public providers, of demand responsive as well as of fixed route service. Training is just as necessary for the driver of a taxicab, a hotel shuttle, or a tour bus as it is for a driver in an FTA-funded city bus system.

Second, training must be to proficiency. The Department is not requiring a specific course of training or the submission of a training plan for DOT approval. However, every employee of a transportation provider who is involved with service to persons with disabilities must have been trained so that he or she knows what needs to be done to provide the service in the right way. When it comes to providing service to individuals with disabilities, ignorance is no excuse for failure.

While there is no specific requirement for recurrent or refresher training, there is an obligation to ensure that, at any given time, employees are trained to proficiency. An employee who has forgotten what he was told in past training sessions, so that he or she does not know what needs to be done to serve individuals with disabilities, does not meet the standard of being trained to proficiency.

Third, training must be appropriate to the duties of each employee. A paratransit dispatcher probably must know how to use a TDD and enough about various disabilities to know what sort of vehicle to dispatch. A bus driver must know how to operate lifts and securement devices properly. A mechanic who works on lifts must know how to maintain them. Cross-training, while useful in some instances, is not required, so long as each employee is trained to proficiency in what he or she does with respect to service to individuals with disabilities.

Fourth, the training requirement goes both to technical tasks and human relations. Employees obviously need to know how to run equipment the right way. If an employee will be assisting wheelchair users in transferring from a wheelchair to a vehicle seat, the employee needs training in how to do this safely. But every public contact employee also has to understand the necessity of treating individuals with disabilities courteously and respectfully, and the details of what that involves.

One of the best sources of information on how best to train personnel to interact appropriately with individuals with disabilities is the disability community itself. Consequently, the Department urges entities to consult with disability organizations concerning how to train their personnel. Involving these groups in the process of establishing training programs, in addition to providing useful information, should help to establish or improve working relationships among transit providers and disability groups that, necessarily, will be of long duration. We note that several transit providers use persons with disabilities to provide the actual training. Others have reported that role playing is an effective method to instill an appreciation of the particular perspective of one traveling with a disability.

Finally, one of the important points in training concerns differences among individuals with disabilities. All individuals with disabilities, of course, are not alike. The appropriate ways one deals with persons with various kinds of disabilities (e.g., mobility, vision, hearing, or mental impairments) are likely to differ and, while no one expects bus drivers to be trained as disability specialists, recognizing relevant differences and responding to them appropriately is extremely significant. Public entities who contract with private entities to have service provided—above all, complementary paratransit—are responsible for ensuring that contractor personnel receive the appropriate training.

Appendix A to Part 37—Standards for Accessible Transportation Facilities

Sections 504(a) and (b) of the Americans with Disabilities Act (ADA) require the Access Board to adopt accessibility guidelines; sections 204(c) and 306(c) of the ADA require the Department of Transportation to adopt regulatory standards ''consistent with the minimum guidelines and requirements'' issued by the Access Board. In the original 1991 publication of part 37, the Department complied with this requirement by reproducing the Access Board's Americans with Disabilities Act Accessibility Guidelines (ADAAG) in their entirety as Appendix A.

The Access Board revised ADAAG in July 2004. ADAAG, including technical amendments issued in July 2005, is codified in Appendices B and D to 36 CFR part 1191. In order to avoid duplication of material that the Access Board has already included in the CFR, and which is now readily available on the Internet, the Department has adopted ADAAG by cross-reference in part 37, rather than reproducing the lengthy Access Board publication. However, there are certain provisions of ADAAG that the Department is modifying for clarity or to preserve requirements that have been in effect under the existing standards. Under the ADA, the Department, in adopting standards, has the discretion to depart from the language of ADAAG as long as the Department's standards remain consistent with the Access Board's minimum guidelines. In addition, this appendix provides additional guidance concerning some sections of the DOT standards as they apply to transportation facilities.

Section 201.1

The basic scoping requirement requires all areas of newly designed and newly constructed buildings and facilities to be accessible. Former §4.1.1(5) provided a ''structural impracticability'' exception to the requirements for new buildings and facilities. The Access Board deleted this exception to avoid duplication with an existing requirement to the same effect in Department of Justice regulations (see 28 CFR §36.401(c)). For consistency with the approach taken by the Access Board and Department of Justice, and to ensure consistency between facilities subject to Titles II and III of the ADA under part 37, the Department has added the language of the Department of Justice regulation to §37.41 of this part.

Section 206.3

This section concerns the location of accessible paths. The Department is retaining language from former §10.3.1(1), which provides that ''Elements such as ramps, elevators, or other circulation devices, fare vending or other ticketing areas, and fare collection areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.'' This concept, in our view, is implicit in the language of §206.3. However, we believe it is useful to make explicit the concept that, in transportation facilities such as rail stations, important facility elements are placed so as to minimize the distance persons with disabilities must travel to use them. This requirement is intended to affect decisions about where to locate entrances, boarding locations (e.g., where a mini-high platform is used for boarding), and other key elements of a facility.

Section 406.8

To maintain the *status quo* with respect to detectable warnings in pedestrian facilities, the Department is adding a provision (not found in the current version of the new ADAAG) requiring curb ramps to have detectable warnings.

Section 810.2.2

The Department recognizes that there will be some situations in which the full dimensions of a bus boarding and alighting area complying with the §810.2.2 may not be able to be achieved (e.g., there is less than 96 inches of perpendicular space available from the curb or roadway edge, because of buildings or terrain features). The Department is adding language from former §37.9 (c) of this part, which provides that ''Public entities shall ensure the construction of bus boarding and alighting areas comply with 810.2.2, to the extent the construction specifications are within their control.'' Where it is not feasible to fully comply with §810.2.2, the Department expects compliance to the greatest extent feasible.

We note that there may be some instances in which it will be necessary to make operational adjustments where sufficient clearance is not available to permit the deployment of lifts or ramps on vehicles. For example, a bus driver could position the bus at a nearby point—even if not the precise location of the designated stop—so that a passenger needing a lift or ramp to get on or off the bus can do so. To avoid the need for such operational adjustments, it is important to place bus shelters, signs, etc. so that they do not intrude into the required clearances.

Section 810.5.3

This section concerns coordination between rail platforms and rail vehicles. The Department is adding language from the former §10.3.1 (9) (Exception 2), which provides that ''In light rail, commuter rail, and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or

platform-mounted lifts, ramps or bridge plates or similarly manually deployed devices, meeting the requirements of 49 CFR Part 38 shall be permitted.''

In September 2005, the Department issued guidance concerning the relationship of its ADA and 504 rules in the context of rail platform accessibility This guidance emphasized that access to all cars of a train is significant because, if passengers with disabilities are unable to enter all cars from the platform, the passengers will have access only to segregated service. This would be inconsistent with the nondiscrimination mandate of the ADA. It would also, in the case of Federal Transit Administration (FTA) and Federal Railroad Administration (FRA)-assisted projects (including Amtrak), be inconsistent with the requirement of the Department's section 504 regulation (49 CFR §27.7), which requires service in the most integrated setting reasonably achievable. This guidance states the Department's views of the meaning of its existing rules, and the Department will continue to use this guidance in applying the provisions of this rule.

The Department notes that a related section of 49 CFR part 38 has been the source of some misunderstanding. Section 38.71(b)(2) provides that ''Vehicles designed for, and operated on, pedestrian malls, city streets, or other areas where level-entry boarding is not practicable shall provide wayside or carborne lifts, mini-high platforms, or other means of access in compliance with §38.83 (b) or (c) of this part.'' The Department has received some suggestions that this provision should be interpreted to mean that, if there is any portion of a system in which level-entry boarding is not practicable, then the *entire* system can use some method other than level-entry boarding. Such an interpretation is incorrect. The authority to use alternatives to level-entry boarding pertains only to those portions of a system in which rail vehicles are ''operated on'' an area where level-entry boarding is not practicable.

For example, suppose a light rail system's first three stops are on a pedestrian/transit mall where it is infeasible to provide level-entry boarding. The transit system could use car-borne lifts, mini-high platforms, etc. to provide access at those three stops. The system's next ten stops are part of a right-of-way in which level-entry boarding is practicable. In such a case, level-entry boarding would have to be provided at those ten stops. There is nothing inappropriate about the same system having different means of boarding in different locations, in such a case.

We also caution against a potential misunderstanding of the sentence in §810.5.3 that provides that ''Low-level platforms shall be 8 inches minimum (205 mm) above top of rail.'' This does not mean that high-level platforms are prohibited or that low-level platforms are the only design consistent with the rules. It simply means that where low-level platforms are otherwise permitted, such platforms must be at least 8 inches above the top of rail, except where vehicles are boarded from the street or a sidewalk.

[56 FR 45621, Sept. 6, 1991, as amended at 61 FR 25416, May 21, 1996; 71 FR 63266, Oct. 30, 2006]

PART 38—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY SPECIFICATIONS FOR TRANSPORTATION VEHICLES

Subpart A—General

Subpart B—Buses, Vans and Systems

Subpart C—Rapid Rail Vehicles and Systems

Subpart D—Light Rail Vehicles and Systems

Appendix S
FTA C 4710.1

U.S. Department
of Transportation

Federal Transit Administration

CIRCULAR

FTA C 4710.1

November 4, 2015

Subject: AMERICANS WITH DISABILITIES ACT (ADA): GUIDANCE

1. PURPOSE. This circular provides guidance to recipients and subrecipients of Federal Transit Administration (FTA) financial assistance necessary to carry out provisions of the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, as amended, and the U.S. Department of Transportation's implementing regulations at 49 CFR Parts 27, 37, 38, and 39.
2. CANCELLATION. This is a new circular. It does not cancel any existing directive.
3. SCOPE. This circular applies to all assistance authorized by the Federal Transit Laws (49 U.S.C. Chapter 53) and all programs administered by FTA.
4. AUTHORITIES.
   a. Americans with Disabilities Act of 1990
   b. Section 504 of the Rehabilitation Act of 1973, as amended
   c. 49 CFR Parts 27, 37, 38, and 39
   d. Federal Transit Laws, 49 U.S.C. 5301 et seq.
5. WAIVER. FTA reserves the right to waive any requirements of this circular to the extent permitted by law.
6. FEDERAL REGISTER NOTICE. In conjunction with publication of this circular, FTA published a notice in the *Federal Register* on October 5, 2015, addressing comments received during development of the circular.
7. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to update this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular. FTA will post updates on our website at www.fta.dot.gov. The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance. Please visit the website and click on "sign up for e-mail updates" for more information.
8. 49 CFR § 37.15 REVIEW. The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR Parts 27, 37, 38, and/or 39, as applicable.
9. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, call FTA's Administrative Services Help Desk, at 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.

Therese W. McMillan
Acting Administrator

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FTA CIRCULAR 4710.1
AMERICANS WITH DISABILITIES ACT GUIDANCE

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Chapter 1 – Introduction and Applicability

1.1 Introduction

The Federal Transit Administration (FTA) is one of 12 operating administrations within the U.S. Department of Transportation (DOT). Headed by an Administrator who is appointed by the President of the United States, FTA functions through a Washington, DC, headquarters office, 10 regional offices, and five metropolitan offices that assist transit agencies in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa.

FTA is charged with ensuring public transit providers comply with the DOT regulations implementing the transportation-related provisions of the Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended. The regulations in 49 CFR Parts 27, 37, 38, and 39 set specific requirements transit providers must follow to ensure their services, vehicles, and facilities are accessible to and usable by individuals with disabilities.

The ADA applies to almost all providers of transportation service, whether private or public, and whether or not an entity receives Federal financial assistance. The purpose of this ADA Circular is to provide guidance to FTA grantees, that is, entities that receive funding through the agency, concerning the requirements of the DOT ADA regulations. FTA's goal is to help public transit providers meet their obligations under the ADA by outlining and explaining the vast body of requirements in an easy-to-use, consolidated format.

Because the DOT ADA regulations discussed in this Circular also apply to entities that are not Federal funding recipients, non-FTA grantees also may find the information in this document helpful.

This Circular primarily addresses the following types of public transit services:

- Fixed route bus
- Complementary paratransit
- Demand responsive
- Rail (rapid, light, and commuter)
- Water transportation/passenger ferries

This Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves or replace the need for readers to reference the detailed information in the regulations. FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.

This introductory chapter highlights the regulations applicable to transit providers and the scope and organization of the Circular.

1.2 Regulations Applicable to Public Transit Providers

1.2.1 DOT ADA Regulations

The DOT ADA regulations span 49 CFR Parts 37, 38, and 39. A large part of this Circular focuses on Part 37, which contains the service-related requirements for fixed route bus, complementary paratransit, demand responsive service, and rail systems, with the following six subparts applicable to public entities:

- General (Subpart A)
- Applicability (Subpart B)
- Transportation Facilities (Subpart C)
- Acquisition of Accessible Vehicles (Subpart D)
- Paratransit as a Complement to Fixed Route Service (Subpart F)
- Provision of Service (Subpart G)

Appendix D to Part 37 provides important supplemental information to help explain DOT's interpretation of the regulatory text and is quoted throughout the Circular.

Part 38 contains the design specifications for various types of buses, vans, and rail cars, and is the focus of Circular Chapter 4.

Part 39 sets forth the general nondiscrimination and service-related requirements for passenger vessel operators (PVOs) that provide ferry and other water transportation services, and is covered in Circular Chapter 10.

1.2.2 DOT Section 504 Regulations

Requirement

"For entities receiving Federal financial assistance from the Department of Transportation, compliance with applicable requirements of this part is a condition of compliance with Section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance" (§ 37.21(b)).

Discussion

Prior to the passage of the ADA in 1990, the Rehabilitation Act of 1973—and Section 504 of that act—was implemented to prohibit discrimination against individuals with disabilities by entities that receive Federal funds. The purpose of the Rehabilitation Act is to ensure that individuals with disabilities are not excluded from, denied the benefits of, or subject to discrimination in any programs or activities receiving Federal financial assistance. The DOT regulations implementing Section 504 are found in 49 CFR Part 27.

The DOT regulations were amended as part of DOT's ADA rulemaking to require ADA compliance as a condition of Section 504 compliance. In order to receive Federal funds, FTA grantees must comply with Section 504; in order to comply with DOT's Section 504 regulations, grantees must comply with the DOT ADA regulations.

Part 27 contains general nondiscrimination requirements, which largely overlap with the more recent nondiscrimination requirements in Part 37, along with grantees' local complaint process requirements and DOT compliance and enforcement provisions discussed in Circular Chapter 12.

1.2.3 DOT Regulations – In Summary

Table 1-1 summarizes the regulatory parts and subparts applicable to various types of transportation services FTA grantees provide. Requirements for general nondiscrimination, complaint handling, facility design, vehicle acquisition, and provision of service apply to all types of transportation services provided by grantees.

Table 1-1 – Applicable DOT ADA/Section 504 Regulations for Transportation Services Provided By FTA Grantees

Type of Transportation Service	Applicable Subparts and Sections of Regulations					
	General Non-discrimination	Applicability, Complaints & Enforcement	Facilities	Vehicle Acquisition & Specifications	ADA Paratransit	Service Provision
Commuter Rail	Part 37 Subpart A; Part 27 Subpart A	Part 37 Subpart B; Part 27 Subpart C	Part 37 Subpart C, Appendix A	Part 37 Subpart D; Part 38 Subpart E	Not Required	Part 37 Subpart G
Light and Rapid Rail	Part 37 Subpart A; Part 27 Subpart A	Part 37 Subpart B; Part 27 Subpart C	Part 37 Subpart C, Appendix A	Part 37 Subpart D; Part 38 Subparts C & D	Part 37 Subpart F	Part 37 Subpart G
Fixed Route Bus	Part 37 Subpart A; Part 27 Subpart A	Part 37 Subpart B; Part 27 Subpart C	Part 37 Subpart C, Appendix A	Part 37 Subpart D; Part 38 Subpart B	Part 37 Subpart F	Part 37 Subpart G
Commuter Bus	Part 37 Subpart A; Part 27 Subpart A	Part 37 Subpart B; Part 27 Subpart C	Part 37 Subpart C, Appendix A	Part 37 Subpart D; Part 38 Subpart B	Not Required	Part 37 Subpart G
Demand Responsive	Part 37 Subpart A; Part 27 Subpart A	Part 37 Subpart B; Part 27 Subpart C	Part 37 Subpart C, Appendix A	Part 37 Subpart D; Part 38 Subpart B	Not Required	Part 37 Subpart G
Ferry Boats and Other Water Transportation	Part 39 Subpart B; Part 27 Subpart A	Part 39 Subparts A & G	Part 39 Subpart D	Part 39 Subpart E (Reserved)	Not Required	Part 39 Subparts C & F

Complementary paratransit service is required where public entities provide fixed route service (bus and rail). Section 37.121(c) exempts commuter bus, commuter rail, and intercity rail (i.e., Amtrak) from the requirement for complementary paratransit service. (See Circular Section 8.2.)

Part 37 Subpart B explains the applicability of the DOT ADA regulations to various types of transportation.

1.2.4 DOJ ADA Regulations

Requirement

"Entities to which [Part 37] applies also may be subject to ADA regulations of the Department of Justice (28 CFR Parts 35 or 36, as applicable). The provisions of [Part 37] shall be interpreted in a manner that will make them consistent with applicable Department of Justice regulations. In any case of apparent inconsistency, the provisions of [Part 37] shall prevail" (§ 37.21(c)).

Discussion

While the DOT ADA regulations apply to transportation services provided by FTA grantees, the Department of Justice (DOJ) ADA regulations apply to other types of services grantees may provide. As Appendix D to § 37.21 states,

> Virtually all entities covered by this rule also are covered by DOJ rules, either under 28 CFR Part 36 as state and local program providers or under 28 CFR Part 35 as operators of places of public accommodation. Both sets of rules apply; one does not override the other. The DOT rules apply only to the entity's transportation facilities, vehicles, or services; the DOJ rules may cover the entity's activities more broadly. For example, if a public entity operates a transit system and a zoo, DOT's coverage would stop at the transit system's edge, while DOJ's rule would cover the zoo as well.

To address such instances, DOT and DOJ collaborated on the development of their ADA regulations to ensure both consistency of interpretation and efficiency of application. In situations where there are apparent inconsistencies between the two rules regarding the provision of transportation, however, DOT's Part 37 provisions prevail.

1.3 Applicability of the DOT Regulations

1.3.1 Applicability in General

Requirement

"[Part 37] applies to the following entities, whether or not they receive Federal financial assistance from the Department of Transportation:

(1) Any public entity that provides designated public transportation or intercity or commuter rail transportation;

(2) Any private entity that provides specified public transportation; and

(3) Any private entity that is not primarily engaged in the business of transporting people but operates a demand responsive or fixed route system" (§ 37.21(a)).

Discussion

This requirement explains the entities covered by the DOT ADA regulations, noting that entities are subject to the regulations whether or not they receive Federal funds. Since FTA grantees primarily fall under the first category as public entities that provide designated public transportation, the DOT ADA regulations apply to them. Section 37.3 provides the following definitions:

- *Public entity* means (1) Any state or local government; (2) Any department, agency, special purpose district, or other instrumentality of one or more state or local governments; and (3) The National Railroad Passenger Corporation (Amtrak) and any commuter authority.
- *Designated public transportation* means transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis.

A private entity may receive FTA funds to provide public transportation as either a subrecipient or a contractor. In those circumstances, specific provisions of the regulations will apply to these private entities. These provisions are discussed below. As stated earlier, the ADA and the DOT ADA regulations

apply broadly to both public and private entities and to almost all types of transportation services. The discussion below describes how the various service arrangements determine which portions of the ADA regulations are applicable.

1.3.2 Services Under Contract or Other Arrangement

Requirement

"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 [Part 37] that would apply to the public entity if the public entity itself provided the service" (§ 37.23(a)).

"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 [Part 37]" (§ 37.23(b)).

"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" (§ 37.23(c)).

"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 [Part 37] applicable to the other entity" (§ 37.23(d)).

Discussion

Many public transit agencies use contractors to operate some or all of their services. Section 37.23 obligates these agencies to ensure their contractors comply with the same Part 37 requirements the transit agencies would need to follow if they were running the services themselves. As explained in Appendix D to § 37.23, private entities (e.g., contractors) "stand in the shoes" of public entities with whom they contract to provide transportation services. Section 37.23 ensures that, while a public entity may contract out its service, it may not contract away its ADA responsibilities. Commonly known as the "stand-in-the-shoes requirements," § 37.23 primarily applies to (1) provision of service and (2) vehicle acquisition.

Section 37.23 requires contractors to follow the public entity service requirements in Part 37 if they are operating service on behalf of a public entity. If a transit agency is using a contractor to run fixed route bus service, for example, the contractor would need to comply with the § 37.163 requirement to keep vehicle lifts in operative condition. As another example, consider a transit agency that uses a contractor to operate its commuter bus service. The requirements applicable to publicly operated commuter bus service take precedence over those that apply to over-the-road bus companies and services for the service provided on behalf of the public entity, even if the contractor also operates private intercity or charter/tour bus service.

Section 37.23 also applies to the fleets contractors use, which means ensuring the percentage of accessible vehicles in a public transit agency's fixed route or demand responsive fleet is not diminished as a result of using a contractor. For example, if a public entity's demand responsive bus fleet is 85 percent accessible, then at least 85 percent of its contractor's vehicles used for the contract must be accessible. This requirement applies whether the vehicles to be acquired are new, used, or remanufactured. (See Circular Section 4.1.3.)

As discussed in Appendix D to § 37.23, the vehicle acquisition requirements may differ depending on the kind of service involved. For example, all new vehicles acquired for use in fixed route service must be accessible. In the case of demand responsive service, a public entity operating a demand responsive system is not required to buy an accessible vehicle if its system, when viewed in its entirety, provides service to individuals with disabilities equivalent to its service to other individuals. A private contractor providing a portion of demand responsive service would not necessarily have to acquire an accessible vehicle if this equivalency test is being met by the system as a whole. (See Circular Section 7.4.)

The stand-in-the-shoes requirements extend to subcontractors as well. For example, if a transit agency engages a contractor to provide complementary paratransit service, the contractor might subcontract with a private taxi company for some trips. In these instances, both the transit agency's contractor and the taxi subcontractor are subject to the same Part 37 requirements applicable to the agency for providing complementary paratransit service.

The stand-in-the-shoes requirements not only apply to traditional contracts for service, but also apply to "other arrangements or relationships." For example, a private utility company may have an agreement with a city to receive FTA funding as a subrecipient to the city to operate a fixed route service. As an FTA funding recipient, the city is responsible for ensuring the private utility company (the subrecipient) meets the DOT ADA requirements pertaining to fixed route service.

When the Stand-in-the-Shoes Requirements Do Not Apply

The stand-in-the-shoes requirements, referenced in Appendix D to § 37.23, do not apply if private entities are merely regulated by public entities or receive a franchise or permit to operate from these entities. For example, if private taxi or shared-ride van services are only regulated by, or receive permits to operate from, a state, county, or municipal government or authority, then they are not required to comply with public entity provisions. In those circumstances, they are not operating service on behalf of the public entity. However, if the public entity's control of the taxi system extends beyond mere regulation, the taxi system may be considered part of the public entity's demand responsive transit system and the stand-in-the-shoes requirements would apply.

Similarly, the stand-in-the-shoes requirements do not apply in cases where public entities provide general subsidies to private companies to underwrite private transportation services. For example, a city may start a taxi voucher program for individuals 65 and older using local taxicabs. Accepting these vouchers does not mean the taxi companies stand in the shoes of the city. In operating such a program, however, to comply with the ADA general nondiscrimination requirements in § 37.5, the city—not the taxi company—would be required to ensure that its taxi voucher program does not discriminate against program participants with disabilities. (See Circular Section 2.2.) In this example, the city would have to ensure that program participants with disabilities, including those who use wheelchairs, have the same access to the program as nondisabled individuals during the same times and with the same fares and response times.[1]

Private Entities Receiving § 5311 Funding

The stand-in-the shoes requirements apply to private entities that receive § 5311 funding (Formula Grants for Rural Areas), whether through subgrant agreements directly with state agencies, or through subrecipients who then enter into agreements with private contractors for service. The state agency provides funding through these agreements for public transportation services in rural parts of the state.

[1] See the Title II program access requirements applicable to state and local governments under the ADA. In this example, in the event the taxi provider has no accessible taxis, the city may provide service to individuals who need accessible vehicles through alternative methods, such as contracting with a provider that has accessible vans.

Because these private contractors are providing services on behalf of the state (or the state's subrecipient), they are standing in the shoes of the state, and the public entity provisions apply.

For example, state agencies using a private nonprofit provider to deliver demand responsive service are required under § 37.23 to ensure the provider's services meet the general public demand responsive service requirements applicable to public entities contained in § 37.77. (See Circular Sections 4.2.4 and 7.3.) Similarly, for providers delivering fixed route service on their behalf, § 37.23 obligates state administering agencies to ensure the service meets the fixed route and complementary paratransit service requirements. (See Circular Chapter 8.)

Private entities may also operate as contractors to a subrecipient or as a contractor to a Tribal Transit direct recipient. In these cases, the same provisions applying to private contractors above would apply.

Private Entities Receiving § 5310 Funding

Private nonprofit entities that receive § 5310 funding (Enhanced Mobility for Seniors and Individuals with Disabilities) and provide closed-door service to their own clientele do not stand in the shoes of state administering agencies or designated recipients. "Closed-door service" is not open to the general public but rather is available only to the clients or members of a particular agency. The funding provided by state agencies or designated recipients for these projects allows § 5310 grant subrecipients to provide services to seniors and individuals with disabilities as defined by the subrecipient's mission. As a result, these subrecipients are not providing services on behalf of the state or designated recipient.

These subrecipients are subject to the ADA requirements that apply to private entities, and in particular to Part 37 Subpart E, which covers vehicle acquisition by private entities. For example, for subrecipients purchasing inaccessible vehicles with § 5310 funds, this means being prepared to demonstrate they are providing equivalent levels of service to individuals with disabilities, including those who use wheelchairs. If an award to a subrecipient that provides closed-door service to its own clientele includes inaccessible vehicles, the subrecipient must have a process in place to ensure that equivalent service is provided as needed, either by the private nonprofit that alters its vehicle fleet composition, or through a third-party contract or other arrangement with another subrecipient or contractor.

In contrast, private entities that receive § 5310 funding for projects that are open to the general public do stand in the shoes of the state or designated recipient and are subject to the requirements applicable to public entities providing fixed route or demand responsive services. If an award to a subrecipient that provides open-door service includes inaccessible vehicles, the state agency or designated recipient must have a process in place to ensure that equivalent service is provided, either by the private nonprofit that alters its vehicle fleet composition, or through a third-party contract or other arrangement with another subrecipient or contractor. In this case, the state or designated recipient is responsible for ensuring equivalent service in the service area. "Open-door service" includes service that is open to the general public or a segment of the general public defined by age, disability, or low-income, and thus includes public transportation service, as well as alternatives to public transportation that may require a passenger to be a senior or person with a disability but is not limited to clients or members of a particular agency.

1.4 Transportation Services Not Addressed in this Circular

While this Circular is primarily addressed to FTA grantees, other transportation services are also referenced in and subject to the DOT ADA regulations or other ADA or disability-related regulations under the jurisdiction of other Federal agencies. These services are not addressed in the Circular and include:

- Intercity rail service (Amtrak), which is under the jurisdiction of both the Federal Railroad Administration (FRA) and DOJ.
- Fixed route and demand responsive transportation services operated by private entities primarily engaged in the business of transportation (e.g., private bus companies, airport shuttles, taxi companies, and nonprofit agencies incorporated specifically to provide transportation), when the private entity is not a subrecipient or contractor to an FTA recipient or subrecipient. These entities are subject to provisions of the DOT ADA regulations for private entities primarily engaged in the business of transportation. In such cases, enforcement of the DOT ADA regulations is carried out by DOJ; however, a DOT operating administration with regulatory jurisdiction over a particular mode, such as the Federal Motor Carrier Safety Administration, may exercise its oversight and enforcement authority to seek compliance.
- Fixed route and demand responsive transportation services operated by private entities not primarily engaged in the business of transportation (e.g., hotel shuttles, rental car shuttles, and transportation provided by human service agencies), when the private entity is not a subrecipient or contractor to an FTA recipient or subrecipient. These services are subject to provisions of both the DOT ADA regulations for private entities not primarily engaged in the business of transporting people and DOJ's Title III ADA regulations. In such cases, administrative and judicial enforcement of both DOT and DOJ's ADA regulations would be carried out by DOJ.
- Services provided by airlines, which are covered by the Air Carrier Access Act and are subject to regulations implemented by the Aviation Consumer Protection Division of DOT's Office of the Assistant General Counsel.
- Airport transportation systems, which may fall under the jurisdiction of the Federal Aviation Administration or DOJ.
- Transportation services for elementary and secondary education systems, which are covered by the Individuals with Disabilities Education Act and the regulations implemented by the Department of Education.
- Services in public conveyances used primarily for recreational purposes, such as amusement park rides, ski lifts, or historic rail cars or trolleys operated in museum settings, which are covered by the DOJ Title III regulations (28 CFR Part 36).
- Services provided by employers exclusively for their employees, which are covered under the Equal Employment Opportunity Commission's Title I regulations (29 CFR Part 1630).

Almost all types of transportation providers are obligated to comply with Federal nondiscrimination regulations in one form or another. The only transportation services that fall outside the purview of the ADA and other nondiscrimination regulations are transportation services provided by religious organizations or entities controlled by religious organizations and transportation services provided by private clubs or establishments. (They are exempted from coverage under Section 307 of the ADA (42 U.S.C. `12187)).

1.5 Organization of the Circular

The Circular includes 12 distinct chapters organized by topic. Because it is organized topically, the information presented does not necessarily follow the order the requirements appear in the DOT ADA regulations. The Circular is not intended to cover all of the provisions in the regulations but rather targets guidance to particular issues most relevant to the delivery of public transit service. Table 1-2 outlines the organization of the document.

Table 1-2 – Circular Chapters

Chapter Title	Description
1 – Introduction and Applicability	Overview of the scope and organization of the Circular and the regulations applicable to transit providers
2 – General Requirements	The fundamental nondiscrimination requirements, including examples of permitted and prohibited practices. Also includes crosscutting service provision requirements applicable to all modes of transportation (e.g., reasonable modification of policy, maintenance of accessible features, use of vehicle lifts, provision of accessible information, accommodation of service animals, and employee training)
3 – Transportation Facilities	The requirements that apply to new construction of transportation facilities and alterations at existing facilities, with a focus on common issues
4 – Vehicle Acquisition and Specifications	The requirements for acquiring new, used, and remanufactured transit buses, light rail vehicles, rapid rail vehicles, and commuter rail cars, along with vehicle design specifications
5 – Equivalent Facilitation	The process for seeking a determination from the FTA Administrator that permits alternative ways—by use of other designs and technologies—to comply with the regulations for vehicles and transportation facilities
6 – Fixed Route Service	Service provision requirements specific to fixed route bus and rail, such as priority seating, alternative transportation when bus lifts are inoperable, and stop announcements and route identification
7 – Demand Responsive Service	The requirements applicable to demand responsive services (other than complementary paratransit), including the equivalent service standard
8 – Complementary Paratransit Service	The requirements for complementary paratransit service, including service criteria, absence of capacity constraints, and origin-to-destination service
9 – ADA Paratransit Eligibility	The requirements pertaining to complementary paratransit eligibility, including eligibility criteria, basic process requirements, accommodation of companions and personal care attendants, and no-show suspensions
10 – Passenger Vessels	Guidance applicable to providing public transportation via passenger ferry services and accessibility requirements of landside facilities
11 – Other Modes	Overview of applicable requirements for less common vehicles and systems such as monorails and trams
12 – Oversight, Complaints, and Monitoring	Information on FTA's oversight role, grantee complaint resolution requirements, and service monitoring

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Chapter 2 – General Requirements

2.1 Introduction

This chapter explains the U.S. Department of Transportation (DOT) Americans with Disabilities Act (ADA) regulations related to nondiscrimination and other broad crosscutting requirements applicable to fixed route (rail and non-rail), complementary paratransit, and demand responsive services. Regulations covered in this chapter are primarily from 49 CFR Part 37 Subparts A (General) and G (Provision of Service).

As the chapter outlining the broad general requirements that apply across transit modes, Chapter 2 is meant to accompany the specific service-focused chapters that follow and to be cross-referenced by the reader as needed.

This Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves or replace the need for readers to reference the detailed information in the regulations. FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.

2.2 Nondiscrimination

As a comprehensive civil rights law, the ADA grants the same rights and responsibilities to individuals with disabilities as are available to all individuals. Fundamentally, the overarching requirement of the law is that entities cannot discriminate against individuals with disabilities. Section 37.5 contains a general prohibition against discrimination and outlines several specific actions the regulations disallow.

2.2.1 Prohibition Against Discrimination

Requirement

"No entity shall discriminate against an individual with a disability in connection with the provision of transportation service" (§ 37.5(a)).

Discussion

Having a disability in no way diminishes an individual's right to be treated equally and to benefit from public transit along with others in the community. This general nondiscrimination requirement represents the foundation upon which the rest of the regulatory requirements rest. In the absence of a specific provision covering a particular policy or operating issue, the general nondiscrimination requirement applies.

The following are examples of policies and practices FTA considers discriminatory under § 37.5(a):

- Refusing to provide service because of a person's disability
- Requiring individuals with disabilities to use seat belts or shoulder harnesses when other riders on the same vehicle are not also required to do the same

- Requiring riders who use wheelchairs to wear a special body belt as a condition of using lifts on vehicles or riding on transportation systems
- Requiring riders who board a vehicle with a service animal to first disclose the nature of their disability to receive transportation
- Requiring adults to accompany children under a certain age in order to use complementary paratransit service without having the same age requirement to ride the fixed route system
- Prohibiting an individual with a disability from serving as a personal care attendant (PCA) for another rider with a disability

2.2.2 Right to Use General Public Transportation Services

Requirement

"Notwithstanding the provision of any special transportation service to individuals with disabilities, an entity shall not, on the basis of disability, deny to any individual with a disability the opportunity to use the entity's transportation service for the general public, if the individual is capable of using that service" (§ 37.5(b)).

Discussion

Section 37.5(b) prohibits a transit agency from denying to any individual with a disability the opportunity to use the agency's transportation service for the general public if the individual is capable of using that service. An agency cannot compel an individual with a disability, for example, to use its complementary paratransit service, or otherwise prevent the individual from using fixed route service, based on a belief that he or she will "take too long" to board a bus.

An agency cannot deny service to a person with a disability based on what it perceives to be "safe" or "unsafe" for that individual. All riders take on some level of risk when traveling (e.g., standing while riding a bus, crossing busy streets, or walking along roadways with quickly moving traffic). Individuals with disabilities also have the right to decide the level of risk they are willing to take to travel independently.

To ensure nondiscrimination, an optional good practice is for an agency to have written rules of rider conduct and related internal policies. (See Circular Section 2.11.) Such policies would apply equally to complementary paratransit and fixed route, as well as to riders with and without disabilities. These policies are particularly important if it becomes necessary to refuse service to individual riders, as discussed in Circular Section 2.2.7.

2.2.3 Prohibition Against Requiring Use of Priority Seating

Requirement

"An entity shall not require an individual with a disability to use designated priority seats, if the individual does not choose to use these seats" (§ 37.5(c)).

Discussion

Section 37.5(c) prohibits an agency from requiring an individual with a disability to use designated priority seats if the individual does not choose to use the seats. Individuals with disabilities have the same right as all other riders to decide where they would like to sit.

2.2.4 Prohibition Against Imposition of Special Charges

Requirement

"An entity shall not impose special charges, not authorized by [Part 37], on individuals with disabilities, including individuals who use wheelchairs, for providing services required by [Part 37] or otherwise necessary to accommodate them" (§ 37.5(d)).

Discussion

A transit agency cannot impose special charges for providing required accessible services to individuals with disabilities. Examples of prohibited charges include:

- Charging individuals more to ride in lift-equipped vehicles than in sedans in demand responsive services that use both types of vehicles
- Charging individuals more for assistance beyond the curb when riding complementary paratransit, if such assistance is necessary to meet the origin-to-destination requirements of that service (See Circular Section 8.3.1.)
- Charging extra to riders who use wheelchairs to travel in an accessible vanpool vehicle
- Charging individuals for travel to in-person interviews or functional assessments that are required as part of the ADA paratransit eligibility process
- Charging ADA paratransit eligible riders for photo IDs or for travel to or from locations to obtain required ID cards
- Imposing a mandatory fee to complementary paratransit riders (and their companions) for cancelled trips or trips counted as no-shows (See Circular Section 9.12.5.)

Special charges are not the same as premium services for which agencies may charge extra fees. (See Circular Section 8.7.)

2.2.5 Prohibition Against Requiring Use of Attendants

Requirement

"An entity shall not require that an individual with disabilities be accompanied by an attendant" (§ 37.5(e)).

Discussion

A transit agency cannot require an attendant to accompany an individual with disabilities. For example, an agency may not require a rider with a disability to travel with an attendant based on concerns about his or her safety. There is one exception. As discussed in Circular Section 2.2.7, § 37.5(h) permits agencies to refuse service to individuals with disabilities if they engage in violent, seriously disruptive, or illegal conduct, or if they pose a direct threat to the health or safety of others. As discussed in Appendix D to § 37.5,

> This provision must also be considered in light of the fact that an entity may refuse service to someone who engages in violent, seriously disruptive, or illegal conduct. If an entity may legitimately refuse service to someone, it may condition service to him on actions that would mitigate the problem. The entity could require an attendant as a condition of providing service it otherwise had the right to refuse.

If a transit agency requires a rider to travel with an attendant as a condition of service under the circumstances described above, those conditions cannot be permanent. The agency would need to afford

the rider the future opportunity to demonstrate that circumstances have changed and he or she is now able to travel independently, i.e., without an attendant.

From a practical standpoint, some riders with disabilities will need to travel with an attendant to use the service, sometimes permanently. While § 37.165(f) requires drivers to provide assistance with the use of lifts, ramps, and securement systems (see Circular Section 2.5.1), per Appendix D to § 37.5 they are not required to provide "attendant services." This includes assisting with the use of oxygen or other medical equipment, administering medication, or helping with other personal needs. If unable to travel without this level of assistance, riders may need to bring along their own attendant.

2.2.6 Prohibition Against Refusing Service Due to Insurance Issues

Requirement

"An entity shall not refuse to serve an individual with a disability or require anything contrary to [Part 37] because its insurance company conditions coverage or rates on the absence of individuals with disabilities or requirements contrary to [Part 37]" (§ 37.5(g)).

Discussion

If an insurer declines to provide liability coverage for required services to individuals with disabilities, a transit agency cannot use this decision as a basis for not providing the required services. This also applies if insurance companies require anything contrary to the regulations. The following examples illustrate possible issues related to insurance:

- A transit agency's vehicle liability policy does not provide coverage for a driver to help push a rider using a manual wheelchair up the vehicle ramp.
- An insurance company refuses to provide coverage if riders travel with portable oxygen supplies, or classifies this situation as a form of medical transportation and charges higher rates.

In both instances, § 37.5(g) requires the transit agency to provide the required services to riders with disabilities and to refrain from using insurance company stipulations as reasons to deny service. Similarly, an agency cannot require individuals with disabilities to sign liability waivers as a condition of receiving service. For example, if an agency has a mandatory wheelchair securement policy, and a vehicle operator is unable to determine how best to secure a passenger's wheelchair aboard a bus, the agency may not deny service or require the passenger to sign a waiver in order to ride.

2.2.7 Service Denial Due to Rider Conduct

Requirement

"It is not discrimination under this part for an entity to refuse to provide service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct, or represents a direct threat to the health or safety of others. However, an entity shall not refuse to provide service to an individual with disabilities solely because the individual's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of the entity or other persons" (§ 37.5(h)).

Discussion

Section 37.5(h) permits transit agencies to refuse to provide service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct, or that individual constitutes a direct threat to others. Overlap among these four thresholds is common and therefore FTA recommends agencies consider them as a unit. Rarely is violent behavior such as physical assault, for

example, not also seriously disruptive, illegal, and a direct threat. Consider another example: a verbal outburst directed at a driver or other passengers may start out as seriously disruptive but become so threatening as to prevent a driver from safely operating the vehicle and, therefore, rise to a direct threat as well.

Determining Seriously Disruptive Behavior

It can be especially challenging to assess whether rider behavior rises to the level of "seriously disruptive." Given that a service refusal can be a denial of a civil right, the threshold for seriously disruptive conduct, like the other denial bases, is an intentionally high standard. A transit agency cannot refuse service to individuals with disabilities solely because their appearance or involuntary behavior may offend, annoy, or inconvenience employees or other riders. As discussed in Appendix D to § 37.5, "some persons with Tourette's syndrome may make involuntary profane exclamations. These may be very annoying or offensive to others, but would not be a ground for denial of service." As another example, many agencies have asked FTA for guidance on serving riders with hygiene issues. It would not be appropriate to refuse service if the situation were merely unpleasant to other passengers or drivers. If the situation disrupts the provision of service, however, grounds for refusing service may exist.

Determining a Direct Threat

Appendix D to § 37.3 explains that transit agencies may refuse to transport individuals who pose a significant risk to the health or safety of others, stating:

> The definition of "direct threat" is intended to be interpreted consistently with the parallel definition in the Department of Justice regulations. That is, Part 37 does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others. In determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment, that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk, the probability that the potential injury will actually occur, and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

Presuming certain conduct will occur based on specific disabilities is not appropriate. For example, it is incorrect to presume all riders with particular psychiatric disabilities will behave in a violent manner that constitutes a direct threat to others. If during the ADA paratransit eligibility process, however, an agency obtains documentation indicating a pattern of violent behavior that likely will recur, or documents an individual's pattern or practice of violent behavior on its services, this information might be used to deny service or require such an individual to travel with an attendant, following the process in Appendix D to § 37.3 described above.

FTA emphasizes that the definition of direct threat refers to a direct threat to other individuals and not to the person with the disability.

Steps to Take Before Refusing Service

Before refusing service to an individual with a disability, FTA encourages transit agencies to make reasonable attempts to resolve issues with riders or, if appropriate, caregivers or guardians. Often, local disability organizations may be helpful in resolving issues so that individuals do not lose access to vital transportation services. FTA recommends that agencies document the incident or incidents leading to the service denial, substantiating how such an incident rises to the level of seriously disruptive or a direct threat, for example. When possible, FTA also recommends that agencies provide the rider with a written warning before denying service.

Right of Individuals to Contest Service Denials

Access to public transit is a civil right and inherent in any civil right is the opportunity for due process. This means providing an individual who is denied service the opportunity to contest that decision, correct the situation, and resume service. Service refusals cannot be permanent unless an individual continues to pose a direct threat to the health or safety of others. Riders must have the opportunity to subsequently present information to the transit agency, demonstrating that issues have been resolved or presenting options to mitigate any problems, to have service reinstated.

This also means providing a rider required to travel with an attendant the opportunity to appeal such a requirement. As with service refusals, riders have the right to subsequently provide information demonstrating they have addressed the agency's concerns and can now travel without an attendant or propose other solutions that permit them to travel on their own.

2.3 Equipment Requirements for Accessible Service

2.3.1 Using Accessibility Features

Requirement

"The entity shall ensure that vehicle operators and other personnel make use of accessibility-related equipment or features required by Part 38 of this title" (§ 37.167(e)).

Discussion

It is not enough for a transit agency to have accessibility-related equipment or features. Section 37.167(e) requires that agency employees use the equipment or feature in order to provide accessible service to riders. For example, this means that drivers deploy lifts or ramps when operating accessible vehicles or use the public address system if needed when making onboard stop announcements.

2.3.2 Maintaining Accessibility Features

Requirement

"Public and private entities providing transportation services shall maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible to and usable by individuals with disabilities. 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 impaired vision or hearing" (§ 37.161(a)).

"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" (§ 37.161(b)).

"This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs" (§ 37.161(c)).

Discussion

Section 37.161(a) requires a transit agency to maintain accessibility features in facilities and on vehicles in working condition. When accessibility features are damaged or out of order, § 37.161(b) requires the agency to repair them promptly. The regulations do not state a time limit for making particular repairs,

given the variety of circumstances involved. As Appendix D to § 37.161 notes, however, "repairing accessible features must be made a high priority."

For vehicles, examples of accessibility features include:

- Lifts and ramps
- Lighting
- Mobility aid securement areas and systems
- Public address and other communications equipment
- Seat belts and shoulder harnesses (where securement systems are required)
- Signage

For facilities, examples of accessibility features include:

- Accessible paths to and within facilities
- Communications equipment
- Elevators
- Fare vending equipment and fare gates
- Platforms and handrails
- Ramps
- Signage

To meet the § 37.161(a) and (b) requirements, transit agencies are obligated to inspect all accessibility features often enough to ensure they are operational and to undertake repairs or other necessary actions when they are not.

Section 37.161(c) does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. FTA recommends taking the following steps when planning maintenance activities that will result in temporary unavailability of an accessibility feature:

- Schedule maintenance during non-service hours or the lowest demand times (and include this timing stipulation in any maintenance contract).
- Consider the effect the maintenance activities (and potential outages) will have on systemwide accessibility and provide replacement service if necessary during such periods.
- Refrain from taking elevators out of service simultaneously at multiple busy rail station hubs.

Accommodating Riders Who Rely on Working Accessibility Features

When an accessibility feature is not working due to maintenance or repairs or unexpected outages, § 37.161(b) requires a transit agency to "take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature." The regulations do not prescribe a particular method for accommodating individuals, but the method an agency chooses must be effective.

An accommodation may be as simple as designating personnel to provide information to customers when a public address system is out of order. One of the most common accommodations, however, involves elevators. When a station elevator is out of service due to mechanical failures or for scheduled maintenance, accommodations are often needed in order to prevent riders from being stranded and to allow them to continue to use the system.

Appendix D to § 37.161 gives an example:

> [W]hen a rail system discovers that an elevator is out of order, blocking access to one of its stations, it could accommodate users of the station by announcing the problem at other stations to

alert passengers and offer accessible shuttle bus service around the temporarily inaccessible station.

An agency may decide to use a combination of means to fulfill the requirement in § 37.161(b) to take "reasonable steps to accommodate individuals with disabilities" when an elevator is out of service. FTA recommends announcing the outage at other stations (both visually and audibly) to alert riders, in combination with providing accessible shuttle bus service. The shuttle vehicles may be any accessible vehicles, including the agency's paratransit vehicles. The shuttle service can be standing by or on call.

Riders who know in advance about current elevator outages may be able to plan an alternative itinerary that would allow them to avoid the inconvenience of using the substitute bus service. Accordingly, good practices include providing elevator outage information on agency websites, through proper signage and recorded announcements at facilities, and through emails or text messages to rider notification lists, as well as through notifications to rider advocacy groups or others (for planned or longer term outages).

FTA also recommends providing sufficient staffing at affected locations to guide any riders needing shuttle service or information. In some systems, convenient fixed route bus service already runs between rail stations. FTA recommends ensuring that station personnel are trained on any connecting bus service and prepared to direct riders capable of using the fixed route bus to the correct bus stop and route number to bypass a station affected by an elevator outage. Riders may prefer this option to waiting for an on-call shuttle service.

Ensuring Accessibility Features Are Free from Obstructions

An important part of maintaining accessibility features so that they are "accessible to and usable by individuals with disabilities" is ensuring they are free from obstructions. Agencies have an obligation to enforce parking bans and to keep accessible features clear if they have direct control over the area. This can include removing illegally parked vehicles occupying accessible parking spaces or access aisles in station parking lots, removing bicycles obstructing ramps and accessible routes, and removing snow from ramps and accessible routes.

Where a transit agency does not have direct control over the areas with accessibility features, FTA encourages coordination with other public entities or private property owners. For example, the Massachusetts Bay Transportation Authority (MBTA) has agreements with the municipalities in which its 15 highest ridership routes operate where the municipality prioritizes the clearing of snow from bus stops along these routes. For other bus stops, MBTA's website provides contact information for the agency responsible for snow removal.

2.3.3 Keeping Lifts/Ramps in Operative Condition

Requirement

"The entity shall establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative" (§ 37.163(b)).

"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" (§ 37.163(c)).

"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" (§ 37.163(d)).

"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" (§ 37.163(e)).[1]

Discussion

While § 37.161 outlines general requirements for maintaining accessibility features, § 37.163 establishes specific requirements for maintaining lifts used to board non-rail vehicles. FTA generally treats lifts and ramps interchangeably and applies these same requirements to maintaining ramps. An optional good practice for keeping lifts in working order is to have drivers cycle lifts (or ramps) as part of pre-trip inspections. Mechanics can repair any problems or, if necessary, assign spare accessible vehicles. Most transit agencies include lift cycling in all levels of vehicle inspection and maintenance.

While pre-trip lift cycling is an optional good practice, it is not a regulatory requirement. Some transit agencies design other procedures for making regular and frequent checks of lifts. An alternative approach may be necessary if the logistics of pullouts make it difficult for each driver to make checks at the time of pullout. Some agencies ensure lift reliability by having maintenance personnel perform daily checks to verify that lifts work properly.

Another optional good practice is to keep thorough records of lift operations checks. When transit agencies perform checks during pre-trip inspections, completed inspection forms serve as documentation. An additional optional good practice is for mechanics to document any lift inspections and include this information in each vehicle's maintenance history.

Reporting Lift Failures and Removing Vehicles from Service

When drivers discover that lifts or ramps are not working, § 37.163(c) requires that they report the outages to appropriate staff (e.g., dispatchers) as soon as possible. Based on this information, dispatchers and supervisors can decide the best course of action. In demand responsive services (complementary paratransit and general public service), drivers using vehicles with inoperable lifts may be able to continue to use such vehicles for the remainder of the day as long as any trips for riders needing lift-equipped vehicles can be reassigned to another lift-equipped vehicle.

In non-rail fixed route systems, except as discussed below, § 37.163(d) requires transit agencies to remove vehicles with inoperable lifts (and ramps) from service before the beginning of the vehicle's next service day. An optional good practice, if possible, is to remove vehicles sooner (e.g., at the end of the run or driver's shift).

As covered in the regulations and discussed in Appendix D to § 37.163, "[w]hen a lift is discovered to be inoperative, either because of an in-service failure or as the result of a maintenance check, the entity must take the vehicle out of service before the beginning of its next service day . . . and repair the lift before the vehicle is put back into service." When agencies do not have sufficient accessible spare vehicles available, § 37.163(e) permits agencies to return vehicles with inoperable lifts to service for limited periods as follows:

- Vehicles with inoperable lifts may be returned to service for up to three days if there are no available spares and the transit agency's service area has a population of more than 50,000.
- Vehicles with inoperable lifts may be returned to service for up to five days if there are no available spares and the transit agency's service area has a population of 50,000 or less.

[1] See Circular Section 6.2.1 for a discussion on § 37.163(f), which requires agencies to provide alternative transportation in some circumstances when a fixed route bus lift is inoperable.

A transit agency cannot continue to use vehicles with inoperable lifts after these specified timeframes, even when there are no spares. Section 37.163(e) requires the agency to remove these vehicles from service until the lifts are repaired.[2]

2.4 Lift/Ramp and Securement Use

2.4.1 Accommodating Riders Using Wheelchairs

Requirement

"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.

(2) The entity is not required to permit [riders who use] wheelchairs to ride in places other than designated securement locations in the vehicle, where such locations exist" (§ 37.165(b)).

Discussion

Under § 37.165, transit agencies must transport individuals using wheelchairs if their devices meet the definition of a wheelchair and can be accommodated on the vehicle (e.g., they fit on the lift or ramp and in the securement area). Agencies may only decline to transport a wheelchair/occupant if doing so would be inconsistent with "legitimate safety requirements," as discussed below. A vehicle that complies with the base Part 38 specifications will be able to accommodate, at a minimum, all occupied wheelchairs weighing up to 600 pounds and measuring 30 inches in width and 48 inches in length (formerly known as a "common wheelchair"). Vehicles that exceed the minimum Part 38 specifications (e.g., those that have lifts with design loads of 800 pounds and securement areas larger than 30 x 48 inches) will accommodate larger, heavier devices.

Wheelchair Definition

Section 37.165(b) requires transit agencies to allow riders who use wheelchairs to board and ride accessible vehicles. A wheelchair is defined in § 37.3 as "a mobility aid belonging to any class of three- or more-wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered."

The definition is consistent with the legislative history and intent to accommodate the wide range of devices used by individuals with mobility impairments. The definition does not include devices not intended for indoor use (e.g., golf carts or all-terrain vehicles) or devices not primarily designed to assist individuals with mobility impairments (e.g., bicycles or tricycles).

It is important to note that the definition of a wheelchair does not require specific elements or equipment such as front rigging (footplates or leg rests), wheel locks or brakes, push handles, or positioning belts or harnesses. Any transit agency policy, therefore, requiring wheelchairs to be equipped with specific

[2] See Circular Section 6.2.1 for a discussion on § 37.163(f), which requires agencies to provide alternative transportation in some circumstances when a fixed route bus lift is inoperable.

features in order to be transported or allowing for the denial of service because of the perceived condition of a passenger's mobility device is not permitted under § 37.165(b) and would be a discriminatory policy prohibited by § 37.5(a).

Legitimate Safety Requirements

Transit agencies 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." The preamble to DOT's 2011 final rule amending Parts 37 and 38 states that legitimate safety requirements include such circumstances as when "a wheelchair was of a size that would block an aisle or not be able to fully enter a rail car, thereby blocking the vestibule, and interfere with the safe evacuation of passengers in an emergency."[3]

As discussed in Appendix D to § 37.165,

> If a transportation provider has a vehicle and equipment that meets or exceeds standards based on Access Board guidelines, and the vehicle and equipment can in fact safely accommodate a given wheelchair, then it is not appropriate, under disability nondiscrimination law, for the transportation provider to refuse to transport the device and its user. Transportation providers must carry a wheelchair and its user, as long as the lift can accommodate the size and weight of the wheelchair and its user and there is space for the wheelchair on the vehicle. However, if in fact a lift or vehicle is unable to accommodate the wheelchair and its user, the transportation provider is not required to carry it.
>
> For example, suppose that a bus or paratransit vehicle lift will safely accommodate an 800-pound wheelchair/passenger combination, but not a combination exceeding 800 pounds (i.e., a design load of 800 lbs.). The lift is one that exceeds the Part 38 design standard, which requires lifts to be able to accommodate a 600-pound wheelchair/passenger combination. The transportation provider could limit use of that lift to a combination of 800 pounds or less. Likewise, if a wheelchair or its attachments extends beyond the 30 x 48 inch footprint found in Part 38's design standards but fits onto the lift and into the wheelchair securement area of the vehicle, the transportation provider would have to accommodate the wheelchair. However, if such a wheelchair was of a size that would block an aisle and interfere with the safe evacuation of passengers in an emergency, the operator could deny carriage of that wheelchair based on a legitimate safety requirement.

Other factors associated with transporting individuals using wheelchairs are not legitimate safety requirements under the DOT ADA regulations. For example, legitimate safety requirements do not apply to securement; an agency cannot impose a limitation on the transportation of wheelchairs and other mobility aids based on the inability of the securement system to secure the device to the satisfaction of the agency.

Using Designated Securement Areas

Part 38 vehicle specifications include requirements for the minimum number of designated securement areas for riders using wheelchairs. One or two such areas are required in buses and vans depending on the length of the vehicle. Securement devices are not required on rail cars.

Under § 37.165(b), transit agencies operating buses and vans with designated securement locations are not required to allow riders who use wheelchairs to ride elsewhere in the vehicle. Rather, agencies may

[3] DOT Final Rule, "Transportation for Individuals With Disabilities at Intercity, Commuter, and High Speed Passenger Railroad Station Platforms; Miscellaneous Amendments"; *Federal Register*, vol. 76, no. 181 (76 FR 57924, Sept. 19, 2011).

create policies requiring riders who use wheelchairs to ride in designated securement areas noting that wheelchairs must fit in these (compliant) areas.

Maintaining an Inventory of Lifts/Ramps and Securement Areas

To help comply with the § 37.165(b) requirements, FTA encourages transit agencies to maintain inventories of detailed design specifications and dimensions of lifts, ramps, and securement areas for all vehicles. Agencies can then use the capacity specifications together with service operating policies and procedures to determine the maximum sizes and weights of wheelchairs they can accommodate.

The § 37.165(b) requirements do not dictate that transit agencies operating a mixed fleet assign a particular vehicle to a route or dispatch a particular vehicle to a waiting customer. FTA encourages agencies, however, to provide up-to-date public information about the maximum sizes and weights of occupied wheelchairs the agencies' vehicles can safely accommodate so that riders can consider any system limitations when acquiring wheelchairs or deciding to use the service. Such information can be provided on schedules, in rider guides, and on agency websites, as well as through outreach to riders and agencies that serve individuals with disabilities. An agency might decide to install signs on the vehicles themselves indicating the maximum wheelchair size and weight that can be transported.

In cases where a rider's occupied wheelchair exceeds the maximum size or weight an agency's vehicles can safely accommodate, an agency may also use the ADA paratransit eligibility determination process as an opportunity to discuss service limitations with the rider. (See Circular Section 9.2.2.)

Boarding Separately from a Wheelchair

Some riders may be able to board separately from their wheelchairs to avoid having their combined weight exceed the design load of the vehicle lift. As discussed below, standees are expressly permitted on lifts. Appendix E to Part 37 (Reasonable Modification Requests) (see Circular Section 2.10) provides the following guidance regarding accommodating a wheelchair user's request to board a vehicle separately:

> *Boarding Separately From Wheelchair.* A wheelchair user's request to board a fixed route or paratransit vehicle separately from his or her device when the occupied weight of the device exceeds the design load of the vehicle lift should generally be granted.

Vehicle operators, however, are not required to assume the controls of power wheelchairs to assist riders with boarding vehicles. Providing assistance with a power wheelchair falls under the category of attendant-type services, which the regulations do not require. Moreover, it would be unreasonable to expect a driver to know how to operate each rider's powered mobility device. While placing a power wheelchair in freewheeling mode may not be difficult, controlling it is a different matter. (See FTA response to Complaint 10-0172 for an example of how FTA addressed a complainant's request for a driver to operate his power wheelchair.) Riders needing to board separately, and capable of doing so, may need to bring along a personal care attendant (PCA) to assist them.

Boarding and Alighting Direction

Requirement

"*Boarding direction*. The lift shall permit both inboard and outboard facing of wheelchair and mobility aid users" (§ 38.23(b)(11)).[4]

[4] The same boarding directional requirements are found in § 38.83 for light rail and in § 38.95 for commuter rail cars.

Discussion

The requirements applicable to boarding and alighting direction are covered in the Part 38 vehicle specifications and are discussed in Appendix D to § 37.165:

> Wheelchair users, especially those using electric wheelchairs, often have a preference for entering a lift platform and vehicle in a particular direction (*e.g.*, backing on or going on frontwards). Except where the only way of successfully maneuvering a device onto a vehicle or into its securement area or an overriding safety concern (*i.e.*, a direct threat) requires one way of doing this or another, the transit provider should respect the passenger's preference. We note that most electric wheelchairs are usually not equipped with rearview mirrors, and many individuals who use them are unable to rotate their heads sufficiently to see behind.

Complying with the § 38.23(b) requirement means purchasing lifts (or ramps) that accommodate wheelchair users wishing to board facing forward or facing rearward.

2.4.2 Accommodating Riders Using Other Mobility Devices

As discussed in Appendix D to § 37.3, "persons with mobility disabilities may use devices other than wheelchairs to assist with locomotion. Canes, crutches, and walkers, for example, are often used by people whose mobility disabilities do not require use of a wheelchair. These devices must be accommodated on the same basis as wheelchairs."

As explained in the same section of Appendix D, transit agencies are not required to accommodate devices not primarily designed for use by individuals with mobility impairments.[5] This includes items such as shopping carts, bicycles, and skateboards. In addition, agencies are not required to permit other types of assistive devices to be used in ways that depart from or exceed their intended uses. For example, agencies are not required to permit riders who use walkers with built-in seats to ride in securement areas while seated on their walkers, meaning that transit agencies can require these individuals to transfer to a vehicle seat.

2.4.3 Use of Securement Devices

Requirement

"(1) For vehicles complying with Part 38 of this title, the entity shall use the securement system to secure wheelchairs as provided in that part.

(2) For other vehicles transporting individuals who use wheelchairs, the entity shall provide and use a securement system to ensure that the wheelchair remains within the securement area.

(3) The entity may require that an individual permit his or her wheelchair to be secured" (§ 37.165(c)).

"The entity may not deny transportation to a wheelchair or its user on the ground that the device cannot be secured or restrained satisfactorily by the vehicle's securement system" (§ 37.165(d)).

[5] See DOT Guidance, "Use of 'Segways' on Transportation Vehicles" (2005) for information on accommodating "Segways" on transit vehicles. By contrast, DOJ defines Segways as falling within the class of "Other-Power-Driven Mobility Devices" that are subject to specific requirements that are different from those applicable to wheelchairs. This distinction is not found in the DOT ADA regulations.

Discussion

Section 38.23(d) requires all ADA-compliant buses and vans to be equipped with securement devices capable of accommodating wheelchairs and mobility aids. (See Circular Section 4.2.5.) Part 38 does not require securement devices on rail cars.

Under § 37.165(c), a transit agency may establish a policy requiring riders to allow drivers to secure their wheelchairs on buses and vans. If an agency establishes a mandatory securement policy, then the agency is permitted to deny service to an individual who refuses to allow his or her wheelchair to be secured. (Conversely, an agency may have a policy allowing riders to remain unsecured, provided that if a rider wishes to have his or her wheelchair secured, agency personnel provide assistance with the securement.)

However, § 37.165(d) prohibits an agency from refusing to serve riders on the ground that their wheelchairs cannot be secured or restrained satisfactorily by the vehicle's securement system. If the agency requires securement—or when riders ask to be secured—drivers are to do the best they can to secure wheelchairs with the available securement systems, as explained in Appendix D to § 37.165.

For more information on securement, see DOT guidance, "Questions and Answers Concerning Wheelchairs and Bus and Rail Service" (DOT Wheelchair Q&A Guidance).

2.4.4 Use of Seat Belts and Shoulder Harnesses

Requirement

"*Seat belt and shoulder harness*. For each wheelchair or mobility aid securement device provided, a passenger seat belt and shoulder harness, complying with all applicable provisions of Part 571 of this title, shall also be provided for use by wheelchair or mobility aid users. Such seat belts and shoulder harnesses shall not be used in lieu of a device which secures the wheelchair or mobility aid itself" (§ 38.23(d)(7)).

Discussion

Bus and van securement areas must also have a passenger seat belt and shoulder harness. Under the broad nondiscrimination provisions of § 37.5, a transit agency is not permitted to mandate that individuals using wheelchairs use seat belts and shoulder harnesses, unless the agency mandates the use of these devices by all passengers on the vehicle, including those sitting in vehicle seats. For example, on fixed route buses, if none of the other passengers is required to wear a seat belt and shoulder harness then neither can the person in the mobility device be required to do so.

Transit agencies may establish a policy that requires the seat belt and shoulder harness to be used by all riders, including those who use wheelchairs as well as those who use vehicle seats, if seat belts and shoulder harnesses are provided at all seating locations.

When developing seat-belt-use policies, it must be stressed that § 38.23(d)(7) prohibits the use of the seat belt and shoulder harness in lieu of securing the wheelchair itself. Wheelchairs must be secured separately with a securement system.

Transit agencies can require all riders in complementary paratransit vehicles to use seat belts and/or shoulder harnesses, even if there is not a similar requirement on larger fixed route vehicles. In some cases, state law could require an operator to adopt such a policy based on size/weight of the vehicle. Nevertheless, unless prohibited by state law, FTA encourages transit agencies to have a policy that allows a rider to present documentation demonstrating that using seat belts and shoulder harnesses would pose a health hazard and allow that rider to travel without a seat belt and shoulder harness. Some states have waiver processes for individuals to complete as well, where state law normally requires seat belt use due to the type of vehicle operated.

For more information on seat belts, see DOT Wheelchair Q&A Guidance.

2.4.5 Requesting that Riders Transfer to a Seat

Requirement

"The entity may recommend to a user of a wheelchair that the individual transfer to a vehicle seat. The entity may not require the individual to transfer" (§ 37.165(e)).

Discussion

Transit agencies may recommend to a user of a wheelchair that the individual transfer to a vehicle seat, but § 37.165(e) prohibits requiring the individual to transfer. As Appendix D to § 37.165 states, "The final decision on whether to transfer is up to the passenger."

The regulations do not address the opposite scenario of riders wishing to transfer from their wheelchairs into vehicle seats. In these situations, FTA suggests honoring the request, but drivers are not required to lift the person or provide other attendant-type services to facilitate the transfer.

2.4.6 Allowing Standees on Lifts/Ramps

Requirement

"The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle. *Provided*, that an entity is not required to permit such individuals to use a lift Model 141 manufactured by EEC, Inc. If the entity chooses not to allow such individuals to use such a lift, it shall clearly notify consumers of this fact by signage on the exterior of the vehicle (adjacent to and of equivalent size with the accessibility symbol)" (§ 37.165(g)).

Discussion

The requirement to allow standees on lifts applies to riders who use canes, crutches, walkers, or other assistive devices. It also includes riders with disabilities who do not use any type of assistive device or who may not have a visible or apparent disability. The Part 38 vehicle specifications require handrails on lifts to facilitate use of lifts by standees.

If riders ask to use lifts or ramps, § 37.165(g) requires drivers to honor such requests. It is not appropriate for drivers to ask riders to disclose their disabilities before being allowed to board as standees. Appendix D to § 37.165 explains that "standees with disabilities who do not use wheelchairs but have difficulty using steps (*e.g.*, an elderly person who can walk on a level surface without use of a mobility aid but cannot raise his or her legs sufficiently to climb bus steps) must also be permitted to use the lift, on request." The phrase "on request" is key.

2.5 Assistance by Transit Agency Personnel

2.5.1 Lifts/Ramps and Securement

Requirement

"Where necessary or upon request, the entity's personnel shall assist individuals with disabilities with the use of securement systems, ramps and lifts. If it is necessary for the personnel to leave their seats to provide this assistance, they shall do so" (§ 37.165(f)).

Discussion

Required assistance, which can be provided by vehicle operators, conductors, or station attendants, includes acts such as deploying and stowing lifts and ramps, securing riders' wheelchairs, and assisting with seat belts and shoulder harnesses. Section 37.165(f) requires personnel to provide this assistance even if it is otherwise not customary for them to leave their seats.

Personnel may also need to assist riders who use manual wheelchairs on and off lift platforms, or up and down ramps. Appendix D to § 37.165 gives an example: "On a vehicle which uses a ramp for entry, the driver may have to assist in pushing a manual wheelchair up the ramp (particularly where the ramp slope is relatively steep)." The driver needs to assist an individual with using a ramp, assuming the level of assistance is reasonable and does not constitute a direct threat to the health or safety of the driver. The regulations do not set a minimum or maximum weight for an occupied wheelchair that drivers are obligated to help propel. Transit agencies will need to assess whether a particular level of assistance constitutes a direct threat on a case-by-case basis.

2.5.2 Other General Assistance

It is assumed that transit personnel are prepared to provide a reasonable level of assistance to customers with and without disabilities as part of their routine job of serving the public and in the interest of customer service. In the ADA context, personnel are not required to provide "attendant services" and take on the role typically provided by a PCA. The following examples from Appendix E to Part 37 (Reasonable Modification Requests) (see Circular Section 2.10) provide additional guidance regarding assisting individuals with disabilities:

- *Fare Handling.* A passenger's request for transit personnel (e.g., the driver, station attendant) to handle the fare media when the passenger with a disability cannot pay the fare by the generally established means should be granted on fixed route or paratransit service (e.g., in a situation where a bus passenger cannot reach or insert a fare into the farebox). Transit personnel are not required to reach into pockets or backpacks in order to extract the fare media.
- *Personal Care Attendant (PCA).* While PCAs may travel with a passenger with a disability, transportation agencies are not required to provide a personal care attendant or personal care attendant services to meet the needs of passengers with disabilities on paratransit or fixed route trips. For example, a passenger's request for a transportation entity's driver to remain with the passenger who, due to his or her disability, cannot be left alone without an attendant upon reaching his or her destination may be denied. It would be a fundamental alteration of the driver's function to provide PCA services of this kind.
- *Luggage and Packages.* A passenger's request for a fixed route or paratransit driver to assist with luggage or packages may be denied in those instances where it is not the normal policy or practice of the transportation agency to assist with luggage or packages. Such assistance is a matter for the passenger or PCA, and providing this assistance would be a fundamental alteration of the driver's function.
- *Hand-Carrying.* Except in emergency situations, a passenger's request for a driver to lift the passenger out of his or her mobility device should generally be denied because of the safety, dignity, and privacy issues implicated by hand-carrying a passenger. Hand-carrying a passenger is also a PCA-type service which is outside the scope of driver duties, and hence a fundamental alteration.

2.6 Service Animals

Requirement

"The entity shall permit service animals to accompany individuals with disabilities in vehicles and facilities" (§ 37.167(d)).

Discussion

Per § 37.3, a service animal is:

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

The Department of Justice (DOJ) narrowed the definition of a service animal in amendments to its ADA regulations in 2010,[6] but the DOT ADA regulations were unaffected. Accordingly, public transit providers must follow the DOT definition in § 37.3 when assessing whether to accommodate a particular animal. While most service animals are dogs, DOT's definition recognizes the possibility of other animals.

Service animals are animals that are "individually trained to work or perform tasks." This training can be by an organization or by an individual, including the individual with a disability. Transit agencies are not required to transport animals that have not been individually trained to perform specific work or tasks. If an animal's only function were to provide emotional support or comfort for the rider, for example, that animal would not fall under the regulatory training-based definition of a service animal. Simply providing comfort is something that an animal does passively, by its nature or through the perception of the owner. However, the ADA regulations do not prohibit a transit agency from choosing to accommodate pets and comfort animals, which would be a local decision. (See FTA response to Complaint 15-0117 for an example of how FTA has addressed the issue of defining what constitutes a service animal.)

It is important that local policies and practices recognize that some persons with hidden disabilities do use animals that meet the regulatory definition of a service animal. This would include, for example, animals that are trained to alert individuals with seizure disorders to an oncoming seizure or respond to a seizure and animals that are trained to remind persons with depression to take their medication.

Transit agencies cannot have a policy requiring riders to provide documentation for their service animal before boarding a bus or train or entering a facility, but personnel may ask riders two questions: (1) is the animal a service animal required because of a disability? and (2) what work or task has the animal been trained to perform?

The following guidance also applies to service animals:

- Transit agencies may refuse to transport service animals that are deemed to pose a direct threat to the health or safety of drivers or other riders, create a seriously disruptive atmosphere, or are otherwise not under the rider's control. For example, a rider with a service dog is responsible for ensuring the dog does not bite the driver or other riders. Conversely, a dog that barks occasionally would likely not be considered out of the owner's control.

[6] See DOJ's "Frequently Asked Questions about Service Animals and the ADA" (July 20, 2015) for additional guidance on service animals. Transit providers are reminded, however, that the definition of a service animal in this FAQ does not apply to their services and some of the guidance is not applicable to the transit environment.

- A passenger's request that the driver take charge of a service animal may be denied. Caring for a service animal is the responsibility of the passenger or a PCA. (See Appendix E to Part 37, Example 15.)
- Section 37.167(d) does not prescribe limits on the number of service animals that accompany riders on a single trip. Different service animals may provide different services to a rider during trips or at the rider's destination.
- On complementary paratransit or other demand responsive services, transit agencies may ask riders for notification of their intent to ride with a service animal in order to help ensure adequate space is available for the animal. (An optional good practice is to keep such information in riders' files.)
- Other riders' or agency personnel's allergies to dogs or other animals would not be grounds for denying service to a person accompanied by a service animal. The regulations explicitly state that service animals must be allowed to accompany individuals on vehicles and in facilities. Encountering a service animal in the transit or other environment is an expected part of being in public.

2.7 Oxygen Supplies

Requirement

"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)" (§ 37.167(h)).

Discussion

As discussed in Appendix D to § 37.167, under the DOT hazardous materials rules, a passenger may bring a portable medical oxygen supply on board a vehicle. Specific requirements pertaining to compressed oxygen cylinders can be found in 49 CFR § 177.870(e). However, the commonly used portable oxygen concentrators are not considered hazardous materials and do not require the same level of special handling as compressed oxygen cylinders. Transit agencies, therefore, cannot require riders to secure such concentrators in a particular space on the vehicle (e.g., behind forward-facing seats), and § 37.167(h) requires that agencies allow riders to use the concentrators as needed while aboard the vehicle. (See FTA response to Complaint 09-0057 for an example of how FTA addressed a complainant's objection to restrictions on transporting her oxygen supply.)

Questions concerning the transportation of compressed oxygen cylinders should be directed to the Pipeline and Hazardous Materials Safety Administration.

2.8 Accessible Information

Requirement

"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" (§ 37.167(f)).

Discussion

All public transportation customers need access to adequate information to use a particular service. This requirement obligates transit agencies to ensure that individuals with disabilities also have access to adequate information, including schedules, routes, fares, service rules, and temporary changes. This broad crosscutting requirement applies to all modes. Parts 37, 38, and 39 each contain additional requirements related to information, which are covered elsewhere in this Circular.[7]

Providing information to individuals with sensory, and sometimes mobility and cognitive, disabilities can include the following:

- Providing written information in accessible formats
- Ensuring electronically published materials (e.g., websites) are accessible
- Ensuring alternatives to audio communications are available

2.8.1 Accessible Formats

For individuals who are blind or have low vision, accessible formats include, for example, large print, braille, audiotape, and electronic files usable with text-to-speech technology (also known as screen reader technology). As discussed in Appendix D to § 37.125 on paratransit eligibility, information "does not necessarily need to be made in the format a requester prefers, but it does have to be made available in a format the person can use. There is no use giving a computer disk to someone who does not have a computer, for instance, or a braille document to a person who does not read braille."

FTA views this Appendix D discussion similarly to other requests for written information in accessible formats. In other words, if an individual requests schedule information on audiotape but can use electronic files (e.g., text files that can be rendered as speech, braille, or large print) with the same information, providing the information in electronic format is acceptable. Or a rider with a visual disability may need route and schedule information for bus service and request that information in audio format. Asking the rider which routes he or she will be using and creating audio files for only those routes rather than creating audio files for the entire set of bus routes is also acceptable if it meets the rider's needs. FTA encourages agencies to work with individuals who request information to determine the most appropriate alternative formats.

In addition to this general requirement in § 37.167(f) for accessible formats, § 37.125(b) contains specific format requirements for complementary paratransit materials. (See Circular Section 9.10.1.)

2.8.2 Accessible Websites

Transit agency websites are a primary source of information for riders. Having a fully accessible website is one of the best ways to ensure the adequate information required under § 37.167(f) is available to all riders. Website accessibility also reduces the need for an agency to provide alternate formats on a case-by-case basis. While the DOT ADA regulations do not set standards for website accessibility, FTA suggests that agencies review DOJ guidance, "Accessibility of State and Local Government Websites to People with Disabilities," which also notes general related obligations under the Rehabilitation Act of 1973 (Section 504). For technical guidance on making websites accessible, see the Access Board's Section 508 Standards for Electronic and Information Technology, which apply to the Federal government and address access to websites and other electronic information by people with physical,

[7] For example, at rail stations and other passenger facilities, there are signage requirements to indicate accessible routes, accessible entrances, and means of egress, as discussed in Circular Chapter 3. Requirements for announcing stops and identifying routes on fixed route are discussed in Circular Chapter 6.

sensory, or cognitive disabilities. Other helpful information may be found in the Web Content Accessibility Guidelines.

2.8.3 Alternatives to Audio Communications

For individuals who are deaf or hard of hearing, or who have speech impairments, providing accessible information includes offering alternatives to voice telephone communications, such as using (and having appropriate personnel trained to use) the national "711" relay service or other relay services available through states or telecommunications companies. It can also include using dedicated equipment such as telecommunications devices for the deaf (TDDs) or other advanced technologies people with speech or hearing disabilities use. Where telephone communications are a critical part of using transit services (e.g., customer service and information services, or on-call demand responsive or complementary paratransit services), FTA encourages agencies to obtain equipment that makes direct communication possible in addition to having relay services available. As new technologies become available, FTA also encourages agencies to use a variety of these options to accommodate riders with different abilities and personal equipment. For example, as more people adopt new technologies, it remains important to continue to advertise relay service numbers for riders who do not have or cannot use the latest technologies.

Whichever technologies transit agencies use, the training requirements at § 37.173 obligate them to ensure employees using the technology "are trained to proficiency, as appropriate to their duties," to operate it. (See Circular Section 2.9.) For TDDs, if used, this means providing proper training to those assigned responsibility for their use, including having familiarity with the particular terminology and shorthand that such device users typically employ. This also means having at least one trained staff person available to make and receive TDD calls during the hours in which the telephone lines are open.

When using public transportation, riders who are deaf or hard of hearing also rely on visual information. The ADA Standards for Transportation Facilities (discussed in Circular Chapter 3) state, "Where public address systems convey audible information to the public, the same or equivalent information shall be provided in a visual format." (See DOT Standards Section 810.7.)

2.9 Personnel Training

Requirement

"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" (§ 37.173).

Discussion

Appendix D to § 37.173 notes the importance of training, stating, "A well-trained workforce is essential in ensuring that the accessibility-related equipment and accommodations required by the ADA actually result in the delivery of good transportation service to individuals with disabilities." At the same time, the Appendix highlights the importance of local flexibility, stating, "Each transportation provider is to design a training program which suits the needs of its particular operation."

Training to proficiency means that, once trained, personnel can consistently and reliably operate accessibility features, provide appropriate assistance to individuals with disabilities, and treat riders in a respectful and courteous way.

Rider comments and complaints can be the ultimate tests of proficiency; comments that reveal issues with the provision of service may serve as good indicators that employees are not trained proficiently.

2.9.1 Types of Training

A transit agency must provide training that is appropriate to the duties of each employee. The training must also address both technical tasks and human relations. As Appendix D to § 37.173 explains,

> A paratransit dispatcher probably must know how to use a TDD and enough about various disabilities to know what sort of vehicle to dispatch. A bus driver must know how to operate lifts and securement devices properly. A mechanic who works on lifts must know how to maintain them. Cross-training, while useful in some instances, is not required, so long as each employee is trained to proficiency in what he or she does with respect to service to individuals with disabilities.

The following are examples of personnel training topics that are appropriate to different duties and responsibilities:

- Drivers – Properly operating all accessibility equipment and features; providing appropriate assistance to individuals with disabilities with boarding, alighting, and securement; communicating effectively with individuals with different types of disabilities; making stop announcements and route identification announcements; and positioning the bus so that the lift or ramp can be deployed and used.
- Vehicle mechanics – Maintaining all accessibility equipment on vehicles and keeping maintenance and repair records.
- Customer service agents, designated employees for responding to complaints, and call-takers – Communicating effectively with individuals with different types of disabilities; explaining the complaint-resolution process; and providing service information (e.g., routes, schedules, and fares) with special attention to the needs of individuals with disabilities.
- Vehicle dispatchers – Understanding all operating policies and procedures to effectively and properly assign and route vehicles, assisting drivers on issues that arise pertaining to accessible service, and communicating effectively with individuals with different types of disabilities.
- Managers and supervisors – Understanding all operating policies and procedures and supervising employees to ensure they provide proper and consistent levels of service to individuals with disabilities.

While cross-training is not required, an optional good practice is to train all employees in the agency's basic accessibility policies and procedures adopted in accordance with the Part 37 requirements.

2.9.2 Other Considerations

Involving Individuals with Disabilities

As Appendix D to § 37.173 notes, "One of the best sources of information on how best to train personnel to interact appropriately with individuals with disabilities is the disability community itself." FTA encourages transit agencies to collaborate with local disability organizations for assistance with employee training. Involving individuals with disabilities in agency training programs helps to demonstrate appropriate types of assistance and provides a forum for discussion of what does and does not work in practice.

Refresher Training

The DOT ADA regulations do not specify how often personnel must receive training. Appendix D to § 37.173 states:

> While there is no specific requirement for recurrent or refresher training, there is an obligation to ensure that, at any given time, employees are trained to proficiency. An employee who has forgotten what he was told in past training sessions, so that he or she does not know what needs to be done to serve individuals with disabilities, does not meet the standard of being trained to proficiency.

In addition to the initial job training, FTA recommends that agencies provide regular refresher training for all appropriate employees to ensure the requirements of § 37.173 are being met. Such training typically focuses on any recently raised issues from riders or employees, along with any new agency policies and procedures. Drivers and maintenance staff, in particular, benefit from refresher training after an agency procures new vehicles with different accessibility features (e.g., a switch from lift-equipped to low-floor, ramp-equipped buses). Effective refresher-training programs are not presented as punitive (i.e., solely in response to poor performance) but help to reinforce the agency's mission of serving the travel needs of all riders. When an agency's monitoring of service reveals specific issues, an optional good practice is to provide targeted refresher training to address such issues.

2.10 Reasonable Modification of Policy

2.10.1 Background

Requirement

"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" (§ 37.5(i)(3)).

Discussion

In 2015, DOT amended its ADA regulations by issuing the final rule on Reasonable Modification of Policies and Practices.[8] As stated in the final rule's preamble, reasonable modification means that "the nature of an individual's disability cannot preclude a public transportation entity from providing full access to the entity's service unless some exception applies."

Reasonable modification is often best illustrated with examples. Consider a transit agency with a policy of only stopping buses at designated bus stops. As explained in the preamble, this policy would be modified for "an individual using a wheelchair who needs to access the bus even though sidewalk construction or snow prevents the individual from boarding the bus from the bus stop." In this case, "the operator of the bus will need to slightly adjust the boarding location so that the individual using a wheelchair may board from an accessible location." Appendix E to Part 37 contains 27 scenarios and provides guidance as to whether a particular passenger request should be granted or denied consistent with the final rule.

[8] DOT Final Rule, "Transportation for Individuals With Disabilities; Reasonable Modification of Policies and Practices"; F*ederal Register*, vol. 80, no. 49 (80 FR 13253, Mar. 13, 2015).

As part of the final rule, § 37.169 was added to Part 37. As stated in the preamble, "[§ 37.169 covers] the reasonable modification obligations of public entities providing designated public transportation, including fixed route, demand-responsive, and complementary paratransit service. The key requirement of [§ 37.169] is that these types of transportation entities implement their own processes for making decisions on and providing reasonable modifications to their policies and practices."

2.10.2 Responding to Reasonable Modification Requests

Requirement

"(1) A public entity providing designated public transportation, in meeting the reasonable modification requirement of § 37.5(i)(3) with respect to its fixed route, demand responsive, and complementary paratransit services, shall respond to requests for reasonable modification to policies and practices consistent with this section.

(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.

(3) This process shall be in operation no later than July 13, 2015" (§ 37.169(a)).

"The process shall provide a means, accessible to and usable by individuals with disabilities, to request a modification in the entity's policies and practices applicable to its transportation services.

(1) Individuals requesting modifications shall describe what they need in order to use the service.

(2) Individuals requesting modifications are not required to use the term 'reasonable modification' when making a request.

(3) Whenever feasible, requests for modifications shall be made and determined in advance, before the transportation provider is expected to provide the modified service, for example, during the paratransit eligibility process, through customer service inquiries, or through the entity's complaint process.

(4) Where a request for modification cannot practicably be made and determined in advance (*e.g.*, because of a condition or barrier at the destination of a paratransit or fixed route trip of which the individual with a disability was unaware until arriving), operating personnel of the entity shall make a determination of whether the modification should be provided at the time of the request. Operating personnel may consult with the entity's management before making a determination to grant or deny the request" (§ 37.169(b)).

Discussion

Section 37.169(a)(1) requires transit agencies to respond to requests for reasonable modification of policies and practices, and § 37.169(a)(2) requires agencies to make information about the process for requesting reasonable modifications readily available to the public. When making this information available to the public, a transit agency must use the same means it uses to inform the general public about its policies and procedures. For example, if an agency uses printed media and a website to inform customers about bus and complementary paratransit services, then it must use these means to inform people about the reasonable modification process. As stated in the preamble, "like all communications, this information must be provided by means accessible to individuals with disabilities."

Section 37.169(b) requires transit agencies to provide an accessible means by which individuals with disabilities can request a reasonable modification. Section 37.169(b)(1)–(2) explains that individuals requesting modifications only need to describe what they need in order to use the service and do not need to use the term "reasonable modification" to validly request such a modification.

Section 37.169(b)(3) encourages individuals requiring a reasonable modification to make their requests, and that the agency make the necessary determinations, in advance of the need for the modified service, whenever feasible. This is particularly appropriate where a permanent or long-term condition or barrier is the basis for the request (e.g., difficulty in access to a complementary paratransit vehicle from the passenger's residence, the need to occasionally eat a snack on a rail car to maintain a diabetic's blood sugar levels, or lack of an accessible path of travel to a designated bus stop due to sidewalk or road construction, resulting in a request to have the bus stop a short distance from the bus stop location).

The rule does not require that agencies establish a separate process for handling reasonable modification requests; procedures already in place may suffice. As stated in the preamble, "In many cases, agencies are handling requests for modifications during the paratransit eligibility process, customer service inquiries, and through the long-existing requirement in the Department's Section 504 rule for a complaint process. Entities will need to review existing procedures and conform them to the new rule as needed."

Section § 37.169(b)(4) makes provisions for situations in which an advance request and determination are not feasible. In those situations, operating personnel are to make the determination of whether the modification should be provided at the time of the request. These situations are sometimes more difficult to handle than advance requests, but responding to them is necessary.

2.10.3 Exceptions to Granting Reasonable Modification Requests

Requirement

"Requests for modification of a public entity's policies and practices may be denied only on one or more of the following grounds:

(1) Granting the request would fundamentally alter the nature of the entity's services, programs, or activities;

(2) Granting the request would create a direct threat to the health or safety of others;

(3) Without the requested modification, the individual with a disability is able to fully use the entity's services, programs, or activities for their intended purpose" (§ 37.169(c)).

"In determining whether to grant a requested modification, public entities shall be guided by the provisions of Appendix E to this part" (§ 37.169(d)).

"In any case in which a public entity denies a request for a reasonable modification, the entity shall take, to the maximum extent possible, any other actions (that would not result in a direct threat or fundamental alteration) to ensure that the individual with a disability receives the services or benefit provided by the entity" (§ 37.169(e)).

Part 27, which is applicable only to agencies that receive Federal funding, states:

"*Reasonable accommodations*. A recipient shall make reasonable accommodations in policies, practices, or procedures when such accommodations are necessary to avoid discrimination on the basis of disability unless the recipient can demonstrate that making the accommodations would fundamentally alter the nature of the service, program, or activity or result in an undue financial and administrative burden. For the purposes of this section, the term reasonable accommodation shall be interpreted in a manner consistent with the term 'reasonable modifications' as set forth in the Americans with Disabilities Act Title II regulations at 28 CFR 35.130(b)(7), and not as it is defined or interpreted for the purposes of employment discrimination under Title I of the ADA (42 U.S.C. 12111–12112) and its implementing regulations at 29 CFR Part 1630" (§ 27.7(e)).

Discussion

Section 37.169(c) states three grounds on which a transportation provider may deny a requested modification, which apply to both advance requests and on-the-spot requests. Section 27.7(e) adds a fourth exception involving undue financial and administrative burden. The grounds are:

- Granting the request for a modification would *fundamentally alter* the provider's services (e.g., a request for a dedicated vehicle in paratransit service, a request for a fixed route bus to deviate from its normal route to pick up someone) (§ 37.169(c)(1)).
- Granting the request for a modification would *create a direct threat* to the health or safety of others (e.g., a request that would require a driver to engage in a highly hazardous activity in order to assist a passenger, such as having to park a vehicle for a prolonged period of time in a no parking zone on a high-speed, high-volume highway that would expose the vehicle to a heightened probability of being involved in a crash) (§ 37.169(c)(2)).
- The requested modification *would not be necessary* to allow the passenger to fully use the entity's services, programs, or activities for their intended purpose (e.g., the modification might make transportation more convenient for the passenger, who could nevertheless use the service successfully to get where he or she is going without the modification) (§ 37.169(c)(3)).
- For FTA recipients, a request may also be denied if it would *create an undue financial or administrative burden* (§ 27.7(e)).

Appendix E to Part 37 provides additional examples of requested modifications that transportation providers usually would not be required to grant for one or more of the above-stated reasons.

Section 37.169(e) requires a transportation provider that has a sound basis for denying a reasonable modification request under the above-stated grounds to do what it can to enable the requester to receive the services and benefits it provides (e.g., a different work-around to avoid an obstacle to transportation from the one requested by the passenger).

2.11 Written Policies and Procedures

FTA encourages transit agencies to implement and update written policies and procedures for operations in accordance with the various parts of the regulations. This includes, for example, written policies and procedures consistent with the Part 37 Subpart A general nondiscrimination requirements and the Part 37 Subpart G provision of service requirements.

Written policies and procedures help ensure consistency in operations. They also help employees make objective (i.e., not arbitrary) decisions, which can help avoid unintentional discrimination. As noted above, training employees to proficiency in proper implementation of formal operating policies and procedures is paramount.

FTA also encourages transit agencies to involve individuals with disabilities in developing appropriate policies and procedures for meeting regulatory requirements.

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Chapter 3 – Transportation Facilities

3.1 Introduction

This chapter explains the U.S. Department of Transportation (DOT) Americans with Disabilities Act (ADA) requirements for transportation facilities with particular emphasis on the requirements for new construction and alterations. It also highlights common issues that FTA has identified in oversight reviews. As defined in 49 CFR § 37.3, a facility is "all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located."

This Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves or replace the need for readers to reference the detailed information in the regulations. FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.

3.1.1 ADAAG and DOT Standards for Facilities

Requirement

"For purposes of [Part 37], a transportation facility shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of [Part 37] 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 [Part 37]" (§ 37.9(a)).

"Facility alterations begun before January 26, 1992, in a good faith effort to make a facility accessible to individuals with disabilities may be used to meet the key station requirements set forth in §§ 37.47 and 37.51 of [Part 37], even if these alterations are not consistent with the requirements set forth in Appendices B and D to 36 CFR Part 1191 and Appendix A to [Part 37], if the modifications complied with the Uniform Federal Accessibility Standards (UFAS) or ANSI A117.1 (1980) (American National Standards Specification for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped). This paragraph applies only to alterations of individual elements and spaces and only to the extent that provisions covering those elements or spaces are contained in UFAS or ANSI A117.1, as applicable" (§ 37.9(b)).

"(1) New construction or alterations of buildings or facilities on which construction has begun, or all approvals for final design have been received, before November 29, 2006, are not required to be consistent with the requirements set forth in Appendices B and D to 36 CFR Part 1191 and Appendix A to [Part 37], if the construction or alterations comply with the former Appendix A to [Part 37], as codified in the October 1, 2006, edition of the Code of Federal Regulations.

(2) Existing buildings and facilities that are not altered after November 29, 2006, and which comply with the former Appendix A to [Part 37], are not required to be retrofitted to comply with the requirements set forth in Appendices B and D to 36 CFR Part 1191 and Appendix A to [Part 37]" (§ 37.9(c)).[1]

[1] See Circular Chapter 5 for a discussion of § 37.9(d) (equivalent facilitation) related to transportation facilities.

Discussion

Under the ADA, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for creating design guidelines for the accessibility of facilities and vehicles subject to ADA requirements. These guidelines form the basis for enforceable standards incorporated by other Federal agencies, including DOT, into their ADA regulations.

The Access Board issued its original ADA Accessibility Guidelines (ADAAG) in 1991 and, on the same day, DOT met its obligation to implement the ADA regulations through verbatim incorporation of ADAAG in Appendix A to Part 37. In 2004, the Access Board issued a major revision to ADAAG after an extensive notice and comment period.[2] In addition, the Access Board issued technical amendments to the revised guidelines.

In 2006, DOT issued a final rule adopting the Access Board's 2004 revisions and subsequent technical amendments to ADAAG into Part 37 as standards. DOT made four additions or modifications to the Access Board's version:

- Location of accessible routes (Section 206.3) – DOT retained an existing requirement that important elements of transportation facilities (ramps, elevators, or other circulation devices; fare vending or other ticketing areas; and fare collection areas) be located to minimize the distance that individuals with disabilities must travel to use them. This strengthens the concept that accessible routes coincide with or be located in the same general area as general circulation paths. This includes, for example, not locating elevators at the opposite end of a platform from stairways that provide a shorter route to the boarding areas.
- Detectable warning on curb ramps (Section 406.8) – DOT retained the requirement for detectable warnings on curb ramps.
- Bus boarding and alighting areas (Section 810.2.2) – This section retained an existing provision that the requirements for bus boarding and alighting areas apply "to the extent that construction specifications are within [the] control" of public entities; compliance is required to the greatest extent feasible.
- Rail station platforms (Section 810.5.3) – This section requires low-level platforms to be constructed at 8 inches above top of rail unless vehicles are boarded from sidewalks or at street level.

The requirements located in Appendix B and Appendix D to 36 CFR Part 1191[3] and in Appendix A to Part 37 are together henceforth referred to as the ADA Standards for Transportation Facilities (DOT Standards). The DOT Standards, which are different from the Department of Justice's 2010 standards, contain the requirements that apply to transportation facilities.[4]

Existing facilities built under and compliant with the original ADAAG do not have to be retrofitted to comply with the DOT Standards.[5] (See Circular Section 3.4.)

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[2] Because this revision also updated the standards under the Architectural Barriers Act of 1968, the new guidelines are technically known as the "ADA-ABA AG" or the "updated ADAAG."

[3] Appendices B and D to 36 CFR Part 1191 constitute the ADA-ABA Accessibility Guidelines issued by the Access Board, upon which the DOT Standards are based.

[4] See FTA's "Requirements to Remember for ADA Compliance in Construction Projects" for an overview of the applicability of the DOT Standards and regulations relevant to new construction and alterations.

[5] DOT crafted language in § 37.9(c)(1) to address projects, either new construction or alteration of an existing facility, underway in 2006. For projects already in progress (i.e., actual construction had already begun or the final design had received all necessary approvals) before November 29, 2006, original ADAAG applies.

3.1.2 Transit Agency Jurisdiction

Part 37 Subpart C obligates public entities to follow the DOT Standards when constructing new transportation facilities and when altering existing ones. Subpart C also obligates these entities to operate their transportation facilities in a manner that, when viewed in their entirety, are accessible to and usable by individuals with disabilities.

Transit facilities constructed or controlled by one entity often are used by others, or connect to transit facilities or services operated by another entity. For example, a bus transfer center may be constructed by a municipality for use by the operator of the bus system, with a connection to a commuter rail station beneath. In such cases, entities are encouraged to coordinate closely with each other, especially during the design and construction or alteration of transportation facilities, to ensure accessibility to the maximum extent possible.

Coordination with Other Entities

Despite these jurisdictional challenges, when transit agencies undertake construction or alteration projects involving their own facilities, FTA encourages them to engage with other entities that control facility elements individuals with disabilities use or would use to access the transportation facility. It is to the transit agency's advantage to document such coordination efforts, in the event that questions arise as to which party is responsible for what elements.

The goal of such coordination efforts is to make sure that all entities involved with a transportation facility are working together to make the facility accessible. Construction projects often provide an opportunity that transit agencies can use to address accessibility issues by encouraging entities controlling adjacent facilities to participate in the project. This might include advising a municipality that controls sidewalks adjacent to a new rail station of identified barriers such as missing or noncompliant curb ramps. Where coordination cannot be obtained, transit agencies are encouraged to contact the FTA Office of Civil Rights. In these situations, FTA may be able to facilitate coordination in consultation with the Federal Railroad Administration (FRA), Federal Highway Administration (FHWA), or other counterparts.

Shared Intercity (Amtrak) and Commuter Rail Stations

Appendix D to § 37.49 explains coordination requirements for shared Amtrak and commuter rail stations:

> [Section 37.49] sets forth a mechanism for determining who bears the legal and financial responsibility for accessibility modifications to a commuter and/or intercity rail station. The final provision of the section is the most important. It authorizes all concerned parties to come to their own agreement concerning the allocation of responsibility. Such an agreement can allocate responsibility in any way acceptable to the parties. [DOT] strongly encourages parties to come to such an agreement.

Importantly, in the absence of such an agreement, the statute and regulations allocate responsibility. Section 37.49(b) provides that if a public entity (such as a public transit system) owns more than 50 percent of a rail facility that is used by both commuter and intercity rail, then the public entity is responsible for making it accessible. If, however, a private entity owns more than 50 percent of such a rail facility, Amtrak and the operator of commuter rail share responsibility for making it accessible. (See § 37.49(c).)

As discussed in Circular Chapter 1, private transportation providers' services are under Department of Justice (DOJ) jurisdiction, and Amtrak's services are under Federal Railroad Administration (FRA) and DOJ jurisdiction. Consistent with FRA policy, construction of new facilities or modifications to existing facilities owned by or shared with Amtrak require review and approval by FTA and FRA. Transit

agencies constructing new commuter rail stations or making alterations to existing commuter rail stations are encouraged to coordinate their efforts with FTA and FRA early in the planning process.

3.1.3 Bus Stops

Section 810.2 of the DOT Standards applies to construction, alteration, or relocation of bus stops. This means, where practicable, siting bus stops at locations that will permit construction of a boarding and alighting area that complies with Section 810.2, which covers elements such as surface, dimensions, connections, and slope. Section 810.2 also requires:

- New, altered, or relocated bus stops must have a firm, stable surface and must provide a clear length of 96 inches (2,440 mm), measured perpendicular to the curb or vehicle roadway edge, and a clear width of 60 inches (1,525 mm), measured parallel to the vehicle roadway.
- Bus stops must also connect via an accessible route to streets, sidewalks, or pedestrian paths.
- The slope of the bus boarding and alighting area in the direction parallel to the roadway must be the same as that of the roadway to the maximum extent practicable. Perpendicular to the roadway, the slope must not exceed 1:48, that is, not more than 1 inch of rise over a horizontal distance of 48 inches.

As noted above, these requirements apply to the extent that construction specifications are within the control of public entities; compliance is required to the maximum extent practicable. If a transit agency does not own the right-of-way, but another public entity does own it, FTA encourages the transit agency to work with the public entity to come to an arrangement where a bus boarding and alighting area that complies with Section 810.2 to the maximum extent practicable is provided.

Section 209.2.3 of the DOT Standards provides that bus stops located on streets without sidewalks are subject to the same Section 810.2 requirements to the maximum extent practicable. In these cases, this means constructing or locating bus stops with connections via an accessible route to the public right-of-way; if the only public right-of-way is a roadway, this means providing connections to the roadway.

Providing Accessible Routes to Bus Stops

While sidewalks and other features of pedestrian rights-of-way are often outside a transit agency's jurisdiction, an accessible pathway to a bus stop is nevertheless an essential element of overall accessible fixed route service. A lift-equipped bus or a bus stop with a level pad of the proper dimensions serves little value to an individual with a disability if the individual cannot reach the bus stop (to board a bus) or cannot travel beyond the bus stop (after alighting from a bus). An individual with a disability who could otherwise ride an accessible bus but cannot reach the bus stop due to the lack of an accessible route would be eligible for complementary paratransit, at least on a conditional basis. (See Circular Section 9.2.) FTA encourages transit agencies to inventory the location of their bus stops in relation to accessible pedestrian routes, and coordinate with owners of public rights-of-way (e.g., local municipalities) to help ensure connections to stops are as accessible as possible.

Bus Shelters

Transit agencies usually have control over bus shelters. Section 810.3 of the DOT Standards specifies that the minimum clear floor or ground space (as set forth in Section 305) must be entirely within the shelter to accommodate individuals using wheelchairs and must be connected to an accessible route that complies with Section 402 to the boarding and alighting area.

3.1.4 BRT Facilities

Bus facilities such as transfer stations and bus rapid transit (BRT) stations often employ "platforms" from which passengers board. Such "platforms" are subject to the requirements for bus stop boarding and

alighting areas in Section 810.2 of the DOT Standards. Where a facility provides multiple "platforms," each must comply with these requirements.

3.2 Common Issues in Applying the DOT Standards

The DOT Standards contain extensive requirements for scoping, access, parking, passenger and bus loading, path of travel to and within facilities, signage and communication, telephones and fare vending, and emergency egress and places of refuge. Part 37 Subpart C requires transit agencies to follow the DOT Standards when embarking upon any new construction or alteration projects. While the DOT Standards cover many topics, to help guide agencies in complying with the DOT Standards, this section presents information on the following commonly misapplied or misinterpreted elements of the DOT Standards:

- Number and location of accessible station parking spaces
- Access aisles for passenger loading zones
- Curb ramps
- Track crossings
- Station platforms

3.2.1 Common Issues with Station Parking

Two common errors with respect to meeting station parking requirements are related to the number of accessible parking spaces and the proper location when more than one parking facility serves a station. Figure 3-1 illustrates both of these issues.

Number of Accessible Spaces

Correctly computing the number of accessible parking spaces can be challenging. Section 208.2 of the DOT Standards requires the use of Table 208.2 to calculate the number of accessible spaces for a station parking facility. If multiple parking facilities serve a station, public entities are required to separately calculate the requirements for each parking facility. As illustrated in Figure 3-1, two parking lots and one parking garage together provide 2,295 spaces for a hypothetical station. To calculate the number of accessible spaces required, the table must be applied to each lot and the parking garage, and then the numbers of accessible spaces required for each are added together. Using Table 208.2, five accessible spaces are required for Lot 1, 11 accessible spaces are required for Lot 2, and 27 accessible spaces are required for the garage, for a total of 43 accessible spaces. If the accessible space requirements were computed based on the total parking supply (2,295 spaces), it would incorrectly yield 33 accessible parking spaces, 10 fewer spaces than required.

Location of Accessible Spaces

Another challenge is ensuring accessible spaces are in the proper location. Section 208.2 of the DOT Standards requires accessible parking spaces to be located on the shortest route to one or more accessible station entrances. Generally, if parking is located near more than one accessible station entrance, this means allocating accessible spaces to each accessible entrance. Section 206.3 of the DOT Standards requires the accessible route to coincide with or be located in the same area as general circulation paths. In Figure 3-1, for example, better accessibility might result from locating the accessible parking for Lot 1 and the parking garage together in the parking garage, as it is located closer to the upper-level accessible platform entrance and under cover for weather, while locating the accessible spaces for Lot 2 within Lot 2 due to roadway access patterns.

In stations with multiple accessible entrances, an optional good practice is to consult riders with disabilities on where best to locate accessible parking, taking into account roadway access patterns, local climate, signage needs, and ease of circulation within parking facilities.

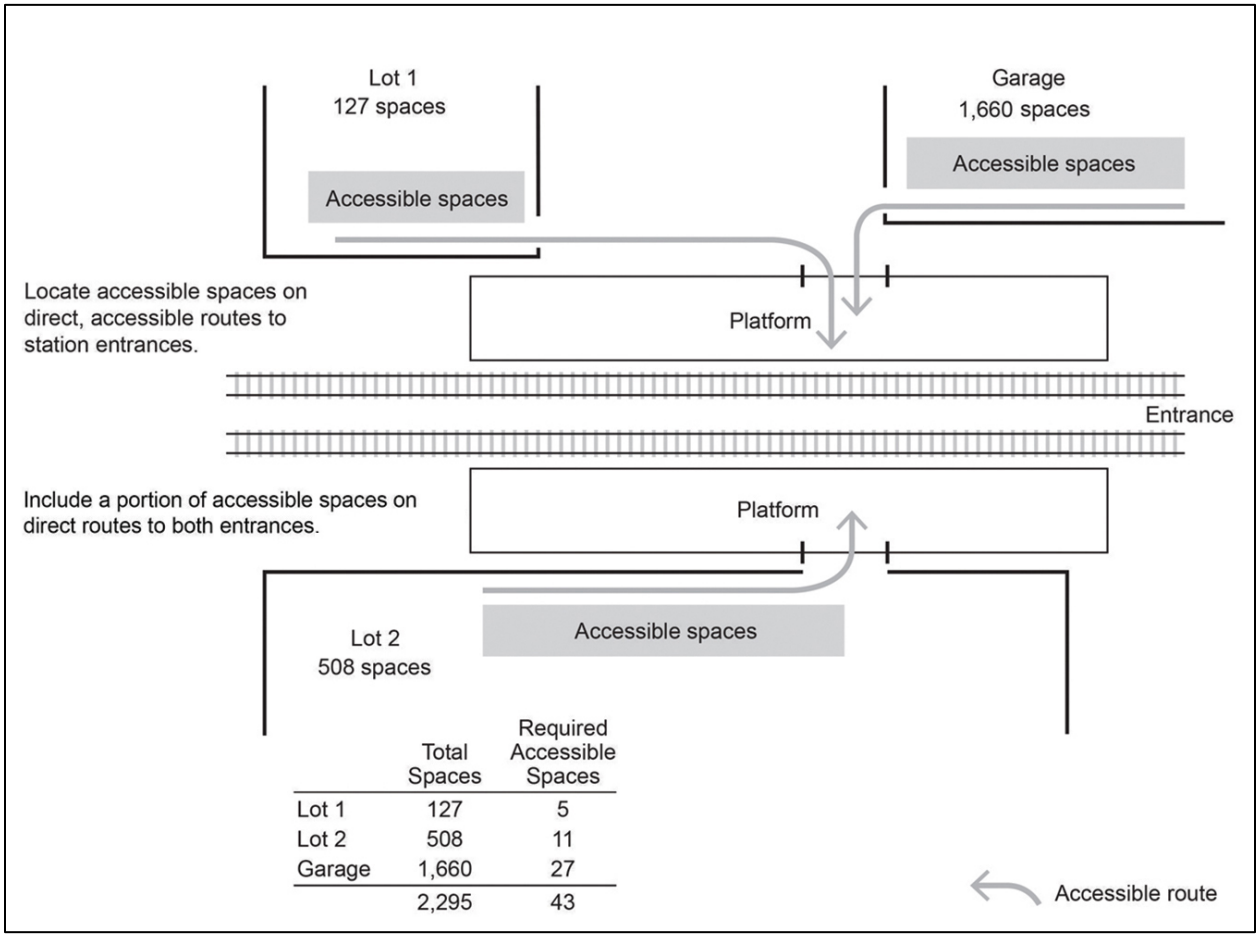


Figure 3-1 – Location and Number of Accessible Parking Spaces

3.2.2 Common Issues with Passenger Loading Zones

At stations with designated passenger loading zones, these zones require at least one passenger loading zone complying with DOT Standards Section 503 in every continuous 100 linear feet (30 m) of loading zone space, or fraction thereof. An exception applies for passenger loading zones required to comply with Section 209.2.2 (Bus Loading Zones) and Section 209.2.3 (On-Street Bus Stops). A common mistake is to simply designate a portion of curb as accessible without providing the required clearly marked 60-inch wide access aisle at the same level as the vehicle pull-up space. The DOT Standards do not permit changes in level between the access aisle and the vertical pull-up space, and they require the access aisle to be the full length of the vehicle pull-up space and on an accessible route to the facility entrance. (See Section 503.4.) (See Figure 3-2.)

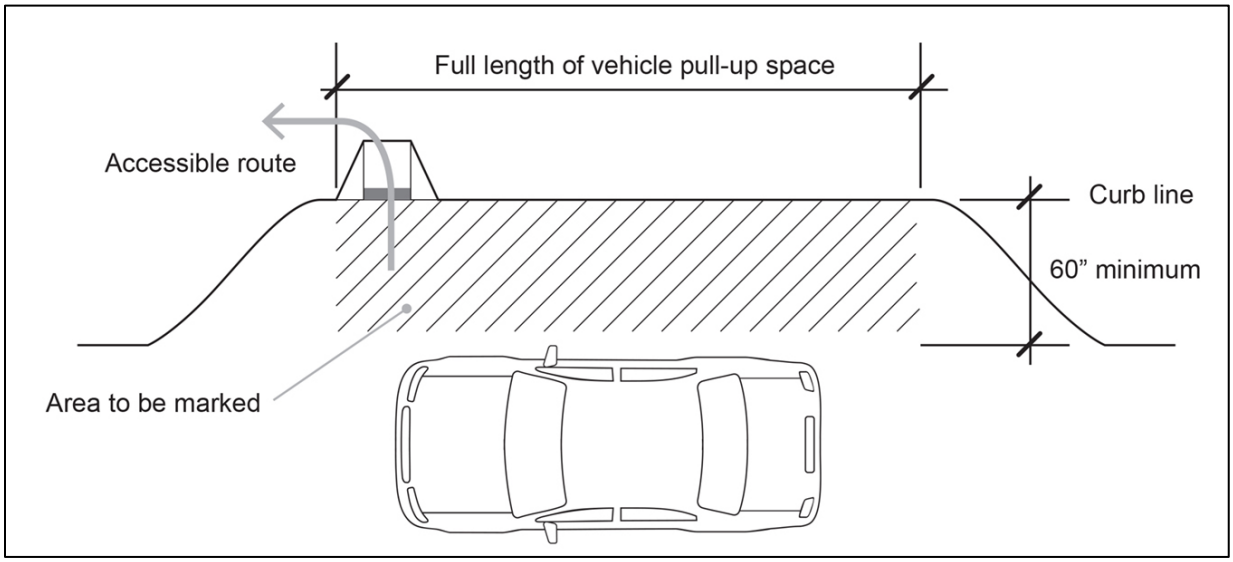


Figure 3-2 – Required Dimensions for Passenger Loading Zones and Access Aisle

3.2.3 Common Issues with Curb Ramps

The DOT Standards contain detailed requirements for curb ramps in Section 406. Many issues with curb ramps result from construction practices that do not adhere to design specifications, particularly landings that are not level because of field conditions. Additional common deficiencies include top landings that are too small, ramps that are too steep, and counter slopes that are too steep. For example, if a counter slope to a curb ramp exceeds 5 percent (i.e., steeper than 1:20), this can cause a wheelchair to tip forward or flip over backwards. Other deficiencies commonly seen are vertical changes in level at the transition between the bottom of curb ramps and the roadway.

Another common deficiency is missing detectable warnings required by Section 406.8. Section 705 requires detectable warnings to be 24 inches deep measured from the back of the curb, to extend the full width of the curb ramp, to visually contrast with adjacent surfaces (either light-on-dark or dark-on-light), and to have a pattern of truncated domes that conform to Section 705 specifications.[6] Figure 3-3 illustrates the requirements for curb ramps as well as these common deficiencies.

Careful monitoring during construction is important to ensure compliance. An optional good practice is to include provisions in construction documents specifying the Section 406 requirements (including detectable warnings) rather than simply directing contractors to construct ADA-compliant curb ramps.

[6] For additional guidance on curb ramps, see FHWA’s ADA/Section 504 website, which includes documents such as “Designing Sidewalks and Trails for Access.”

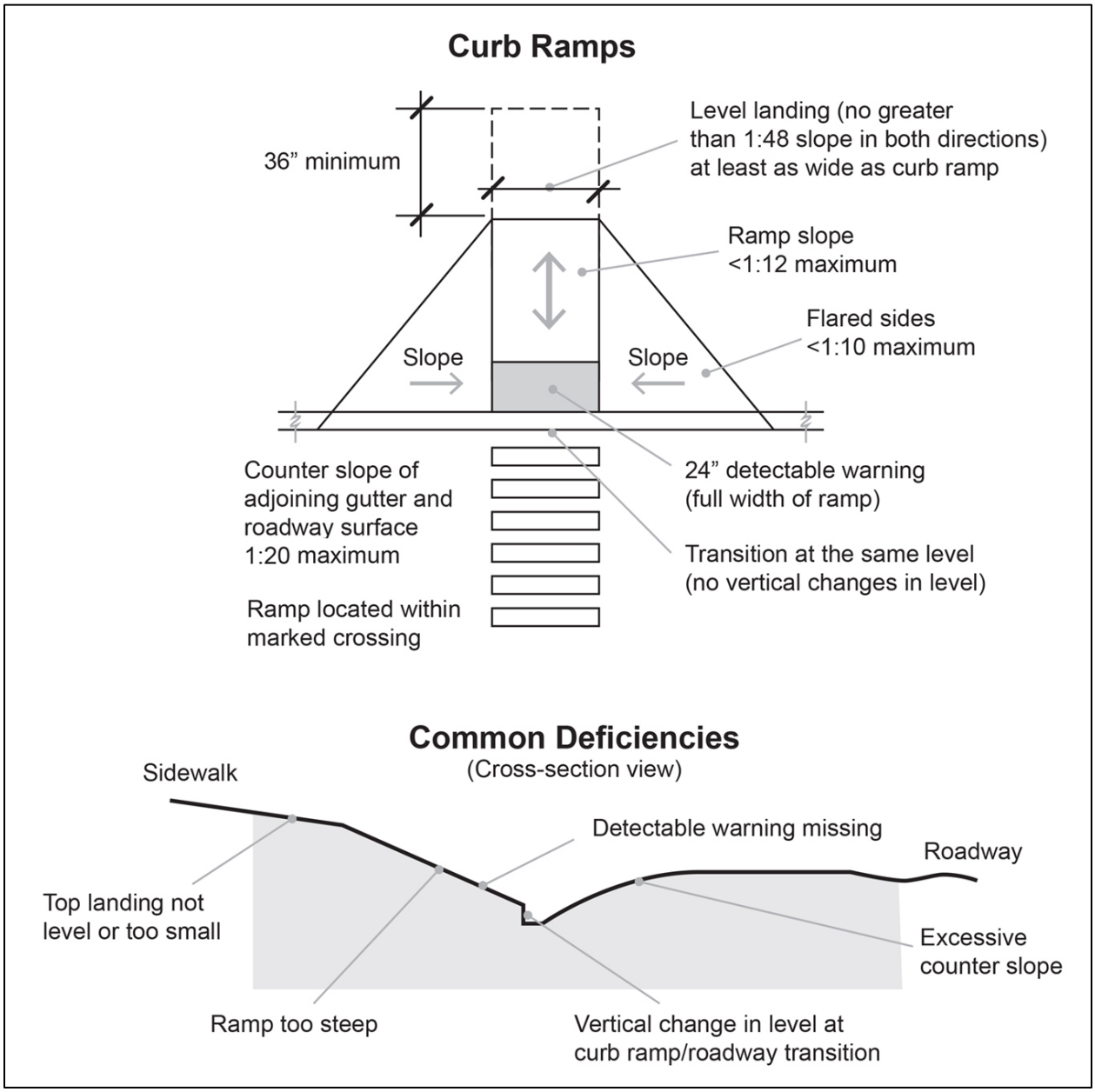


Figure 3-3 – Curb Ramp Requirements and Common Deficiencies

3.2.4 Common Issues with Track Crossings

The DOT Standards contain detailed requirements for track crossings in Section 810.10. At rail stations where an accessible route to boarding platforms crosses tracks, the DOT Standards require the route to meet the Section 402 accessible route requirements, with an exception that openings for wheel flanges are permitted to be a maximum of 2.5 inches wide. As part of an accessible route, the track crossing cannot have level changes greater than 1/4 inch vertical plus 1/4 inch if beveled at a 1:2 angle. (See Section 303.) Thus, if the top of rail has beveled edges, it can extend up to 1/2 inch above the surface on either side of the flange gap, but the least possible level change is preferable. (See Figure 3-4.)

A common issue occurs when flangeway gaps exceed 2.5 inches. This can cause mobility devices to become caught or stopped within a track crossing, which is a critical safety consideration. In Part 37,

§ 37.161 requires that accessibility features be maintained in operative condition, and this includes track crossings. (See Circular Section 2.3.2.) Track crossings require regular maintenance because bituminous concrete (asphalt) may form raised ridges at the tracks or concrete pads between the tracks may shift. In such instances where the requirement for a maximum 2.5-inch gap cannot be met or maintained, other means of crossing the track may need to be explored.

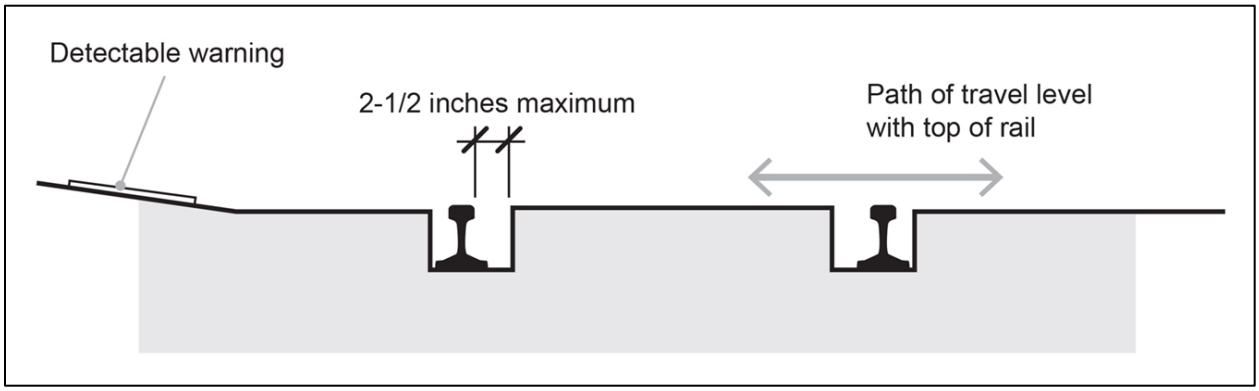


Figure 3-4 – Track Crossing Cross-Section

3.2.5 Common Issues with Station Platforms

The following discussion includes several common issues with station platforms:

- Detectable warnings
- Station name signage
- Directions to accessible means of egress

Detectable Warnings

Detectable warnings covered in Section 705 of the DOT Standards specify requirements for truncated domes, including size, spacing, and contrast, as well as the dimensional requirements along platform edges. Section 810.5.2 specifies requirements for platform boarding edges not protected by platform screens. A commonly misunderstood element of these requirements is that the orientation of the dome pattern is not part of the requirement; the detectable warnings are commonly aligned at 90 degrees to the platform edge but other orientations such as 45 degrees are also acceptable.

Station Name Signage

The DOT Standards contain detailed requirements for station name signs on platforms. The DOT Standards require signs to be visible so that riders can identify the station from within a train and know whether or not to get off the train. The DOT Standards require station names to be clearly visible and within the sight lines of standing and sitting riders from within the vehicle on both sides when not obstructed by another vehicle. (See Section 810.6.3.) The DOT Standards also require text on signs to be sized to be legible at the distance from which train riders will view it. (See Section 703.5.)

At stations with center platforms, a common issue is the lack of adequate station name signs opposite the platform. Signs must be clearly visible and within the slight lines of standing and sitting passengers from within the vehicle on both sides when not obstructed by another vehicle.

Directions to Accessible Means of Egress

The DOT Standards require signs for navigating stations. In stations where some, but not all means of egress from platforms are accessible, signs are required on station platforms to direct people to the

accessible means of egress. For example, in stations with stairs at one end of the platform and an accessible means of egress at the other end of the platform, clear directional signs are essential. (See Section 216.4.3.) Such signs are also required to direct people along the accessible path to areas of refuge. (See Section 216.4.2.)

Signage is also required to provide direction to accessible emergency exits and areas of refuge (fire-resistance rated and smoke-protected areas where those unable to use stairs can register a call for evacuation assistance and await instructions or assistance). (See Section 216.4.2.) The International Building Code (IBC), which is incorporated by reference into the DOT Standards, requires that signs providing directions to accessible means of egress be placed at elevators serving accessible spaces and those exits that do not provide an accessible means of egress. These signs must meet requirements for visual signs in the DOT Standards (see Sections 216.3 and 216.4.3), as must any other directional egress signs provided, including egress route maps.

Doors at exit stairways, exit passageways, and exit discharge must be identified by tactile signs that include both raised characters and braille and meet the specified visual criteria. (See Section 216.4.1.)

3.3 New Construction of Transportation Facilities

3.3.1 Overview

Requirement

"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" (§ 37.41(a)).

Discussion

For new facilities that public entities construct, this requirement obligates them to comply with the DOT Standards. In addition to new stations for use in public transit and intercity or commuter rail transportation, this requirement also applies to other types of facilities, such as bus boarding areas and intermodal centers. The DOT Standards contain detailed requirements for all elements of a facility. Attachment 3-1 contains an optional facilities checklist to facilitate the review of design and construction of new transportation facilities. This optional checklist is also helpful for reviewing elements of facility alterations. (See Circular Section 3.4.)

3.3.2 Structural Impracticability

Requirement

"(1) Full compliance with the requirements [for new construction] 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" (§ 37.41(b)).

Discussion

The regulations at § 37.41(b)(1) provide public entities a limited exception to the requirement that new facilities be readily accessible in rare circumstances where the agency can demonstrate that it is structurally impracticable to fully comply. These rare circumstances may occur when the unique characteristics of terrain prevent the incorporation of accessibility features. In its final rule adopting the DOT Standards, DOT noted that for new construction, the structural impracticability standard may not be applied to a situation in which a facility is simply located in "hilly" terrain or on a plot of land with steep grades. This means that a facility located at the top of a steep hill, for example, must be accessible.

If it is not possible to meet all of the DOT Standards in all parts of the facility due to demonstrated structural impracticability, this requirement still obligates public entities to meet the DOT Standards to the greatest extent possible for the portions where there are structural constraints, and to comply fully in the other portions of the facility that are not structurally constrained.

FTA encourages transit agencies constructing new stations or stops in steeply sloped environments to make every effort to find a location that affords the greatest accessibility practicable. Because FTA must determine compliance with the DOT ADA regulations for grant-making purposes, FTA requires grantees to submit for review documentation substantiating any claim that compliance with a particular DOT Standard in new construction is structurally impracticable. FTA requires such documentation to describe all aspects of siting and design and to demonstrate compliance with the DOT Standards to the maximum extent possible. FTA encourages grantees with questions about matters of structural impracticability to contact the FTA Office of Civil Rights.

3.4 Alteration of Transportation Facilities

Section 37.43(a) of DOT's ADA regulations addresses two distinct types of alterations. First, in paragraph (a)(1) the regulations require that, to the maximum extent feasible, an alteration that affects the usability of the facility must be made such that the altered portions of the facility are accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Second, in paragraph (a)(2), the regulations address those circumstances where an entity is undertaking an alteration to a primary function area of the facility (e.g., platforms or waiting areas), and the entity must therefore ensure that the path of travel to the altered area is readily accessible as well, subject to a disproportionate cost analysis.

This section describes the distinction between these two provisions and when each provision applies.

It is important to note that the requirements for alterations are in addition to and separate from the requirements for key stations under §§ 37.47, 37.51, and 37.53. The requirements for alterations apply to any station that is undergoing alterations, whether it had previously been designated as "key" or not.

3.4.1 Maximum Extent Feasible

Requirement

"As used in this section, the phrase to the maximum extent feasible applies to the occasional case where the nature of an existing facility makes it impossible to comply fully with applicable accessibility

standards through a planned alteration. In these circumstances, the entity shall provide the maximum physical accessibility feasible. Any altered features of the facility or portion of the facility that can be made accessible shall be made accessible. If providing accessibility to certain individuals with disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to individuals with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments)" (§ 37.43(b)).

Discussion

Because there are circumstances where facility alterations are extremely complex, both the DOT ADA regulations and the DOT Standards discuss and define the phrase "maximum extent feasible." This phrase within the meaning of Title II of the ADA and applicable regulations governing "alterations" of existing public transportation facilities refers to "technical infeasibility" rather than economic infeasibility.

The DOT Standards in Section 106.5 define "technically infeasible" as follows:

> With respect to an alteration of a building or a facility, something that has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements.

If an entity determines that it is not feasible to make an altered area accessible, including a determination that it is not technically feasible to install an elevator, the entity must document this infeasibility. As part of the grant-making process or in a compliance review, FTA may request the information below in order to determine compliance with the regulations. Therefore, to ensure the entity has a complete record to demonstrate infeasibility, FTA recommends the following elements be thoroughly discussed and analyzed in a narrative format:

- A detailed project scope, which includes, and is not limited to, the type of activity and work, the extent of such activity and work, associated costs, etc. The project scope discussion must cover the full cost and scope of the project.
- A discussion of any existing accessible elements within the altered area.
- A discussion of the steps taken during the planning and design phase to ensure that the altered area is made accessible to the maximum extent feasible. Provide supporting documentation as appropriate.
- A discussion of coordination with other stakeholders (e.g., municipality or private property owners), as appropriate. Discuss this element in the narrative, and provide supporting documentation as appropriate.
- A discussion of any potential real estate acquisition possibilities, either through easement, condemnation, eminent domain, or other legal tools at the entities' disposal.
- A discussion on the facility-specific conditions and any other controlling factors. (This includes presenting and analyzing how the factors impact the accessibility feasibility.)
- A step-by-step discussion on how the entity determined that the altered area could not be made accessible. This will include an analysis of alternatives considered, regardless of cost, for making the altered area accessible, and why those alternative approaches are also technically infeasible.
- Architectural drawing(s), photographs of the station, design plans, and neighborhood maps, as appropriate.

- In the case of an alteration that falls under § 37.43(a)(2), include the cost of alterations to the path of travel, restrooms, drinking fountains, etc., as compared to the cost of the total alteration. Include a discussion of how the provided design plans and drawings support this conclusion.
- Any other information the entity has used to determine that making the station fully accessible is technically infeasible.

3.4.2 General Alterations

Requirement

"(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" (§ 37.43(a)(1)).

Discussion

Under the general alterations provision of § 37.43(a)(1), cost is not a consideration. When a public entity makes an alteration to a facility, the altered area must be accessible to the maximum extent feasible.

The DOT ADA regulations in § 37.3 define an "alteration" as follows:

> [A] change to an existing facility, including, but not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangements in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

The DOT Standards in Section 106.5 define "alteration" as follows:

> A change to a building or facility that affects or could affect the usability of the building or facility or portion thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

Within the meaning of Part 37, an "alteration" is a change that affects the usability of the facility involved. The definition of alteration specifically excludes normal maintenance. FTA expressly considers minor repairs to be maintenance. "Usability" in this context is broadly defined to include renovations that affect the use of a facility in any way, and not simply changes that relate directly to access. Further, a facility or part of a facility does not have to be "unusable" for an alteration to affect usability. Resurfacing a platform or a stairway are alterations that make the platform or stairway safer and easier to use.

3.4.3 When the Altered Area Is the Path of Travel

In some cases, the path of travel itself (e.g., sidewalks, pedestrian ramps, passageways between platforms, staircases, and escalators) will be the area that is undergoing alterations. In these instances, the element of the path of travel undergoing alteration will be subject to the general requirement of § 37.43(a)(1) that the

altered area be accessible to and usable by persons with disabilities, including wheelchair users, to the maximum extent feasible. Cost disproportionality does not apply.

For example, when a transit agency alters a sidewalk, it must include curb ramps complying with Section 406 of the DOT Standards, including detectable warnings. (See Section 406.8.) Similarly, when a transit agency undertakes a station renovation project that includes replacing the staircases leading to and from the station platform, resurfacing concrete staircases, replacing a significant number of stair treads or risers, or replacing an escalator, the end result must be an accessible station entrance unless an analysis of site-specific conditions demonstrates that it is technically infeasible. In most cases, this will involve the installation of elevators but may include ramps or other level-change mechanisms. In this case, because this is a general alteration under § 37.43(a)(1), the cost of installing elevators cannot be considered disproportionate.

If a rail transit station has multiple entrances and one is already fully accessible, in the event the transit agency alters the stairs or escalators at another station entrance, it is not required to add ramps or elevators at that entrance. (See Exception 1 to Section 206.4.)

As noted above in Circular Section 3.4.1, where site-specific conditions render it infeasible to meet this requirement, FTA requires agencies to document such conditions for its review to ensure that the alteration is compliant with the regulations and, therefore, eligible for Federal funding.

3.4.4 Areas of Primary Function and Path of Travel

Requirement

"(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" (§ 37.43(a)).

"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)" (§ 37.43(c)).

"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" (§ 37.43(d)).

Discussion

Under § 37.43(a)(2), if a transit agency is altering a primary function area, such as a station platform, then it must make the path of travel to that altered area accessible to the maximum extent feasible, subject to a

cost analysis. Section 37.43(c) defines primary function as a major activity for which the facility is intended. Appendix D to § 37.43 explains that primary function areas include waiting areas, ticket purchase and collection areas, train or bus platforms, baggage checking and return areas, and employment areas (with some exceptions stated in the rule for areas that are used by service personnel and are very difficult to access).

Appendix D to § 37.43 also notes:

> First, if the alteration is made to a primary function area, (or access to an area containing a primary function), the entity shall make the alteration in such a way as to ensure that the path of travel to the altered area and the restrooms, telephones and drinking fountains servicing the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.
>
> Second, alterations to drinking fountains, telephones, and restrooms do not have to be completed if the cost and scope of making them accessible is disproportionate.

3.4.5 Disproportionate Costs

Requirement

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

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

> (i) Costs associated with providing an accessible entrance and an accessible route to the altered area (e.g., widening doorways and installing ramps);
>
> (ii) Costs associated with making restrooms accessible (e.g., grab bars, enlarged toilet stalls, accessible faucet controls);
>
> (iii) Costs associated with providing accessible telephones (e.g., relocation of phones to an accessible height, installation of amplification devices or TDDs);
>
> (iv) Costs associated with relocating an inaccessible drinking fountain" (§ 37.43(e)).

Discussion

A detailed analysis is necessary to determine whether the cost of making the path of travel to an altered area is "disproportionate." Public entities are not required to complete alterations to the path of travel, drinking fountains, telephones, and restrooms if the cost and scope of making them accessible is "disproportionate" to the overall cost of the alteration to the primary function area. (See § 37.43(a)(2).)

In other words, when altering a primary function area, if the costs of changes to the path of travel to that primary function area are disproportionate, then public entities are required only to complete those changes for which the costs are not disproportionate. As explained in § 37.43(e), alterations made to provide an accessible path of travel to the altered area are deemed disproportionate when the cost associated with the accessible path exceeds 20 percent of the cost of the alteration to the primary function area (without regard to the costs of accessibility modifications).

For example, consider a subway station that is not designated as a key station that only has stair access and the only way to provide access to individuals who use wheelchairs would be to install elevators. An alteration project to the platform areas might involve retiling the platform surface at a cost of $150,000. Accordingly, costs to make alterations to provide an accessible path of travel to platforms that exceed

$30,000 would be disproportionate, and more costly path-of-travel improvements like elevators would not be required. [7] On the other hand, if extensive renovations to the platforms and mezzanine are planned, and elevators would increase the cost of the renovations by 20 percent or less, § 37.43(e) requires that elevators be included.

When altering a primary function area, only the costs of the additional alterations to the path of travel are relevant to calculating disproportionate costs. Section 37.43(a)(1) requires the altered area itself to be accessible.

In this context, "costs" include those necessary to bring the alteration project to its conclusion, such as design, engineering, and construction. Ongoing maintenance and other continuing operating expenses are not part of the calculation. For example, it would be appropriate to consider the total costs of designing, engineering, and construction for the alterations to the primary function area, including ADA compliance for the altered elements. The total would form the basis against which the costs of providing an accessible path of travel would be measured for purposes of determining disproportionality. But it would not be appropriate to include the ongoing expected maintenance costs (e.g., those associated with elevators) as part of the project costs.

3.4.6 Accessibility Improvements When Costs Are Disproportionate

Requirement

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

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

(i) An accessible entrance;

(ii) An accessible route to the altered area;

(iii) At least one accessible restroom for each sex or a single unisex restroom (where there are one or more restrooms);

(iv) Accessible telephones;

(v) Accessible drinking fountains;

(vi) When possible, other accessible elements (e.g., parking, storage, alarms)" (§ 37.43(f)).

"If a public entity performs a series of small alterations to the area served by a single path of travel rather than making the alterations as part of a single undertaking, it shall nonetheless be responsible for providing an accessible path of travel" (§ 37.43(g)).

"(1) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alteration to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel is disproportionate" (§ 37.43(h)).

[7] Notably, as explained further in Circular Section 3.4.6, $30,000 would need to be spent on other path of travel improvements to the maximum extent feasible, such as accessible restrooms, telephones, and drinking fountains.

Discussion

Section 37.43(g) prohibits public entities from circumventing the requirements for path of travel alterations by making a series of small alterations to the area served by a single path of travel. Limitations also apply to alterations of different areas served by a single path of travel within three years of the original alteration. When considering undertaking subsequent alterations to primary function areas on a single path of travel within three years, § 37.43(h) obligates public entities to consider the total cost of alteration to the primary function areas on that path of travel during the preceding three-year period in determining whether the cost of making that path of travel accessible is disproportionate.

Public entities are encouraged to consider the cost-effectiveness of undertaking alterations of multiple elements. Advisory 202.3 of the DOT Standards notes:

> Although covered entities are permitted to limit the scope of an alteration to individual elements, the alteration of multiple elements within a room or space may provide a cost-effective opportunity to make the entire room or space accessible.

Finally, Appendix D to § 37.43 explains:

> In looking at facility concepts like "disproportionality" and "to the maximum extent feasible," [DOT] will consider any expenses related to accessibility for passengers. It is not relevant to consider non-passenger related improvements (e.g., installing a new track bed) or to permit "gold-plating" (attributing to accessibility costs the expense of non-related improvements, such as charging to accessibility costs the price of a whole new door, when only adding a new handle to the old door was needed for accessibility).

For example, if a transit agency's renovation of a rail station includes the installation of a new track structure and track bed, then costs of these alterations are not attributable to the costs of making the path of travel to the altered passenger area accessible.

Transit agencies with questions about calculating disproportionate costs for facility alterations are encouraged to seek assistance from the FTA Office of Civil Rights.

3.5 Platform-Vehicle Coordination

For new construction and alteration projects, Section 810.5.3 of the DOT Standards requires rail platforms to be positioned to coordinate with vehicles in accordance with the applicable requirements of Part 38. With "level boarding" (see Figure 3-5), the platform height is coordinated with the height of the vehicle floor and gaps are minimized, ideally allowing persons who use wheelchairs to board independently. Where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements of Part 38, mini-high platforms, car-borne or platform-mounted lifts, ramps, bridge plates, or similarly manually deployed devices, meeting the requirements of Part 38, will suffice. Figure 3-6 includes examples of mini-high platforms, platform lifts, and bridge plates.

Figure 3-5 – Level Boarding

Section 37.42(e)(2) requires transit agencies to provide barriers to prevent the flow of pedestrian traffic through the area between the front of the mini-high platform and the train. The photo in the upper left of Figure 3-6 depicts an example of an appropriate barrier.

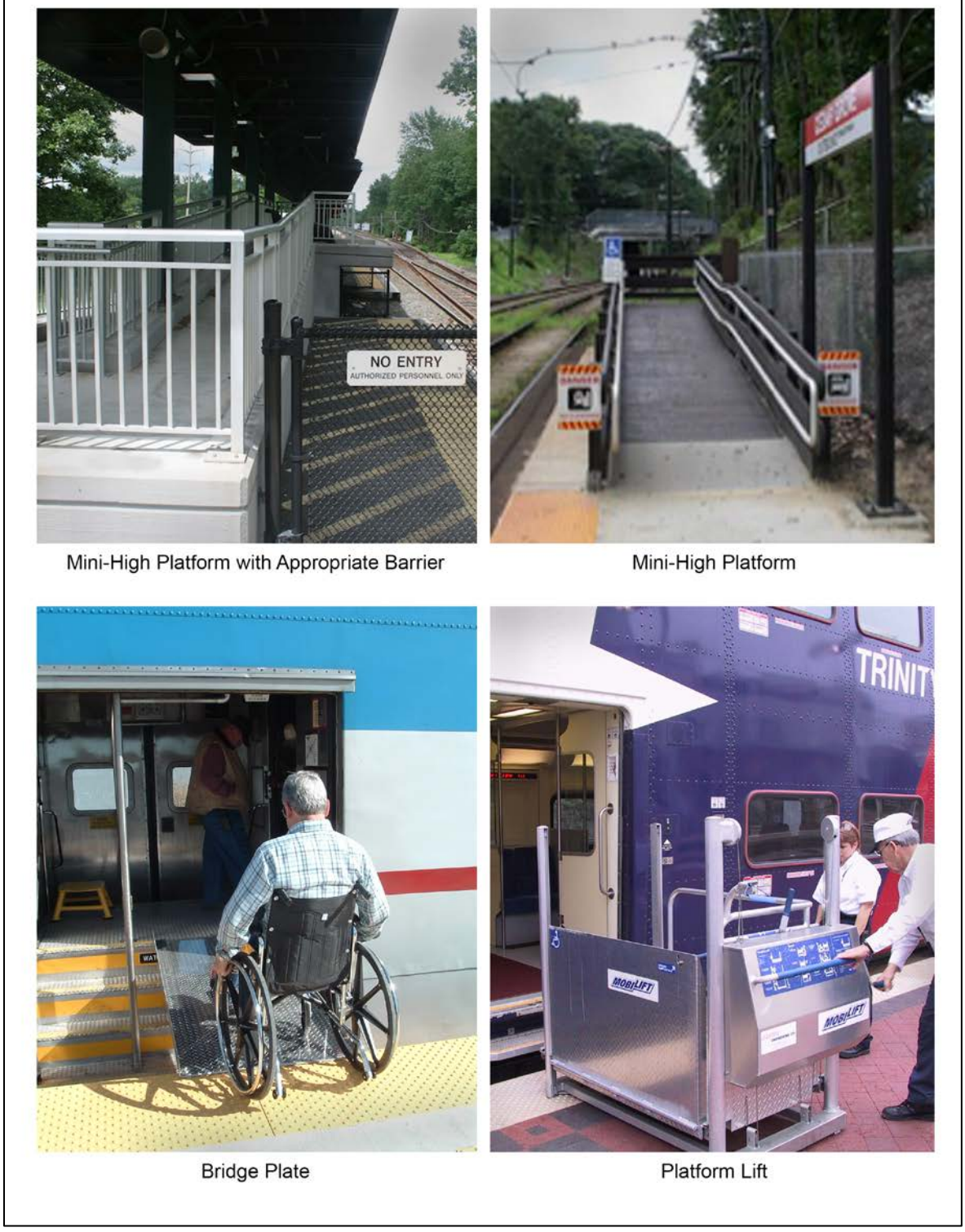


Figure 3-6 – Mini-High Platforms, Bridge Plate, and Platform Lift

3.6 Rapid Rail Platforms

Rapid-rail-specific requirements are provided in Part 38 Subpart C.

Requirement

"*Coordination with boarding platform*—(1) *Requirements*. Where new vehicles will operate in new stations, the design of vehicles shall be coordinated with the boarding platform design such that the horizontal gap between each vehicle door at rest and the platform shall be no greater than 3 inches and the height of the vehicle floor shall be within plus or minus 5⁄8 inch of the platform height under all normal passenger load conditions. Vertical alignment may be accomplished by vehicle air suspension or other suitable means of meeting the requirement.

(2) *Exception*. New vehicles operating in existing stations may have a floor height within plus or minus 1 1⁄2 inches of the platform height. At key stations, the horizontal gap between at least one door of each such vehicle and the platform shall be no greater than 3 inches.

(3) *Exception*. Retrofitted vehicles shall be coordinated with the platform in new and key stations such that the horizontal gap shall be no greater than 4 inches and the height of the vehicle floor, under 50% passenger load, shall be within plus or minus 2 inches of the platform height" (§ 38.53(d)).

Discussion

The general standards for rail platforms can be found in Section 810.5 of the DOT Standards; Section 810.5.3 references the platform-to-rail-car gap standards found in Part 38. For rapid rail, § 38.53(d) establishes the platform-to-rail-car gap required for new vehicles operating in new stations, new vehicles operating in existing stations, and retrofitted vehicles operating in new and key stations. Unlike commuter or light rail, there is no exception that permits platform configurations that do not provide level boarding. It is important to note that the platform-to-rail-car gap dimensions are a maximum standard, and may still present barriers to some persons with some disabilities. Project sponsors are encouraged to minimize the gap as much as possible.

3.7 Light Rail Platforms

Light-rail-specific requirements can be found in Part 38 Subpart D.

Requirement

"(1) Vehicles intended to be operated solely in light rail systems confined entirely to a dedicated right-of-way, and for which all stations or stops are designed and constructed for revenue service after the effective date of standards for design and construction in §§ 37.21 and 37.23 of this title shall provide level boarding and shall comply with §§ 38.73(d)(1) and 38.85 of this part.

(2) Vehicles designed for, and operated on, pedestrian malls, city streets, or other areas where level boarding is not practicable shall provide wayside or car-borne lifts, mini-high platforms, or other means of access in compliance with § 38.83 (b) or (c) of this part" (§ 38.71(b)).

"*Coordination with boarding platform*—(1) *Requirements*. The design of level-entry vehicles shall be coordinated with the boarding platform or mini-high platform design so that the horizontal gap between a vehicle at rest and the platform shall be no greater than 3 inches and the height of the vehicle floor shall be within plus or minus 5⁄8 inch of the platform height. Vertical alignment may be accomplished by vehicle air suspension, automatic ramps or lifts, or any combination.

(2) *Exception*. New vehicles operating in existing stations may have a floor height within plus or minus 1 1/2 inches of the platform height. At key stations, the horizontal gap between at least one door of each such vehicle and the platform shall be no greater than 3 inches.

(3) *Exception*. Retrofitted vehicles shall be coordinated with the platform in new and key stations such that the horizontal gap shall be no greater than 4 inches and the height of the vehicle floor, under 50% passenger load, shall be within plus or minus 2 inches of the platform height.

(4) *Exception*. Where it is not operationally or structurally practicable to meet the horizontal or vertical requirements of paragraphs (d) (1), (2) or (3) of this section, platform or vehicle devices complying with § 38.83(b) or platform or vehicle mounted ramps or bridge plates complying with § 38.83(c) shall be provided" (§ 38.73(d)).

Discussion

The general standards for rail platforms can be found in Section 810.5 of the DOT Standards; Section 810.5.3 references the platform-to-rail-car gap standards found in Part 38. For light rail, § 38.71(b) requires that light rail systems confined entirely to a dedicated right-of-way provide level boarding, and establishes standards for new vehicles in new stations, new vehicles in existing stations, and retrofitted vehicles in new and key stations.

There is an additional exception for light rail, under which platform or vehicle mounted ramps or bridge plates can be used where the vertical and/or horizontal gap requirements cannot be met.

Where light rail systems are operated on pedestrian malls, city streets, or other areas where level boarding is not practicable, then wayside or car-borne lifts, mini-high platforms, or other means of access such as ramps or bridge plates must be provided.

In its October 30, 2006, final rule adopting the DOT Standards for accessibility, DOT clarified a related section of 49 CFR Part 38 that has been the source of some misunderstanding. Section 38.71(b)(2) provides, "Vehicles designed for, and operated on, pedestrian malls, city streets, or other areas where level-entry boarding is not practicable shall provide wayside or car-borne lifts, mini-high platforms, or other means of access in compliance with § 38.83 (b) or (c) of this part." DOT received suggestions that this provision should be interpreted to mean that, if there is any portion of a system in which level boarding is not practicable, then the entire system can use some method other than level boarding. Such an interpretation is incorrect. The authority to use alternatives to level boarding pertains only to those portions of a system in which rail vehicles are "operated on" an area where level boarding is not practicable.

For example, suppose a light rail system's first three stops are on a pedestrian/transit mall where it is infeasible to provide level boarding. The transit system could use car-borne lifts, mini-high platforms, etc., to provide access at those three stops. The system's next 10 stops are part of a right-of-way in which level boarding is practicable. In such a case, level boarding must be provided at those 10 stops. There is nothing inappropriate about the same system having different means of boarding in different locations, in such a case.

Section 810.5.3 of the DOT Standards requires low-level platforms to be at least 8 inches above top of rail. Where light rail vehicles are boarded from sidewalks or street-level, such as in streetcar operations, low-level platforms are permitted to be less than 8 inches.

Also note where level boarding is provided, § 38.85 requires the provision of between-car barriers to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. These can include, but are not limited to, pantograph gates, chains, motion detectors or other suitable devices. (See Circular Section 4.3.5.)

3.8 Intercity, Commuter, and High-Speed Rail Platforms

In September 2011, DOT amended its ADA regulations by adding § 37.42 to require intercity, commuter, and high-speed passenger railroads to ensure, at new and altered station platforms, that passengers with disabilities can enter and exit any accessible car of the train. Beginning in December 2011, and periodically afterwards, DOT has provided additional guidance on these requirements in "Questions and Answers Concerning DOT Final Rule on Transportation for Individuals With Disabilities at Intercity, Commuter, and High-Speed Rail Platforms" (DOT Rail Q&A Guidance). This document considers the following topics, among others:

- When does § 37.42 begin to apply
- What if a private entity owns the platform
- What constitutes an alteration to a platform
- Minimum platform height requirements
- Situations where level boarding is not feasible
- Plans for meeting service standards
- The obligations of a public entity that owns and controls track through a station
- Platform width guidance for level and non-level boarding

Requirement

"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" (§ 37.42(a)).

Discussion

For new intercity, commuter, and high-speed rail stations approved for entry into final design or beginning construction after February 1, 2012, meeting this requirement means ensuring passengers with disabilities, including passengers who use wheelchairs, have access to the same accessible cars as passengers without disabilities. This standard applies to alterations as well as new construction. Alterations include reconstruction of a platform that replaces its surface, changes its height, or other changes that affect the platform's usability. This requirement does not obligate commuter, intercity, or high-speed rail system operators to retrofit pre-existing platforms.

Track and station ownership is often relevant to commuter, intercity, and high-speed rail operators, because often the entity responsible for operating the service is not the owner of the facilities being used. Stations are often owned, controlled, or constructed by a third party, such as a freight railroad, another public entity such as a municipality or Amtrak, or a private entity. Where this is the case, § 37.57 requires the owner or person in control of an intercity or commuter rail station to provide reasonable cooperation to the intercity or commuter rail operator to comply with accessibility requirements.

3.8.1 Level Boarding

Requirement

"For purposes of this part, level-entry boarding means a boarding platform design in which the horizontal gap between a car at rest and the platform is no more than 10 inches on tangent track and 13 inches on

curves and the vertical height of the car floor is no more than 5.5 inches above the boarding platform. Where the horizontal gap is more than 3 inches and/or the vertical gap is more than 5/8 inch, measured when the vehicle is at rest, the horizontal and vertical gaps between the car floor and the boarding platform must be mitigated by a bridge plate, ramp, or other appropriate device consistent with 49 CFR 38.95(c) and 38.125(c)" (§ 37.42(f)).

Discussion

For level boarding[8] at commuter and intercity rail stations, § 37.42(f) provides that the horizontal gap between the platform and a rail car cannot exceed 10 inches (13 inches on curves), and the car floor cannot be more than 5.5 inches above the platform. However, these maximum gaps are not intended to be the norm for new or altered platforms. DOT expects commuter and intercity rail providers to minimize platform gaps to the greatest extent possible. Where the horizontal gap exceeds 3 inches and the vertical difference is more than ±5/8 inch, § 37.42(f) requires the gaps to be mitigated by using a bridge plate, ramp, or other appropriate device.

3.8.2 Stations Not Shared with Freight Rail Operations

Requirement

"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" (§ 37.42(b)).

Discussion

This requirement means providing individuals with disabilities, including individuals who use wheelchairs, access to all accessible cars available to passengers without disabilities in each train using the station. Except where tracks adjacent to platforms are shared with freight rail service, meeting this requirement means meeting the performance standard by providing level boarding for all accessible cars in the train.

There may be some situations in which track adjacent to the platform is not shared with freight rail service, but level boarding may not be physically feasible, such as when curvature of the track is too great, or other situations that would result in a horizontal gap that exceeds the regulatory maximum. The DOT Rail Q&A Guidance explains that the railroad operator should consult with FTA or FRA as appropriate. The Q&A continues by stating that if either FTA or FRA agree that level boarding is not feasible, then the railroad would meet the accessibility performance standard of § 37.42(a) at the station through the means and process described in § 37.42(c)–(d) and explained in Circular Sections 3.8.3 and 3.8.4.

3.8.3 Stations Shared with Freight Rail Operations

Requirement

"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 [§ 37.42(a)] by use of one or more of the following means:

[8] The terms "level boarding" and "level-entry boarding" are synonymous.

(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" (§ 37.42(c)).

Discussion

This requirement permits railroad operators to employ a range of boarding methods at stations where track adjacent to passenger platforms is shared with freight rail operations. The regulations at § 37.42(a) provide a performance standard to ensure that passengers with disabilities can access each accessible train car that other passengers can board. DOT will apply this performance standard in its review of the agency's proposed boarding system. The § 37.42(c) requirement applies on a station-by-station basis. DOT requires a separate plan for meeting the standard for each station or group of stations being constructed or altered together.

3.8.4 Process for Approval of Methods Other Than Level-Entry Boarding

Requirement

"Before constructing or altering a platform at a station covered by [§ 37.42(c)], 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 [(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 [§ 37.42(a)] 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 [§ 37.42(c) & (d)], 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.

> (i) FTA/FRA will provide an initial written response within 30 days of receiving a railroad's written proposal. This response will say either that the submission is complete or that additional information is needed.

(ii) Once a complete package, including any requested additional information, is received, as acknowledged by FRA/FTA in writing, FRA/FTA will provide a substantive response accepting, rejecting, or modifying the proposal within 120 days.

(iii) If FTA/FRA needs additional time to consider the railroad's proposal, FRA/FTA will provide a written communication to the railroad setting forth the reasons for the delay and an estimate of the additional time (not to exceed an additional 60 days) that FRA/FTA expect to take to finalize a substantive response to the proposal.

(iv) In reviewing the plan, FRA and FTA will consider factors including, but not limited to, how the proposal maximizes accessibility to individuals with disabilities, any obstacles to the use of a method that could provide better service to individuals with disabilities, the safety and reliability of the approach and related technology proposed to be used, the suitability of the means proposed to the station and line and/or system on which it would be used, and the adequacy of equipment and maintenance and staff training and deployment" (§ 37.42(d)).

Discussion

This requirement prescribes the process for entities to follow in order to propose a method other than level boarding for consideration and approval by FTA (for commuter rail) or FRA (for intercity or high-speed rail). For commuter rail stations shared with Amtrak, joint FTA/FRA approval may be required.

When level boarding is not feasible, the preferred alternative is car-borne lifts. Methods of providing access other than level boarding can be considered only after an analysis comparing costs and the ability of each of these alternatives to provide service to individuals with disabilities in an integrated, safe, timely, and reliable manner. (See § 37.42(d)(1).)

Before proceeding, § 37.42(d)(2) requires a facility owner to submit this analysis and a plan for deployment, maintenance, and operation of the alternative means of boarding and receive approval from FTA or FRA. The DOT Rail Q&A Guidance more thoroughly discusses the § 37.42(d)(2) requirement for submitting plans to meet performance standards. These plans must be completed on a station-by-station basis, and not in a generic fashion, as there are likely to be differences among stations, such as the design, layout, number of trains that stop at the station, and passenger volume. Plans must be submitted to the FTA Office of Civil Rights (1200 New Jersey Avenue SE, Room E54-312, Washington, DC 20590). For more information regarding the requirement for submitting plans to meet service standards, see the DOT Rail Q&A Guidance.

3.8.5 Requirements for a Combination of Low and High Platforms

Requirement

"In any situation using a combination of high and low platforms, a commuter or intercity rail operator shall not employ a solution that has the effect of channeling passengers into a narrow space between the face of the higher-level platform and the edge of the lower platform.

(1) Except as provided in [the next] paragraph, any obstructions on a platform (mini-high platforms, stairwells, elevator shafts, seats, etc.) shall be set at least six feet back from the edge of a platform.

(2) If the six-foot clearance is not feasible (e.g., where such a clearance would create an insurmountable gap on a mini-high platform or where the physical structure of an existing station does not allow such clearance), barriers must be used to prevent the flow of pedestrian traffic through these narrower areas" (§ 37.42(e)).

Discussion

This requirement describes the steps for commuter or intercity rail operators to follow when low and high platforms (mini-high platforms) are in use. This includes the prohibition against employing a solution that has the effect of channeling passengers into a narrow space between the face of the higher-level platform and the edge of the lower platform.

Section 37.42(e)(1) requires operators to ensure that mini-high platforms are set at least 6 feet back from the edge of a platform. Where the 6-foot clearance is not feasible, such as where a 6-foot clearance would create an insurmountable gap on a mini-high platform or where the physical structure of an existing station does not allow that clearance, § 37.42(e)(2) requires operators to use barriers to prevent the flow of pedestrian traffic through narrower areas.

The 6-foot clearance requirement also applies to other structures, including elevators, stairs, or seats that may constrain the space at the platform edge.

Although the requirement applies to new construction or alterations, an optional good practice is to install barriers on all existing rail platforms where mini-high platforms or other obstructions create a narrow space along the platform edge.

3.8.6 Platform Width of New or Altered Platforms

The DOT Rail Q&A Guidance also provides recommendations regarding platform width of new passenger station platforms, both where non-level and level boarding are used.

The following guidance applies to a non-level boarding railroad passenger station platform. For a conventional platform with a railing or wall on the platform side opposite the track, the guidance suggests a minimum 12-foot platform width. For an end loading island platform between two tracks, the guidance suggests a minimum 14-foot platform width to account for the width of tactile strips. For an island passenger platform with vertical pedestrian access, the guidance suggests a minimum platform width calculated by the vertical access width plus twice 6 feet; this type of platform can be tapered to 14 feet at the ends of the platform.

The following guidance applies to a level boarding railroad passenger station platform. For a conventional platform with a railing or wall on the platform side opposite the track, the guidance suggests a minimum 8-foot platform width. For an end loading island platform between two tracks, the guidance suggests a minimum 10-foot platform width to account for the width of tactile strips. For an island passenger platform with vertical pedestrian access, the guidance suggests a minimum platform width calculated by the vertical access width plus twice 6 feet; this type of platform can be tapered to 10 feet at the ends of the platform. The guidance also states that a 15-inch high platform used by single-level passenger cars should follow the guidance for non-level boarding platforms.

For more information regarding recommended minimum platform widths for railroad passenger stations, see the DOT Rail Q&A Guidance.

3.9 Key Stations

Given that many fixed-guideway systems in the United States were constructed prior to enactment of the ADA, and recognizing that exclusive reliance on new construction and alterations would result in little-to-no improvement in accessibility for those systems, the ADA required public entities operating rapid and light rail systems and commuter rail systems to identify "key stations" that would be altered in the near term to ensure a basic degree of usability by individuals with disabilities (42 U.S.C. § 12147(b) for rapid rail and light rail and 42 U.S.C. § 12162(e)(2)(a) for commuter rail). Stations that were not designated as key stations were not originally required to be made accessible; however, if non-key stations undergo alterations after January 26, 1992, the DOT Standards apply as discussed above in Circular Sections 3.3 and 3.4, respectively.

The DOT ADA regulations in §§ 37.47–37.51 incorporated these requirements. By statute, the deadline for key station compliance was July 26, 1993. For rapid rail and light rail systems, the FTA Administrator could have extended this deadline until July 26, 2020, for extraordinarily expensive structural changes to or replacement of existing facilities, provided that two-thirds of a system's key stations were compliant by July 26, 2010. For commuter rail systems, the FTA Administrator was permitted to extend the deadline to July 26, 2010.

The primary requirement for key stations is to alter the stations to provide at least one fully accessible entrance and accessible route to all areas necessary for the use of the transportation system. In many cases, this requires the installation of elevators, which may necessitate coordination with municipalities or other entities to acquire the necessary right-of-way.

Key stations must meet the DOT Standards in the same manner as other new or altered stations with several exceptions. The DOT Standards for key stations provide exceptions for route-specific entrances and direct connections to pre-existing non-transportation facilities. In addition, pre-existing escalators are not required to comply. Thus, upon completion of the required alterations to the key station, people using wheelchairs can reach all primary function areas needed to use the station (including platforms, ticketing, toilets, waiting rooms, drinking fountains, etc.), although their path of travel may vary from the general public access route. In addition, the key station must meet all other DOT Standards throughout for elements in place when the station was made accessible, including signs, detectable warnings on platform edges, accessible fare vending, text telephones, visual display of public address announcements, etc.

Any subsequent alterations transit agencies make to key stations must comply with the DOT Standards.

3.10 Public Transportation Programs and Activities in Existing Facilities

Requirement

"A public entity shall operate a designated public transportation program or activity conducted in an existing facility so that, when viewed in its entirety, the program or activity is readily accessible to and usable by individuals with disabilities" (§ 37.61(a)).

Discussion

As discussed in Appendix D to § 37.61, "this provision is intended to cover activities and programs of an entity that do not rise to the level of alteration. Even if an entity is not making alterations to a facility, it has a responsibility to conduct its program in an accessible manner."

The following are examples of accessible and usable programs and activities:

- User-friendly fare cards
- Accessible websites and mobile applications
- User-friendly schedules
- Edge detection on rail platforms
- Adequate lighting
- Use of telecommunication display devices (TDDs), 711 Relay telephones, broadcast text messaging, and similar devices for use by individuals with speech and hearing disabilities
- Enhanced wayfinding and signage for people with visual impairments, including public address announcements and text-to-speech devices
- Continuous pathways for individuals with visual disabilities, wheelchair users, or individuals with mobility disabilities, including the elimination of obstructions caused by trash cans, newspaper stands, and maintenance equipment
- Public address systems and clocks

According to Appendix D, "[DOT] did not prescribe one list of things that would be appropriate for all stations." FTA encourages transit agencies to consider as many actions short of alteration to accommodate the needs of individuals with disabilities.

Attachment 3-1
Optional Facilities Checklist for New Construction and Alterations

This optional checklist provides a format for design review of new or altered facilities and for inspection during construction. It can also be used for review of existing facilities to determine whether maintenance or corrective action is needed. The checklist includes all of the Section 810 transportation facility requirements and the Section 201 requirements for stairways. Other requirements in the DOT Standards apply if they are included in transportation facilities (e.g., public toilets and drinking fountains), but are not included in this checklist. In addition, this checklist does not address the exceptions in Section 206.4.4 specific to key stations.

Contents

1 Parking (DOT Standards 208, 502)

Accessible Parking Spaces	
Are spaces provided for visitor self-parking?	☐ Yes ☐ No
Are the spaces owned, leased, or operated by the transit agency? If yes, complete the following for each parking facility	☐ Yes ☐ No
Total parking spaces provided	
Number of designated accessible parking spaces provided	
Number of accessible spaces required per table below (If parking is provided in multiple facilities, standards require accessible spaces to be calculated for each facility, and numbers rounded up to the next whole number (208.2))	
Number of designated van spaces provided	
Number of van spaces required (standards require one in every 6 accessible spaces, but not less than 1 to be designated “van accessible” (208.2.4))	

Total Spaces	Minimum Accessible Spaces Required
1–25	1
26–50	2
51–75	3
76–100	4
101–150	5
151–200	6
201–300	7
301–400	8
401–500	9
501–1,000	2 percent of total
1,001 and over	20 plus 1 for each 100 over 1,000

Accessible Parking Elements	Note OK, No, or N/A. Note dimensions if No
Note: Where parking serves more than one accessible entrance, the standards require parking spaces to be dispersed and located on the shortest accessible route to the accessible entrances (208.3.1)	
Location	
Accessible parking spaces closest in lot to accessible entrance of building it serves (208.3.1)	
Accessible spaces adjacent to accessible route (206.2.1)	
Access aisle does not overlap vehicular way (502.3.4)	
Width and Access Aisle	
≥ 96” for cars + 60” aisle (may be paired) (502.2, 502.3)	
≥ 132” for vans + 60” aisle or ≥ 96” + 96” aisle (may be paired) (502.2)	
If angled van parking, access aisle on passenger side of space (502.3.4)	
Aisles marked to discourage parking in them (502.3.3)	
Entire access aisle at same level as parking space (502.4)	
Vertical Clearance	
Minimum for van: 98” for vehicular route from entrance to van space and access aisle (502.5)	
Signage	
International Symbol of Accessibility (ISA) symbol on sign mounted ≥ 60” from the ground to bottom of sign (502.6)	
ISA plus “van accessible” at van parking spaces mounted ≥ 60” from the ground to bottom of sign (502.6)	
Surface	
Parking space and access aisle: Stable, firm, and slip resistant (502.4) (302)	
Parking space and access aisle: Slope ≤ 1:48 (2.1%) (502.4)	

2 Passenger Loading Zones (DOT Standards 209, 503)

Number	Note OK, No, or N/A. Note dimensions if No
Where loading zones are provided, at least one accessible loading zone space provided (209.2)	
At least one accessible space in every 100 linear feet of total loading zone space (209.2.1)	
Vehicle Pull-up Space (503.2)	
≥ 96” wide and ≥ 20’ long	
Access Aisle Location (503.3)	
Adjacent to vehicle pull-up space	
Adjoins/connects to an accessible route	
Does not overlap vehicular way	
Access Aisle Dimensions	
≥ 60” wide (503.3.1)	
Extends full length of vehicle pull-up space it serves (503.3.2)	
Surface	
Access aisle marked with surface treatment to discourage parking in access aisle (503.3.3)	
Vehicle pull-up space and access aisle: Stable, firm, and slip resistant and no changes in level > ¼” (503.4) (302.1)	
Vehicle pull-up space and access aisle: Slope ≤ 1:48 (2.1%) in all directions (503.4)	
Vehicle pull-up space and access aisle at same level with no changes in level (503.4)	
Vertical Clearance (503.5)	
At least 114” vertical clearance at vehicle pull-up spaces, access aisles, and vehicular route from entrance to passenger loading zone, and from passenger loading zone to vehicular exit	

3 Bus Boarding and Alighting Areas (DOT Standards 209, 218.4, 810)

Identify bus boarding and alighting facilities within the scope of review and complete the following sheet for each of them. Where the transit entity does not control the facility and connections to and from it, coordination with the municipality or other controlling entity is recommended.

Control	Note OK, No, or N/A. Note dimensions if No
Does transit entity control the bus boarding/alighting facility? (209.2.2) (810.2)	
Connections	
Accessible route between all bus stops within site and accessible entrance (206.2.1)	
Accessible route to streets, sidewalks, and pedestrian paths (810.2.3)	
Boarding and Alighting Area (810.2.2)	
≥ 96” perpendicular to the roadway, from curb or road edge	
≥ 60” long parallel to the roadway	
Slope (810.2.4)	
Parallel to the roadway the slope is the same as the roadway, to the maximum extent practicable	
Perpendicular to the roadway the slope is ≤ 1:48 (2.1%)	
Bus Route Signs (810.4)	
Non-glare finish (703.5.1)	
Contrast between characters and background (703.5.1)	
Width of uppercase “O” is between ≥ 55% and ≤ 110% of the height of uppercase “I” (703.5.4)	
Character height meets 703.5.5 to maximum extent practicable (See Circular Facilities Checklist Section 14 – Ticketing and Automatic Fare Vending.) Note: Bus schedules, timetables, and maps not required to comply	
Characters upper or lower case (703.5.2)	
Characters “conventional” in form: no italic, oblique, script, or highly decorative (703.5.2)	
Width of uppercase “I” ≥ 10% to ≤ 30% of the height (703.5.7)	
Closest characters spaced between ≥ 10% and ≤ 35% of the character height (703.5.8)	
Bus Shelters (218.4)	
Connected by an accessible route to bus boarding and alighting area (810.3)	
Clear floor space of ≥ 30” by ≥ 48” entirely within shelter (305.3) (810.3)	
One side of the clear floor space adjoins accessible route (305.6)	
If the clear floor space is confined on any of three sides, width ≥ 36” for front approach or length ≥ 60” for parallel approach (305.7)	
Clear floor space: Surface stable, firm, and slip resistant and no changes in level > ¼” (305.2) (302.1)	

4 Accessible Routes (DOT Standards 206, 207, 402, 403)

Identify routes that people use to get from points of arrival to a platform and all station elements such as ticketing, telephones, bathrooms, etc. Using example below, prepare a sketch or use an available site plan and floor plans. Then number and name each route for use while walking, applying the checklist. For design review, mark accessible routes on plans.

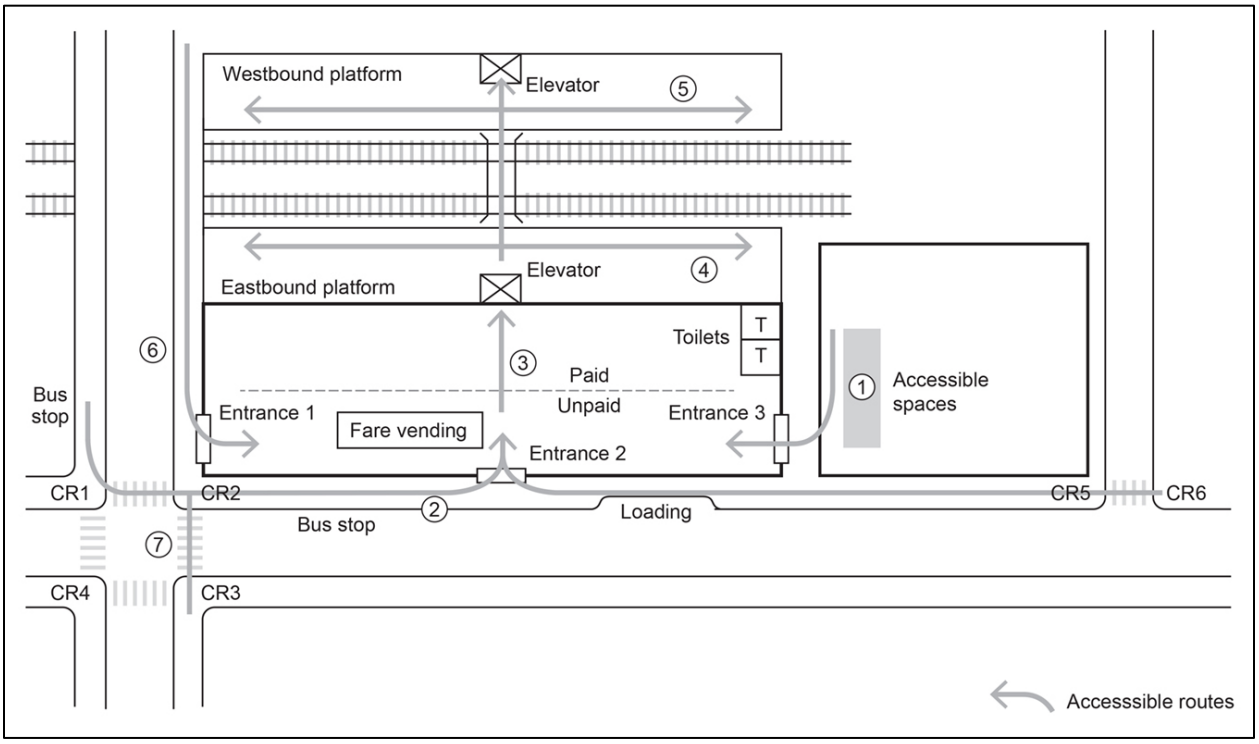
Note arrival points, including:

- Public sidewalks from adjacent land uses/city blocks (include curb ramps (CR) and street crossings adjacent to the facility)
- External bus loading for each adjacent bus route serving the facility
- Each separate area of accessible parking
- Each separate area of accessible loading
- Each accessible entrance

Note elements within the facility, including routes:

- To and along each internal bus platform
- To and along the full length of each rail platform
- To each separate area of waiting, ticket vending, telephones, toilet rooms, etc. (group these if appropriate to simplify number of routes)

Example: “Route 1 from accessible parking through station entrance to unpaid area; Route 2 from bus stop and loading to unpaid area; Route 3 from unpaid area via elevator to eastbound platform; Route 4 along length of eastbound platform; etc.”



Sample Drawing of Accessible Routes to Below-Grade Rail Station

Assess each accessible route and note OK, No, or N/A Note dimensions if No	Route					
	1	2	3	4	5	6
Accessible route coincides with general public route and minimizes distance relative to general public route (206.3 as modified by Part 37 Appendix A); If accessible route is longer, record distance						
Accessible routes are interior where circulation paths are interior (206.3)						
At least one accessible route connects all transportation system elements required to be accessible at the same site (206.2.2)						
Doors ≥ 32” wide open to 90° to opposite stop (404.2.3) (See Circular Facilities Checklist Section 8 – Doors)						
Route length no more than 24” if reduced to 32” wide min. (403.5.1)						
Reduced width segment separated by segments ≥ 36” wide for distance of ≥ 48” (403.5.1)						
If route is < 60” wide, space ≥ 60” wide x 60” long at intervals do not exceed 200’ (403.5.3)						
Where accessible route makes U-turn around an obstacle ≤ 48” wide,						
Pathway width is ≥ 42” on approaches (403.5.2)						
Pathway width is ≥ 48” in turn (403.5.2) EXCEPT where the clear width at the turn is 60” (1525 mm) minimum compliance with 403.5.2 shall not be required						
Vertical clearance ≥ 80” except at door closers and door stops (307.4)						
Vertical clearance ≥ 78” at door closers and door stops (307.4)						
If area adjoining accessible route has vertical clearance < 80”, cane-detectable barrier is ≤ 27” above floor (307.4)						
Objects protrude from walls into the accessible route ≤ 4” between 27” and 80” above the floor, EXCEPT handrails may protrude ≤ 4 ½” (307.2)						
Objects protrude from posts or pylons into the circulation path ≤ 12” between 27” and 80” above the floor (307.3)						
Surface stable, firm, and slip resistant (302.1) and cross slope ≤ 1:48 (2.1%) (403.3)						
Vertical changes ≤ ½” (303.4)						
Vertical changes between ¼” and ½” are beveled with slope ≤ 1:2 (303.3)						
Untreated vertical changes ≤ ¼” (303.2)						
Any opening in floor, surface, or gratings: openings ≤ ½” (302.3)						
Long dimension of openings perpendicular to direction of travel (302.3)						
At track crossings, horizontal gap on the inner edge of each rail ≤ 2½” (810.10) and crossings comply with requirements for surface and level change						

5 Directional Signs (DOT Standards 216.3, 216.4, 703)

Locate directional signs identifying routes to station elements (e.g., to accessible entrances and egresses, elevators, bus facilities, etc.).

List signs and routes with sequences of signs:

Sign/Route 1: _____ Sign/Route 4: _____

Sign/Route 2: _____ Sign/Route 5: _____

Sign/Route 3: _____ Sign/Route 6: _____

Assess each accessible route and note OK, No, or N/A Note dimensions if No	Sign/Route					
	1	2	3	4	5	6
Where accessible route diverges from general public route, visual signs are required that show direction to accessible egress and route (216.3, 216.4.3, IBC 2003, 1007.7) Is number and location of signs sufficient to show direction?						
Sign Characteristics (703.5)						
Non-glare finish (703.5.1)						
Contrast between characters and background (light on dark, dark on light) (703.5.1)						
Characters conventional in form. No italic, oblique, script, highly decorative, or other unusual forms (703.5.3)						
Fonts where width of uppercase “O” is between ≥ 55% and ≤ 110% of the height of uppercase “I” (703.5.4)						
Stroke thickness: width of uppercase “I” ≥ 10% to ≤ 30% of the height (703.5.7)						
Character spacing: closest characters spaced between ≥ 10% and ≤ 35% of the character height (703.5.8)						
Line Spacing: spacing between the baselines of separate lines of characters ≥ 135% and ≤ 170% percent of character height (703.5.9)						
Sign Character Height (703.5.5 and Table 703.5.5)						
For characters ≥ 40” and ≤ 70” above the ground and viewed from < 72 inches horizontal, height of uppercase letter “I” ≥ 5/8” (703.5.5)						
For characters > 70” and ≤ 120” above the ground and viewed from < 180 inches horizontal, character height of uppercase letter “I” ≥ 2” (703.5.5)						
For signs > 120” above the ground and viewed from < 21 feet horizontal, character height of uppercase letter “I” ≥ 3” (703.5.5)						
Note: Use Table 703.5.5 to increase character height for longer horizontal viewing distances.						

6 Curb Ramps (DOT Standard 406)

Curb ramps or ramps are required wherever there is a vertical change of ≥ ½" on an accessible path (303.4). Identify locations where curb ramps are on the accessible route and/or curbs where there are no ramps. Attach additional sheets for additional curb ramps and identify locations on map or diagram.

Curb Ramp 1: _____ Curb Ramp 4: _____

Curb Ramp 2: _____ Curb Ramp 5: _____

Curb Ramp 3: _____ Curb Ramp 6: _____

Note OK, No, or N/A. Note dimensions if No	Ramp Location					
	1	2	3	4	5	6
Ramps (except flared sides) at marked crossings are within the markings (406.5)						
Diagonal curb ramps at marked crossings have ≥ 48" clear from ramp bottom to the marking (406.6)						
Ramp ≥ 36" wide, not including flared sides (406.1) (405.5)						
Landings ≥ 36" long and ≥ width of the curb ramp located at top of ramp (406.4)						
Transition to adjacent surfaces of walks, gutters, and streets shall be at the same level (406.2)						
All ramp slopes, ≤ 1:12 (8.3%) (406.1) (405.2)						
Side flares ≤ 1:10 (10%) (406.3)						
Cross slope ≤ 1:48 (2.1%) (405.3)						
Ramp slopes at sites where space limitations exist,						
≥ 1:10 (10%) to ≤ 1:8 (12.5%) for ≤ 3" rise (405.2)						
≥ 1:12 (8.3%) to ≤ 1:10 (10%) for ≤ 6" rise (405.2)						
Counter slope of adjoining gutter, road, or accessible route surface ≤ 1:20 (5%) (406.2)						
Islands at street crossings either:						
Cut through level with the street surface (406.7)						
Curb ramps provided at both sides of island with a ≥ 48" long ≥ 36" wide level area connecting the ramps (406.7)						
Detectable Warnings (406.8, 705)						
Width: (406.8)						
Full depth of curb ramp or						
≥ 24" from the back of curb						
The detectable warning contrasts visually with adjoining surfaces, either light-on-dark or dark-on-light (705.1.3)						
The detectable warning consists of raised truncated domes with:						
Base diameter ≥ 0.9" to ≤ 1.4" and top diameter 50% to 65% of base diameter (705.1.1)						
Height of 0.2" (705.1.1)						
Center-to-center dome spacing ≥ 1.6" to ≤ 2.4" and base-to-base dome spacing ≥ 0.65" (705.1.2)						

7 Entrances (DOT Standards 206, 207)

Label each entrance below (also note on sketch). Also label any exit doors that are not also entrances.

Entrance 1:_____ Entrance 2 _____ Entrance 3: _____

Entrance 4:_____ Entrance 5 _____ Entrance 6: _____

Note OK, No, or N/A. Note dimensions if No	Entrance					
	1	2	3	4	5	6
Accessibility						
At least 60% of all public entrances accessible (206.4.1)						
All direct access to facility from parking structure accessible (206.4.2)						
At least one accessible entrance for each group of transit routes (206.4.4.1)						
If direct connections to commercial, retail, or residential facilities, each must have an accessible route from point of connection to boarding platforms and accessible transportation elements (206.4.4.2). See Checklist Section 8 – Doors.						
Signage at Entrances (216.6)						
If an entrance is not accessible, signage complying with 703.5 at entrance and along path accessible path of travel directs to nearest accessible entrance						
Accessible entrance, when not all entrances are accessible, is designated with ISA						
Signage at Exit Doors (216.4)						
Doors at exit passageways identified by tactile signs complying with 703.1, 703.2, and 703.5. See Advisory 216.4.1 regarding exit passageways.						
Tactile Sign Location						
If visual entrance sign (“station name” or “entrance”) is provided at an entrance, then raised letter and braille signs are also provided at all such entrances in uniform location (810.6.1, 703.2, 703.4)						
Single door: Tactile sign is provided at latch side of door						
Double door two active leafs: Tactile sign is provided at right side of door						
Double door one active leaf: Tactile sign is provided on the inactive leaf						
Doors with closers and without hold-open devices: Tactile sign as described above, or push side of door						
If no wall space at prescribed location, sign on nearest adjacent wall						
Signage for Stations with Undefined Entrances (810.6.1)						
At least one tactile sign identifying the station is placed in a central location						
Mounting						
Mounting height ≥ 48” to base of lowest tactile character and ≤ 60” to base of highest tactile character (703.4.1)						
At doors: Signs containing tactile characters located so clear floor space ≥ 18” by ≥ 18” centered on tactile characters, provided beyond arc of door swing between closed position and 45° open position (703.4.2)						
Raised Characters						
Characters raised 1/32” (703.2.1)						
Uppercase sans serif font (703.2.2) (703.2.3)						
Characters ≥ 5/8” to ≤ 2” high (703.2.5)						
≥ 3/8” separation from borders and decorative elements (703.2.7)						
Grade 2 Braille Characters						
Below text; if multi-lined, below entire text (703.3.2)						
Separated from tactile characters and raised borders ≥ 3/8” (703.3.2)						
Braille dots domed or rounded shape (703.3.1)						

8 Doors (DOT Standard 404)

Doors that are part of accessible route are required to be accessible (404.1). Identify configuration for each approach to each door (e.g., latch side pull) per Figure 404.2.4.1.

Door 1 _____ Door 4: _____

Door 2:_____ Door 5: _____

Door 3:_____

Identify each door along each accessible route and note OK, No, or N/A. Note dimensions if No	Door				
	1	2	3	4	5
Revolving doors, revolving gates, or turnstiles not part of accessible route (404.2.1)					
Clearances					
Clear space needed for manual swinging doors and gates based on approach, parallel or perpendicular to doorway: varies depending on doorway configuration and approach. (See DOT Standards Figure 404.2.4.1)					
Configuration (a) – (k)					
Minimum parallel clearance					
Actual parallel clearance					
Minimum perpendicular clearance					
Actual perpendicular clearance					
Two doors in series: Distance between doors ≥ 48” plus width of doors swinging into space between doors (404.2.6)					
Thresholds					
Thresholds (404.2.5) ≤ ½”; 1/4–1/2” sloped 1:2; ≤1/4” vertical					
Existing or altered thresholds ≤ 3/4” with edges beveled ≤ 1:2 slope (404.2.5)					
Automatic and Power-Assisted Doors (404.3)					
Automatic doors and automatic gates comply with 404.3. Full-powered automatic doors comply with ANSI/BHMA A156.10).					
Low-energy and power-assisted doors comply with ANSI/BHMA A156.19 (1997 or 2002 edition)					
Door Clear Width (404.2.3)					
Measured from door face to stop with door open at 90°					
All doors: ≥ 32” wide					
Operation					
Door hardware can be operated with one hand and not require tight grasping, pinching, or twisting or wrist (404.2.7) (309.4)					
Force needed to activate operable part ≤ 5 pounds					
Operable parts of door hardware mounted ≥ 34” to ≤ 48” above ground (404.2.7)					
Interior hinged door opening force ≤ 5 pounds (404.2.9); not applicable to exterior doors					
For fire doors, minimum force allowable by appropriate authority per applicable fire code. (404.2.9)					
Doors with closers: sweep period of ≥ 5 seconds from 90° open position to point 12° from latch (404.2.8.1)					
Double-Leaf Doors and Gates: At least one of the active leaves of doorways with two leaves comply with 404.2.3 and 404.2.4					

9 Ramps (DOT Standards 303, 405)

Change in level along accessible route greater than ½" requires ramp (303.4). Identify ramps and locations where ramps are required.

Ramp 1:_____ Ramp 3: _____

Ramp 2:_____ Ramp 4: _____

Note OK, No, or N/A. Note dimensions if No	1	2	3	4
Clearances				
Minimum clear width 36" (between handrails) (405.5)				
Grade Slope				
Running slope ≤ 1:12 (8.3%) (405.2) (See exception in 405.2 for existing facilities)				
Cross slope ≤ 1:48 (2.1%) (405.3)				
Vertical rise between landings not to exceed 30" (405.6); therefore, minimum ramp run length 30' to achieve 1:12 slope, 50' to achieve 1:20 slope				
Landings				
Landings at top and bottom of each run (405.7)				
Landing length ≥ 60" long (405.7.3)				
Landing width along straight run ≥ width of ramp (405.7.2)				
Landings at a change of direction ≥ 60" x 60" (405.7.4)				
See Advisory 405.7 regarding ramps without level landings at changes in direction and potential for compound slopes that will not meet the requirements.				
Surface (405.4)				
Stable, firm, and slip resistant				
No change in level on ramp runs, other than slope and cross slope				
Handrails				
Handrails provided on both sides for length of ramp, if ramp rise > 6" (405.8) (505.2)				
Handrail continuous (505.3)				
Outside rail continuous for length of each run				
Inside rail continuous between runs				
Handrails extend ≥ 12" horizontally beyond top and bottom of ramp (505.10.1).				
End of handrail returned to wall, guard, or floor (505.10.1)				
Handrail extension is not a protruding object and does not project more than 4 inches into the circulation path at a height more than 27 inches above finish floor (307.2)				
Tops of handrails ≥ 34" to ≤ 38" above ground (505.4)				
Clearance ≥ 1 ½" between gripping surface and adjoining surface (505.5)				
Circular handrail diameter ≥ 1 ¼" and ≤ 2" (505.7.1)				
Non-circular handrail perimeter dimension ≥ 4" and ≤ 6 ¼" and diameter ≤ 2 ¼" (505.7.2)				
Handrail protrudes ≤ 4 ½" from wall (307.2)`				

Edge Protection				
Edge protection (A or B below) provided on each side of ramp runs and landings if ramp rise > 6” (405.9) or drop-off > ½” within 10” of landing area (405.9)				
A: Surface of run or landing extends ≥ 12” beyond inside surface of handrail (405.9.1)				
B: Curb or barrier that prevents passage of 4” diameter sphere any portion of which is within 4” of floor/ground surface (405.9.2)				
Wet Conditions				
Ramp landings subject to wet conditions designed to prevent the accumulation of water (405.7)				

10 Stairs (DOT Standards 210.1, 504, 302.1, 505)

In alterations, stairs between levels where an accessible route already exists are required to comply only with handrail requirements. (210.1 Exception 2)

Note OK, No, or N/A. Note dimensions if No	1	2	3	4
Risers				
Risers heights are uniform (504.2)				
Risers are 4 inches (100 mm) high minimum and 7 inches (180 mm) high maximum (504.2)				
No open risers (504.3)				
Treads				
Treads have uniform depths (504.2)				
Treads are 11 inches (280 mm) deep minimum (504.2)				
Surface stable, firm, and slip resistant and slope is ≤ 1:48 (2.1%) (504.4)				
Nosings				
Radius of curvature at the leading edge of the tread ½" (13 mm) maximum (504.5)				
Nosings that project beyond risers the underside of the leading edge curved or beveled (504.5)				
Risers slope under the tread up to an angle of 30 degrees maximum from vertical (504.5)				
Permitted projection of the nosing extends 1½ (38 mm) maximum over the tread below (504.5)				
Handrails				
Handrails provided on both sides of stairs (505.2)				
Handrail continuous (505.3)				
Outside rail continuous for length of each stair flight				
Inside rail continuous between flights				
At top, handrails extend ≥ 12" horizontally beyond first riser nosing (505.10.2)				
At bottom, handrails extend at slope of stair flight for a horizontal distance of at least one tread depth beyond last riser nosing. (505.10.3)				
End of handrail returned to wall, guard, or floor (505.10.1)				
Tops of handrails ≥ 34" to ≤ 38" above stair nosing at consistent height (505.4)				
Clearance ≥ 1 ½" between gripping surface and adjoining surface (505.5)				
Circular handrail diameter ≥ 1 ¼" and ≤ 2" (505.7.1)				
Non-circular handrail perimeter dimension ≥ 4" and ≤ 6 ¼" and diameter ≤ 2 ¼" (505.7.2)				
Wet Conditions				
Stair treads and landings subject to wet conditions designed to prevent the accumulation of water (504.7)				

11 Elevators (DOT Standard 206.6, 407)

A passenger elevator complying with the Standards is required to serve each story or mezzanine in all multi-story facilities not served by a ramp or other accessible route (206.2.3). Label elevators by location (use sketch if available).

Elevator 1: _____ Elevator 3: _____

Elevator 2: _____ Elevator 4: _____

Note OK, No, or N/A. Note dimensions if No	Elevator			
	1	2	3	4
Location (206.3)				
Elevator located on an accessible route that coincides or is located in the same area as general circulation paths? (206.3)				
Hoistway Signage (407.2.3)				
Raised and Braille floor designations on both jambs (407.2.3.1)				
Mounting height ≥ 48” from ground to base of lowest tactile character and ≤ 60” to base of highest tactile character (703.4.1)				
At main entry level, tactile star on both jambs (407.2.3.1)				
Characters				
Uppercase sans serif font (703.2.2) (703.2.3)				
Characters ≥ 2” high (407.2.3.1)				
Characters raised 1/32” (703.2.1)				
Accompanied by Grade 2 Braille (703.2)				
Hall Call Buttons (All Levels) (407.2.1)				
Clear floor area at call buttons ≥ 48” deep by ≥ 60” wide by ≥ 80” high (407.2.1.3) (305)				
Up button above the down button (407.2.1.4)				
Visible signals light up when call registered and extinguish when call answered (407.2.1.5) Exception: existing elevators not required to comply with 407.2.1.5				
Centerline of lowest call button ≥ 15” above the floor (407.2.1.1) (308)				
Centerline of highest call button ≤ 48” above the floor (407.2.1.1) (308)				
Button ≥ 3/4” in smallest dimension (407.2.1.2) Exception: in existing elevators, buttons not required to comply with 407.2.1.2				
Buttons raised or flush (407.2.1) Exception: existing elevators may have recessed buttons				
Hall Signals (All Levels) (407.2.2)				
Visible and audible signal at each hoistway entrance (407.2.2.1)				
Signal visible from area adjacent to the hall call button (407.2.2.1)				
Hall lantern fixtures > 72” above the floor at centerline (407.2.2.2)				
Visible signal ≥ 2 ½” high measured at centerline of signal (407.2.2.2)				
Audible signal one for “up” and two for “down” or verbal annunciators (407.2.2.3)				
Door Operations				
Time from notification that car is answering a call until doors begin to close ≥ 5 seconds (407.3.4)				
Door remains fully open ≥ 3 seconds (407.3.5)				
Horizontal gap between car and hall floors ≤ 1 ¼” at all levels (407.4.3)				
Vertical gap between car and hall floors ≤ ½” at all levels (407.4.4)				
Reopening devices effective at heights of 5” and 29” above floor (407.3.3.1)				
Reopening devices do not require physical contact to be activated (407.3.3.2)				
Door reopening devices to remain effective for 20 seconds minimum (407.3.3.3)				

Note OK, No, or N/A. Note dimensions if No	Elevator			
	1	2	3	4
Car Controls (407.4.6)				
Emergency control buttons grouped at bottom of panel (407.4.6.4.2)				
Lowest button centerline ≥ 35” from floor (407.4.6.4.1)				
If > 16 buttons, highest button centerline ≤ 54” from floor (407.4.6.1)				
If ≤ 16 buttons, highest button centerline ≤ 48” from floor (407.4.6.1) (308.2)				
Control buttons ≥ 3/4” in smallest dimension (407.4.6.2.1)				
Control buttons raised or flush (407.4.6.2) Exception: existing elevators may have recessed buttons				
Raised character and braille designations immediately to the left of all buttons (407.4.7.1.2)				
Raised Characters (703.2) - Car Controls				
Uppercase sans serif font (703.2.2) (703.2.3)				
Characters raised ≥ 1/32” (703.2.1)				
Characters ≥ 5/8” to ≤ 2” high (703.2.5)				
≥ 3/8” separation from borders and decorative elements (703.2.7)				
Tactile symbols identify main floor, emergency stop, alarm, door open and close, and phone (407.4.7.1.3)				
Floor buttons have visual signals that light when call is registered and extinguish when call answered (407.4.7.1.4)				
Car Position Indicators (407.4.8)				
Audible car position indicator provided				
Visual car position indicator provided above car control panel or door				
Visual indicator over door or over control panel, (407.4.8.1.2)				
Floor number on indicators ≥ ½” high (407.4.8.1.1)				
Visual and audible signal as car passes/stops at floor (407.4.8.1.3)				
Elevator Car Requirements				
Floor covering stable, firm, slip resistant, and no vertical changes (407.4.2) (302) (303)				
Illumination ≥ 5 foot-candles (54 lux) (407.4.5)				
Inside dimensions of elevator cars and clear width of elevator doors comply with Table 407.4.1 (below) Exception: Existing elevator car configurations that provide a clear floor area of 16 square feet (1.5 square meters) minimum and also provide an inside clear depth of 54” (1,370 mm) minimum and a clear width of 36” (915 mm) minimum are permitted				
Width of elevator door complies with Table 407.4.1				
Emergency Communication				
Identified by tactile symbol and characters adjacent to device (407.4.9) and comply with 7.03.2 (see above)				
Highest operable part ≤ 48” above floor (407.4.9, 308)				
Lowest operable part ≥ 15” above floor (407.4.9, 308)				

Elevator Car and Door Dimensions				
	Minimum Dimensions			
Door Location	Door Clear Width	Inside Car, Side to Side	Inside Car, Back Wall to Front Return	Inside Car, Back Wall to Inside Face of Door
Centered	42 inches (1065 mm)	80 inches (2030 mm)	51 inches (1.295 mm)	54 inches (1.370 mm)
Side (off-centered)	36 inches (915 mm)[1]	68 inches (1725 mm)	51 inches (1.295 mm)	54 inches (1.370 mm)
Any	36 inches (915 mm)[1]	54 inches (1370 mm)	80 inches (2.030 mm)	80 inches (2.030 mm)
Any	36 inches (915 mm)[1]	60 inches (1525 mm)[2]	60 inches (1.525 mm)[2]	60 inches (1.525 mm)[2]
1. A tolerance of minus 5/8" (16 mm) is permitted 2. Other car configurations that provide a turning space complying with Section 304 with door closed shall be permitted				

Table 407.4.1

12 Platform Lifts (DOT Standard 410)

Identify lifts along accessible routes.

Lift 1: _____ Lift 3:_____

Lift 2: _____ Lift 4:_____

Note OK, No, or N/A. Note dimensions if No	Lifts			
	1	2	3	4
Platform lift permitted only where exterior site constraints make ramp or elevator infeasible (206.7.5)				
Elevator located on an accessible route that coincides or is located in the same area as general circulation paths (206.3)				
Clearances				
Clear floor area at operable parts outside of lift ≥ 30" by ≥ 48" (309.2, 305.7)				
End doors and gates ≥ 32" wide (410.6)				
Side doors and gates ≥ 42" wide (410.6)				
Clear floor space on lift platform ≥ 36" x ≥ 48" end door (in alcove) (410.3) (305)				
Clear floor space on lift platform ≥ 36" x ≥ 60" side door (in alcove)				
Clear vertical clearance ≥ 80" (410.1)				
Horizontal gap between platform sill and landings ≤ 1 ¼" at all levels (410.4)				
Surface				
Floor surface in lift is stable, firm, and slip resistant (410.2) (302) (303)				
Controls				
If horizontal obstruction ≤ 10", controls mounted between ≥ 15" and ≤ 48" (308.2, 308.3)				
If horizontal obstruction > 10" to ≤ 24", controls mounted between ≥ 15" and ≤ 44" (308.2.2)				
Operation				
Unassisted entry, operation, and exit (410.1)				
Controls are operable with one hand without grasping, pinching, or twisting (309.4)				
Force required for controls ≤ 5 foot pounds (309.4)				
Doors remain open ≥ 20 seconds (410.6)				

13 Escalators (New Stations) (DOT Standard 810.9)

Identify escalators along accessible routes.

Escalator 1: _____ Escalator 3: _____

Escalator 2: _____ Escalator 4: _____

Note OK, No, or N/A. Note dimensions if No	Escalators			
	1	2	3	4
Escalators clear width of ≥ 32” (810.9)				
At the top and bottom of each escalator run, ≥ 2 and ≤ 4 contiguous treads level beyond comb plate before risers begin to form (810.9, ASME A17.1 Sec. 6.1.3.6.5)				
Slip resistant strip of contrasting color on the back and side of each tread ≥ 1 ½” and ≤ 2” wide (810.9, ASME A17.1 Sec. 6.1.3.5.6)				

14 Ticketing and Automatic Fare Vending (DOT Standards 206, 220, 305, 404, 707, 904)

Note OK, No, or N/A. Note dimensions if No	Accessible Route			
	1	2	3	4
Ticketing				
Located on an accessible route (206.2.4)				
Ticketing, fare vending, and collection areas located on an accessible route that coincides with the route used by general public (206.2.4, 206.3)				
Counter ≤ 36” high above the ground (904.4.1, 904.4.2)				
Parallel approach: Counter ≥ 36” long with clear floor space complying with 305 parallel to 36” dimension (904.4.1)				
Forward approach: Counter ≥ 30” long with clear floor space complying with 305 perpendicular to 30” dimension and knee and toe clearance complying with 306 below counter (904.4.2)				
Automatic Fare Vending and Fare Adjustment Devices				
Fare vending components adjoin or overlap an accessible route (206.3)				
If self-service fare vending provided, ≥ 1 accessible device of each type at each location (220.1)				
If self-service fare adjustment provided, ≥ 1 accessible device at each location (220.1)				
If self-service fare collection provided, ≥ 1 accessible device at each location (220.1)				
Clear floor area in front of accessible fare device ≥ 80” high and ≥ 48” deep by ≥ 30” wide (forward approach) or ≥ 30” deep by ≥ 48” wide (parallel approach) (305.5) (707.2)				
If device in a confined space:				
If forward approach depth ≥ 24”, approach ≥ 36” wide (305.7.1)				
If side approach depth ≥ 15”, approach ≥ 60” wide (305.7.2)				

Note OK, No, or N/A. Note dimensions if No	Accessible Route			
	1	2	3	4
If coin or card slots or controls necessary for operation including top of touch-screen are provided:				
If forward reach and obstruction ≤ 20” deep, then controls mounted between ≥ 15” and ≤ 48” (308.2.1)				
If forward reach and obstruction > 20” to ≤ 25” deep, then controls mounted between ≥ 15” and ≤ 44” (308.2.2)				
If side reach and obstruction ≤ 10” deep and ≤ 15” high, then controls mounted between ≥ 15” and ≤ 48” (308.3.1)				
If side reach and obstruction > 10” to ≤ 24” deep and ≥ 15” to ≤ 34” high, then controls mounted > height of obstruction to ≤ 46” (308.3.2)				
Controls and operating mechanisms are operable with one hand and do not require tight grasping, pinching, or twisting of the wrist (707.3, 309.4)				
The force required to activate controls is no greater than 5 pounds (707.3) (309.4)				
Instructions and information to complete all transactions are accessible and independently usable by individuals with vision impairments (707.5)				
Input Devices				
At least one tactilely discernable input control provided for each function (707.6.1)				
Key surfaces raised (707.6.1)				
Numeric keys arranged in ascending or descending telephone keypad layout with “5” key tactilely distinct (707.6.2)				
Function keys contrast visually from background surfaces, light-on-dark, dark-on-light (707.6.3.1)				
Characters and symbols on key surfaces contrast from key surfaces				
Function key surfaces have tactile symbols as follows: (707.6.3.2)				
Enter or Proceed key: Raised circle				
Clear or Correct key: Raised left arrow				
Cancel key: Raised letter “X”				
Add Value key: Raised plus (“+”) sign				
Decrease Value key: Raised minus (“–“) sign				
Speech Output				
Machine speech enabled (707.5)				
Braille instructions for initiating speech mode provided and comply with 703.3 (707.8)				
User can interrupt and repeat speech and control volume (707.5.1)				
Where receipts provided, audible balance information, error messages, and information necessary to complete or verify transaction provided (707.5.2)				
Display Screen				
Screen visible from a point 40” above the center of the clear floor space in front of the machine (707.7.1)				
Sans serif font (707.7.2)				
Uppercase “I” ≥ 3/16” high (707.7.2)				
Characters contrast with background, light-on-dark or dark-on-light (707.7.2)				

Note OK, No, or N/A. Note dimensions if No	Accessible Route			
	1	2	3	4
Fare Gate Components (404.2)				
Landing				
Clear space needed for gates based on approach, parallel or perpendicular to gate. (See DOT Standards Figure 404.2.4.1)				
Gate Location				
Configuration (a) – (k)				
Minimum parallel clearance				
Actual parallel clearance				
Minimum perpendicular clearance				
Actual perpendicular clearance				
Gate				
Width (404.2.3) Measured from door face to opposite stop with door open at 90°				
All doors ≥ 32” wide				
Kick plate (404.2.10)				
Gate surface on push side between the finish floor and a height of ≥ 10” has smooth surface on extending full width of gate				
Kick plate surface free of changes in depth at joints of ≥ 1/16”				
Operable parts of hardware between ≥ 34” and ≤ 48” above floor (404.2.7)				
Opening force ≤ 5 pounds for interior hinged gate (404.2.9)				

15 Platforms (DOT Standards 403, 810)

Fill out survey sheet for each platform assessed. Identify each platform below:

Platform 1:_____ Platform 3: _____

Platform 2:_____ Platform 4: _____

Indicate OK, No, or N/A. Note dimensions if No	1	2	3	4
Clearances				
Along the accessible route to the platform, clear width at least 36” wide, except:				
Clear width may be 32” wide to < 36” wide for distance of ≤ 24” provided that narrower segments are separated by segments of at least 48”(403.5.1)				
At intervals of ≤ 200’, route clearance ≥ 60” wide for distance of ≥ 60” (passing space) (403.5.3)				
Platform Width (§§ 37.9, 37.41-37.43, 38.125)				
For a new or altered conventional non-level boarding side passenger platform with a railing or wall on the platform side opposite the track, minimum platform width at least 12 feet. (See DOT Rail Q&A Guidance)				
For a new or altered conventional level boarding side passenger platform with a railing or wall on the platform side opposite the track, minimum platform width at least 8 feet. (See DOT Rail Q&A Guidance)				
Slope (810.5.1)				
Parallel to the track the slope is ≤ 1:48 (2.1%) Exception: if existing track ≤ the slope of the track				
Perpendicular to track the slope is ≤ 1:48 (2.1%)				
Detectable Warning				
Platform boarding edges, not protected by screens or guards, have a detectable warning along the full length of the public use area of the platform (810.5.2, 705.2)				
The detectable warning contrasts visually with adjoining surfaces, either light-on-dark or dark-on-light (705.1.3)				
The detectable warning is 24” wide (705.2)				
The detectable warning consists of raised truncated domes with:				
Base diameter ≥ 0.9” to ≤ 1.4”, top diameter 50% to 65% of base diameter (705.1.1)				
Height of 0.2” (705.1.1)				
Dome center-to-center spacing ≥ 1.6” to ≤ 2.4”, base-to-base dome spacing ≥ 0.65” (705.1.2)				
Platform Signs				
At least one tactile sign with raised characters and braille on each platform or boarding area identifying the station (703.2, 703.3, 810.6.2). (See requirements below)				
Signs, to maximum extent practicable, in uniform locations within system (810.6.2)				
Mounting height ≥ 48” from ground to base of lowest tactile character and ≤ 60” to base of highest tactile character (703.4.1)				
Clear floor space ≥ 18” by ≥ 18” centered on the tactile characters (703.4.2)				

Indicate OK, No, or N/A. Note dimensions if No	1	2	3	4
Route and Destination Signs				
Lists of stations, routes, and destinations served by the station and located in boarding areas, on platforms, or on mezzanines comply with 703.5 sign requirements below (810.6.2). Requirement does not apply to maps.				
Exception: Platform signs and Route and Destination signs are not required to comply with above requirements where audible signs are remotely transmitted to hand-held receivers or are user- or proximity actuated (810.6)				
Raised Characters and Braille (703.2, 703.3)				
Characters raised ≥ 1/32” (703.2.1)				
Uppercase sans serif font (703.2.2) (703.2.3)				
Characters ≥ 5/8” to ≤ 2” high (703.2.5)				
≥ 3/8” separation from borders and decorative elements (703.2.7)				
Accompanied by Grade 2 Braille (703.2)				
Braille characters below text; if multi-lined, below entire text (703.3.2)				
Braille characters are separated from tactile characters and raised borders ≥ 3/8” (703.3.2)				
Braille dots domed or rounded shape (703.3.1)				
Station Name Signs				
Name signs located at frequent intervals and clearly visible to sitting and standing passengers from within the vehicle on both sides when not obstructed by another vehicle (810.6.3)				
Station name signs comply with 703.5 sign requirements below (810.6.3)				
Visual Characters (703.5)				
Visual characters ≥ 40” above finish floor or ground (703.5.6)				
Character Height (703.5.5)				
For characters ≥ 40” and ≤ 70” above the ground, height of uppercase letter “I” ≥ 5/8” (703.5.5)				
For characters > 70” and ≤ 120” above the ground, character height of uppercase letter “I” ≥ 2” (703.5.5)				
For signs > 120” above the ground, character height of uppercase letter “I” ≥ 3” (703.5.5), except where sign space is limited (810.6.2)				
Characters and background have non-glare finish. Contrast between characters and background: Either light characters on dark background or dark characters on light background (703.5.1)				
Style: Characters in conventional form: Characters not Italic, oblique, script, highly decorative, or other unusual forms (703.5.3)				
Character Proportion: Width of uppercase “O” is between ≥ 55% and ≤ 110% of the height of uppercase “I” (703.5.4)				
Stroke: Width of uppercase “I” ≥ 10% to ≤ 30% of the height (703.5.7)				
Closest characters spaced between ≥ 10% and ≤ 35% of the character height (703.5.8)				
Spacing between the baselines of separate lines of characters within message spaced between 135% and 170% of character height (703.5.9)				
Coordination with Vehicle Floor				
Rapid Rail				
Platform edge within 3” horizontal of vehicle door and ± 5/8” vertical of vehicle floor under all normal operating conditions (§ 38.53(d)) Exceptions: (1) ± 1 1/2” vertical for new vehicles in existing stations; (2) 4” horizontal and ± 2” vertical for retrofitted car and new or key station, under 50% passenger load				

Indicate OK, No, or N/A. Note dimensions if No	1	2	3	4
Light Rail				
Platform edge within 3” horizontal of vehicle door and 5/8” vertical of vehicle floor under all normal operating conditions (§ 38.73(d)) Exceptions: (1) ± 1 1/2” vertical for new vehicles in existing stations; (2) 4” horizontal and ± 2” vertical for retrofitted car and new or key station, under 50% passenger load				
Standards require platform to be ≥ 8” above top of rail except where vehicles are boarded from sidewalk or street level				
Note: If station is located on a pedestrian mall, city street, or other area where level boarding is infeasible, lifts, ramps, bridge plates or mini-high platforms are permissible (810.5, 810.5.3 as modified by Part 37 Appendix A). Consult with FTA in these situations.				
Commuter Rail				
For platforms serving a track not also used for existing freight service, platform edge within 3” horizontal of vehicle door and 5/8” vertical of vehicle floor under all normal operating conditions (§ 38.93(d)). See Part 37 Appendix D to § 37.42 discussion of maximum gaps for level boarding and gap mitigation. Exceptions: (1) ± 1 1/2” vertical for new vehicles in existing stations; (2) 4” horizontal and ± 2” vertical for retrofitted car and new or key station, under 50% passenger load				
For platforms serving a track that is also used for freight service, § 37.42(d) requires analysis. In addition, regulations require alternatives to level boarding to be approved by FTA and/or FRA as applicable. (See Circular Chapter 3.)				

16 Mini-High Platforms

Identify each mini-high platform. Use Checklist Section 9 Ramps to survey mini-high ramps.

Note: Per § 37.42(c), mini-highs are allowable in new construction or altered platforms serving commuter, intercity or high-speed rail only where track is shared with freight service and only if analysis accepted by FTA and/or FRA (as applicable) indicates that level boarding, car-borne lifts, or bridge plates are not feasible.

Mini-high Platform 1: _____ Mini-high Platform 3: _____

Mini-high Platform 2: _____ Mini-high Platform 4: _____

Note OK, No, or N/A. Note dimensions if No	1	2	3	4
Light Rail				
Station is located on a pedestrian mall, city street, or other area where level boarding is infeasible (810.5, 810.5.3 as modified by Part 37 Appendix A). Mini-highs acceptable only at such stations, not other stations on the same line where level boarding is possible.				
Commuter Rail (applicable only for platforms adjacent to existing freight service)				
Level boarding not structurally or operationally practicable and approval for use of mini-highs is obtained from FTA or FRA (§ 37.42(d), 36 CFR 1192.93(d))				
Section 37.42(e) requires space between platform edge and mini-high and other obstructions (stairwells, elevator shafts, seats, etc.) to be ≥ 6 feet, or if full clearance not feasible, regulations require barriers to prevent pedestrian traffic through narrower area. (See Circular Chapter 3.)				
Detectable Warning				
Platform edges, not protected by screens or guards, have a detectable warning along the full length of the public use area of the platform (810.5.2, 705.2)				
Detectable warning conforms to 705.2 (See Circular Facilities Checklist Section 15 - Platforms)				

17 Public Address Systems (DOT Standard 810.7)

	Note OK, No, or N/A
If a public address system provides audible messages, the same or equivalent information is provided in a visual format (810.7)	

18 Clocks (DOT Standard 810.8)

Assess each clock and note OK, No, or N/A Note dimensions if No	Clock				
	1	2	3	4	5
Where clocks are provided for use by the public, clock face is uncluttered so that its elements are clearly visible					
Hands, numerals and digits contrast with the background either light-on-dark or dark-on-light					
Overhead Clocks (703.5)					
Overhead clock numerals and digits comply with 703.5					
Characters and background have non-glare finish. Contrast between characters and background: Either light characters on dark background or dark characters on light background (703.5.1)					
Style: Characters conventional in form. No italic, oblique, script, highly decorative, or other unusual forms (703.5.3)					
Character Proportion: Width of uppercase “O” is between ≥ 55% and ≤ 110% of the height of uppercase “I” (703.5.4)					
Stroke: Width of uppercase “I” ≥ 10% to ≤ 30% of its height (703.5.7)					
Closest characters spaced between ≥ 10% and ≤ 35% of the character height (703.5.8)					
Spacing between the baselines of separate lines of characters between 135% and 170% percent of character height (703.5.9)					
Character Height (703.5.5 and Table 703.5.5)					
For characters ≥ 40” and ≤ 70” above the ground and viewed from < 72 inches horizontal, height of uppercase letter “I” ≥ 5/8” (703.5.5)					
For characters > 70” and ≤ 120” above the ground and viewed from < 180 inches horizontal, character height of uppercase letter “I” ≥ 2” (703.5.5)					
For characters > 120” above the ground and viewed from < 21 feet horizontal, character height of uppercase letter “I” ≥ 3” (703.5.5)					
Note: Use Table 703.5.5 to increase character height for longer horizontal viewing distances.					

19 Telephones (DOT Standards 217, 704)

Note OK, No, or N/A	1	2	3	4
Where coin-operated public pay telephones, coinless public pay telephones, public closed-circuit telephones, public courtesy phones, or other types of public telephones are provided, public telephones must be provided in accordance with 217 for each type of public telephone provided.				
If a single public telephone or a bank of telephones provided on floor, level, or exterior site, at least one wheelchair accessible phone per floor, level, and exterior site provided (217.2)				
If two or more banks of phones are provided, at least one per bank is wheelchair accessible (217.2)				
For forward approach, accessible phone has clear floor space ≥ 48” deep and ≥ 30” wide and counter depth ≤ 20” (704.2.1.2) (305.5)				
For parallel approach, accessible phone has clear floor space ≥ 30” deep and ≥ 48” wide and counter depth ≤ 20” (704.2.1.1) (305.5)				
Highest operable part ≤ 48” (704.2.2) (308) (309)				
The cord from the telephone to the handset is 29 inches long				
Volume control is provided on all public phones (217.3)				
TTYs				
If a public pay telephone provided on floor, at least one TTY is provided (217.4.2)				
Where at least one public pay telephone serves an entrance, at least one TTY is provided to serve the entrance (217.4.7)				
If four or more public pay telephones are provided on exterior site, at least one TTY is provided on site (217.4.4)				
Where four or more public pay telephones are provided at a bank of telephones, at least one public TTY complying with 704.4 must be provided at the bank. Exception: If the bank of public telephones is located ≤ 200’ away from and on the same floor as a bank containing a TTY, a TTY is not required at this bank. (217.4.1)				
TTY at a public pay telephone is permanently affixed within, or adjacent to, the telephone enclosure. Where an acoustic coupler is used, the telephone cord shall be sufficiently long to allow connection of the TTY and the telephone receiver. (704.4)				
If an interior bank of public pay telephones has three or more phones, at least one phone provides shelf and electrical outlet for portable TTY (217.5)				
The shelf and electrical outlet for a portable TTY is within or adjacent to the telephone enclosure. The telephone handset is capable of being placed flush on the surface of the shelf. The shelf is capable of accommodating a TTY and has 6 inches minimum vertical clearance above the area where the TTY is to be placed. (704.5)				
Signs				
Where signs provide directions to phones, they also provide directions to TTYs and include the International Symbol of TTY (216.9.2, 703.5, 703.7.2.2)				
At banks of public pay telephones which do not have a TTY, directions to nearest public TTY provided and include the International Symbol of TTY (216.9.2, 703.7.2.2)				
TTY identified by the International Symbol of TTY (216.9.1,703.2.2)				

20 Areas of Refuge (DOT Standard 207)

An area of refuge is required if any of the following conditions exist:

< 50 % of the exterior walls are open to the outside (207.1, IBC 2003) ☐ Yes ☐ No

The facility has no automatic sprinkler system (207.1, IBC 2003 – 903.3.1.1) ☐ Yes ☐ No

The emergency evacuation route is not accessible (207.1, IBC 2003) ☐ Yes ☐ No

Elevators or lifts on the emergency evacuation route do not have standby power (207.2) ☐ Yes ☐ No

Describe each area of rescue assistance:

Area of Refuge 1: _____

Area of Refuge 2: _____

Note OK, No, or N/A. Note dimensions if No	Area of Refuge 1	Area of Refuge 2
Each area of refuge provides at least one wheelchair space for each 200 potential occupants of the area served by the area of refuge, each being ≥ 30” by ≥ 48” (IBC 2003 1007.6.1)		
The wheelchair spaces do not encroach on the required exit width (IBC 2003 1007.6.1)		
Each stairway adjacent to an area of refuge has ≥ 48” clear width between the handrails (IBC 2003 1007.8.2)		
A method of two-way communication, with both visual and audible signals, provided between each area of refuge and the primary entry (IBC 2003 1007.6.3)		
Area of refuge identified by a visual sign that includes the words “Area of Refuge” and the International Symbol of Accessibility (illuminated when exit sign illumination is required) (IBC 2003 1007.6.5)		
Signs displayed at all inaccessible exits and where necessary to identify the direction to areas of refuge (IBC 2003 1007.7)		
Instructions provided for use of the area posted near two-way communication system (IBC 2003 1007.6.4)		

Chapter 4 – Vehicle Acquisition and Specifications

4.1 Introduction

Beginning in 1991, the U.S. Department of Transportation (DOT) Americans with Disabilities Act (ADA) regulations laid out a strategy for making public transportation vehicles accessible over time by requiring transportation providers to acquire vehicles that are "readily accessible to and usable by individuals with disabilities." This phased-in compliance approach with the 49 CFR Part 38 Accessibility Specifications for Transportation Vehicles[1] tied to acquisition will eventually make fixed route vehicle fleets fully accessible as older inaccessible vehicles are replaced with accessible ones. Nearly 100 percent of transit buses and rapid rail cars and 87 percent of commuter rail and light rail cars were reported to be accessible as of 2013.[2]

This chapter highlights the design requirements for accessible buses and vans and for rapid, commuter, and light rail cars as outlined in Part 38, and discusses the vehicle acquisition requirements that apply to various types of service. It ends with suggestions for ensuring acquired vehicles are in fact accessible.

Vehicle acquisition includes both purchasing and leasing vehicles. It also includes vehicles that transit agencies receive through donations. The requirements vary depending on whether a transportation provider is a public entity (or an entity providing service on behalf of a public entity) or a private entity. As noted in Circular Chapter 1, public entities include state or local governments, special purpose districts, commuter authorities, and transit agencies, regardless of whether they are FTA grantees.

The requirements also vary depending on transportation modes an agency provides and, in some cases, whether or not an agency is acquiring new, used, or remanufactured vehicles for these services.

This Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves or replace the need for readers to reference the detailed information in the regulations. FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.

4.1.1 Standards for Accessible Vehicles

Requirement

"For purposes of this part, a vehicle shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the standards set forth in Part 38 of this title" (§ 37.7(a)).

Discussion

An "accessible" vehicle under the ADA is by definition one that meets the Part 38 design specifications. It is important to stress that public entities cannot depart from the specific technical and scoping

[1] These vehicle requirements closely follow the guidelines developed by the Access Board and set forth in the "ADA Accessibility Guidelines for Transportation Vehicles" (36 CFR Part 1192).

[2] See American Public Transportation Association, "Public Transportation Fact Book" (2014).

requirements for vehicles in Part 38 without a signed determination of "equivalent facilitation" from the FTA Administrator. (See Circular Section 5.3.)

4.1.2 Elements of Accessible Vehicles

Part 38 contains technical design requirements for each of the four surface vehicles typically run by FTA grantees. Each vehicle type has its own subpart in Part 38:

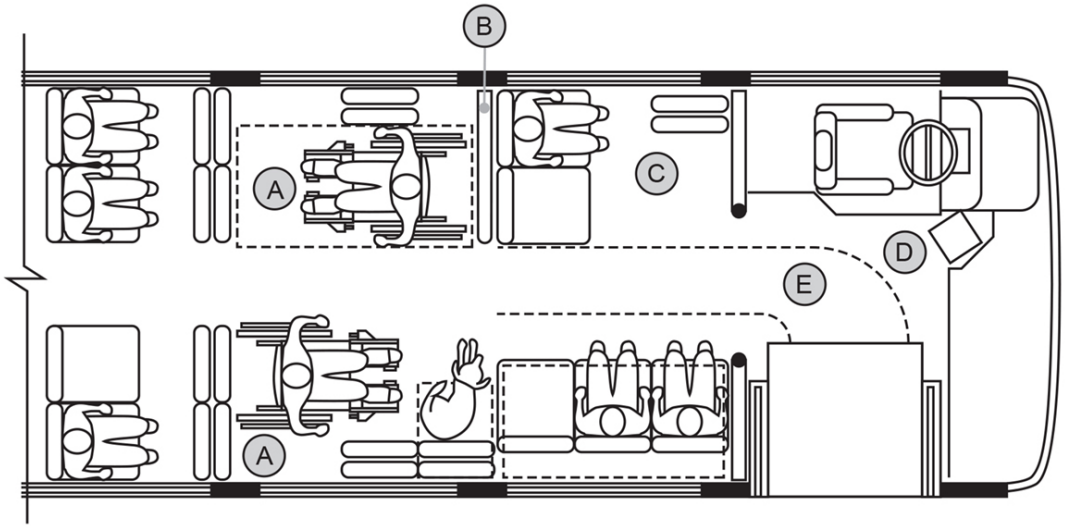
- Subpart B – Buses and Vans
- Subpart C – Rapid Rail Vehicles
- Subpart D – Light Rail Vehicles
- Subpart E – Commuter Rail Cars

Readers should refer to the relevant subpart for the technical design requirements. Because Part 38 is so expansive, this chapter focuses broadly on the crucial and sometimes overlooked accessibility elements. These accessibility elements are discussed below for each respective vehicle type, along with the relevant acquisition requirements.

Readers seeking information on standards for bus rapid transit (BRT) are reminded that "BRT vehicles" are buses, and should direct their attention to the relevant sections of this Circular. Similarly, readers seeking information for "streetcars" should direct their attention to the standards and requirements for light rail.

Although accessibility for buses and rail cars is commonly perceived to mean an individual using a wheelchair or mobility aid can board or alight the vehicle, this is a far from complete picture of accessibility. A fully accessible vehicle or rail car includes a number of additional important elements detailed in Part 38. The range of elements that make for an accessible vehicle is often best illustrated graphically. For example, as shown in Figures 4-1 and 4-2, for the respective interior and exterior elements of a bus, accessibility requirements include public address systems (on vehicles more than 22 feet in length), proper handrails, and stanchions. In addition, minimum overhead clearances, slip-resistant flooring, and sufficient lighting are part of vehicle accessibility.

Interior Components of a Bus More Than 22 Feet in Length



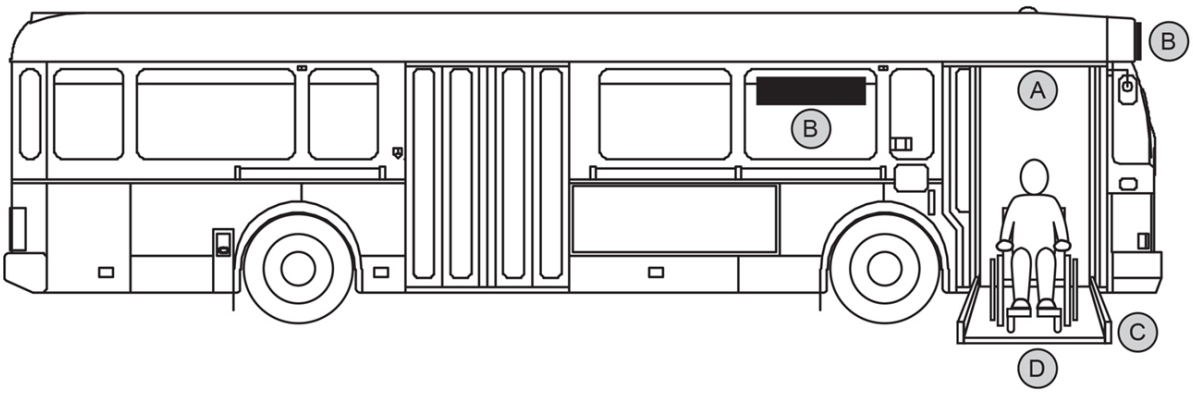
Specification Elements (See §§ 38.23–38.37)

A	Securement areas and storage (including the number of areas, location of areas, size of securement areas, and orientation of mobility device)
B	Padded barrier (if rear-facing securement)
C	Designated priority seating and signage
*	Flooring (slip resistant)
*	Seat edge markings
*	Handrails and stanchions
D	Farebox location and horizontal assist
E	Clear path to/from securement areas
*	Stop request system
*	Public address system

*Not labeled on figure

Figure 4-1 – Interior Accessibility Components of a Bus Longer Than 22 Feet

Exterior Components of an Accessible Bus



Specification Elements (See §§ 38.23—38.37)

A	Accessible door height
B	Destination/route information
*	Lighting at accessible entrance
	Ramp Specification Elements (See § 38.23(c))
*	Design Load
*	Surface
*	Width
*	Slope
*	Attachment to vehicle
*	Transition to vehicle floor
C	Side barriers
D	Transition from ground to ramp

*Not labeled on figure

Figure 4-2 – Accessibility Components of a Bus Exterior

4.1.3 Stand-in-the-Shoes Acquisition Requirements

Requirement

"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" (§ 37.23(b)).

"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" (§ 37.23(c)).

Discussion

Many transit agencies use private contractors to operate all or some of their agency's services. As discussed in Circular Section 1.3.2, § 37.23 obligates these agencies to ensure their contractors comply with the DOT ADA regulations. These stand-in-the-shoes provisions not only apply to service delivery, but also specifically to vehicle acquisition. As discussed in Appendix D to § 37.23,

> The "stand in the shoes" requirement applies not only to vehicles acquired by private entities explicitly under terms of an executed contract to provide service to a public entity, but also to vehicles acquired "in contemplation of use" for service under such a contract. This language is included to ensure good faith compliance with accessibility requirements for vehicles acquired before the execution of a contract. Whether a particular acquisition is in contemplation of use on a contract will be determined on a case-by-case basis. However, acquiring a vehicle a short time before a contract is executed and then using it for the contracted service is an indication that the vehicle was acquired in contemplation of use on the contract, as is acquiring a vehicle ostensibly for other service provided by the entity and then regularly rotating it into service under the contract.

Agencies must also ensure that the percentage of accessible vehicles in their fixed route or demand responsive fleet is not diminished as a result of using a contractor. For example, if a public entity's demand responsive bus fleet is 85 percent accessible, then at least 85 percent of its contractor's vehicles used for the contract must be accessible. This requirement applies whether the vehicles to be acquired are new, used, or remanufactured

4.1.4 Acquisition Requirements for Public Entities – In Summary

The acquisition requirements for public entities, summarized in Table 4-1, depend on the following factors:

- Service type – This includes fixed route bus, light or rapid rail, commuter rail, and demand responsive.
- Vehicle type – This is defined as rail or non-rail. Non-rail vehicles include buses and vans.
- Vehicle condition – This includes new, used, or remanufactured vehicles.

Table 4-1 – Vehicle Acquisition Requirements for Public Entities

Service	Vehicle	New/Used/ Remanufactured	49 CFR Section	Exceptions to Acquiring an Accessible Vehicle
Fixed route	Non-rail	New	37.71	None
Fixed route	Non-rail	Used	37.73	(1) Unable to acquire after good faith effort or (2) received as a donation
Fixed route	Non-rail	Remanufactured	37.75	(1) Vehicle modifications would have a significant adverse effect on structural integrity (as demonstrated by engineering analysis), or (2) vehicle modifications would alter historic character*
Demand responsive	Non-rail	New**	37.77	Demonstrate equivalent service for individuals with a disability (see Circular Chapter 7)
Rapid rail or light rail	Rail car	New	37.79	None
Rapid rail or light rail	Rail car	Used	37.81	Unable to acquire after good faith
Rapid rail or light rail	Rail car	Remanufactured	37.83	(1) Vehicle modifications would have a significant adverse effect on structural integrity (as demonstrated by engineering analysis), or (2) vehicle modifications would alter historic character*
Commuter rail	Rail car	New	37.85	None
Commuter rail	Rail car	Used	37.87	Unable to acquire after good faith effort
Commuter rail	Rail car	Remanufactured	37.89	Vehicle modifications would have a significant adverse effect on structural integrity (as demonstrated by engineering analysis)

* Applicable only if a vehicle of historic character is operated solely on a segment of a fixed route that is included on the National Register of Historic Places
**FTA also permits agencies to acquire inaccessible used vehicles. (See Circular Section 4.2.4.)

As shown in the table, for each type of service and vehicle listed, the applicable requirements obligate public entities to acquire vehicles that are accessible unless one of the exceptions applies. Each requirement is explained in the following sections. Note that some language is deliberately repeated for completeness. These requirements again also apply to contractors that may be "standing in the shoes" to provide service for a public entity. (See Circular Section 4.1.3.)

4.2 Buses and Vans

4.2.1 New Fixed Route Bus or Van Acquisition

Requirement

"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" (§ 37.71(a)).

Discussion

New buses and vans acquired for fixed route service must be accessible; there are no exceptions. The requirement in § 37.71(a) applies to any solicitation for new non-rail vehicles (buses or vans) to ensure that the vehicles are designed and built to meet the applicable Part 38 specifications.

4.2.2 Used Fixed Route Bus or Van Acquisition

Requirement

"Except as provided elsewhere in this section, each public entity operating a fixed route system purchasing or leasing, after August 25, 1990, a used bus or other used 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" (§ 37.73(a)).

"A public entity may purchase or lease a used vehicle for use on its fixed route system that is not readily accessible to and usable by individuals with disabilities if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so" (§ 37.73(b)).

"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" (§ 37.73(c)).

"Each public entity purchasing or leasing used vehicles that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts it made for three years from the date the vehicles were purchased. These records shall be made available, on request, to the FTA Administrator and the public" (§ 37.73(d)).

Discussion

Used buses or vans acquired for fixed route use must be accessible unless the transit agency cannot obtain an accessible used vehicle or, in some cases, when it receives an inaccessible vehicle through a donation as described below. This requirement applies to any solicitation for used non-rail vehicles (buses or vans) to ensure that the vehicles meet the applicable Part 38 specifications.

FTA has encountered public entities interested in leasing or otherwise acquiring used inaccessible trolley replica buses that are designed to appear to be historic rail vehicles (e.g., mimicking cable cars) for use on fixed route service. These rubber-tired trolley replicas are considered the same as any other kind of bus and therefore cannot be acquired unless another accessible used vehicle cannot be found, an unlikely scenario.

Two exceptions apply to fixed route vehicle purchases. First, § 37.73(b) permits acquisition of an inaccessible used vehicle only after demonstrating and documenting a "good faith effort" to acquire accessible used vehicles that was ultimately unsuccessful. Given that most buses manufactured since 1990 are now accessible, this exception generally is no longer used.

For a transit agency, demonstrating good faith efforts described in § 37.73(c) includes specifying accessible used vehicles, specifically a vehicle that is "lift-equipped and otherwise accessible to and usable by individuals with disabilities," in its initial solicitation for used vehicles. Good faith efforts also

include undertaking a nationwide search for accessible used vehicles and not limiting the search to a particular region. It is not enough to contact only a known manufacturer to see if it has accessible used buses.

Section 37.73(c)(3) requires public entities to advertise in trade publications and contact trade associations. This includes advertising in magazines such as *Passenger Transport* or *Community Transportation* and other national outlets to determine whether accessible used vehicles are available. Trade groups include the American Public Transportation Association (APTA) or the Community Transportation Association of America (CTAA), the respective publishers of the two magazines.

Section 37.73(d) requires public entities to document their good faith efforts to acquire accessible used vehicles, and to retain and make available this documentation to FTA and the public for three years.

Second, as discussed in Appendix D to § 37.73, "There is an exception to these requirements for donated vehicles. . . . Entities interested in accepting donated vehicles must submit a request to FTA to verify that the transaction is a donation." This rare situation requires entities to submit documentation to the FTA Regional Civil Rights Officer for verification. Soliciting donations of inaccessible vehicles is not permitted.

4.2.3 Remanufactured Fixed Route Bus or Van Acquisition

Requirement

"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" (§ 37.75(a)).

"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" (§ 37.75(b)).

"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" (§ 37.75(c)).

"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" (§ 37.75(d)).

"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" (§ 37.75(e)).

Discussion

A fixed route bus or van that has been remanufactured must be made accessible to the maximum extent feasible. Like the acquisition of used inaccessible buses, remanufacturing of inaccessible buses has become rarer over time. As defined in § 37.3, a remanufactured vehicle is "a vehicle which has been structurally restored and has had new or rebuilt major components installed to extend its service life." Appendix D to § 37.75 further explains:

> The term remanufacture, as used in the ADA context, is different from the use of the term in previously issued FTA guidance. The term has a specific meaning under the ADA: there must be structural work done to the vehicle and the work must extend the vehicle's useful life by five years.
>
> The ADA imposes no requirements on what FTA traditionally considers bus rehabilitation. Such work involves rebuilding a bus to original specifications and focuses on mechanical systems and interiors. Often this work includes replacing components. It is less extensive than remanufacture.

Some transit agencies have the capacity to perform major work, such as rebuilding a bus from the chassis up after an accident, with their own mechanics in their own maintenance facilities. As a result, they have complete control over the remanufacturing process. The requirement for a remanufactured vehicle to be accessible to the maximum extent feasible, however, applies regardless of whether the vehicle is remanufactured in-house by transit agency personnel or is acquired as a remanufactured vehicle from a third party.

Historic Buses

While remanufactured buses typically must be made accessible to the maximum extent possible, § 37.75(d) has an exception for historic buses. Appendix D to § 37.75 states:

> The statute, and the rule, includes an exception for the remanufacture of historical vehicles. This exception applies to the remanufacture of or purchase of a remanufactured vehicle that (1) is of historic character; (2) operates *solely* on a segment of a fixed route system which is on the National Register of Historic Places; and (3) making the vehicle accessible would significantly alter the historic character of the vehicle. The exception only extends to the remanufacture that would alter the historic character of the vehicle. All modifications that can be made without altering the historic character (such as slip resistant flooring) must be done.

Other modifications that may still need to be made to vehicles deemed historic, in addition to non-slip flooring, include audio speakers, which can be installed and still maintain the vehicle's historic character. Section 37.75(e) requires agencies that wish to qualify for this exception to write to the FTA Administrator. FTA will consult with the National Register of Historic Places on the request and rely on its advice before allowing an exception.

4.2.4 Demand Responsive Bus or Van Acquisition of Inaccessible Vehicles

Requirement

"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" (§ 37.77(a)).

"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" (§ 37.77(b)).

Discussion

For demand responsive systems for the general public, transit agencies may purchase inaccessible vehicles if the system as a whole provides "equivalent service" to persons with disabilities, including those who use wheelchairs.

Section 37.77(a) only specifically addresses the acquisition of new buses or other vehicles for use in demand responsive systems. FTA also permits agencies to acquire inaccessible used vehicles for use in demand responsive systems, as long as the equivalent service standards in § 37.77 are met.

FTA also allows agencies to acquire inaccessible sedans or other inaccessible vehicles for use in complementary paratransit service, for example, as long as accessible vehicles are dispatched to riders who need them, including non-wheelchair users who may require the vehicle lift or another accessibility element of the vehicle to use the service.

See Circular Chapter 7 for information on equivalent service requirements.

4.2.5 Considerations for Acquiring Accessible Buses and Vans

For buses and vans, the following discussion covers lifts, ramps, wheelchair securements, and priority seating, as these are the subjects most often raised to FTA. Refer to Part 38 Subpart B for the complete set of accessibility specifications for these vehicles. Attachment 4-1 includes an optional sample checklist used in FTA's specialized ADA lift compliance reviews, which transit agencies can use to review a vendor's design or to conduct a bus inspection.

Public entities cannot make any departures from the specific technical and scoping requirements for buses or vans without a signed determination of equivalent facilitation from the FTA Administrator. (See Circular Section 5.3.)

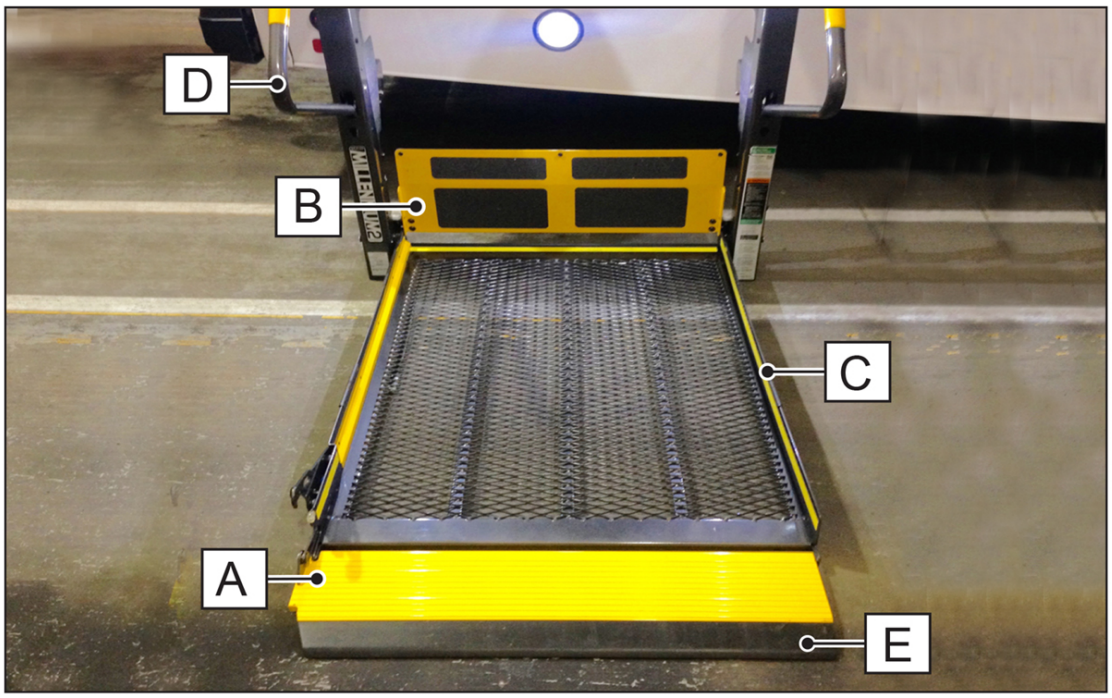
Lifts

Figure 4-3 illustrates the components of a vehicle lift. It is helpful to understand the full range of lift specifications and design and performance dimensions of a lift. For example, § 38.23(b) sets a minimum design load for a lift (600 pounds), which is the maximum amount the lift is expected to accommodate. However, it also establishes minimum safety factors based on the ultimate strength of the material (six times the design load for working parts such as belts, pulleys, and shafts, and three times the design load for nonworking parts like the platform and frame). This means that a lift meeting the minimum 600-pound design load must have a safety factor of 1,800 pounds for nonworking parts and 3,600 pounds for working parts. It is important when specifying lifts to ensure that both the design load and the safety factors are addressed.

Section 38.23(b) includes specifications for the following aspects of a bus or van lift:

- Design load – minimum weight to carry and minimum strength of key components
- Controls – design for safety
- Emergency operation – manual control if primary power fails
- Power or equipment failure – limited descent rate if primary power fails
- Platform barriers – front, rear, and side platform barriers to keep the mobility aid from rolling off of lift
- Platform surface – minimal protrusions and required slip resistance

- Platform gaps – maximum gaps between lift platform and barriers, and between lift platform and vehicle floor
- Platform entrance ramp – maximum slope of lift platform entrance ramp when deployed on ground
- Platform deflection – maximum tilt of lift platform while loaded
- Platform movement – maximum speed of lift while carrying passenger and while deploying and stowing
- Boarding direction – available to board in either direction
- Use by standees – lifts must accommodate standees, with or without a mobility aid
- Handrails – minimum and maximum height, strength, size



Lift Specification Elements (See § 38.23(b))

A	Outer barrier
B	Inner barrier
C	Side barrier
D	Hand rail
*	Design load and safety factors
*	Controls and interlocks
*	Emergency backup system
*	Raise and lower speeds (and control in the event of a power failure)
*	Platform dimensions
*	Transition to vehicle floor
*	Maximum platform deflection
E	Transition from ground to platform
*	Boarding direction
*	Boarding direction edge markings

*Not labeled on figure

Figure 4-3 – Lift Specification Elements

Ramps

More and more transit agencies are choosing to acquire low-floor buses that use ramps to board individuals who use wheelchairs. These ramps also easily accommodate passengers who use other mobility aids as well as passengers who have difficulty climbing or descending steps. Advantages of ramps over lifts are their simpler design, simpler maintenance, and ease of manual operation by the driver if the primary power fails. However, a potential drawback of low-floor buses is that, for a given size bus, the seating capacity for a vehicle with a ramp is often less than the capacity for a vehicle with a lift.

Because of their simpler design and operation, there are fewer specifications for ramps than for lifts. Nevertheless, it is just as important to be familiar with these requirements.

Section 38.23(c) includes specifications for the following elements of a bus or van ramp:

- Design load – minimum weight to carry and minimum strength of key components
- Ramp surface – minimal protrusions and required slip resistance
- Ramp threshold – maximum vertical gap between ramp and street, ramp and vehicle floor
- Ramp barriers – side barriers to prevent mobility aid from rolling off
- Ramp slope – maximum ramp slope when deployed
- Attachment – maximum horizontal gap between ramp and vehicle floor
- Stowage – safe and non-obstructing location of ramp when stowed
- Handrails – minimum and maximum height, strength, size

As an optional good practice, some transit agencies have created a test pallet equal in weight to the specified weight capacity to verify that their lifts and ramps meet the design load specifications, particularly for those they have rebuilt.

Although it is not required, a kneeling feature on the bus reduces the slope of the ramp for individuals using wheelchairs and makes it easier for other riders to enter and exit the bus. This can be an important factor that may determine whether an individual passenger can use the fixed route system. In some situations, such as when deploying a ramp on the street rather than on the sidewalk, the use of the kneeling system may be necessary to achieve a compliant ramp slope.

Securement Systems

Securement systems for wheelchairs can vary considerably among different vendor offerings, even while meeting the DOT ADA regulations. Figure 4-4 illustrates the specification elements of securement and passenger restraint systems.

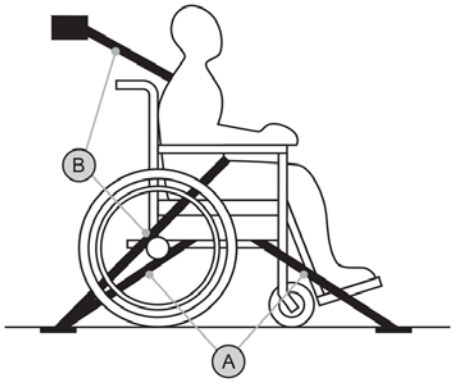
Section 38.23(d) requires all ADA-compliant vehicles to be equipped with securement devices capable of accommodating wheelchairs and mobility aids, as well as a separate seat belt and shoulder harness for use by wheelchair users. The securement system must limit the movement of an occupied wheelchair to no more than 2 inches in any direction under normal vehicle operating conditions.[3] The regulations do not mandate the installation of a specific type of securement device; any device, however, must meet the performance standards outlined in Part 38.

It is also important to note that while these performance standards may enable the securement system to provide a degree of safety in the event of a collision or similar incident, they are not intended to function

[3] For vehicles with a Gross Vehicle Weight Rating (GVWR) of less than 30,000 lbs., securement systems must restrain a force in the forward direction of up to 2,500 lbs. per securement leg or clamping mechanism and a minimum of 5,000 lbs. for each mobility aid (for vehicles with a GVWR of greater than 30,000 lbs., these forces are 2,000 lbs. per securement leg or clamping mechanism and 4,000 lbs. per mobility aid).

as automotive safety devices and are not regulated as such by the National Highway Traffic Safety Administration. Their purpose is to provide accessibility for persons with disabilities by preventing the passenger's mobility device from moving around inside the vehicle under normal operating conditions.

Securement and Passenger Restraint System



Specification Elements (See § 38.23(d))

A	Wheelchair securement system • Design loads • Placement and protection of systems • Accommodation of mobility devices • Effectiveness of securement (Maximum movement of mobility device when secured)
B	Passenger restraint system • Seat belt and shoulder harness at each securement area • Seat belt and shoulder harness separate from wheelchair securement system

Figure 4-4 – Securement and Passenger Restraint System Specification Elements

FTA recommends transit agencies obtain design specifications, including compliance with appropriate industry standards, for any securement system under consideration. It is also useful for agencies to be aware of the wide variety of wheelchairs their securement system must accommodate.

Section 38.23(d) includes specifications for the following aspects of bus or van wheelchair securement systems:

- Design load – minimum force for securement system to restrain
- Location and size – location of securement areas and minimum floor space for each
- Mobility aids – ease of use of securement system to accommodate variety of mobility aids
- Orientation – at least one forward-facing securement area, with additional rearward-facing areas allowed if a rear-padded barrier is provided
- Movement – maximum allowable movement of wheelchair when secured
- Stowage – safe and non-obstructing securement system when not in use
- Seat belt and shoulder harness – requirements for lap belt and shoulder harness for each securement device

In order to ensure that the specified securement system is capable of securing the largest variety of wheelchairs possible, FTA recommends that transit agencies consider various types and configurations to

determine appropriate specifications. This includes consulting with other agencies that are using the same securement system. For example, a four-point strap-type tie-down system that relies on straps and hooks may be easier to use with some types of wheelchairs, but it may not be capable of reaching or attaching to appropriate attachment points on others.

As an optional good practice, some transit agencies provide regular riders who use wheelchairs the option to have tether straps installed on their wheelchairs. Other agencies provide these tether straps to drivers, who may use them to secure certain wheelchairs that otherwise could not be properly secured. Tether straps are also routinely used on wheelchairs that can be properly secured without them as a way to identify the best location for securement and to remove any guesswork for the driver. These practices provide convenient and easily identifiable attachment points for securing a rider's wheelchair to the bus. (See Circular Section 2.4.3.)

Priority Seating Signs

Requirement

"Each vehicle shall contain sign(s) which indicate that seats in the front of the vehicle are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them. At least one set of forward-facing seats shall be so designated" § 38.27(a).

Discussion

The language an agency places on its priority seating signs does not need to match exactly the text in § 38.27(a) but instead capture the general requirement.

With respect to the requirement for designating at least one set of forward-facing seats as priority seats, aisle-facing seats on many buses and vans are designated and signed as priority seats. This is an acceptable practice provided the first forward-facing seats are also designated and signed in accordance with the § 38.27(a) requirement. However, there are certain bus designs in which the first forward-facing seats are not close to the front of the bus but are instead in the elevated portion of a low floor bus and/or in the rear row, a configuration not contemplated when the rule was issued. FTA encourages transit agencies using buses with such seating configurations to designate the first aisle-facing seats reachable without steps as priority seats with accompanying signage for these seats.

4.3 Rapid and Light Rail Vehicles

4.3.1 New Rapid or Light Rail Vehicle Acquisition

Requirement

"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" (§ 37.79).

Discussion

New rapid rail cars and light rail vehicles must be accessible; there are no exceptions. This requirement in § 37.79 applies to any solicitation for new rapid rail or light rail cars to ensure that the vehicles are designed and built to meet the applicable Part 38 specifications.

4.3.2 Used Rapid or Light Rail Vehicle Acquisition

Requirement

"Except as provided elsewhere in this section, each public entity operating a rapid or light rail system which, after August 25, 1990, purchases or leases a used 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" (§ 37.81(a)).

"A public entity may purchase or lease a used rapid or light rail vehicle for use on its rapid or light rail system that is not readily accessible to and usable by individuals if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so" (§ 37.81(b)).

"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" (§ 37.81(c)).

"Each public entity purchasing or leasing used rapid or light rail vehicles that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts it made for three years from the date the vehicles were purchased. These records shall be made available, on request, to the FTA Administrator and the public" (§ 37.81(d)).

Discussion

Used rapid and light rail vehicles must be accessible unless the transit agency cannot obtain an accessible used vehicle or, in some cases, when it receives a donation as described below. This requirement applies to any solicitation for used rapid or light rail vehicles to ensure that the vehicles meet the applicable Part 38 specifications.

Two exceptions apply for rapid rail cars or light rail vehicle purchases. First, § 37.81(b) permits acquisition of an inaccessible vehicle after demonstrating and documenting having first made a "good faith effort" to acquire accessible rapid or light rail vehicles. Given that most rail cars manufactured since 1990 are now accessible, this exception generally is no longer used.

For a transit agency, demonstrating good faith efforts described in § 37.81(c) includes specifying in its initial solicitation for used vehicles that all vehicles must be accessible. Good faith efforts also include undertaking a nationwide search for accessible used vehicles and not limiting the search to a particular region. It is not enough to contact only a known manufacturer to see if it has accessible used rail cars.

Section 37.81(c)(3) requires public entities to advertise in trade publications and contact trade associations. This includes advertising in magazines such as *Passenger Transport* and other national outlets to determine whether accessible used vehicles are available. Trade groups include the American Public Transportation Association (APTA).

Section 37.81(d) requires public entities to document their good faith efforts to acquire accessible used vehicles, and to retain and make available this documentation to FTA and the public for three years.

There is another exception to these requirements for donated vehicles. In the rare circumstance that someone wishes to donate a vehicle to a public entity, the ADA does not prevent the transit operator from accepting a gift. Not all "zero dollar" transfers are donations, however. This rare situation requires entities

to submit documentation to the FTA Regional Civil Rights Officer for verification. Soliciting donations of inaccessible vehicles is not permitted.

4.3.3 Remanufactured Rapid or Light Rail Vehicle Acquisition

Requirement

"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" (§ 37.83(a)).

"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" (§ 37.83(b)).

"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" (§ 37.83(c)).

"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" (§ 37.83(d)).

"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" (§ 37.83(e)).

Discussion

A rapid or light rail vehicle that has been remanufactured must be made accessible to the maximum extent feasible. According to Appendix D to § 37.83, this remanufacturing section for rapid or light rail vehicles "parallels the remanufacturing section for buses," which is covered under § 37.75. (See Circular Section 4.2.3.) Thus, the Appendix D language to § 37.75 also applies to rapid or light rail vehicles:

> The term remanufacture, as used in the ADA context, is different from the use of the term in previously issued FTA guidance. The term has a specific meaning under the ADA: there must be structural work done to the vehicle and the work must extend the vehicle's useful life by five years.
>
> The ADA imposes no requirements on what FTA traditionally considers "rehabilitation." Such work involves rebuilding a [vehicle] to original specifications and focuses on mechanical systems and interiors. Often this work includes replacing components. It is less extensive than remanufacture.

The requirement for a remanufactured vehicle to be accessible to the maximum extent feasible applies regardless of whether the vehicle is remanufactured in-house by transit agency personnel or is acquired as a remanufactured vehicle from a third party.

Historic Rapid or Light Rail Vehicles

Similar to the historic buses exception outlined in Circular Section 4.2.3, there is also an exception for accessibility with respect to remanufactured historic rapid rail and light rail cars. As discussed in Appendix D to § 37.83,

> This section parallels the remanufacturing section for buses, including the exception for historical vehicles. With respect to an entity having a class of historic vehicles that may meet the standards for the historic vehicle exception (e.g., San Francisco cable cars), the Department would not object to a request for application of the exception on a system-wide, as [opposed] to car-by-car, basis.

As with historic buses, remanufactured rapid or light rail vehicles deemed to be historic would not be required to become accessible to persons with disabilities if doing so would "significantly alter the historic character of such vehicle." However, the transit agency would be required to make any modifications for accessibility that would not alter the historic character of the rapid or light rail vehicles. Section 37.83(e) requires agencies that wish to qualify for this exception to write to the FTA Administrator. FTA will consult with the National Register of Historic Places on the request and rely on its advice before allowing an exception.

4.3.4 Considerations for Acquiring Accessible Rapid Rail Cars

For rapid rail vehicles, the Part 38 Subpart C specifications cover doorways, priority seating signs, interior circulation, floor surfaces, public information systems, and between-car barriers. This discussion highlights three areas that have been of interest to transit agencies and members of the public: doorway-platform gaps, priority seating signs and interior circulation, and between-car barriers.

Public entities cannot make any departures from the specific technical and scoping requirements for rapid rail vehicles without a signed determination of equivalent facilitation from the FTA Administrator. (See Circular Section 5.3.)

Doorway-Platform Gaps

For transit agencies operating rapid rail service, § 38.53(d) establishes standards for the horizontal and vertical gaps between the rail cars and the station platforms. The maximum allowable gap depends on whether the rail car is new or retrofitted and whether the platform is part of a station that is designated as existing, "key," or new. (See Circular Section 3.6.) Table 4-2 presents the maximum allowable horizontal and vertical gaps.

Table 4-2 – Allowable Gap Between Station Platform and Rapid Rail Vehicle

Vehicle	Station Designation	Horizontal Gap	Vertical Gap
New	New	3 inches (max.)	± 5/8 inch
New	Key or existing	3 inches (max.)	± 1 1/2 inches
Retrofitted[4]	New or key	4 inches (max.)	± 2 inches[5]

[4] Retrofitted vehicles are vehicles in service in 1990 that were modified to meet the one-car-per-train rule.

[5] For retrofitted vehicles, the vertical gap is measured under 50% passenger load.

It is important when acquiring rapid rail cars to ensure that they will meet the applicable platform-to-rail-car gap requirements. There are no exceptions for rapid rail that allow for the use of lifts, ramps, or bridge plates.

Priority Seating Signs and Interior Circulation

Section 38.55 establishes requirements for signs in each rapid rail car that identify priority seats and ask other passengers to make these seats available to those who need them. The language an agency places on its signs does not need to match exactly the text in § 38.55(a) but instead capture the general requirement. Part 38 Subpart C does not include requirements for rapid rail cars to have securement systems or specific seating locations for individuals who use wheelchairs. But § 38.57(b) specifies that rail cars must have sufficient interior clearances to permit at least two wheelchairs or mobility aids to reach clear space areas, each of which must measure at least 48 inches by 30 inches. (See Figure 4-6.) The regulations do not specify the location of the clear space areas; these areas may coincide with places where other passengers stand.

Between-Car Barriers

Unless there are platform screens, § 38.63 requires rapid rail trains to have devices or systems that "prevent, deter or warn" passengers from accidentally stepping off the platform into the gaps between rail cars.

While the regulations do not prescribe a particular type of between-car barrier, currently available systems include pantograph gates, chains, and motion detectors. Figure 4-5 illustrates an example of a between-car barrier on a rapid rail car.

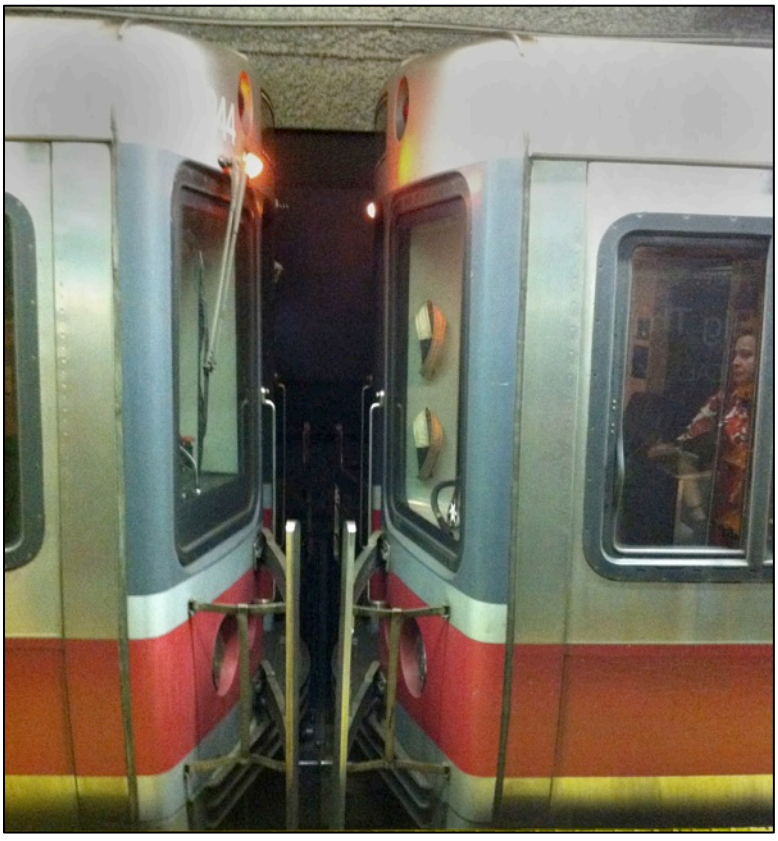


Figure 4-5 – Between-Car Barrier

4.3.5 Considerations for Acquiring Accessible Light Rail Vehicles

For light rail vehicles (including streetcars), the Part 38 Subpart D specifications cover doorway width, priority seating signs, interior circulation, lighting, public address systems, floor and step surfaces, doorway-platform gaps, mobility aid accessibility, and between-car barriers. This discussion highlights areas of particular interest in light rail systems: the doorway-platform gap, boarding devices, priority seating and interior circulation, and between-car barriers.

Public entities cannot make any departures from the specific technical and scoping requirements for light rail vehicles without a signed determination of equivalent facilitation from the FTA Administrator. (See Circular Section 5.3.)

Doorway-Platform Gaps

Section 38.73(d) specifies the platform-to-rail-car gap requirements for level boarding. The maximum allowable gap between the platform and the vehicle doorway depends on whether the vehicle is new or retrofitted and whether the platform is part of a station that is designated as existing, "key," or new. (See Circular Section 3.7.) Table 4-3 presents the maximum allowable horizontal and vertical gaps, which allow for level boarding.

Table 4-3 – Allowable Gap Between Platform and Light Rail Vehicle

Vehicle	Station Designation	Horizontal Gap	Vertical Gap
New	New	3 inches (max.)	± 5/8 inch
New	Existing	3 inches (max.)	± 1 1/2 inches
New	Key	3 inches (max.) for at least one door	±1 1/2 inches
Retrofitted[6]	New or key	4 inches (max.)	± 2 inches[7]

Boarding Devices

Unlike rapid rail, light rail systems often operate on city streets, pedestrian malls, or other areas where level boarding is not practicable. Under such circumstances, the Part 38 requirements allow for the use of various devices to board and alight wheelchair users and others who cannot climb steps. These devices include, for example:

- Car-borne lifts
- Ramps
- Bridge plates (plates that bridge the gap and may be kept on the platform or in the vehicle and are often manually placed by the vehicle conductor)
- Mini-high platforms (raised sections of the platform that are coordinated with the floor height of the rail car)
- Wayside lifts (portable lifts kept on the platform, also called station-based lifts)

Section 38.73(d)(4) permits public entities to use a lift, ramp, or bridge plate if "it is not operationally or structurally practicable to meet the horizontal or vertical requirements." The specifications of the lift, ramp, or bridge plate can be found in § 38.83. Under § 38.83(a)(2), if lifts, ramps or bridge plates are provided on station platforms or other stops, or mini-high platforms are provided, the vehicle is not required to be equipped with a car-borne device.

[6] Retrofitted vehicles are vehicles in service in 1990 that were modified to meet the one-car-per-train rule.

[7] For retrofitted vehicles, the vertical gap is measured under 50% passenger load.

The Part 38 Subpart D requirements differentiate between the varying operating environments for light rail systems, including operations confined entirely to a dedicated right-of-way and vehicles operating in "pedestrian malls, city streets, or other areas where level boarding is not practicable." (See § 38.71(b).) When level boarding is not practicable, § 38.71(b)(2) requires vehicles to provide "wayside or car-borne lifts, mini-high platforms, or other means of access in compliance with § 38.83(b) or (c)." Other means of access include ramps and bridge plates.

Part 38 provides specifications for car-borne lifts in § 38.83(b), covering elements such as design load, slope and platform surface. Section 38.83(c) specifies the requirements for light rail vehicle ramps and bridge plates.

Priority Seating Signs and Interior Circulation

Section 38.75 establishes requirements for signs in each light rail car that identify priority seats and ask other passengers to make these seats available for those who need them. The language an agency places on its signs does not need to match exactly the text in § 38.75(a) but instead capture the general requirement. Part 38 Subpart D does not include requirements for light rail vehicles to have securement systems or specific seating locations for individuals who use wheelchairs. But § 38.77(c) specifies that light rail vehicles must have sufficient interior clearances to permit at least two wheelchairs or mobility aids to reach clear space areas, each of which measures at least 48 inches by 30 inches. (See Figure 4-6.) The regulations do not specify the location of the clear space areas; these areas may coincide with places where other passengers stand.

Figure 4-6 – Clear Area Designated for Wheelchairs and Mobility Aids

Between-Car Barriers

Section 38.85 states, "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." While the regulations do not prescribe a particular type of between-car barrier, they state that suitable devices include pantograph gates, chains, and motion detectors. The purpose of

this provision is to stop an individual from mistaking the gap between cars for an open vehicle door and then stepping off the platform.

While regulations do not define what constitutes a "high platform," the regulatory language links "high-platform" to "level-boarding mode" and must be considered in conjunction with other key parts of the regulations, which clearly point to the relationship between platform height and entrance to the vehicle floor. In a level-boarding/platform environment without between-car barriers, the hazard of falling to the track bed exists whenever a light rail system operates trains of more than one car. This represents a physical risk to the travelling public as well as a financial risk to a transit agency.

FTA notes that while the requirement for between-car barriers is found in the section of the DOT ADA regulations pertaining to light rail vehicles, the language in § 38.85 simply requires "devices or systems" to be "provided." It does not state that such devices or systems are to be car-borne. As a result, many light rail systems where level boarding is provided have elected to implement platform-based between-car barriers. These generally take the form of bollards installed in the platform edge where they align with the gap between cars. Together with precise positioning of the train, these can provide an effective deterrent against mistaking the gap for a door. Examples of between-car barriers in light rail applications are shown in Figure 4-7. As an interim measure, some entities have stationed personnel on the platform to actively warn riders of the between-car gap. (See Figure 4-8.)

Figure 4-7 – Between-Car Barriers in Light Rail Applications

Figure 4-8 – Stationing of Transit Personnel in Lieu of Between-Car Barriers in Light Rail Applications

4.4 Commuter Rail Vehicles

4.4.1 New Commuter Rail Car Acquisition

Requirement

"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" (§ 37.85).

Discussion

All new commuter rail cars must be accessible; there are no exceptions. The regulations require in § 37.85 any solicitation for new commuter rail cars ensure that the rail cars must be designed and built to meet the applicable Part 38 specifications.

4.4.2 Used Commuter Rail Car Acquisition

Requirement

"Except as provided elsewhere in this section, Amtrak or a commuter authority purchasing or leasing a used intercity or commuter rail car after August 25, 1990, shall ensure that the car is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs" (§ 37.87(a)).

"Amtrak or a commuter authority may purchase or lease a used intercity or commuter rail car that is not readily accessible to and usable by individuals if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so" (§ 37.87(b)).

"Good faith efforts shall include at least the following steps:

(1) An initial solicitation for used vehicles specifying that all used vehicles accessible to and usable by individuals with disabilities;

(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" (§ 37.87(c)).

"When Amtrak or a commuter authority leases a used intercity or commuter rail car for a period of seven days or less, Amtrak or the commuter authority may make and document good faith efforts as provided in this paragraph instead of in the ways provided in paragraph (c) of this section:

(1) By having and implementing, in its agreement with any intercity railroad or commuter authority that serves as a source of used intercity or commuter rail cars for a lease of seven days or less, a provision requiring that the lessor provide all available accessible rail cars before providing any inaccessible rail cars.

(2) By documenting that, when there is more than one source of intercity or commuter rail cars for a lease of seven days or less, the lessee has obtained all available accessible intercity or commuter rail cars from all sources before obtaining inaccessible intercity or commuter rail cars from any source" (§ 37.87(d)).

"Amtrak and commuter authorities purchasing or leasing used intercity or commuter rail cars that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts that were made for three years from the date the cars were purchased. These records shall be made available, on request, to the Federal Railroad Administration or FTA Administrator, as applicable. These records shall be made available to the public, on request" (§ 37.87(e)).

Discussion

Used commuter rail cars must be accessible unless the transit agency cannot obtain an accessible used vehicle after making a demonstrated good faith effort to do so. The steps required for a "good faith effort" are set forth in § 37.87(c), and include specifying in the initial solicitation for used vehicles that all vehicles must be accessible, and undertaking a nationwide search for accessible used vehicles and not limiting the search to a particular region. It is not enough to contact only a known manufacturer to see if it has accessible used rail cars.

Section 37.87(c)(3) requires public entities to advertise in trade publications and contact trade associations. This includes advertising in magazines such as *Passenger Transport* and other national outlets to determine whether accessible used vehicles are available. Trade groups include the American Public Transportation Association (APTA).

Where inaccessible used cars are acquired, however, the entity must still have a sufficient number of accessible cars in its fleet to achieve at least one accessible car per train (see Circular Section 4.5). This could include acquiring a sufficient number of new, accessible rail cars to add to the fleet; modifying a sufficient number of the used rail cars to make them accessible; or relying on existing accessible vehicles in the entity's fleet.

There are additional provisions concerning the short-term lease of rail cars by a commuter authority, as may be necessary as fill-ins for cars that need repairs; these requirements are found in § 37.87(d). As Appendix D to § 37.87 explains,

> The section also parallels closely the requirements in the ADA for the purchase or lease of accessible used rail vehicles. We acknowledge that, in some situations, the statutory requirement for to make good faith efforts to acquire accessible used vehicles may create difficulties for rail operators attempting to lease rail cars quickly for a short time (e.g., as fill-ins for cars which need repairs). In some cases, it may be possible to mitigate these difficulties through means such as making good faith efforts with respect to an overall agreement between two rail operators to make cars available to one another when needed, rather than each time a car is provided under such an agreement.

With respect to such short-term leases (i.e., seven days or fewer), § 37.87(d) requires good faith efforts to include:

- Having an agreement that an intercity railroad or commuter authority leasing vehicles will supply all available accessible rail cars before providing any inaccessible rail cars.
- When more than one source of rail cars is available, documentation showing that the transit agency obtained all available accessible commuter rail cars from all sources before obtaining inaccessible commuter rail cars from any source.

There is an exception to these requirements for donated vehicles. In the rare circumstance that someone wishes to donate a vehicle to a public entity, the ADA does not prevent the transit operator from accepting a gift. Not all "zero dollar" transfers are donations, however. This rare situation requires entities to submit documentation to the FTA Regional Civil Rights Officer for verification. Soliciting donations of inaccessible vehicles is not permitted.

4.4.3 Remanufactured Commuter Rail Car Acquisition

Requirement

"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" (§ 37.89(a)).

"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" (§ 37.89(b)).

"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" (§ 37.89(c)).

Discussion

These requirements apply to the acquisition or lease of any remanufactured commuter rail car in order to extend its useful life by 10 years or more. Unless an engineering analysis shows that including a particular accessibility feature would have a significant adverse effect on the structural integrity of the vehicle, § 37.89 requires the remanufactured vehicle to be accessible.

Regular maintenance does not constitute remanufacturing. A typical mid-life overhaul—one that does not extend a vehicle's normal life—does not constitute remanufacturing. Neither does replacement of components, even major items such as the wheels and axles.

The requirement for a remanufactured vehicle to be accessible to the maximum extent feasible applies regardless of whether the vehicle is remanufactured in-house by transit agency personnel or is acquired as a remanufactured vehicle from a third party.

Historic Commuter Rail Cars

Unlike rapid and light rail systems, there is no exception for historic rail cars operated in commuter rail service. Such vehicles would be subject to the requirements for acquisition of used vehicles or for the remanufacture of or acquisition of remanufactured vehicles. The only historic exception is available to private entities that are primarily engaged in the business of transporting people (see § 37.107(c)) and historic rail cars operated in museum settings. (See § 37.37(c).)

4.4.4 Considerations for Acquiring Accessible Commuter Rail Cars

For commuter rail cars, the Part 38 Subpart E requirements cover car doorway-platform gaps, mobility aid accessibility, priority seating signs, and between-car barriers.

Public entities cannot make any departures from the specific technical and scoping requirements for commuter rail vehicles without a signed determination of equivalent facilitation from the FTA Administrator. (See Circular Section 5.3.)

FTA reminds commuter rail operators that the requirement, per § 37.42, for accessible boarding at all accessible cars of a train applies to rail platforms constructed or altered after February 1, 2012. This may affect the specifications for commuter rail vehicles that provide service to these new platforms. (See Circular Section 3.8.)

Doorway-Platform Gaps

Section 38.93 establishes standards for the horizontal and vertical gaps between the rail cars and the station platform or mini-high platform applicable to public entities. The maximum allowable gaps depend on whether the rail car is new or retrofitted and whether the platform is part of an existing, new, or key station. (See Circular Section 3.8.) Table 4-4 presents the maximum allowable horizontal and vertical gaps for unassisted level boarding.

Table 4-4 – Allowable Gaps between Platform and Commuter Rail Cars

Rail Car	Station Designation	Horizontal Gap	Vertical Gap
New	New	3 inches (max.)	± 5/8 inch
New	Existing	3 inches (max.)	± 1 1/2 inches
New	Key	3 inches (max.) for at least one door	± 1 1/2 inches
Retrofitted[8]	New or key	4 inches (max.)	± 2 inches[9]

Boarding Devices

Unassisted level boarding is not always possible in commuter rail systems. The Part 38 requirements allow for the use of various devices to board and alight wheelchair users and others who cannot climb steps. These devices include, for example:

- Car-borne lifts
- Ramps
- Bridge plates (plates that bridge the gap and may be kept on the platform or in the vehicle and are often manually placed by the vehicle conductor)
- Mini-high platforms (raised sections of the platform coordinated with the height of the doorway of the rail car)
- Wayside lifts (portable lifts kept on the platform, also called station-based lifts)

Section 38.93(d)(4) permits public entities to use a lift, ramp, or bridge plate if "it is not operationally or structurally practicable to meet the horizontal or vertical requirements." (The specifications of the lift, ramp, or bridge plate can be found in § 38.83.) Section 38.95(a)(1) specifies that all new commuter rail cars, other than level entry cars, must provide a compliant level-change mechanism or boarding device (e.g., lift, ramp, or bridge plate) for each. However, § 38.95(a)(2) states that where level-entry boarding is provided, or portable or platform lifts, ramps, or bridge plates, or mini-high platforms are provided, the car is not required to be equipped with a car-borne device.

Part 38 provides specifications for car-borne lifts in § 38.95(b), covering elements such as design load, slope, and platform surface. Section 38.95(c) specifies the requirements for commuter rail car ramps and bridge plates.

As discussed in Circular Section 3.8, § 37.42 establishes standards for platform-to-rail-car coordination for level boarding that accounts for the fact that clearance envelopes for freight traffic often do not permit the type of close coordination required for unassisted boarding.

Priority Seating Signs and Interior Circulation

Section 38.105 establishes requirements for signs in each commuter rail car that identify priority seats and ask other passengers to make these seats available to those who need them. The language an agency

[8] Retrofitted vehicles are vehicles in service in 1990 that were modified to meet the one-car-per-train rule.

[9] For retrofitted vehicles, the vertical gap is measured under 50% passenger load.

places on its signs does not need to match exactly the text in § 38.105(a) but instead capture the general requirement. Part 38 Subpart E does not include requirements for commuter rail vehicles to have securement systems or specific seating locations for individuals who use wheelchairs. But § 38.95(d) establishes the following requirement for mobility aid seating in commuter rail cars: "Spaces for persons who wish to remain in their wheelchairs or mobility aids shall have a minimum clear floor space 48 inches by 30 inches."

Between-Car Barriers

When a commuter rail station provides high-platform level boarding, § 38.109 requires commuter rail cars that do not have between-car bellows to have devices or systems that "prevent, deter or warn" passengers from accidentally stepping off the platform into the gaps between rail cars. Section 38.109 does not require between-car barriers if the platforms have screens that close off the platform edge and open only in correct alignment with the doors of the rail cars. While the regulations do not prescribe any particular type of between-car barrier, they list pantograph gates, chains, and motion detectors as examples.

4.5 One-Car-Per-Train Accessibility

Requirement

"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" (§ 37.93(a)).

"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" (§ 37.93(b)).

"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" (§ 37.93(c)).

Discussion

The DOT ADA regulations anticipated that the replacement of vehicles over time would achieve full fleet accessibility. Because rail cars have a long service life, the regulations included a special requirement to provide a minimum level of accessibility in the interim. Section 37.93 required existing passenger rail system operators to provide at least one accessible car per train by July 26, 1995. Transit providers were supposed to accomplish this by purchasing new rail cars, by retrofitting existing rail cars in the fleet, or by some combination of the two. Public entities were expected to allocate their accessible rail cars so that individuals with disabilities would be able to use all trains.

The requirement for at least one accessible car per train is in addition to the requirement for all new, used, or remanufactured rail cars to be accessible to and usable by persons with disabilities, including wheelchair users. Over time, as existing fleets are replaced with accessible cars, every car in every train will become accessible. However, the one-car-per-train requirement continues to be relevant not only to existing rail systems that predated the ADA but also to new systems or expansions of existing service that are served by trains composed of used or remanufactured rail cars. While Part 37 Subpart D permits the acquisition of inaccessible used or remanufactured vehicles subject to the conditions described above, it is still necessary for public entities to ensure that they have a sufficient number of accessible rail cars in order to achieve at least one accessible car per train.

4.6 Ensuring Vehicles Are Compliant

FTA offers a number of suggestions to ensure compliance with the DOT ADA regulations when acquiring vehicles. These include preparing complete bid packages, obtaining public input, and conducting pre-delivery inspections.

4.6.1 Preparing Complete Bid Packages

FTA recommends that when transit agencies prepare the specifications for bid packages, these specifications spell out the specific accessibility requirements in detail. Simply providing a general statement that the vehicle "must meet all ADA requirements in Part 38" presumes that all potential bidders fully understand each specific requirement for each vehicle type. Spelling out the specific requirements ensures that other specifications do not conflict with ADA requirements. For example, if a bid package specifies a particular seating arrangement but does not specify the dimensions of the minimum required wheelchair securement area, potential bidders may overlook that requirement as they attempt to maximize the number of seats. Finally, by incorporating the required specifications into bid packages, individuals preparing the packages will gain a working understanding of the requirements necessary to ensure the acquired vehicles meet the Part 38 requirements.

In order to improve the accessibility of the fixed route system and make service easier for all passengers to use, transit agencies may choose to develop specifications that exceed the minimum requirements. For example, while § 38.23(a) requires buses more than 22 feet in length to have at least two wheelchair securement locations, an agency may choose to purchase some buses with three securement locations for use on certain routes that serve a number of riders who use wheelchairs.

FTA recommends requiring bid packages to have documentation for all specifications that cannot be easily confirmed via observation or simple measurement. This includes product and material specifications, strength of components, and performance of systems. This required documentation might be test results from independent laboratories or product specifications from the original manufacturer, specifying, for example:

- The securement straps have required minimum load tolerances of 5,000 pounds. The vehicle vendor must document that the straps meet these load tolerances.
- The front doorway must have at least 2 foot-candles of lighting and the light on the outside of the doorway must have at least 1 foot-candle of lighting. The vendor must document that the vehicle meets these requirements.

4.6.2 Obtaining Public Input

FTA recommends obtaining public input to ensure as many persons with disabilities as possible can use the new vehicles. Some transit agencies have asked vendors to develop partial, full-scale mockups of buses and rail cars that riders with disabilities can test by entering and exiting the proposed vehicle, using the lifts or ramps, maneuvering in the aisles, using the securement system, and observing the signage. Rider comments based on such testing often help improve the ultimate design of the vehicle.

While it may not be possible to respond to all of the feedback obtained from such an approach, performing this step can offer insights into potential design enhancements and minimize complaints and problems after the vehicles are in service. Having a more usable and workable design can also permit services to operate more efficiently. For example, boarding and alighting times will be reduced if passengers can easily get to and from securement areas and drivers can secure mobility devices faster.

4.6.3 Inspecting Vehicles

Once a vehicle vendor is selected, FTA recommends confirming that the vendor understands the complete bid package. At the appropriate time in the procurement cycle, transit agencies using FTA funds are required to conduct a factory inspection of the vehicles. (See 49 CFR 663.21.) FTA recommends that agencies follow this practice even when not using FTA funds. Agencies may use their own employees or a contractor with expertise in the type of vehicle being inspected. Any identified problems can be more easily remedied at this stage of production.

Based on the developed specification, a checklist will facilitate a pre-delivery inspection, and FTA recommends that this checklist include all elements related to accessibility. The Attachment 4-1 checklist is an example of what a transit agency may use in the factory inspection for buses.

Upon delivery, FTA recommends that transit agencies conduct a final inspection prior to acceptance (also using a checklist). This will ensure the vendor is providing the vehicle as specified. If there are any discrepancies, the vendor may be able to make minor changes locally. For larger issues, the vendor may need to return vehicles to the plant.

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Attachment 4-1
Optional Vehicle Acquisition Checklist for Buses and Vans

Name of Public Entity	
Fleet Number Assigned by Public Entity/Contractor (if applicable):	
Type of Vehicle: (check one)	
• Van	
• Bus (22 feet or less in length)	
• Bus (more than 22 feet in length)	
Make/Model	
Year	
Name of Person Reviewing Specifications	
Signature	
Date	

Lift Specifications (if applicable)

Meets/Does Not Meet/NA	Specification (Regulation)	Note Actual Measurement
	The design load of a lift must be at least 600 pounds. Working parts must have a safety factor of at least six. Non-working parts must have a safety factor of at least three. (49 CFR § 38.23(b)(1))	
	Controls must be interlocked with the brakes, transmission, or door so that the vehicle cannot move unless the interlock is engaged. (§ 38.23(b)(2)(i))	
	Controls must be "momentary contact type" (meaning they require constant pressure) and must allow the up/down cycle to be reversed without causing the platform to "stow" while occupied. (§ 38.23(b)(2)(i))	
	Lifts must be equipped with an emergency method of deploying. This emergency backup system must be capable of being operated both up and down without the platforms "stowing" while occupied. (§ 38.23(b)(3))	
	Must be designed so that in the event of a power failure, the platform cannot fall faster than 12 inches per second. (§ 38.23(b)(4))	
	Must have an inner barrier or inherent design feature to prevent the mobility aid from rolling off the side closest to the vehicle until the platform is in its fully raised position. (§ 38.23(b)(5))	
	Side barriers must be at least 1 1/2 inches high. (§ 38.23(b)(5))	

Meets/Does Not Meet/NA	Specification (Regulation)	Note Actual Measurement
	The “loading-edge” (or outer) barrier must be sufficient to prevent a power wheelchair from riding over or otherwise defeating it. If this barrier is automatic, it must close when the platform is more than 3 inches off the ground. If the outer barrier is to be driver operated, it must have an interlock or inherent design that prevents the platform from being raised until the barrier is closed or other system is engaged. (§ 38.23(b)(5))	
	The platform surface must be slip resistant with no protrusions over 1/4 inch high. (§ 38.23(b)(6))	
	The platform must be at least 28 1/2-inches wide measured at the platform surface and at least 30 inches wide measured from 2 inches above the platform surface to 30 inches above the surface. It must also be at least 48 inches long measured from 2 inches above the surface to 30 inches above the surface. (§ 38.23(b)(6))	
	Gaps between the platform surface and any barrier cannot be more than 5/8 inch. Semi-automatic lifts can have a handhold in the platform that measures no more than 1 1/2 inches by 4 1/2 inches. (§ 38.23(b)(7))	
	When in the fully raised position, the platform surface must be vertically within 5/8 inch of the finished floor and horizontally within 1/2 inch of the finished floor. (§ 38.23(b)(7))	
	The ramp from ground to platform (often the lowered outer barrier) must have a slope of no more than 1:8 for a maximum rise of 3 inches (i.e., if platform is 1 inch off the ground, ramp must be at least 8 inches long). If the threshold from ground to ramp (i.e., the thickness of the ramp material) is more than 1/4 inch, it must be beveled with a slope no greater than 1:2. (§ 38.23(b)(8))	
	The platform must not deflect more than 3 degrees in any direction when a 600-pound load is placed on the center of the platform. (§ 38.23(b)(9))	
	The platform must raise or lower in no more than 6 inches per second. The platform must be stowed or deployed in no more than 12 inches per second. Horizontal acceleration cannot be more than 0.3 g. (§ 38.23(b)(10))	
	Components of a lift must be designed to allow boarding in either direction. (§ 38.23(b)(11))	
	Must be equipped with two handrails that move in tandem with the lift platform. Handrails must be 30-38 inches above the platform surface and must have a usable grasping area of at least 8 inches. Handrails must be capable of supporting 100 pounds, must have a cross-sectional diameter of 1 1/4 to 1 1/2 inches, and must have at least 1 1/2 inches of "knuckle clearance." (§ 38.23(b)(13))	
	Lifts may be marked to identify the preferred standing position. (§ 38.23(b)(12))	

Ramp Specifications (if applicable)

Meets/Does Not Meet/NA	Specification (Regulation)	Note Actual Measurement
	Ramps 30 inches or greater in length must have a design load of 600 pounds. Ramps < 30" in length must have a design load of 300 pounds. (§ 38.23(c)(1))	
	Ramp surface must be continuous and slip resistant. Protrusions cannot be more than 1/4 inch. (§ 38.23(c)(2))	
	Ramps must be at least 30 inches wide. (§ 38.23(c)(2))	
	Ramps must accommodate both three-wheeled and four-wheeled mobility aids. (§ 38.23(c)(2))	
	If the threshold from the ground to the ramp surface exceeds 1/4 inch, it must be beveled with a maximum slope of 1:2. (§ 38.23(c)(3))	
	Side barriers, at least 2 inches high, must be provided. (§ 38.23(c)(4))	
	Ramps must have the least slope practicable. When the ramp is deployed to ground, the slope cannot exceed 1:4 (i.e., for a vehicle with a finished floor 12 inches above the ground, a 48-inch ramp would be needed). When deployed to a 6-inch curb the following maximum slopes would apply: Finished floor height above 6-inch curb • 3 inches or less – maximum slope of 1:4 • 6 inches or less, but more than 3 inches – maximum slope of 1:6 • 9 inches or less, but more than 6 inches – maximum slope of 1:8 • Greater than 9 inches – maximum slope of 1:12 (§ 38.23(c)(5))	
	The ramp must be firmly attached to the vehicle. (§ 38.23(c)(6))	
	Gaps between the ramp and vehicle finish floor cannot be more than 5/8 inch. (§ 38.23(c)(6))	
	A compartment or securement system must be provided for the ramp to keep it from impinging on the space set aside for mobility aid users and to keep it from becoming a hazard in the event of a sudden stop. (§ 38.23(c)(7))	
	Handrails are not required. If they are provided, however, they must support 100 pounds, be 30 to 38 inches above the ramp surface, have a cross-sectional diameter of 1 1/4 to 1 1/2 inches, and be continuous for the full length of the ramp. (§ 38.23(c)(8))	

Securement Area

Meets/Does Not Meet/NA	Specification (Regulation)	Note Actual Measurement
	Vehicles more than 22 feet in length must have at least two (2) securement locations. Vehicles 22 feet or less in length must have at least one (1) securement location. (§ 38.23(a)) Vehicles are to be measured from the front-most part to the rear-most item (including the bumpers).	
	Wheelchairs and mobility aids must be oriented as follows: • For vehicles more than 22 feet in length, at least one securement position must be forward facing. Other securement areas can be either forward or rear facing. • For vehicles 22 feet or less in length, the one required position can be either forward or rear facing. (§ 38.23(d)(4))	
	If wheelchair and mobility-aid users are secured in a rear-facing orientation, a padded barrier must be provided. The barrier must be 18 inches wide and extend from 38 inches to 56 inches above the floor. (§ 38.23(d)(4))	
	Securement systems must have the following design loads: • For vehicle with a GVWR of 30,000 pounds or more: 2,000 pounds for each strap/clamp and 4,000 pounds per mobility aid. • For vehicles with a GVWR of less than 30,000 pounds: 2,500 pounds per clamp/strap and 5,000 pounds per mobility aid. (§ 38.23(d)(1))	
	Securement area must be located as close to the accessible entrance as possible. (§ 38.23(d)(2))	
	A clear floor area of 30 inches wide by 48 inches long must be provided for each securement area. This can include an area up to 6 inches under a seat as long as there is a vertical clearance of at least 9 inches. If flip-seats are utilized, they cannot obstruct the required floor area. The required floor area can overlap the access path (the path of travel from the accessible entrance to the securement area). (§ 38.23(d)(2))	
	The securement system must accommodate all common wheelchairs and mobility aids (any mobility aid not exceeding 30 inches in width and 48 inches in length and weighing no more than 600 pounds when occupied)* and be operable by someone with average dexterity that is familiar with the system. [§ 38.23(d)(3)] *The “common wheelchair” concept was removed from Part 37, but the above dimensions/weight still represent the minimum a compliant lift must accommodate.	

Meets/Does Not Meet/NA	Specification (Regulation)	Note Actual Measurement
	Securement systems must keep mobility aids from moving no more than 2 inches in any direction. (§ 38.23(d)(5))	
	The securement system must be located to be readily accessed when needed but must not interfere with passenger movement or be a hazard to passengers. It should also be reasonably protected from vandalism. (§ 38.23(d)(6))	
	A seat belt and shoulder harness must be provided for each securement position. The seat belt and shoulder harness must be separate from the securement system for the mobility aid. (§ 38.23(d)(7))	
	Each securement location must have a sign designating it as such. Characters on these signs must have (1) a width-to-height ratio between 3:5 and 1:1; (2) a stroke width-to-height ratio between 1:5 and 1:10; (3) minimum height (using an uppercase "X") of 5/8 inch; (4) wide spacing (generally, the space between letters must be 1/16 the height of uppercase letters); and (5) contrast with the background, either light-on-dark or dark-on-light. (§ 38.27(b) and (c))	

General Vehicle Specifications

Meets/Does Not Meet/NA	Specification (Regulation)	Note Actual Measurement
	Aisles, steps, and floor areas must be slip resistant. (§ 38.25(a))	
	Step edges, thresholds, and the boarding edge of ramps or lift platforms must have a band of color that contrasts with the step/floor surface. Typically, white or bright yellow is used to contrast against dark floors. (§ 38.25(b))	
	The height of doors at accessible entrances and the interior height along the path of travel between accessible entrances and securement areas must be as follows: • For vehicles more than 22 feet in length, the clearance from the raised lift platform or the ramp surface to the top of the door must be at least 68 inches. • For vehicles 22 feet or less in length, the overhead clearance must be at least 56 inches. (§ 38.25(c))	

Meets/Does Not Meet/NA	Specification (Regulation)	Note Actual Measurement
	Signs for at least one set of forward-facing seats indicating that those seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them. Characters on these signs must have (1) a width-to-height ratio between 3:5 and 1:1; (2) a stroke width-to-height ratio between 1:5 and 1:10; (3) minimum height (using an uppercase "X") of 5/8 inch; (4) wide spacing (generally, the space between letters must be 1/16 the height of uppercase letters); and (5) contrast with the background, either light-on-dark or dark-on-light. (§ 38.27(a), § 38.27(c))	
	Interior handrails and stanchions must allow space for wheelchairs and other mobility aids to turn and maneuver to reach a securement location from the lift or ramp. (§ 38.29(a))	
	Handrails and stanchions must be provided in the vehicle entrance so that a person with a disability can grasp the handrail or stanchion to board from outside the vehicle and then pay a fare. Handrails must (1) have a cross-sectional diameter of 1 1/4 to 1 1/2 inches or provide equivalent grasping service; (2) have eased edges with corner radii of at least 1/8 inch; and (3) be placed to provide a minimum of 1 1/2 inches of knuckle clearance from the nearest adjacent surface. On vehicles more than 22 feet in length with on-board fare collection systems, a horizontal assist must be provided across the front of the vehicle.(§ 38.29(b))	
	For vehicles more than 22 feet in length, an overhead handrail or handrails must be provided which are continuous except for a gap at the rear doorway. (§ 38.29(c))	
	Handrails and stanchions must be sufficient to permit safe boarding, on-board circulation, sitting and standing assistance, and exiting by persons with disabilities. (§ 38.29(d))	
	For vehicles more than 22 feet in length with front-door lifts or ramps, vertical stanchions immediately behind the driver must either terminate at the lower edge of the aisle-facing seats or be "dog-legged" so that the floor attachment does not impede or interfere with wheelchair footrests. (§ 38.29(e))	
	If a wheelchair user must pass the driver's seat, the seat platform must not extend into the aisle or vestibule beyond the wheel housing, to the maximum extent practicable. (§ 38.29(e))	
	Any stepwell or doorway with a lift or ramp, immediately adjacent to the driver must have—when the door is open—at least 2 foot-candles of lighting measured on the step tread or lift platform. (§ 38.31(a))	

Meets/Does Not Meet/NA	Specification (Regulation)	Note Actual Measurement
	Other stepwells, and doorways with lifts or ramps must have at all times at least 2 foot-candles of lighting measured on the step tread or lift or ramp, when deployed at the vehicle floor level. (§ 38.31(b))	
	All vehicle doorways must have outside lights that, when the door is open, provide at least 1 foot-candle of lighting on the street surface for a distance 3 feet (915 mm) perpendicular to the bottom step tread or lift outer edge. These lights must be shielded to protect the eyes of entering and exiting passengers. (§ 38.31(c))	
	If present, a farebox must be located as far forward as practicable and must not obstruct traffic in the vestibule, especially for wheelchairs and mobility aids. (§ 38.33)	
	If a vehicle is more than 22 feet in length and used in multiple-stop, fixed-route service, then it must be equipped with a public address system. (§ 38.35(a))	
	Where passengers may choose to board or alight at multiple stops, vehicles more than 22 feet in length must provide controls adjacent to the securement location for requesting stops and alerting the driver that a mobility-aid user wishes to disembark (i.e., stop-request controls). The controls must (1) be mounted no higher than 48 inches and no lower than 15 inches above the floor; (2) be operable with one hand; (3) not require tight grasping, pinching, or twisting of the wrist; and (4) not require more than 5 lbf (22.2N) of force to activate. This system must provide auditory and visual indications that a request has been made. (§ 38.37)	
	If destination or route information is displayed on a vehicle's exterior, then the vehicle must have illuminated signs on its front and boarding side. Characters on these signs must have (1) a width-to-height ratio between 3:5 and 1:1; (2) a stroke width-to-height ratio between 1:5 and 1:10; (3) a minimum character height (using an uppercase "X") of 1 inch for signs on the boarding side; (4) a minimum character height of 2 inches for front "headsigns"; (5) "wide" spacing (generally, the space between letters must be 1⁄16 the height of uppercase letters); and (6) contrast with the background, either dark-on-light or light-on-dark. (§ 38.39)	

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Chapter 5 – Equivalent Facilitation

5.1 Introduction

This chapter discusses the U.S. Department of Transportation (DOT) Americans with Disabilities Act (ADA) regulations covering requests for equivalent facilitation for transportation vehicles and transportation facilities. Equivalent facilitation is the process for requesting permission from FTA to depart from the technical standards in the DOT ADA regulations and to use alternative designs or technologies that provide equal or greater accessibility. It does not represent a mechanism for obtaining a "waiver" from compliance.[1]

In addition to presenting the requirements for equivalent facilitation, this chapter discusses important considerations for transit agencies and manufacturers considering such requests and includes recommendations for what to do and what not to do based on FTA's experience.

This Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves or replace the need for readers to reference the detailed information in the regulations. FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.

5.2 Important Considerations

Equivalent facilitation is the means by which the DOT ADA regulations accommodate innovation in accessible design. Such innovations must provide equal or greater accessibility in comparison to the specific technical and scoping requirements contained in the regulations (49 CFR Part 38 for vehicles and the ADA Standards for Transportation Facilities (DOT Standards) for facilities). It is important to understand that no such departures from the regulations can be made without a formal determination of equivalent facilitation from the FTA Administrator.

The requirement for an affirmative determination of equivalent facilitation serves two purposes. First, it ensures that any departure from the required standards fulfills the same function to an equal or greater degree. Second, it ensures that the equivalent facilitation provision does not become a mechanism for amending the regulations outside of the Federal rulemaking process.

There are a number of important considerations to take into account when seeking a determination of equivalent facilitation:

- The DOT ADA regulations for equivalent facilitation apply only to (1) the acquisition of transportation vehicles and (2) the construction or alteration of transportation facilities.
- The DOT ADA regulations for equivalent facilitation differ from those of the Department of Justice (DOJ). Under the DOJ ADA regulations, there is no requirement for an affirmative determination of equivalent facilitation. However, such an entity would be responsible for

[1] Effective June 20, 1996, DOT amended 49 CFR §§ 37.7(b) and 37.9(d) to remove "inability to comply" as a basis for seeking a determination of equivalent facilitation.

demonstrating equal or greater accessibility or usability in the event of litigation or a DOJ inquiry. (See Circular Section 5.4.2.)

Under the equivalent facilitation requirements discussed in Circular Sections 5.3 and 5.4 for vehicles and facilities, respectively:

- Only the Administrator of the concerned DOT operating administration, with concurrence from the Office of the Secretary of Transportation, can make a determination of equivalent facilitation.
- A determination of equivalent facilitation pertains only to the specific situation for which the determination is made.
- Since determinations are made on a case-by-case basis, FTA requires each entity to document and submit its own request. Previous determinations are not applicable to subsequent requests, even if the circumstances appear similar.
- The Administrator is permitted to make a determination of equivalent facilitation for a class of situations concerning facilities. Such determinations will explicitly state where this is the case.
- A determination of equivalent facilitation is not a waiver of a standard. Rather, it is a finding that accessibility or usability are provided to an equal or greater degree in comparison to the required standard.
- Because the regulations require a determination of equivalent facilitation in order to depart from the vehicle and facility requirements, FTA strongly cautions against making any decisions or commitments to a vehicle or facility design that departs from the required standards prior to a determination.
- A determination of equivalent facilitation is not an endorsement of any product or method by the Federal government and cannot be claimed as such, for example, by a vehicle manufacturer.
- Requests for equivalent facilitation must be developed through a public process, including notice and comment and a public hearing.

Equivalent facilitation must not be confused with the “equivalent service” requirements that apply to vehicle acquisition for demand responsive systems. (See Circular Section 7.4.)

5.3 Equivalent Facilitation for Transportation Vehicles

5.3.1 Part 38 Vehicle Specifications

Equivalent facilitation allows for departures from the vehicle specifications in 49 CFR Part 38 (Accessibility Specifications for Transportation Vehicles). Section 38.2 states, “Departures from particular technical and scoping requirements of [the Part 38] guidelines by use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the vehicle.”

The FTA Administrator makes a determination of equivalent facilitation for transportation vehicles on a case-by-case basis, with concurrence from the Office of the Secretary of Transportation. No departures from the required standards can be made without a determination of equivalent facilitation.

5.3.2 Parties Eligible to Submit Requests

Requirement

"(1) For purposes of implementing the equivalent facilitation provision in § 38.2 of this subtitle, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(i) A public or private entity that provides transportation services and is subject to the provisions of Subpart D or Subpart E this part; or

(ii) The manufacturer of a vehicle or a vehicle component or subsystem to be used by such entity to comply with this part" (§ 37.7(b)).

Discussion

Section 37.7(b) permits transportation entities (public or private) or the manufacturer of a vehicle or vehicle component or subsystem to request a determination of equivalent facilitation from the FTA Administrator. FTA strongly advises against making any decision or commitment to acquire a vehicle or component that departs from the Part 38 standards without first obtaining a determination of equivalent facilitation.

5.3.3 Submission Materials

Requirement

"(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision of Part 38 of this title concerning which the entity is seeking a determination of equivalent facilitation;

(iii) [Reserved]

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in Part 38 of this subtitle; and

(v) Documentation of the public participation used in developing an alternative method of compliance" (§ 37.7(b)).

Discussion

In order to make a determination of equivalent facilitation, the FTA Administrator must be able to conclude that the alternative method of compliance meets or exceeds the level of accessibility or usability of the vehicle or vehicle component specified in Part 38. A complete and thorough submission will contain sufficient evidence to support the request with hard data demonstrating the effectiveness of the proposed solution in providing equal or greater accessibility or usability by individuals with disabilities. FTA expects the request to document the testing of potential problems or failure modes. For example, what are the consequences if an individual using a mobility device deviates from a direct path of travel down a ramp that lacks side barriers? Properly documented requests consider the full spectrum of operating conditions (e.g., the normal range of vehicle loading conditions) and weather when relevant.

FTA encourages entities to submit additional materials to facilitate review. This can include detailed information such as drawings, data, photographs, and videos. In prior reviews of requests for a

determination of equivalent facilitation, FTA has found the use of photographs and videos of the testing process to be particularly valuable forms of documentation.

FTA requires each entity to present data specific to its request for equivalent facilitation. Reliance on another transit agency's equivalent facilitation data is not acceptable, regardless of any apparent similarities.

FTA requires submissions to be addressed to the FTA Administrator and requests a copy to be sent to the FTA Office of Civil Rights.

5.3.4 Public Participation

Requirement

"(3) In the case of a request by a public entity that provides transportation services subject to the provisions of Subpart D of this part, the required public participation shall include the following:

> (i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to members of the public.
>
> (ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.
>
> (iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a private entity that provides transportation services subject to the provisions of Subpart E of this part or a manufacturer, the private entity or manufacturer shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request" (§ 37.7(b)).

Discussion

For transit agencies pursuing equivalent facilitation, outreach goes beyond simple notification; it is an ongoing activity that provides an opportunity for obtaining direct input from potential users. It is not sufficient to present a fully formed equivalent facilitation request at a public meeting. The documentation of public participation required under § 37.7(b)(2) must include the input received during the public participation process.

Transit agencies are likely familiar with the process of contacting and consulting with individuals with disabilities and groups representing them in the community because they have an existing customer base of riders with disabilities who can provide input. Most agencies also have committees with which they coordinate on disability issues. These committees are often the best place to begin the outreach process, supplemented by contacting any organizations that committee members represent.

The public outreach requirements for manufacturers are different. Because vehicles and components may be used by more than one transit agency, § 37.7(b)(4) requires manufacturers seeking a determination of equivalent facilitation to consult, in person, in writing, or by other appropriate means with representatives of national and local organizations representing individuals with disabilities who would be affected by the request. As with transit agencies, the manufacturer submitting the request must document the steps taken to incorporate the input of those consulted.

Consultation might differ for a manufacturer depending on local conditions. A component may perform differently in locations with snow and ice conditions, for example, and operating practices that affect usability might also vary from place to place. Accordingly, public consultation on such a component would need to involve people who experience this kind of weather and are familiar with local conditions.

5.3.5 FTA Determinations

Requirement

"(5) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Policy and International Affairs.

(6) Determinations of equivalent facilitation are made only with respect to vehicles or vehicle components used in the provision of transportation services covered by Subpart D or Subpart E of this part, and pertain only to the specific situation concerning which the determination is made. Entities shall not cite these determinations as indicating that a product or method constitute equivalent facilitations in situations other than those to which the determinations specifically pertain. Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government, the Department of Transportation, or any of its operating administrations" (§ 37.7(b)).

Discussion

The FTA Administrator will make determinations of equivalent facilitation on a case-by-case basis, with the concurrence of the Office of the Secretary of Transportation. Determinations of equivalent facilitation are made in writing under the signature of the Administrator and describe the basis upon which the determination is made. A determination of equivalent facilitation pertains only to the specific situation for which it is made; it is not applicable to other entities or in other situations.

5.4 Equivalent Facilitation for Transportation Facilities

5.4.1 DOT Standards

In 2006, DOT issued a final rule adopting the Access Board's 2004 revisions and subsequent technical amendments to the ADA Accessibility Guidelines (ADAAG) into Part 37 as DOT's enforceable standards. (See Circular Section 3.1.1.) Section 103 of the ADA Standards for Transportation Facilities (DOT Standards) states that the standards do not prevent the use of "designs, products, or technologies as alternatives to those prescribed, provided they result in substantially equivalent or greater accessibility and usability."

The DOT Standards apply to new (i.e., post-ADA enactment) transportation facilities and alterations to existing facilities.[2] In the context of this Circular, a transportation facility is one that serves "designated public transportation," (i.e., service to the public by bus, rail, or other conveyance other than aircraft). It

[2] New construction or alterations of buildings and facilities on which construction has begun, or all approvals for final design have been received, after November 29, 2006, are required to comply with the requirements set forth in Appendices B and D to 36 CFR Part 1191 and Appendix A to 49 CFR Part 37. Buildings and facilities that were altered between February 26, 1992 and November 29, 2006, and that have not been altered since, are compliant if they meet the ADA Accessibility Guidelines (ADAAG) issued on September 6, 1991. Facility alterations begun before February 26, 1992, and that have not been altered since are compliant if they meet Uniform Federal Accessibility Standards (UFAS) in effect at that time.

also applies to facilities for commuter rail service. However, the facility itself may be owned by public entities, private entities, or a combination of the two.

The FTA Administrator makes a determination of equivalent facilitation for transportation facilities on a case-by-case basis, and each determination pertains only to the situation for which it is made—with one exception. Under § 37.9(d)(6), with respect to a product or accessibility feature that the Administrator determines can provide equivalent facilitation in a class of situations, the Administrator may make an equivalent facilitation determination that applies to that class of situations. (See Circular Section 5.4.6.) Where equivalent facilitation is issued for a class of situations, it will be clearly stated in the letter granting the determination.

5.4.2 Public and Private Entities that Provide Transportation Facilities

Where a private entity is responsible for construction or alteration of a transportation facility—for example, where a private real estate developer is constructing a light rail station as part of a mixed-use development project—the DOT requirements for seeking equivalent facilitation apply to the transportation facility. While commercial facilities that are part of the same project would be subject to the DOJ requirements for equivalent facilitation, which do not require a formal approval process, any departures from the specific ADA design requirements for the station would require FTA approval in advance.

5.4.3 Parties Eligible to Submit Requests

Requirement

"(1) For purposes of implementing the equivalent facilitation provision in ADA Chapter 1, Section 103, of Appendix B to 36 CFR Part 1191, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

> (i)(A) A public or private entity that provides transportation facilities subject to the provisions of Subpart C of [Part 37], or other appropriate party with the concurrence of the Administrator.
>
> (B) With respect to airport facilities, an entity that is an airport operator subject to the requirements of 49 CFR Part 27 or regulations implementing the Americans with Disabilities Act, an air carrier subject to the requirements of 14 CFR Part 382, or other appropriate party with the concurrence of the Administrator.
>
> (ii) The manufacturer of a product or accessibility feature to be used in a transportation facility or facilities" (§ 37.9(d)).

Discussion

Section 37.9(d)(1) permits a public or private entity that provides transportation facilities subject to Part 37 Subpart C (Transportation Facilities) to make a request to the appropriate DOT operating administration for a determination of equivalent facilitation. For transit facilities, this is FTA, but a request involving an Amtrak-owned station would be submitted to the Federal Railroad Administration, and a request involving a pedestrian right-of-way such as an overpass would be submitted to the Federal Highway Administration. Recipients of FTA funding who are participating in projects involving Amtrak or public rights-of-way are expected to notify FTA and other appropriate DOT operating administrations of such requests.

5.4.4 Submission Materials

Requirement

"(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision(s) of Appendices B and D to 36 CFR Part 1191 or Appendix A to [Part 37] concerning which the entity is seeking a determination of equivalent facilitation;

(iii) [Reserved]

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability provided in Appendices B and D to 36 CFR Part 1191 or Appendix A to [Part 37]; and

(v) Documentation of the public participation used in developing an alternative method of compliance" (§ 37.9(d)).

Discussion

In order to make a determination of equivalent facilitation, the FTA Administrator must be able to conclude that the alternative method of compliance meets or exceeds the level of accessibility or usability of the facility element specified in the DOT Standards. A complete and thorough submission will contain sufficient evidence to support the request with hard data demonstrating the effectiveness of the proposed solution in providing equal or greater accessibility or usability by individuals with disabilities. This generally involves testing and data collection using, for example, a full-size mockup of a facility element such as a platform edge detectable warning, with the participation of an appropriate cross-section of individuals with disabilities from the local community.

FTA encourages entities to submit additional materials to facilitate review. This can include detailed information such as drawings, data, photographs, and videos. FTA has found the use of photographs and videos of the testing process to be particularly valuable forms of documentation.

As explained below, § 37.9(d)(6) requires each agency to present data specific to its request for equivalent facilitation. Reliance on another transit agency's equivalent facilitation data is not acceptable, no matter how similar it may seem.

FTA requires submissions to be addressed to the FTA Administrator and requests a copy to be sent to the FTA Office of Civil Rights.

5.4.5 Public Participation

Requirement

"(3) In the case of a request by a public entity that provides transportation facilities (including an airport operator), or a request by an air carrier with respect to airport facilities, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to Department of Transportation officials and members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a manufacturer or a private entity other than an air carrier, the manufacturer or private entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request" (§ 37.9(d)).

Discussion

For transit agencies pursuing equivalent facilitation, outreach goes beyond simple notification. Section 37.9(b)(3) requires a public participation process to be used to develop the alternative means of compliance. This is an ongoing activity that provides an opportunity for obtaining direct input from potential users; it is not sufficient to present a fully formed equivalent facilitation request at a public meeting. The documentation of public participation required under § 37.9(d)(2) must include the input received during the public participation process.

Most transit agencies are familiar with the process of contacting and consulting with individuals with disabilities and groups representing them in the community because they have an existing customer base of riders with disabilities who can provide input. Most transportation providers also have committees with which they coordinate on disability issues. These committees are often the best place to begin the outreach process, supplemented by contacting any organizations that committee members represent.

The outreach requirements for manufacturers are different. Because a facility element (e.g., automated ticket vending machine) may be used in more than one transit system, § 37.9(d)(4) requires manufacturers seeking a determination of equivalent facilitation to consult, in person, in writing, or by other appropriate means with representatives of national and local organizations representing individuals with those disabilities who would be affected by the request. As with public entities, these regulations require the manufacturer submitting the request to document the steps taken to incorporate the views of those consulted.

Consultation might differ for a manufacturer depending on local conditions. Some components might perform differently according to local factors such as climate (e.g., snow and ice), and operating practices that affect usability also may vary from place to place. Accordingly, public consultation on the component would need to involve people who experience different weather conditions and are familiar with local conditions.

5.4.6 FTA Determinations

Requirement

"(5) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Transportation Policy.

(6)(i) Determinations of equivalent facilitation are made only with respect to transportation facilities, and pertain only to the specific situation concerning which the determination is made. *Provided, however,* that with respect to a product or accessibility feature that the Administrator determines can provide an

equivalent facilitation in a class of situations, the Administrator may make an equivalent facilitation determination applying to that class of situations.

> (ii) Entities shall not cite these determinations as indicating that a product or method constitutes equivalent facilitation in situations, or classes of situations, other than those to which the determinations specifically pertain.
>
> (iii) Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government, the Department of Transportation, or any of its operating administrations" (§ 37.9(d)).

Discussion

The FTA Administrator will make determinations of equivalent facilitation on a case-by-case basis, with the concurrence of the Office of the Secretary of Transportation. Determinations of equivalent facilitation are made in writing under the signature of the Administration and describe the basis upon which the determination is made. A determination of equivalent facilitation pertains only to the specific situation for which it is made; it is not applicable to other entities or in other situations. However, where the Administrator determines that a product or accessibility feature can provide equivalent facilitation in a class of situations, § 37.9(d)(6) permits the Administrator to issue a determination of equivalent facilitation with respect to that class of situations. Where equivalent facilitation is issued for a class of situations, it will be clearly stated in the letter granting the determination.

5.5 Suggested Dos and Don'ts for Equivalent Facilitation Requests

Based on FTA's experience with past requests for determinations of equivalent facilitation, FTA offers the following suggestions to those considering submitting a request for equivalent facilitation:

- Don't rely on an explanation of why it is difficult to comply with the regulatory standards; inability to comply is not a basis for a determination of equivalent facilitation.[3]
- Don't present only evidence from another system or from your own system in the past.
- Do provide your actual test results to support the assertion of equal or greater accessibility or usability.
- Do perform the testing with a realistic mockup and with a cross-section of potential passengers with varying types of disabilities and mobility aids.
- Do perform statistical analysis on a large enough sample of tests to demonstrate the reliability of the proposed solution.
- Do consider all potential failure points and use testing of a realistic mockup to demonstrate why these are not potential problems with the proposed solution.
- Do provide complete documentation of the public participation process used to develop the proposed solution, beginning early in the development of proposed alternatives, and include all input received.
- Don't combine requests for determination of equivalent facilitation for separate issues (e.g., vehicle ramp design and platform design); do submit separate requests for these determinations, with cross-references in each submission to present the overall situation clearly.

[3] Effective June 20, 1996, DOT amended 49 CFR §§ 37.7(b) and 37.9(d) to remove "inability to comply" as a basis for seeking a determination of equivalent facilitation.

- Don’t forget to include all information needed to make the request complete; do follow the requirements of the regulations and include:
    a. The transportation entity name, address, and contact person
    b. The specific provision of the standard for which you are proposing equivalent facilitation
    c. A complete and detailed description of the alternative method of compliance, other alternatives considered, and technical analysis to support a determination of equal or greater accessibility or usability
    d. A complete description of the public participation process, addressing all points listed in the regulation

Chapter 6 – Fixed Route Service

6.1 Introduction

This chapter explains the U.S. Department of Transportation (DOT) Americans with Disabilities Act (ADA) regulations in 49 CFR Part 37 specific to fixed route service. Fixed route service encompasses a variety of transit services and modes, including bus (local, express, commuter, and bus rapid transit (BRT)) and rail (light, rapid, and commuter rail).[1] These services are distinct from demand responsive services because they operate on prescribed routes according to a fixed schedule. Individuals wishing to ride a fixed route service board at a stop or station and then disembark at another stop or station along the route.

This chapter highlights the few regulatory service provisions that are specific and unique to fixed route services, including alternative transportation when bus lifts are inoperable, service to designated bus stops, priority seating, and stop announcements and route identification.

With this chapter, it is particularly important for the reader to reference Chapter 2 for the crosscutting service requirements that apply to all modes, including fixed route. Chapter 2 contains, for example, information on the following important provisions:

- Maintaining accessible features, such as elevators
- Keeping vehicle lifts/ramps in operative condition
- Using lifts and securement systems

This Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves or replace the need for readers to reference the detailed information in the regulations. FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.

6.2 Lift/Ramp Issues Specific to Fixed Route

6.2.1 Providing Alternative Transportation When Bus Lifts Are Inoperable

Requirement

"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" (§ 37.163(f)).

[1] This Circular does not cover intercity rail (i.e., Amtrak), which is also a fixed route service. The Federal Railroad Administration and the Department of Justice oversees Amtrak.

Discussion

This requirement obligates transit agencies that operate a bus without a working lift to promptly provide alternative transportation when the headway to the next accessible bus is more than 30 minutes.[2] As Appendix D to § 37.163 states,

> This could be done, for example, by having a "shadow" accessible service available along the route or having the bus driver call in the minute he saw an accessible passenger he could not pick up (including the original passenger stranded by an in-service lift failure), with a short (i.e., less than 30-minute) response from an accessible vehicle dispatched to pick up the stranded passenger.

As Appendix D highlights, transit agencies can use a variety of means to meet the alternative transportation requirement, including dispatching a similar accessible vehicle with a working lift or ramp or dispatching a different accessible vehicle (e.g., a paratransit van). Some agencies have other accessible vehicles in their fleets such as ramp-equipped vans (often supervisor vehicles) that they dispatch to provide accessible trips. FTA encourages agencies to adopt policies requiring bus drivers to immediately call into dispatch upon encountering a rider he or she cannot pick up due to an inoperable lift and for the agency to be prepared to dispatch alternative accessible transportation as soon as a driver reports the need.

When a lift cannot be deployed to a waiting rider, drivers typically are instructed to contact dispatch to determine whether an accessible bus is scheduled to arrive within 30 minutes and, if not, what alternative transportation solution is planned. An optional good practice is for an agency to adopt a policy that instructs a driver in this situation to (1) inform the rider that he or she is contacting dispatch to obtain further information and then (2) inform the rider when another bus is scheduled to arrive (i.e., within 30 minutes) or communicate the alternative transportation plan.

Another optional good practice is for an agency to have procedures in place to record these occurrences, the communication protocol followed, and the resolution (i.e., what time the next vehicle picked up the rider).

Instructing riders to wait for a vehicle scheduled to arrive more than 30 minutes later without arranging for alternative transportation is prohibited. Similarly, it is not appropriate for drivers to tell waiting riders that they do not know when the next bus might arrive.

Buses at Capacity

The requirement to provide alternative transportation does not apply if the only reason a bus cannot accommodate a rider who needs to use the lift is because the particular bus is full. "Full" can mean:

- The waiting rider needs to use a securement location, but all securement areas are already occupied by riders who use wheelchairs.
- The waiting rider needs to use a securement location, but securement areas are already occupied by riders whom the driver has asked to move but are unwilling to do so (absent a local mandatory-move policy discussed below).
- The bus is at capacity, with no space to accommodate any additional riders.

When there is no space on the bus, FTA encourages agencies to instruct drivers to explain the situation to waiting riders, so they are not left with the misperception they are simply being passed by. Agencies may, of course, adopt a local policy of dispatching alternative transportation in these situations.

[2] A bus with an inoperable lift might be in operation as a result of an in-service failure or due to the no-spare exception in § 37.163(e) discussed in Circular Section 2.3.3.

Ramp-Equipped Buses

As mentioned in Circular Chapter 2, while § 37.163 references "lifts," FTA applies the same requirements to ramps and generally treats them interchangeably. For alternative transportation, however, there is an important difference. One advantage to ramp-equipped buses is that the ramps are typically easy to deploy manually if the automatic mechanism is out of order. Many transit agencies have policies directing drivers to manually deploy the ramp for the waiting rider instead of calling for alternative transportation. This solution is typically more efficient and expedient for both the agency and the rider. Moreover, the Part 38 vehicle specifications do not require ramps to have a mechanical deployment feature; manual deployment is allowable. For these reasons, FTA considers local policies that direct drivers to manually deploy ramps in lieu of arranging for alternative transportation acceptable.

6.2.2 Deployment of Lifts/Ramps

Requirement

"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" (§ 37.167(g)).

Discussion

A transit agency cannot declare a stop "off limits" to individuals with disabilities unless one of the three conditions above is present. Under normal operating conditions, drivers must position vehicles in order to allow riders to use lifts or ramps. This means ensuring that deployment of the lift or ramp is not obstructed by signposts, street furniture, security bollards, or parked vehicles. In addition, sufficient clearance must be available to enable riders to use the lift or ramp and to ensure that riders are able to reach the lift or ramp without stepping off a curb.

Both lifts and ramps need a relatively level area to deploy, whether the rider is boarding or alighting. Lifts are more sensitive to the cross slope of the surface where they are being deployed. If the cross slope is too steep, a lift's sensors may not detect that it has reached the ground and possibly may not release the front safety flap that prevents a wheelchair from rolling on or off the lift. It is preferable to deploy a ramp onto a sidewalk, as this creates a less steep slope for riders to navigate—whether using a wheelchair, another mobility device, or traveling without a mobility device.

The following example from Appendix E to Part 37 (Reasonable Modification Requests) (see Circular Section 2.10), covers moving a vehicle in order to avoid obstructions:

> *Obstructions.* For fixed route services, a passenger's request for a driver to position the vehicle to avoid obstructions to the passenger's ability to enter or leave the vehicle at a designated stop location, such as parked cars, snow banks, and construction, should be granted so long as positioning the vehicle to avoid the obstruction does not pose a direct threat. To be granted, such a request should result in the vehicle stopping in reasonably close proximity to the designated stop location. Transportation entities are not required to pick up passengers with disabilities at non-designated locations. Fixed route operators would not have to establish flag stop or route-deviation policies, as these would be fundamental alterations to a fixed route system rather than reasonable modifications of a system.

As the preamble to DOT's 2015 final rule on Reasonable Modification of Policies and Practices explained, when a bus stop is obstructed under this scenario "the operator of the bus will need to slightly

adjust the boarding location so that the individual using a wheelchair may board from an accessible location."[3]

The phrase "reasonably close proximity" in the example implies moving the bus a small distance away from the designated stop location. This does not mean stopping at non-designated locations (e.g., establishing flag stops). As FTA has explained in webinars, "slightly adjust" means feet, not blocks—just enough to avoid whatever is blocking the bus stop boarding/alighting area. Where possible, FTA encourages transit agencies to work to relocate bus stops that present such deployment challenges (by coordinating with land owners as needed), particularly at locations that present safety issues for all riders.

6.3 Priority Seating and the Securement Area

Requirement

"(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 . . . 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" (§ 37.167(j)).

Discussion

Priority seating and the securement area are intended to accommodate riders with disabilities. The regulations distinguish between individuals sitting in priority seating and those occupying the fold-down seats over the securement area, in terms of which individuals a driver may need to ask to move. For the fold-down seats, § 37.167(j)(1)(ii) does not include an exception for "other individuals with a disability or elderly persons." The regulations, therefore, obligate drivers in some cases to ask ambulatory individuals with disabilities and seniors to move from the securement area if a wheelchair user needs to use the space. (See FTA response to Complaint 11-0076 for an example of how FTA addressed an ambulatory complainant's objection to being asked to move from the securement area.)

There are certain bus designs in which the only priority seats are fold-down seats that also serve as the securement area. When buses have this seating configuration, FTA encourages agencies to develop their

[3] DOT Final Rule, "Transportation for Individuals With Disabilities; Reasonable Modification of Policies and Practices"; F*ederal Register*, vol. 80, no. 49 (Mar. 13, 2015).

own policies to guide drivers regarding whom they ask to move from these seats if an individual who uses a wheelchair boards.

The regulations do not require drivers to proactively assist or lead riders with disabilities to the priority seating area. FTA encourages agencies to develop their own policies for drivers regarding serving riders who may need assistance, including riders without apparent disabilities.

Note that § 37.167(j)(1) requires a driver (or other transit personnel) to ask an individual to move, but § 37.167(j)(3) does not require a transit agency to enforce that request. An agency may establish its own mandatory-move policy requiring riders to vacate priority seats and wheelchair securement locations upon request. FTA encourages agencies that establish such policies to inform all riders and post signs reflecting these policies adjacent to the priority seats and wheelchair securement areas.

6.3.1 Applicability to Rail

On rail systems, because rail operators or other personnel are not always present to carry out requests for others to vacate priority-seating locations, the § 37.167(j)(3) requirement to ask passengers to move applies only to the extent practicable. This means that when transit agency personnel are present in rail cars (e.g., collecting fares, monitoring service, providing security, or for other reasons), they are to ask passengers occupying priority seats to make such seats available to individuals with disabilities, if needed and practicable.

6.3.2 Placement Policies for Strollers and Other Items

Many transit agencies also develop policies regarding the placement of strollers, luggage, and other items on vehicles. Because parents and caretakers, for example, commonly place strollers adjacent to or within fold-up seat/bench locations, an optional good practice is to develop a local policy regarding who has priority for the securement space. For example, a sample policy would state, "the placement of large items such as strollers is permitted in fold-up seat locations only if riders who use wheelchairs or other mobility devices do not need to use those areas."[4]

6.4 Adequate Vehicle Boarding and Disembarking Time

Requirement

"The entity shall ensure that adequate time is provided to allow individuals with disabilities to complete boarding or disembarking from the vehicle" (§ 37.167(i)).

Discussion

Ensuring riders with disabilities have adequate time to board and alight vehicles is more of a challenge on fixed route than demand responsive service, and more difficult on rail than bus. In order to ensure that adequate boarding and alighting time is provided, FTA encourages transit agencies to instruct personnel to pay attention to riders who need extra time. This applies to riders who use wheelchairs as well as others with ambulatory or sensory disabilities who may need extra time to board or disembark.

On rail vehicles, in situations when train personnel do not have visual contact with riders inside cars, FTA encourages transit agencies to establish wait-time standards or other procedures for personnel to follow that will give riders sufficient time to get to a seat or to situate their mobility device before proceeding.

[4] For a detailed example of a local policy, see the District Department of Transportation's "Strollers on Circulator" policy governing use of the securement space on its DC Circulator fixed route buses.

FTA also encourages agencies to train employees to provide sufficient time at station stops to permit riders with disabilities to leave a seat or securement area and completely clear vehicle doorways.

For rail operators using bridge plates, ramps, or other appropriate devices, personnel must be available (and trained to proficiency) to deploy these devices for passengers who require them. This also means aligning such devices with car doors to allow riders using mobility aids to enter and exit, and aligning bridge plates to minimize slopes in both the direction of travel and the cross slope.

In older trains, not all cars may be accessible. An optional good practice is for agencies to standardize the location of the accessible car(s) on all trains, and direct riders who need to board an accessible car to the appropriate location on the platform to wait (with signage and audio announcements). Absent such practices riders may decide to wait in a distant location and not have sufficient time to move down the platform to board an accessible car once the train arrives.

6.5 Other Boarding Considerations

6.5.1 Boarding Assistance for Ambulatory Riders

While some riders may not require lifts or ramps to board or alight buses, they may still have difficulty in stepping onto or off buses due to a disability. In these situations, FTA recommends that transit agencies adopt policies requiring drivers to use the kneeling feature available on most buses and pull close to the curb. Use of kneelers, combined with pulling as close to the curb as possible (when there is a sidewalk), allows certain riders greater ability to use fixed route buses consistent with the nondiscrimination requirements in § 37.5(a)–(b). Some agencies have policies that require drivers to deploy the kneeler at any stop where the boarding or alighting is at street level.

6.5.2 Boarding Order of Riders

Adopting a policy that covers the order in which individuals using wheelchairs are boarded along with other passengers waiting at a stop or station is permissible. If capacity is available for riders who need securement areas, however, vehicle operators must keep securement areas open for their use, regardless of whether riders who need securement areas board first or last, consistent with the nondiscrimination requirements in § 37.5(a)–(b).

Establishing a policy that allows individuals who use wheelchairs or other mobility aids to board first at a given stop or station is also permissible. Such a policy may make it easier for riders who use wheelchairs to maneuver to securement areas. This does not mean giving boarding priority to riders with disabilities above other riders. For example, if riders with disabilities are waiting at a bus stop and a bus at full capacity arrives at the stop, drivers do not need to (and are advised not to) compel other riders to get off the bus in order to accommodate waiting riders. Conversely, policies that give lower boarding priority to riders who use mobility aids because they would occupy more space on the vehicle, or for any other reason, would also be discriminatory under § 37.5(a)–(b). (See Circular Section 2.2.)

6.6 Stop Announcements

Requirement

"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" (§ 37.167(b)).

Discussion

Section 37.167(b) requires a transit agency to make on-board stop announcements on fixed route bus and rail (including commuter service) in a way that allows people with visual impairments and other disabilities to be oriented to their location. Stop announcements benefit all riders, but failing to announce stops can present significant challenges to some riders in knowing when to get off the vehicle. The regulations specify the general locations where stops must be announced. Appendix D to § 37.167 explains:

> On fixed route systems, the entity must announce stops. These stops include transfer points with other fixed routes. This means that any time a vehicle is to stop where a passenger can get off and transfer to another bus or rail line (or to another form of transportation, such as commuter rail or ferry), the stop would be announced. The announcement can be made personally by the vehicle operator or can be made by a recording system. If the vehicle is small enough so that the operator can make himself or herself heard without a P.A. system, it is not necessary to use the system.
>
> Announcements also must be made at major intersections or destination points. The rule does not define what major intersections or destination points are. This is a judgmental matter best left to the local planning process. In addition, the entity must make announcements at sufficient intervals along a route to orient a visually impaired passenger to his or her location. The other required announcements may serve this function in many instances, but if there is a long distance between other announcements, fill-in orientation announcements would be called for. The entity must announce any stop requested by a passenger with a disability, even if it does not meet any of the other criteria for announcement.

Most transit agencies operating commuter rail and rapid rail systems announce all station stops, usually over public address systems. Practices vary for light rail systems. Agencies that have automated announcement systems on their light rail vehicles usually announce all station stops.

There is no requirement to visually display stop information inside fixed route vehicles. Section 810.6.3 of the DOT Standards, however, requires transit agencies to provide rail station name signs that are clearly visible and within the sight lines of riders standing and sitting in the vehicle on both sides when not obstructed by another vehicle. (See Circular Section 3.2.5.) For buses, sighted individuals can orient themselves by looking out the window.

6.6.1 Transfer Points

Section 37.167(b)(1) requires a transit agency to announce transfer points with other fixed routes (same or other mode). This does not mean an agency must announce the other routes, lines, or transportation services that its stop shares—only that it announce the stop itself (e.g., "State Street" or "Union Station"). If two bus routes or rail lines overlap and share a set of common stops or stations, applying the requirement to announce stops "at least at transfer points" also does not mean announcing all stops along

the intersecting route or line where transfers are possible. FTA recommends announcing the stops or stations where the routes or lines merge or diverge. In the example illustrated in Figure 6-1, when two bus routes (#11 and #22) both travel along the same road segment for 1 mile before the two routes diverge, this means at a minimum announcing (on both routes) the first stop that routes #11 and #22 share and the final stop that both routes share.

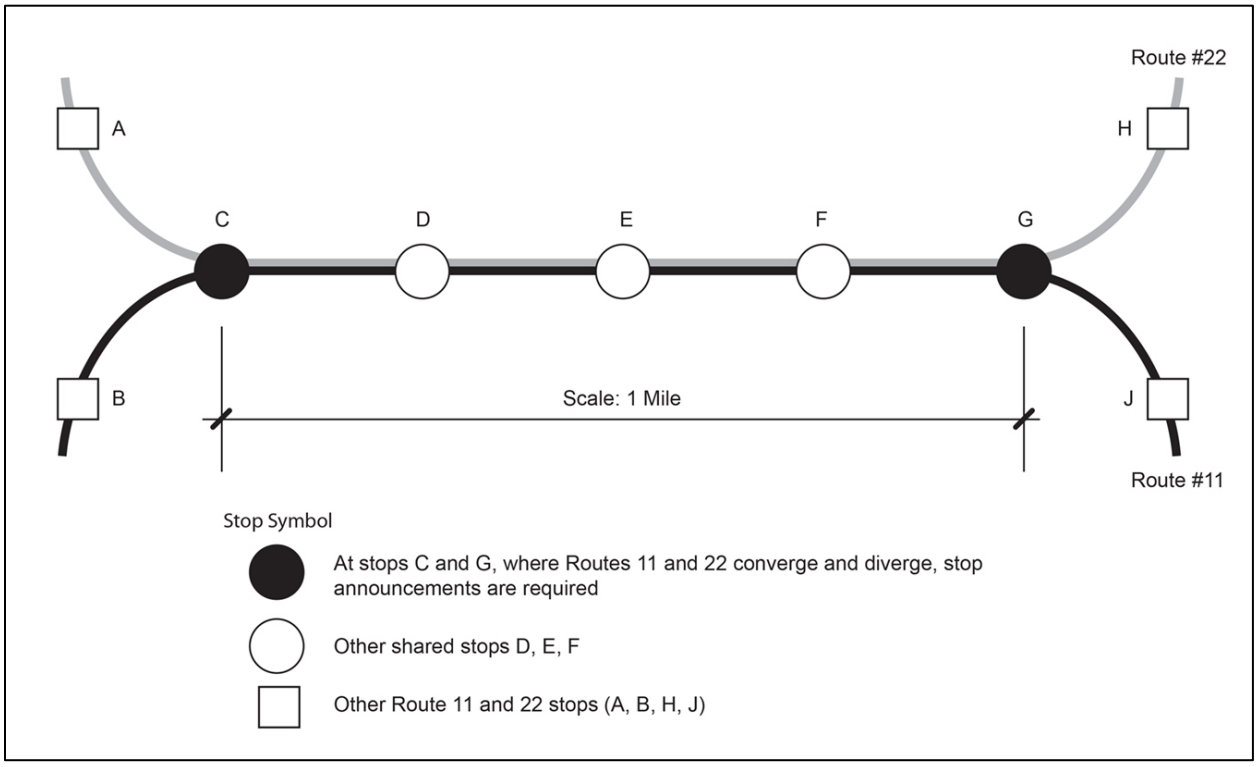

Figure 6-1 – Stop Announcements for Combined Bus Routes

6.6.2 Major Intersections and Major Destination Points

Section 37.167(b)(1) requires a transit agency to also announce stops at major intersections or destination points with appropriate orienting information (e.g., the destination name and the intersection location). As discussed in Appendix D to § 37.167, the selection of major intersections or destinations is deliberately left to the local planning process.

Many transit systems include the following types of locations for stop announcements, as applicable:

- Time points and cross streets published in schedules and on route maps
- Public facilities such as government offices, libraries, and schools
- Medical facilities
- Stores and shopping malls
- Cultural and entertainment venues
- Other popular destinations

6.6.3 Sufficient Intervals

In order to orient a visually impaired rider to his or her location, § 37.167(b) requires a transit agency to make announcements at sufficient intervals along the route. The regulations do not define the intervals, and agencies may tailor intervals to local conditions using metrics such as distance (e.g., at least every

half mile) or time (e.g., at least every 90 seconds). Regardless of the method chosen, FTA suggests agencies consider the implications for riders who miss their intended stop and would have to backtrack because the stop announcement did not take place at sufficient intervals.

6.6.4 Stops Requested by Riders

Section 37.167(b)(2) requires a transit agency to announce any stop or station that a rider with a disability requests. For agencies using automated stop announcement systems (described below), the requirement obligates bus drivers and rail operators to verbally announce a stop or station that is not on the technology's programmed list of announcements if the location is requested by a rider with a disability.

To ensure that rail operators announce a specific station, an optional good practice is to encourage riders to approach an agency employee (e.g., operator on light rail, operator on rapid rail, or conductor on commuter rail), when possible, and request the station announcement when the riders are boarding the vehicle. Alternatively, rail operators may announce all stations.

6.6.5 Stop Announcement Considerations

The following discussion of stop announcements covers optional good practices and considerations for ensuring compliance with the requirements. This includes developing stop lists, announcing all stops (particularly for rail stations), the use of public address systems, and the use of automated stop announcement systems.

Transit agencies must ensure stop announcements are clear, audible, and timely in order for them to be effective:

- Clear announcements enable riders unfamiliar with the route and neighborhood to understand the name of the stop.
- Audible announcements enable riders to hear the announcement from any location within the bus or train.
- Timely announcements provide riders with sufficient time to press the stop request device to enable drivers to stop at a desired location.

FTA also recommends that agencies ensure announcements are made consistently and worded in way familiar to riders:

- Consistently worded announcements are structured the same way for all stops; for stops served by multiple routes, vehicles on all routes announce the stop consistently. An optional good practice is to adopt the convention of only announcing cross streets. For example, if traveling on Broadway and intersecting with Market Street, announce, "Market Street." If turning onto Market Street from Broadway, the convention might be to announce, "Market Street at Broadway."
- Use of familiar names (e.g., "Target") to announce stops at major destinations rather than general but less familiar names (e.g., "Smith Street Mall") is helpful. FTA also encourages transit agencies to announce the intersecting street (consistent with the adopted style) along with the name of the destination for major destination stops also at intersections.

Developing and Maintaining Stop Lists

Many transit agencies develop their own lists of stops to announce, called stop lists. FTA recommends considering the following optional good practices for developing and maintaining stop lists:

- Consult with groups that represent or work with individuals with visual and cognitive disabilities when developing the lists.
- Keep stop lists current for each route by incorporating any changes as soon as possible (e.g., new routing, added or removed stops, and temporary construction-related closures).

- As stop lists are updated, provide the lists to operators for the routes they serve (in both directions of travel) and ensure the lists readily available on their vehicles.

Announcing All Stops

As noted above, transit agencies operating rapid rail and commuter services typically announce all station stops for these services. Some agencies that operate light rail service also announce all station stops. Similarly, some agencies also announce all stops for fixed route bus service, but usually only agencies using automated systems do so. This practice eliminates the need to determine what is a "major intersection" or "major destination" or to judge sufficient "intervals along a route." If an agency adopts this practice, riders might become accustomed to hearing an announcement for each stop and would similarly expect bus drivers to announce all stops whenever the automated system is not working. While limiting the announcements to only the stops that meet the criteria set forth in § 37.167(b) would be compliant, such practices might confuse some riders who are listening for the announcement of each stop.

Using Public Address Systems

The Part 38 vehicle specifications require that all accessible rail vehicles (e.g., light rail, rapid rail, and commuter rail) and buses more than 22 feet in length have a public address system for amplifying announcements (See §§ 38.35, 38.61, 38.87, and 38.103, respectively). When needed for riders to be able to hear announcements, transit agencies must ensure their personnel use the public address system when making announcements. Section 37.167(e) requires personnel to use accessibility-related equipment. If the public address system, or automated announcement system is inoperable, fulfilling the stop announcement requirements means drivers or rail personnel must verbally announce stops.

Automated Stop Announcement Systems

As noted above, many transit agencies are now using automated systems to announce stops. Automated systems use global positioning systems and offer several benefits:

- When correctly programmed, automated systems provide clear and timely announcements.
- Automated systems can store announcement lists in each vehicle for all routes (and route variations).

As with any technology, an automated stop announcement system may occasionally not function or not be programmed correctly. Any of the following may lead to poor performance that could result in individuals with visual impairments or other disabilities not being oriented to their location:

- The stop list is out of date.
- The positioning signal is blocked, omitting geographic information.
- The positioning technology does not properly account for the direction or speed of the vehicle, leading to stop announcements that are too early or too late.
- The positioning technology uses incorrect coordinates to identify bus stop locations.

As discussed above, whenever the automated stop announcement system is not functioning properly, fulfilling the stop announcement requirements means drivers or rail personnel must verbally announce stops.

6.6.6 Monitoring Stop Announcements for Compliance

To ensure compliance with the § 37.167(b) stop announcement requirements, transit agencies must sufficiently monitor their operators' performance and the effectiveness of the announcement equipment. To perform such activities, agencies typically employ the following people to conduct field observations:

- Road supervisors or managers

- Agency employees commuting by fixed route
- Volunteer riders who record and submit their riding experiences ("secret" or "ghost" riders)
- Contracted secret riders

When road supervisors or managers perform in-service observations, they will be more effective if they are inconspicuous by not wearing uniforms or other identifying items. For transit agencies with multiple garages, an optional good practice is to assign road supervisors to observe employees from other garages or to "borrow" monitors from other agencies. For example, in Washington and Wisconsin, state transit associations have arranged to have supervisors from other member agencies act as secret riders.

Stop Announcement Data Collection

Attachment 6-1 presents an optional sample data collection form for recording stop announcement performance on bus service (which could be tailored easily to rail). Regardless of the specific data collection form used, FTA recommends obtaining the following key information for each observation:

- Date
- Route number and direction
- Vehicle number
- Time and stop when boarding the bus
- Time and stop when alighting the bus

The sample data collection form may include a list of all required stop announcement locations. To facilitate data collection, an optional good practice is to print the stop names on data forms. For each announcement, key data for observers to record include:

- Whether the announcement was made
- How the announcement was made (by the driver or by the automated system)
- Whether the announcement was audible
- Whether the announcements were timely (i.e., early enough for riders to press a stop request indicator button)

FTA recommends observers also note other relevant issues, including:

- Whether the driver used the public address system to announce stops
- Whether the driver (or automated system) announced stops not on the stop list
- Whether a rider asked the driver to announce a particular stop, and if the driver announced that stop properly
- Whether there are certain locations or stops for which announcements might be required by § 37.167(b) but are not being announced. Such announcements can include places along long intervals without any announcements, as well as route segments with several turns.

If observers sit in the middle or toward the rear of the vehicle, they will be able to confirm that announcements are audible from these locations.

For any given set of observations, observers do not need to ride the full route when part of a larger set of observations; 10–20 minutes on a vehicle observing a single driver is usually sufficient.

6.7 Route Identification

Requirement

"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" (§ 37.167(c)).

Discussion

Since DOT first issued the ADA regulations in 1991, the techniques commonly used to achieve route identification have changed. Appendix D to § 37.167 identifies techniques such as colored mitts or numbered cards that waiting riders would use to inform drivers which route they desired to use. Today, most buses and many rail cars are equipped with external speakers for announcing route information. At bus or rail stations, many transit agencies use the station's public address system to identify arriving vehicles. Transit agencies using public address systems may also choose to make such announcements verbally or through automated systems.

Note that this requirement obligates transit agencies to identify routes only at stops or stations served by more than one route or line. This requirement also applies to rail stations that serve trains of the same route but that travel in opposite directions. Announcements are not required for a single line stop or station, but many transit agencies—particularly those that have automated announcement systems—identify the routes at all stations or stops, eliminating the need to determine which stops require route identification.

6.7.1 Methods of Announcing Routes

Depending on available technology, the following are four ways in which transit agencies typically make the required route identification announcements:

- Bus drivers or rail vehicle personnel verbally announce the route by opening the door and speaking to waiting riders at the stop or station
- Bus drivers or rail vehicle personnel verbally announce the route by using external public address systems if vehicles are so equipped[5]
- Transit agencies equip their bus and rail vehicles with and use automated route identification systems
- Transit agencies announce the route from boarding areas rather than from arriving vehicles using automated systems or verbally (using public address systems or not)

To meet the requirement for route identification, FTA encourages transit agencies to ensure operators are instructed to announce routes even if waiting riders do not readily appear to have a visual impairment (e.g., someone not using a cane or without a service animal), as not all disabilities are apparent. FTA also encourages agencies to adopt policies requiring that operators always stop at bus stops with waiting passengers and not only when an individual at the stop waves or otherwise signals the operator to stop. Absent such a practice, individuals unable to see and signal the operator to pull over would be denied service. At busy transit hubs serving multiple bus routes, FTA similarly recommends that agencies adopt

[5] While Part 38 Subpart B (Buses, Vans and Systems) does not require external speakers on buses, many transit agencies have acquired buses equipped with external speakers. Rapid rail cars serving more than one line must have external public address systems except where station announcement systems provide information on arriving trains. (See § 38.61(a)(1)–(2).)

policies requiring operators always to pull up to their designated route stop and perform the route identification, even if it means waiting for a bus in front to depart the stop.

When practical, FTA encourages transit agencies using vehicles with external speakers to test speaker volume and fidelity in settings where announcements typically take place (e.g., transfer centers, commercial districts, and residential areas). Calibrating external speakers to field conditions helps to ensure that riders will be able to clearly hear announcements. Another option is to try to simulate the settings to determine whether riders will be able to hear announcements.

Automated Route Identification Systems

Automated systems for route identification are typically paired with automated stop announcement systems. When correctly programmed, these systems provide clear, consistent, and timely announcements. Such systems can be programmed for use on multiple routes and route variations.

As with any technology, automated announcement systems may fail or be improperly programmed either through the software or by personnel entering the incorrect information. Fulfilling the route identification requirements in such instances means drivers or rail personnel must verbally announce and identify routes.

FTA encourages transit agencies to include a test of the announcement system during the operators' pre-trip inspections. If the announcement system or the external public address system is not working properly and cannot be repaired before pullout, the operator of that vehicle would then be required to announce routes unaided by a public address system.

Announcements at Stations and Platforms

As noted above, external speakers are not required on rail cars where station announcement systems provide information on arriving trains. If a transit agency chooses to make route identification announcements that originate from a facility rather than from a vehicle, it is important that riders can hear these announcements at all stops and platforms, as well as from any waiting areas.

In addition, it should be noted that under Section 810.7 of the DOT Standards, where public address systems convey audible information to the public, the same or equivalent information must be provided in a visual format. Often this is accomplished by signs on the station platforms indicating which track is for trains heading "uptown" and which is for "downtown," for example, and by signs on the trains indicating whether it is a "red line" train or a "green line" train.

6.7.2 Monitoring Route Identification for Compliance

To ensure compliance with the route identification requirements, transit agencies must sufficiently monitor their operators' performance and the effectiveness of the announcement equipment. To perform such activities, agencies typically employ the following people to conduct field observations:

- Road supervisors or managers
- Agency employees commuting by fixed route
- Volunteer riders who record and submit their riding experiences ("secret" or "ghost" riders)
- Contracted secret riders

Road supervisors or managers who perform in-service observations will be more effective if they are inconspicuous by not wearing uniforms or other identifying items. Transit agencies with multiple garages often assign road supervisors to observe employees from other garages or from other agencies.

Route Identification Data Collection

Attachment 6-2 presents a sample data collection form for recording route identification performance. For efficient data collection, observers may stand at stops or stations served by multiple routes or lines, such as major transfer centers or downtown locations. As each bus or train arrives, regardless of the specific data collection form used, FTA recommends obtaining the following key information for each observation:

- Vehicle number
- Route number or line name
- Time of arrival
- Whether an announcement of the route or line took place
- Whether the driver, another transit employee, or an automated system made the announcement
- Information included in the announcement

The number of routes and lines that serve each stop or station observation site and the operating schedule will determine how much data each observer can record.

6.8 Commuter Bus, University Transportation, and Supplemental Services

Fixed route is typically thought of in terms of non-commuter city bus service or rail service. The following discussion provides guidance on three other types of services that are also considered fixed route (including whether complementary paratransit is required for each) – commuter bus, university transportation, and supplemental service for other transportation modes.

6.8.1 Commuter Bus Service

Commuter bus is a common form of fixed route service but has a specific definition in the regulations, as follows:

> "*Commuter bus service* means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation." (See § 37.3.)

As highlighted in Circular Section 8.2, the definition is important because under § 37.121(c), commuter bus services are not subject to the requirement to provide complementary paratransit service. A bus route may have characteristics of commuter and non-commuter service. For example, if a bus route makes stops in a suburban service area and provides local service (i.e., local trips within the suburban service area), then the regulations require that local-service portion of the bus route to have complementary paratransit service. However, if this route proceeds on a highway with no intervening stop until arriving in a downtown where most riders alight, then a transit agency would not have to provide complementary paratransit service between the suburban service area and downtown.

A case-by-case assessment by the transit agency is needed to determine whether a specific bus route meets the definition of commuter bus service. During a complaint investigation or other oversight activity, FTA may require an agency to substantiate how a particular service meets the definition of

commuter bus. (See FTA response to Complaint 14-0067 for an example of an FTA analysis of whether a particular service met the definition.)

6.8.2 University Transportation Systems

Requirement

"Transportation services operated by private institutions of higher education are subject to the provisions of [Part 37] governing private entities not primarily engaged in the business of transporting people" (§ 37.25(a)).

"Transportation systems operated by public institutions of higher education are subject to the provisions of [Part 37] governing public entities. If a public institution of higher education operates a fixed route system, the requirements of [Part 37] governing commuter bus service apply to that system" (§ 37.25(b)).

Discussion

In some cases, public universities receive FTA funding to operate fixed route service. While this Circular covers such grantee services, the requirements vary depending on the type of service provided, as follows:

- When the fixed route service provided serves only the university (i.e., students, faculty, and staff), the service is considered analogous to commuter bus service in accordance with § 37.25(b). As such, the nondiscrimination requirements apply as well as those for facilities, vehicle acquisition, and service provision for public entities operating fixed route service. Under § 37.121(c), commuter bus services are not subject to the requirement to provide complementary paratransit service.
- When the fixed route service operated by the public university also provides service to the broader community, it is not a "university transportation system" and therefore complementary paratransit requirements apply.

In some cases, transit agencies that receive FTA funding may also operate fixed routes that serve public or private universities. The requirements in such instances will vary depending on the type of service provided, as follows:

- A route does not become "university service" simply because it serves or passes through a university. Such routes are part of the transit agency's regular fixed route service and are subject to the requirements for complementary paratransit.
- If a transit agency operates a route or routes at the behest of, under contract to, funded by, and for the purposes of a university (i.e., closed-door service that provides transportation only for students, faculty and staff), such routes would be regarded as "university service" and the requirements for complementary paratransit would not apply.

6.8.3 Supplemental Service for Other Transportation Modes

Requirement

"Transportation service provided by bus or other vehicle by an intercity [or] commuter rail operator, as an extension of or supplement to its rail service, and which connects an intercity rail station and limited other points, is subject to the requirements of [Part 37] for fixed route commuter bus service operated by a public entity" (§ 37.35(a)).

"Dedicated bus service to commuter rail systems, with through ticketing arrangements and which is available only to users of the commuter rail system, is subject to the requirements of [Part 37] for fixed route commuter bus service operated by a public entity" (§ 37.35(b)).

Discussion

Some commuter rail operators provide fixed route transportation services to supplement their rail services or connect rail stations with a limited number of other points. Such services are subject to the same requirements as public-entity-provided fixed route commuter bus services. In these instances, complementary paratransit service is not required.

Some transit agencies provide bus services to commuter rail systems with through-ticketing arrangements that are limited to commuter rail passengers. These services are also governed by the requirements for public-entity-provided commuter bus services, and complementary paratransit service is not required.

Attachment 6-1
Sample On-Board Fixed Route
Stop Announcement Data Collection Form

Section 37.167(b) requires transit agencies to announce stops on fixed route systems, 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. (See Circular Section 6.6.)

The attached form is a sample data collection device for use in monitoring compliance with this requirement. FTA recognizes there are many different ways of collecting such data and monitoring compliance.

When monitoring stop announcements on fixed route vehicles, FTA recommends observers be as inconspicuous as possible and behave as regular riders.

For each announcement, FTA recommends observers record:

- Whether the announcement was made
- How the announcement was made (by the driver or by the automated system)
- Whether the announcement was audible
- Whether the announcements were timely (i.e., early enough for riders to press a stop request indicator button)

FTA recommends observers also note other relevant issues:

- Whether the driver used the public address system to announce stops
- Whether the driver (or automated system) announced stops not on the stop list
- Whether a rider asked the driver to announce a particular stop and if the driver announced that stop properly
- Whether the route includes certain locations or stops for which the regulations require announcements but they were not announced. Such announcements can include places along long intervals without any announcements, as well as route segments with several turns.

FTA recommends observers sit in the middle or toward the rear of the vehicle to confirm that announcements are audible from these locations.

For any given set of observations, FTA notes that observers do not need to ride the full route; 10–20 minutes on a vehicle observing a single driver is usually sufficient, when part of a larger set of observations.

On-Board Fixed Route Stop Announcement Data Collection Form		
Date		**Bus No.**
Route No.	**Direction**	**Destination**
Boarded at:		**Disembarked at:**
Time (a.m./p.m.)		**Time (a.m./p.m.)**

Location: Include all stops called out by driver, in addition to all scheduled time points and transfer points
Stop type: Indicate major intersection, transfer, major destination, turn, etc.

Location	Stop Type	On-board Announcement Made? Yes/No	Announcement Method: Voice/PA/ Automated	Audible? Yes/No	Timely? Yes/No

Total Locations	Made	Not Made	Voice	PA	Automated	Audible	Not Audible	Timely	Untimely

Notes:

Name: _____

Attachment 6-2
Sample Route Identification Data Collection Form

Section 37.167(c) requires transit agencies to 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 when vehicles for more than one route serve the same stop. (See Circular Section 6.7.)

The attached two-page form is a sample data collection device for use in monitoring compliance with this requirement. FTA recognizes there are many different ways of collecting such data and monitoring compliance.

When monitoring route identification practices, FTA recommends that observers be as inconspicuous as possible while collecting data.

FTA recommends observers stand at stops or stations served by multiple routes or lines, such as major transfer centers or downtown locations. As each bus or train arrives, FTA recommends observers record:

- Vehicle number
- Route number or line name
- Time of arrival
- Whether an announcement of the route or line took place
- Whether the driver, another transit employee, or an automated system made the announcement
- Information included in the announcement

The number of routes and lines that serve each stop or station observation site and the operating schedule will determine how much data each observer can record.

Route Identification Data Collection Form			
Stop/Station/Location		**Date**	**Page No.** **Total Pages:**
1	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
2	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
3	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
4	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
5	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
6	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
7	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
8	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
9	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
10	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
Notes/observations (lift/ramp use, assistance provided, etc.)			

Name: _____

Route Identification Data Collection Form			
Stop/Station/Location		**Date**	**Page No.** **Total Pages:**
11	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
12	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
13	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
14	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
15	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
16	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
17	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
18	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
19	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
20	Vehicle No.	Route/Line No./Name	
	Time (a.m./p.m.)	Route Announced? Y/N	
	Text of Announcement		
Notes/observations (lift/ramp use, assistance provided, etc.)			

Name: _____

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Chapter 7 – Demand Responsive Service

7.1 Introduction

This chapter explains the U.S. Department of Transportation (DOT) Americans with Disabilities Act (ADA) regulations that apply to demand responsive transportation systems, which are broadly defined as any system that is not fixed route. In 49 CFR § 37.3, demand responsive system and fixed route system are defined as follows:

- *Demand responsive system* means any system of transporting individuals, including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including but not limited to specified public transportation service, which is not a fixed route system.[1]
- *Fixed route system* means a system of transporting individuals (other than by aircraft), including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including, but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule.

Demand responsive systems encompass a wide variety of service types, including traditional dial-a-ride service, taxi subsidy service, vanpool service, and route deviation service. Complementary paratransit service, also a type of demand responsive system, is covered separately in Circular Chapters 8 and 9. In addition, FTA reminds readers to consult the general requirements in Circular Chapter 2, which apply to all types of services, including demand responsive service.

This Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves or replace the need for readers to reference the detailed information in the regulations. FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.

7.2 Characteristics of Demand Responsive Systems

Determining whether service is demand responsive is usually, but not always, straightforward. An accurate determination is important because the ADA requirements differ between fixed route and demand responsive services. As discussed in Appendix D to § 37.3, a key factor in deciding whether a service is demand responsive rather than fixed route is whether riders must request service, typically by making a phone call:

> With fixed route service, no action by the individual is needed to initiate public transportation. If an individual is at a bus stop at the time the bus is scheduled to appear, then that individual will

[1] Under § 37.3, *designated public transportation* means "transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis." *Specified public transportation* means "transportation by bus, rail, or any other conveyance (other than aircraft) provided by a private entity to the general public, with general or special service (including charter service) on a regular and continuing basis."

be able to access the transportation system. With demand-responsive service, an additional step must be taken by the individual before he or she can ride the bus, i.e., the individual must make a telephone call.

Other factors, such as the presence or absence of published schedules, or the variation of vehicle intervals in anticipation of differences in usage, are less important in making the distinction between the two types of service. If a service is provided along a given route, and a vehicle will arrive at certain times regardless of whether a passenger actively requests the vehicle, the service in most cases should be regarded as fixed route rather than demand responsive.

Not all interactions between riders and transportation providers make services demand responsive. For example, riders often call ahead when using intercity rail or bus services to purchase tickets or reserve seats. Because these interactions do not alter a service's route or schedule, they do not make the services demand responsive. Similarly, some fixed route services permit "flag stops," where riders can signal drivers and board a bus between designated stops. Because they still operate along fixed routes according to fixed schedules, such services are fixed route and not demand responsive. (Note that the services classified as demand responsive for purposes of this Circular are distinct from the definition of "demand response" for the purposes of FTA's National Transit Database.)

The definition of the service is particularly important because true demand responsive services, as covered in this chapter, do not require complementary paratransit. Similarly, because the DOT ADA regulations permit public entities to purchase a mix of accessible and inaccessible vehicles to deliver demand responsive services, understanding what is and is not demand responsive is critical in terms of ensuring riders with disabilities who wish to use these services receive equivalent service and are not subject to discrimination because of their disabilities.

7.3 Acquisition of Vehicles for Demand Responsive Systems

Requirement

"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" (§ 37.77(a)).

"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" (§ 37.77(b)).

Discussion

In the DOT ADA regulations, the service requirements for demand responsive systems are directly tied to vehicle acquisition and, for public entities, are found in Part 37 Subpart D (Acquisition of Accessible Vehicles by Public Entities). Although many transit agencies procure only accessible vehicles for their fleets, the regulations permit agencies to purchase a mix of accessible and inaccessible vehicles for demand responsive services by requiring that the system "when viewed in its entirety" provides equivalent service.

7.4 Equivalent Service in the Most Integrated Setting

Requirement

"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" (§ 37.77(c)).

Discussion

Equivalent service is an underlying measure of nondiscrimination for demand responsive service with inaccessible vehicles in the fleet. Demand responsive fleets are permitted to include inaccessible vehicles as long as the service to individuals with disabilities is provided in the "most integrated setting appropriate" and is equivalent to the service provided to individuals without disabilities. Circular Section 7.5 discusses common types of demand responsive services. Examples of issues related to equivalency are provided for each respective service.

In some cases, transit agencies procure all accessible vehicles for their fleets, meaning they meet the Part 38 vehicle specifications discussed in Circular Chapter 4. Where all the vehicles in a demand responsive vehicle fleet are fully accessible, the equivalent service standard addressed in this chapter does not apply. The general nondiscrimination requirements in § 37.5 discussed in Circular Chapter 2, however, apply to all demand responsive services. It would be discriminatory, for example, in a system with a 100 percent accessible demand responsive fleet to charge a higher fare to riders with disabilities or provide them a poorer response time in comparison with the service provided to riders without disabilities.

7.4.1 Service in the Most Integrated Setting

In general, providing service in the most integrated setting appropriate to the needs of the individual means providing service to individuals with disabilities on the same vehicles and together with all other riders. When the service provided is demand responsive, there might be limited circumstances when the use of a separate vehicle is necessary, but such instances would be extremely rare.

It is also important to keep service integration in mind when designing seating plans and preparing specifications for acquiring accessible vehicles. While it may be reasonable to acquire a small number of vehicles designed specifically to accommodate large groups of riders who use wheelchairs, FTA discourages transit agencies from segregating fleets into vehicles that accommodate ambulatory riders and those that only accommodate riders who use wheelchairs. Instead, FTA encourages agencies to acquire vehicles that accommodate a mix of all riders, a prerequisite to fulfilling the most integrated setting requirement.

Transit agencies are allowed to include inaccessible vehicles, such as sedans, in their overall demand responsive fleet. This enables agencies to serve some riders with smaller vehicles that cost less to operate.

In such instances, other riders traveling in an agency's fleet of accessible vans or buses would travel in an integrated setting.

7.4.2 Service Characteristics for Equivalency

The seven § 37.77(c) service characteristics for determining equivalency for riders with disabilities, including those who use wheelchairs, are:

- Response time – The elapsed time between a request for service and the provision of service is the same for riders with and without disabilities, and days and hours to request service are the same.
- Fares – For a given trip, the fare is the same for all riders.
- Geographic area of service – Riders with disabilities are able to request trips in the same area or areas as other riders.
- Hours and days of service – Riders with disabilities are able to request trips on the same days and during the same hours as other riders.
- Restrictions or priorities based on trip purpose – For demand responsive service with restrictions or priorities based on trip purpose, the same restrictions or priorities apply to all riders. Establishing policies that restrict or prioritize service based on trip purpose (e.g., medical transportation only) is acceptable as long as transit agencies apply these policies in the same way for all riders.
- Availability of information and reservations capability – Riders with disabilities have access to the same information and reservation systems as other riders, including information in alternate formats (e.g., large print, braille, audio, or accessible electronic files for riders with vision disabilities). Section 37.167(f) requires agencies to make alternate formats available, usable by the individual, and appropriate to the intended use. This means providing individuals with hearing or speech disabilities equal access to trip reservation systems in order to request service. (See Circular Section 2.8.)
- Any constraints on capacity or service availability – In demand responsive services with service availability or capacity constraints, this means having the same constraints for all riders. The regulations do not prohibit demand responsive services from having trip denials or providing trips on a first-come, first-served basis. However, to be considered equivalent, riders with disabilities would encounter trip denials with the same frequency as riders without disabilities. Similarly, the regulations do not prohibit the use of waiting lists or trip caps, as long as riders with disabilities are not waitlisted more often or do not have more restrictive trip cap limitations. Finally, the regulations do not prohibit demand responsive services from having poor rates of on-time performance or having long ride times due to limited service capacity, as long as riders with disabilities do not experience lower on-time performance rates or longer ride times than other riders.

FTA notes that the above equivalency requirements are often confused with the service criteria for complementary paratransit. While these services can have similar characteristics, there is a fundamental difference in the requirements. As covered in Circular Chapter 8, a transit agency's complementary paratransit service provision is measured against its fixed route service. But in demand responsive service, the comparison is between riders with disabilities and riders without disabilities, and the regulations require the level of service provided to be "equivalent."

FTA also notes that as long as transit agencies provide equivalent service, providing higher levels of service to individuals with disabilities, such as prioritizing routes and schedules for riders with disabilities or offering them reduced fares, is a local decision. Accordingly, throughout this chapter, references to equivalent service being "the same" imply "the same or better."

7.4.3 Service When Viewed in Its Entirety

Determining equivalency also considers the demand responsive service when viewed in its entirety. As explained in Appendix D to § 37.77, "when viewed in its entirety" means that "when all aspects of a transportation system are analyzed, equal opportunities for each individual with a disability to use the transportation system must exist." For example, some transit agencies may use multiple service providers to operate demand responsive services. Each service provider could have a different mix of accessible and inaccessible vehicles. One provider might primarily use sedans (e.g., a taxi service), while another might operate a fleet of accessible vehicles. In such instances, equivalency determinations are based on all of the providers' services combined. It is important for agencies using multiple providers—some of which are using inaccessible vehicles—to ensure that all providers operate with the same policies and practices. For example, one taxi provider might accommodate same-day service requests with sedans while another provider using accessible vans might require advance reservations. Providing equivalent service in this instance means riders who need to travel in an accessible van are not required to place reservations earlier than riders who use the taxi service do.

7.4.4 Considering the Next Potential Customer

In some demand responsive services, all current riders might be ambulatory and able to travel in an inaccessible vehicle. This is often the case for vanpools. However, the next potential customer might require an accessible vehicle. Equivalent response time in such instances means being able to provide this person an accessible vehicle in the same timeframe as someone who does not need an accessible vehicle. To do so, agencies must have accessible vehicles in reserve or have plans in place to acquire such vehicles or arrange for their temporary use.

7.4.5 Certification of Equivalency Requirement

Requirement

"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. Public entities operating demand responsive service receiving funds under any other section of the [Federal Transit Act] shall file the certificate with the appropriate FTA regional office. A public entity which does not receive FTA funds shall make such a certificate and retain it in its files, subject to inspection on request of FTA. 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" (§ 37.77(d)).

Discussion

Before acquiring inaccessible vehicles for use in a demand responsive service, the regulations require a public entity to certify that the service using a future fleet with the inaccessible vehicles being procured will be equivalent for riders with disabilities, including riders who use wheelchairs. Attachment 7-1 provides the certification form for entities to complete. Certifications are valid for one year, meaning the entity will have to recertify before acquiring additional inaccessible vehicles through future procurements.

The requirements for filing certifications vary depending on the type of funding received and the entity receiving funding. As discussed in Appendix D to § 37.77,

> The Department has been asked specifically where an entity should send its "equivalent level of service" certifications. We provide the following: Equivalent level of service certifications should be submitted to the state program office if you are a public entity receiving FTA funds through the state. All other entities should submit their equivalent level of service certifications to the FTA regional office . . . Certifications must be submitted before the acquisition of the vehicles.

The following FTA circulars provide guidance for FTA funding recipients:

- Section 5307 Urbanized Area Program Grants – Circular 9030.1E
- Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Grant Recipients – Circular 9070.1G
- Section 5311 Formula Grants for Rural Areas – Circular 9040.1F

Section 37.77(d) requires transit agencies that receive funds under any other section of the Federal Transit Act to file certificates with the appropriate FTA regional office.

Subrecipient Certification and Monitoring

The § 37.77(d) certification requirements also apply to subrecipients. Because the FTA Master Agreement obligates FTA funding recipients to enter into written agreements with subrecipients that incorporate applicable Federal requirements, FTA requires state administering agencies to have review procedures in place to monitor subrecipients' compliance with certification requirements.

When awarding inaccessible vehicles to subrecipients, monitoring compliance with certification requirements means asking funding applicants who request inaccessible vehicles to document equivalency of services. Such documentation addresses each area of equivalency: response time, fares, geographic areas of service, hours and days of service, trip purpose, information and reservation capability, and capacity and service availability.

When requesting and receiving inaccessible vehicles, accurately certifying that service is equivalent means reviewing policies and operating procedures to ensure that service is available in the same area, at the same times, with the same response time, and for the same trip purposes for all types of riders. This includes riders with disabilities who use wheelchairs as well as others who may need accessible vehicles. FTA encourages monitoring daily operations to ensure compliance with policies and operating procedures and that the service is equivalent.

FTA also expects subrecipients that obtain or plan to obtain inaccessible vehicles to gather and closely analyze service data to determine if service is the same for all riders. At a minimum, this would include comparing the following service data for riders who need accessible vehicles with riders who do not need accessible vehicles:

- Trip denials and missed trips
- Frequency of being wait-listed
- On-time performance
- On-board ride times
- Telephone hold times

7.5 Types of Demand Responsive Services

Many types of services fall under the demand responsive category, including:

- Dial-a-ride service
- Taxi subsidy service
- Vanpool service
- Route deviation service

Transit agencies must ensure all applicable ADA requirements are being met for all services—not just equivalent service. This includes the general nondiscrimination requirements in Part 37 Subpart A (§ 37.5) along with the relevant service provisions in Part 37 Subpart G. With these services, agencies have the same obligations to ensure, for example, that service animals are allowed to accompany riders with disabilities and that portable oxygen is accommodated. The training requirements in § 37.173 can be particularly important. Vehicle operators, including taxi drivers and volunteer vanpool drivers, must be trained to proficiency on safely operating vehicles and equipment and on properly assisting and treating riders with disabilities. (See Circular Chapter 2 for the crosscutting requirements that apply to all modes.) The following descriptions of the most common demand responsive services highlight service options for consideration locally.

7.5.1 Dial-a-Ride Service

As perhaps the most common type of demand responsive service, dial-a-ride operates in a defined area such as a city, county, or transit agency jurisdiction, and during advertised days and hours. Pickups and drop-offs typically take place anywhere within the service area, and sometimes at important out-of-area locations. Riders call to request a pickup time and service providers develop schedules and routes according to these requests.

General public dial-a-ride services are commonly available in suburban and rural areas that do not have sufficient population density to support fixed route service. Sections 5311 and 5307 funds typically support general public dial-a-ride services.

Some agencies operate dial-a-ride services for seniors and individuals with disabilities. They often operate these services as a supplement to fixed route and complementary paratransit services and typically use § 5310 funding to support these services.

Subscription Vans

Subscription van service, a type of dial-a-ride service, provides a defined set of riders with ongoing transportation. This might include reverse commuters working in a common location or social service agency clients traveling to agency programs. Riders either call the service provider to request ongoing transportation or the programs or workplaces arrange transportation services with the providers.

Although the same group of riders may follow a similar daily route and schedule, the roster of van riders can change over time, leading to changes in routes and schedules. Thus, FTA considers subscription van service as demand responsive, not fixed route.

Equivalency for Dial-a-Ride Services

Many dial-a-ride services combine individual transportation and group transportation. Individual transportation services might enable trips for shopping, personal business, or medical appointments. Group trips such as those in subscription vans might serve those traveling to common destinations such as senior nutrition programs. Providing services in the most integrated setting is a particularly important issue for group trips that include social elements. For example, if transporting groups of seniors from a

meal center, it would not be in the most integrated setting to transport those seniors without disabilities home in one vehicle and use a separate accessible vehicle to transport the riders who use wheelchairs.

If multiple service providers with different mixes of accessible and inaccessible vehicles provide service, it is important to consider whether the providers with accessible vehicles operate all the days and hours and in all parts of the service area as providers that operate mainly inaccessible vehicles.

As discussed in Circular Section 7.4, equivalency also means that agencies cannot charge a higher fare to riders with disabilities. Even if service providers charge agencies more to provide trips in lift-equipped vans than in sedans or non-lift vans, such cost differences are internal to the agency and cannot be passed onto riders.

Using Dial-a-Ride Service to Also Provide Complementary Paratransit Service

Some transit agencies that operate both general public dial-a-ride and fixed route service use the general public dial-a-ride service (i.e., vehicles, drivers, scheduling, and dispatch) to meet all or part of their complementary paratransit service requirements. In these cases, the Part 37 Subpart F complementary paratransit requirements apply, including those covering capacity constraints, to the portion of the service used to meet the complementary paratransit requirements. (See Circular Chapters 8 and 9.) To ensure compliance with Subpart F, agencies must monitor the level of service the complementary paratransit riders are receiving. FTA recommends that agencies record and analyze trip requests and completed trips by type of rider—those determined ADA paratransit eligible versus others not ADA paratransit eligible. This permits agencies to document compliance with the Subpart F requirements during FTA oversight reviews, for example, even if the general public dial-a-ride portion of the service has capacity constraints.

If the general public dial-a-ride portion of a transit agency's service cannot accommodate all trip requests, complying with the Subpart F requirements means giving scheduling priority to ADA paratransit eligible riders and ensuring service for these riders operates without capacity constraints.

FTA recommends clearly describing both types of service (service available to the general public and service for ADA paratransit eligible riders) in public information so that individuals with disabilities understand the benefits of applying for ADA paratransit eligibility and the level of service they can expect to receive.

7.5.2 Taxi Subsidy Service

Taxi subsidy service, often classified as either user-side subsidy or provider-side subsidy service, is also a common type of demand responsive transportation. In both variations, transit agencies contract with taxi companies to provide service. In user-side taxi subsidy programs, agencies sell discounted vouchers (also known as scrip) to riders, who arrange trips directly with taxi companies and use the vouchers as payment for rides. In provider-side subsidy programs, riders may arrange trips through a transit agency. The agency then contracts with taxi companies for service and subsidizes a portion of the taxi fare through its direct payment to the taxi company; the rider pays a fare or agreed-upon amount for each trip.

Equivalency for Taxi Subsidy Services

Taxi subsidy programs administered by transit agencies using FTA funds are subject to the equivalent service requirements. In other words, agencies are responsible for providing equivalent service to individuals with disabilities, including those who use wheelchairs, who qualify for these services. Taxi subsidy programs that use only inaccessible taxicabs would not meet the regulatory requirements for equivalency. One way to provide equivalent service is to work with participating taxi companies to incorporate accessible vehicles into their taxicab fleets. Another way is to contract with other companies that can provide accessible service, and to negotiate terms so that the riders requiring accessible vehicles receive equivalent service without being charged a higher fare.

Transit agencies operating taxi subsidy programs must monitor response times for riders with disabilities, including those who use wheelchairs, to ensure these riders experience comparable response times to other riders. Achieving equivalent response times for all riders can be challenging when only a small portion of a total available taxi fleet is accessible. One option is to establish a central dispatch service and work with operators that have accessible taxicabs to prioritize the assignment of accessible taxicabs to riders who need accessible vehicles. Another option is to use a separate company that operates accessible vehicles to serve riders with disabilities. In such instances, service monitoring for equivalent response times is crucial.

With respect to fares, equivalency means that all riders pay the same fares for comparable trips regardless of the actual cost of providing taxicab service. For example, if more than one operator provides the taxi service and the accessible taxicab provider's fare structure is higher than the other operator, equivalency issues could arise. In programs with capped subsidies (e.g., the agency subsidizes the first $10 and the rider pays any balance), riders who need accessible taxicabs through a more costly provider cannot be charged a higher fare than those receiving similar trips in less costly inaccessible taxicabs. In voucher programs, riders requiring service in more costly accessible taxicabs cannot be required to use more vouchers for comparable trips. Maintaining the required equivalency might obligate the agency to adopt remedies such as tying coupons to specific rides instead of to dollar values or providing higher subsidies to riders who require accessible taxicabs. (See Circular Section 7.6.)

7.5.3 Vanpool Service

Requirement

"Vanpool systems which are operated by public entities, or in which public entities own or purchase or lease the vehicles, are subject to the requirements of [Part 37] for demand responsive service for the general public operated by public entities. A vanpool system in this category is deemed to be providing equivalent service to individuals with disabilities if a vehicle that an individual with disabilities can use is made available to and used by a vanpool in which such an individual chooses to participate" (§ 37.31).

Discussion

As defined in the § 37.3,

> *Vanpool* means a voluntary commuter ridesharing arrangement, using vans with a seating capacity greater than 7 persons (including the driver) or buses, which provides transportation to a group of individuals traveling directly from their homes to their regular places of work within the same geographical area, and in which the commuter/driver does not receive compensation beyond reimbursement for his or her costs of providing the service.

Typically, entities that sponsor and administer vanpools coordinate the creation of vanpool rider groups, set the cost of the service, and collect regular payments from riders. Entities also purchase or lease, insure, and maintain the vans.

Equivalency for Vanpools

Vanpool systems operated by public entities (in which the entities own, purchase, or lease the vehicles)[2] are subject to the equivalent service requirements that apply to general public demand responsive services. Meeting the vanpool equivalency requirement means being prepared to accommodate requests to participate in the vanpool from individuals with disabilities, including those who use wheelchairs.

[2] "Operated by public entities" includes those situations in which the public entity owns, purchases, or leases the vehicles, or provides financial assistance to purchase or lease the vehicles.

If riders without disabilities can join an existing vanpool in one or two days, equivalent response time means riders who use wheelchairs can join a vanpool in the same timeframe. (See Circular Section 7.4.4.)

Equivalency for fares means charging all vanpool participants the same fees even if operating costs are higher for operating an accessible van. To make the contributions or fares the same, FTA suggests that sponsoring agencies consider further subsidizing vanpools that accommodate riders with disabilities or assessing a surcharge to all vanpools to offset any higher rider costs of accessible vanpools.

7.5.4 Route Deviation Service

Route deviation service operates along established routes that typically have designated stops. Between these stops, vehicles deviate from an established route to pick up or drop off riders within a defined off-route service area. Figure 7-1 illustrates the route deviation concept.

Transit agencies operating route deviation services typically ask riders to call in advance (e.g., 1–2 hours prior to desired pickup time) to request off-route pickups.

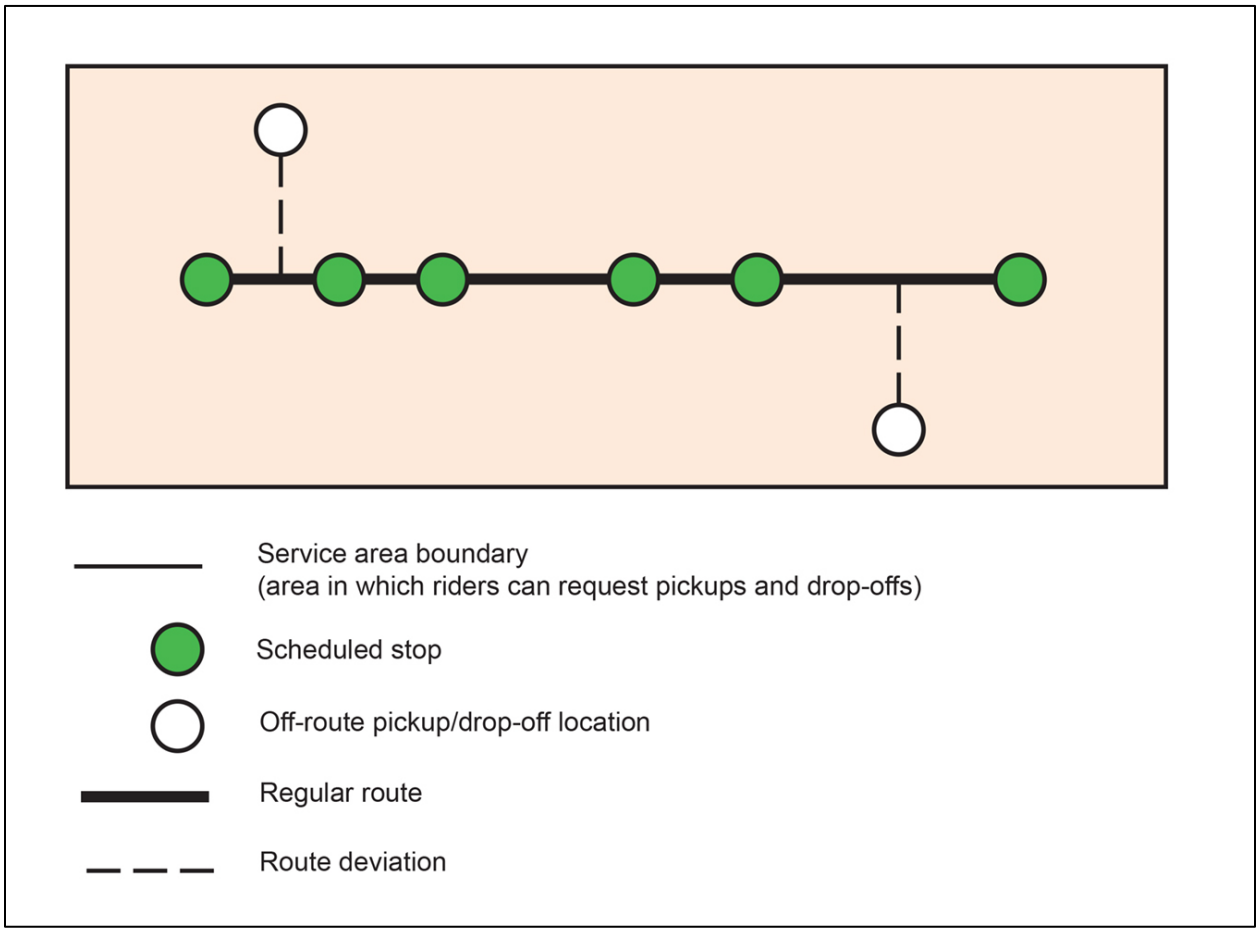

Figure 7-1 – Route Deviation Service[3]

Typically, all vehicles used in route deviation service are accessible, as it would be difficult to provide equivalent service with a mixed fleet. Riders needing accessible vehicles would not have the same ability to catch the next bus at a scheduled stop if only certain runs were provided with accessible vehicles.

[3] Transportation Research Board, Transit Cooperative Research Program Report 163, "Strategy Guide to Enable and Promote the Use of Fixed-Route Transit by People with Disabilities" (2014).

Considerations for Route Deviation Service

To be considered demand responsive rather than fixed route, route deviation services must accept deviation requests from all riders. Deviated fixed route services that limit route deviations only to riders with disabilities are not demand responsive services. These are fixed route services that require complementary paratransit.

Some transit agencies operate a mix of route deviation and fixed route services. FTA considers the routes that permit all riders to request deviations as demand responsive. Routes that do not allow deviations are fixed route, and therefore complementary paratransit is required.

Similarly, some transit agencies allow deviations only at certain times. For example, an agency may operate fixed route service during peak hours and limit deviation requests to off-peak hours when the schedule can accommodate off-route pickups and drop-offs. In such instances, the service is therefore fixed route during peak periods and demand responsive during the times that deviations are permissible. The Part 37 Subpart F complementary paratransit requirements apply during hours when the service is fixed route.

Operating route deviation services without limits can result in so many deviations that the fixed route portion of the service becomes unattractive to other riders. For this reason, route deviation services are often employed on longer runs in more rural areas where the time spent deviating can be made up along the way. Route deviation services are also sometimes supplemented by other demand responsive services to help meet off-route requests.

Discriminatory Practices that Limit the Use of Route Deviation Service

The § 37.5 nondiscrimination requirements obligate transit agencies to ensure that their policies and practices do not discriminate against individuals with disabilities. (See Circular Section 2.2.) The following are examples of discriminatory practices in the delivery of route deviation service, and may leave the appearance that a route deviation service is "in name only" as a way to avoid providing complementary paratransit service:

- Designating services as route deviation in plans and other documents, but not advertising them as such. To ensure that riders are aware of and able to use the service, FTA requires that transit agencies advertise the availability of route deviations (e.g., including the information on schedules and in other public information).
- Establishing restrictive policies for deviations that would significantly limit the use of the service by individuals with disabilities who are not able to get to and from designated stops and can therefore only use the service by requesting deviations. This would include:
    - Charging excessive surcharges for deviations
    - Establishing overly restrictive areas within which riders can request deviations
    - Limiting deviations to only certain trip purposes
    - Unreasonably capping the number of permitted deviations

To avoid discriminating against riders with disabilities who may only be able to use the services by requesting deviations, transit agencies must:

- Apply only reasonable surcharges for deviations (e.g., no more than twice the base fare)
- Establish a reasonable service area within which deviations are permitted (e.g., 3/4 mile)
- Ensure that policies capping the number of allowable deviations per vehicle run do not significantly limit the service

Operating Complementary Paratransit Through Route Deviation Service

Services that do not deviate for all riders must provide complementary paratransit service in full compliance with Part 37 Subpart F. (See Circular Chapters 8 and 9.) This includes administering an eligibility determination process to determine who is ADA paratransit eligible. In very rural areas where demand is low, transit agencies might be able to meet the complementary paratransit requirements through off-route deviations.

The DOT ADA regulations do not require agencies to provide complementary paratransit and fixed route service in separate vehicles. In fact, comingling complementary paratransit and fixed route riders on the same vehicle has the benefit of providing service to riders with disabilities in a more integrated setting. Some agencies have long operated comingled service.

A comingled fixed route and complementary paratransit service using the same vehicle operates along a fixed route and deviates from the route only for ADA paratransit eligible riders. The deviation portion of the service is subject to the Subpart F requirements.

While agencies have the option to run complementary paratransit on the same vehicle as fixed route service, if this option is chosen, the agency must be prepared to demonstrate to FTA that it is fulfilling the Subpart F requirements. This would include, for example, ensuring complementary paratransit is provided within 3/4 mile of the fixed route and is free from capacity constraints.

Operating Complementary Paratransit Through Supplemental Dial-A-Ride Service

Where demand is higher, a separate complementary paratransit service may be necessary. In some cases, rather than establishing a new service, transit agencies use existing dial-a-ride programs to meet the complementary paratransit requirements, especially in more rural areas. Both service design options might also be employed. Some complementary paratransit demand might be met by using route deviation vehicles to make off-route pickups and some demand might be met using an existing dial-a-ride program. FTA reminds agencies using these approaches to track and analyze the combined services (deviations and dial-a-ride trips) to ensure compliance with all Subpart F requirements, including the prohibitions against capacity constraints.

Service options are summarized in Table 7-1, including whether or not the Subpart F requirements apply.[4]

[4] For more information on service delivery options, see FTA letter to the California Department of Transportation (Caltrans) (Dec. 8, 2014).

Table 7-1 – Service Delivery Options

Service Delivery Option	Route Deviations	Part 37 Subpart F Requirements
Route deviation that is demand responsive	Deviates for all riders, including those without disabilities Publicly advertised as route deviation service	Do not apply
Comingled complementary paratransit and fixed route service on the same vehicle	Deviates only for ADA paratransit eligible riders	Apply to trips for all ADA paratransit eligible riders
Fixed route service with separate complementary paratransit service (operated with separate vehicles or through existing dial-a-ride service)	None	Apply

7.5.5 Other Types of Service

Transit agencies have developed other types of demand responsive services that may include some elements of user interaction. Some of these services are similar to the common services described above with variations. Agencies must evaluate these other services on a case-by-case basis and consult the § 37.3 definitions and Appendix D discussions referenced throughout this chapter to determine whether the services are demand responsive or fixed route.

FTA also recognizes the emergence of innovative types of transportation, especially in the realm of demand responsive service. As mentioned in Circular Chapter 1, nearly all types of publically or privately operated transportation are covered by the ADA one way or another, either through the DOT ADA regulations or the Department of Justice's. In some cases, the applicable regulatory requirements may not be immediately clear. FTA grantees contemplating nontraditional programs (e.g., on-demand car- or bike-sharing) are encouraged to contact the FTA Office of Civil Rights for any needed guidance on identifying the applicable requirements.

7.6 Suggestions for Monitoring Service

Transit agencies must sufficiently monitor their demand responsive service, provided in house or by contractors, in order to confirm the service is being delivered consistent with the ADA requirements. States must similarly monitor their subrecipients. FTA does not dictate the specifics of an agency's monitoring efforts. Approaches for monitoring demand responsive service will vary based on the characteristics of the service and local considerations.

7.6.1 Determining Equivalency

Table 7-2 offers suggestions for how to determine equivalency for each of the seven § 37.77 service characteristics when some of a transit agency's vehicles are not accessible to individuals with disabilities, including individuals who use wheelchairs. Agencies can determine the equivalency of basic service characteristics (such as response time, fares, service areas, days and hours, and trip purposes) by reviewing policy statements, public information, and other documents that define for agencies and the public how the service is operated and the rules for its use.

FTA suggests examining operating procedures and considering any differences between the policies and procedures used to serve riders with disabilities versus policies and procedures for serving riders without disabilities. For transit agencies using multiple providers, FTA also suggests comparing any variations in policies and procedures among contracted providers, including those with mixed fleets of accessible and inaccessible vehicles.

To evaluate the availability of information and reservation capacity, FTA suggests examining policies and procedures for preparing information in accessible formats. This includes reviewing the accessibility of systems used for trip reservations, such as telephone or online systems, and monitoring accessible communications practices to ensure that they are performed as efficiently as other types of communications. (See Circular Section 2.8.)

Determining equivalency in the area of service capacity and availability requires more detailed analysis of various service constraints and limitations, such as waiting lists, trip caps, trip denials, on-time performance, and on-board ride times. In each of these areas, FTA suggests that transit agencies compare the experiences of riders with disabilities, particularly those who use wheelchairs and need accessible vehicles, with the experiences of other riders.

Table 7-2 – Suggested Approaches for Determining Equivalency with the § 37.77 Service Requirements

Service Requirement	Suggested Approach for Determining Equivalency
The same response time	Review all policies that indicate how far in advance riders must request service and confirm that notification requirements are the same for individuals with disabilities. Consider all procedures for arranging service and confirm that individuals with disabilities receive service in the same amount of time. Monitor and observe the service to ensure adherence to policies and procedures and response time are equivalent in practice.
The same fares	Review all policies related to fares to confirm that riders with disabilities pay the same fares as riders without disabilities for similar trips. Confirm there are no additional charges that only riders with disabilities pay. Monitor and observe the service to ensure adherence to policies and fares are equivalent in practice.
The same geographic area of service	Examine the availability of accessible vehicles throughout the service area. Review how the fleet is assigned and the mix of accessible and inaccessible vehicles in each part of the service area. Compare the service areas of different contractors who might have different mixes of accessible and inaccessible vehicles. Monitor and observe service to confirm adherence to policies and that service is provided on an equal basis.
The same hours and days of service	Review all policies related to the days and hours of service to confirm that an adequate number of accessible vehicles is available during all hours of operation. If multiple contractors provide service, confirm that contractors using accessible vehicles operate at least as long as all other contractors. Monitor and observe the service to ensure that policies are followed.
The same restrictions or priorities based on trip purpose	Review all policies and operating procedures to confirm that riders with disabilities can request trips for the same trip purposes as all other riders. The regulations permit demand responsive services to have trip purpose restrictions or priorities, but the same restrictions or priorities must apply to all riders, including riders with disabilities. Monitor and observe the service to ensure that policies and procedures are followed and any trip purpose restrictions or priorities are applied on an equal basis.
The same availability of information and reservations capability	Confirm that public information is available in accessible formats so that riders with disabilities have the same information as all other riders and that reservation systems are accessible.

Service Requirement	Suggested Approach for Determining Equivalency
Constraints on capacity or service availability	Waiting lists – Demand responsive services can have waiting lists, but the regulations require transit agencies to apply them equally to riders with and without disabilities. If using waiting lists, confirm that riders with disabilities are not waitlisted more frequently than other riders. Consider maintaining information about each rider's disability status, particularly whether a rider uses a wheelchair and requires an accessible vehicle. Periodically review waitlists and calculate the percentage of riders by type who are waitlisted (the number of riders who require accessible vehicles on the waitlist divided by the total number of riders who require accessible vehicles vs. the number of riders who do not require accessible vehicles on the waitlist divided by the total number of riders who do not require accessible vehicles). Trip caps – Demand responsive services can have trip caps, but the regulations require transit agencies to apply them equally to riders with and without disabilities. Examine all policies related to trip caps to ensure that riders with disabilities are not subject to more restrictive trip caps. Trip denials – Demand responsive services can have trip denials, but the regulations prohibit riders with disabilities from experiencing a higher percentage of denied trip requests. Consider maintaining information about each rider's disability status, particularly whether a rider uses a wheelchair and requires an accessible vehicle. Periodically review trip denials and calculate the percentage of trips requested by riders who require accessible vehicles that were denied (denied trips requested by riders who need accessible vehicles divided by the total trips requested by riders who need accessible vehicles). Compare this with the percentage of trips requested by riders who do not need accessible vehicles that were denied (denied trips requested by riders who do not need accessible vehicles divided by the total trips requested by riders who do not need accessible vehicles). On-time performance – The regulations require riders with disabilities, particularly those who use wheelchairs and require accessible vehicles, to experience the same on-time performance other riders experience. Consider analyzing on-time performance for riders who need accessible vehicles and compare this with the overall on-time performance for the service. FTA notes that given operational variances, equivalent on-time performance means similar, but not identical, on-time performance. For instance, if on-time performance for riders with disabilities over time is very close to the systemwide average, then this represents equivalent on-time performance. On-board ride times –The regulations require that on-board ride times that individuals with disabilities experience, particularly those who use wheelchairs and require accessible vehicles, be the same as the on-board ride times other riders experience for similar trips. FTA suggests analyzing the average on-board ride times for trips taken by riders who need accessible vehicles versus those who do not need accessible vehicles. If the averages differ significantly, consider possible reasons. Are riders with disabilities making different types of trips that are longer? Is the difference caused by more trip grouping on accessible vehicles (and therefore longer ride times) than on inaccessible vehicles?

7.6.2 Monitoring Suggestions for Specific Service Types

Comingled Dial-A-Ride and Complementary Paratransit Service

When transit agencies use dial-a-ride services to provide complementary paratransit, FTA suggests coding general dial-a-ride riders and ADA paratransit eligible riders differently. This can be done in the eligibility determination process (e.g., the ID number for an ADA eligible rider might begin with an "A"). This will allow the agency to compare the level of service ADA paratransit eligible riders receive with other riders and demonstrate to FTA during oversight activity that the service is being monitored and is free of capacity constraints. For example, this could include generating and analyzing a list of all trip request denials to determine if any denials applied disproportionately to ADA paratransit eligible riders.

Taxi Subsidy Service

Monitoring provider-side taxi subsidy services, where a transit agency or call center contractor handles trips requests, is relatively straightforward. Transit agencies can require taxi companies participating in the program to report actual pickup and drop-off times for trips assigned to them as well as other statistics.

Because riders arrange trips directly with participating taxi companies, monitoring user-side taxi subsidy services requires other techniques. One suggested approach is to analyze a sample of voucher trip records and compare the time the rider requested the trip with the dispatch records for when the taxi driver accepted the trip assignment and to examine the actual pickup and drop-off times. This permits comparisons of response times and on-time performance with the levels of service provided to other riders.

Demand Responsive Route Deviation Service

For transit agencies that accept route deviation requests from all riders (i.e., regardless of disability), monitoring is more straightforward since the service is not fixed route. It is not necessary to monitor compliance with the complementary paratransit requirements. FTA suggests that transit agencies analyze how they handle route deviation requests to confirm that there are no restrictions in ways that might be discriminatory to those who can only use the service via off-route deviations.

Attachment 7-1
Certification of Equivalent Service – Appendix C to Part 37

The (name of agency) certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Such service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to:

(1) Response time;

(2) Fares;

(3) Geographic service area;

(4) Hours and days of service;

(5) Restrictions on trip purpose;

(6) Availability of information and reservation capability; and

(7) Constraints on capacity or service availability.

In accordance with 49 CFR 37.77, public entities operating demand responsive systems for the general public which receive financial assistance under 49 U.S.C. 5311 or 5307 must file this certification with the appropriate state program office before procuring any inaccessible vehicle. Such public entities not receiving FTA funds shall also file the certification with the appropriate state program office. Such public entities receiving FTA funds under any other section of the FT Act must file the certification with the appropriate FTA regional office. This certification is valid for no longer than one year from its date of filing.

_____

(Name of authorized official)

_____

(Title)

_____

(Signature)

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Chapter 8 – Complementary Paratransit Service

8.1 Introduction

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

This chapter explains how the U.S. Department of Transportation (DOT) ADA regulations in 49 CFR Part 37 apply to complementary paratransit service in terms of required service criteria, types of service options, operational performance, and other factors. ADA paratransit eligibility is discussed separately in Circular Chapter 9. FTA reminds readers to consult the general requirements in Circular Chapter 2, which apply to all types of services, including complementary paratransit.

This Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves or replace the need for readers to reference the detailed information in the regulations. FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.

8.2 Requirement for Complementary Paratransit Service

Requirement

"*Paratransit* means comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems" (§ 37.3).

"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" (§ 37.121(a)).

"To be deemed comparable to fixed route service, a complementary paratransit system shall meet the requirements of §§ 37.123–37.133 of this subpart. The requirement to comply with § 37.131 may be modified in accordance with the provisions of this subpart relating to undue financial burden" (§ 37.121(b)).

"Requirements for complementary paratransit do not apply to commuter bus, commuter rail, or intercity rail systems" (§ 37.121(c)).

Discussion

Complementary paratransit service must be provided by any public entity operating fixed route service that is not otherwise exempt from the regulations. This paratransit service must be "comparable" to the fixed route service. To be considered comparable, it must meet the service criteria in §§ 37.123–37.133 discussed below.

The requirement for complementary paratransit service applies to all fixed route bus and rail transit service except for commuter bus, commuter rail, and intercity rail (Amtrak) services, which are specifically exempt. Commuter rail service and Amtrak can be easily identified based on their definitions

in Part 37. Determining whether a bus service is actually commuter bus is less straightforward because it requires an assessment of the service's characteristics. Section 37.3 provides the following definitions:

- "*Commuter rail transportation* means short-haul rail passenger service operating in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, usually characterized by reduced fare, multiple ride, and commutation tickets and by morning and evening peak period operations. This term does not include light or rapid rail transportation."
- "*Intercity rail* means transportation provided by Amtrak."
- "*Commuter bus service* means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation."

As highlighted in Circular Chapter 6, a bus route might have some but not all of the characteristics of commuter bus service found in the § 37.3 definition. A case-by-case assessment by the transit agency is needed to determine whether a specific bus route meets the definition of commuter service. (See Circular Section 6.8.1.) During a complaint investigation or other oversight activity, FTA may require an agency to substantiate how a particular service meets the definition of commuter bus. (See FTA response to Complaint 14-0067 for an example of an FTA analysis of whether a particular service met the definition.)

8.3 Types of Service

8.3.1 Origin-to-Destination Service

Requirement

"*Origin-to-destination service* means providing service from a passenger's origin to the passenger's destination. A provider may provide ADA complementary paratransit in a curb-to-curb or door-to-door mode. When an ADA paratransit operator chooses curb-to-curb as its primary means of providing service, it must provide assistance to those passengers who need assistance beyond the curb in order to use the service unless such assistance would result in a fundamental alteration or direct threat" (§ 37.3).

"Except as provided in this section, complementary paratransit service for ADA paratransit eligible persons shall be origin-to-destination service" (§ 37.129(a)).

Discussion

By definition, complementary paratransit service is an origin-to-destination service featuring a level of personnel assistance that enables all complementary paratransit riders to travel from their origins to their destinations. In 2005, DOT published "Origin-to-Destination Service" guidance that elaborates on the meaning of origin-to-destination service. In 2015, DOT's Reasonable Modification of Policy final rule added the above definition of origin-to-destination service to the regulations. It also introduced Appendix E to Part 37 (Reasonable Modification Requests), which includes several examples specific to origin-to-destination service. (See Circular Section 2.10.)

Base Level of Service

Transit agencies, through the public participation process, may set a "base level" of service for complementary paratransit, which may be defined as door-to-door or curb-to-curb service. Door-to-door service means assisting all riders beyond the curb. Setting the base level of service as curb-to-curb means agencies will pick up and drop off riders at the curb. Where the local planning process establishes curb-to-

curb service as the basic complementary paratransit service mode, however, agencies must provide assistance to ensure the service actually gets riders from their point of origin to their destination point. To meet this origin-to-destination requirement, agencies will need to provide service to some individuals, or at some locations, in a way that goes beyond curb-to-curb service.

Rider Assistance Practices and Policies

If transit agencies elect to provide assistance beyond the curb only on an as-needed basis, they may ask riders to inform them in advance if they will need additional assistance. However, assistance must also be provided if riders do not request it in advance. Riders may not know ahead of time what barriers exist at drop-off points. The § 37.169 reasonable modification requirements include making provisions for situations in which an advance request and determination are not feasible. As noted in Circular Section 2.10.2, these situations are likely to be more difficult to handle than advance requests, but agencies are required to respond to them regardless. An optional good practice is to include such information in a rider's file for future trips. Such information may also be obtained during the eligibility determination process. (See Circular Section 9.4.)

Transit agencies may set policies to ensure safety for drivers and other riders. Agencies may set a policy in which drivers must be able to maintain "effective continuing control" of the vehicle. This sometimes includes maintaining visual contact with the vehicle or not going more than a certain distance (e.g., X feet) from the vehicle. Agencies may also create a policy that prohibits drivers from entering a private residence or traveling beyond the lobby of a public building such as a hospital or traveling past the first exterior door of a building.

Once transit agencies establish policies for origin-to-destination service, they must ensure that all appropriate staff understand these policies and receive appropriate training consistent with § 37.173 to properly carry out these policies. (See Circular Section 2.9.)

Origin-to-Destination Examples

Appendix E to Part 37 introduces examples of the types of rider requests that, in most cases, will be reasonable or not. The examples cover the two basic elements of origin-to-destination service: first, the vehicle getting to the customer's location and, second, the operator leaving the vehicle and assisting the customer.

The following examples, quoted directly from Appendix E, apply specifically to the § 37.129(a) origin-to-destination service requirement:

> *Snow and Ice*. Except in extreme conditions that rise to the level of a direct threat to the driver or others, a passenger's request for a paratransit driver to walk over a pathway that has not been fully cleared of snow and ice should be granted so that the driver can help the passenger with a disability navigate the pathway. For example, ambulatory blind passengers often have difficulty in icy conditions, and allowing the passenger to take the driver's arm will increase both the speed and safety of the passenger's walk from the door to the vehicle.
>
> *Pick Up and Drop Off Locations with Multiple Entrances*. A paratransit rider's request to be picked up at home, but not at the front door of his or her home, should be granted, as long as the requested pickup location does not pose a direct threat. Similarly, in the case of frequently visited public places with multiple entrances (e.g., shopping malls, employment centers, schools, hospitals, airports), the paratransit operator should pick up and drop off the passenger at the entrance requested by the passenger, rather than meet them in a location that has been predetermined by the transportation agency, again assuming that doing so does not involve a direct threat.

Private Property. Paratransit passengers may sometimes seek to be picked up on private property (e.g., in a gated community or parking lot, mobile home community, business or government facility where vehicle access requires authorized passage through a security barrier). Even if the paratransit operator does not generally have a policy of picking up passengers on such private property, the paratransit operator should make every reasonable effort to gain access to such an area (e.g., work with the passenger to get the permission of the property owner to permit access for the paratransit vehicle). The paratransit operator is not required to violate the law or lawful access restrictions to meet the passenger's requests.

Opening Building Doors. For paratransit services, a passenger's request for the driver to open an exterior entry door to a building to provide boarding and/or alighting assistance to a passenger with a disability should generally be granted as long as providing this assistance would not pose a direct threat, or leave the vehicle unattended or out of visual observation for a lengthy period of time. [1]

Hard-to-Maneuver Stops. A passenger may request that a paratransit vehicle navigate to a pickup point to which it is difficult to maneuver a vehicle. A passenger's request to be picked up in a location that is difficult, but not impossible or impracticable, to access should generally be granted as long as picking up the passenger does not expose the vehicle to hazards that pose a direct threat (e.g., it is unsafe for the vehicle and its occupants to get to the pickup point without getting stuck or running off the road).

Navigating an Incline or Around Obstacles. A paratransit passenger's request for a driver to help him or her navigate an incline (e.g., a driveway or sidewalk) with the passenger's wheeled device should generally be granted. Likewise, assistance in traversing a difficult sidewalk (e.g., one where tree roots have made the sidewalk impassible for a wheelchair) should generally be granted, as should assistance around obstacles (e.g., snowdrifts, construction areas) between the vehicle and a door to a passenger's house or destination should generally be granted. These modifications would be granted subject, of course, to the proviso that such assistance would not cause a direct threat, or leave the vehicle unattended or out of visual observation for a lengthy period of time.

Extreme Weather Assistance. A passenger's request to be assisted from his or her door to a vehicle during extreme weather conditions should generally be granted so long as the driver leaving the vehicle to assist would not pose a direct threat, or leave the vehicle unattended or out of visual observation for a lengthy period of time. For example, in extreme weather (e.g., very windy or stormy conditions), a person who is blind or vision-impaired or a frail elderly person may have difficulty safely moving to and from a building.

Unattended Passengers. Where a passenger's request for assistance means that the driver will need to leave passengers aboard a vehicle unattended, transportation agencies should generally grant the request as long as accommodating the request would not leave the vehicle unattended or out of visual observation for a lengthy period of time, both of which could involve direct threats to the health or safety of the unattended passengers. It is important to keep in mind that, just as a driver is not required to act as a PCA for a passenger making a request for assistance, so a driver

[1] Please see guidance issued on this topic. U.S. Department of Transportation, Origin-to-Destination Service, September 1, 2005, available at http://www.fta.dot.gov/12325_3891.html (explaining that, "the Department does not view transit providers' obligations as extending to the provision of personal services… Nor would drivers, for lengthy periods of time, have to leave their vehicles unattended or lose the ability to keep their vehicles under visual observation, or take actions that would be clearly unsafe …").

is not intended to act as a PCA for other passengers in the vehicle, such that he or she must remain in their physical presence at all times.

Ensuring Origin-to-Destination Service When Transfers Are Required

If different service providers or contractors operate a transit agency's complementary paratransit service with service divided into specific geographical areas, the agency is responsible for ensuring riders are able to travel from any point within its service area to any other point in its service area in a manner comparable with its fixed route service.

Transit agencies may meet the § 37.129(a) requirement by providing the trip in one vehicle or may establish transfer points within their complementary paratransit service area for efficiency or convenience. If an agency requires riders to transfer between two vehicles to complete the complementary paratransit trip within that agency's jurisdiction, then the agency is required to have an employee (driver or other individual) wait with any riders who cannot be left unattended. Not doing so would require the rider to travel with an attendant in order to travel safely, which would violate the § 37.5(e) prohibition against requiring an individual with disabilities to be accompanied by an attendant. (See Circular Section 2.2.5.)

The requirement for attended transfers does not apply when an agency is dropping off a rider to be picked up by another provider to be taken outside the agency's jurisdiction.

8.3.2 Feeder Service

Requirement

"Complementary paratransit service for ADA paratransit eligible persons described in § 37.123(e)(2) of [Part 37] may also be provided by on-call bus service or paratransit feeder service to an accessible fixed route, where such service enables the individual to use the fixed route bus system for his or her trip" (§ 37.129(b)).

"Complementary paratransit service for ADA eligible persons described in § 37.123(e)(3) of [Part 37] also may be provided by paratransit feeder service to and/or from an accessible fixed route" (§ 37.129(c)).

Discussion

The regulations permit transit agencies to use "feeder service" to transport certain complementary paratransit riders to and from the fixed route services. This includes using complementary paratransit to take individuals to bus stops if there are barriers in the pedestrian environment that prevent them from getting to stops or stations. It also includes taking individuals to nearby accessible stops or stations if the ones closest to them are not accessible.

Feeder service is a service-delivery option, not a type of eligibility. For individuals who can navigate the fixed route system and can use feeder service, a conditional eligibility determination would be appropriate for applicable trips. Appropriately placed conditions on an individual's eligibility identify the specific barriers that prevent use of fixed route service. When these conditions are present, transit agencies can then consider whether feeder service to access fixed route service is an appropriate option for particular trips.

Such an approach may involve evaluating individual riders and their trip requests to determine when feeder service is appropriate. Important considerations in evaluating whether using feeder service is appropriate for a particular trip include:

- Rider's functional abilities – A rider's functional abilities to independently complete the fixed route portion of the trip, based on the current assessment of the rider, must be confirmed.

- The total length of the trip – Providing feeder service for a very short trip can result in total travel time that could become a capacity constraint, i.e., excessive in length when compared to a comparable fixed route trip. (See Circular Section 8.5.5.)
- Distance between the alighting stop on the fixed route and the destination – As discussed in Appendix D to § 37.129,

  > Given the more complicated logistics of such arrangements, and the potential for a mistake that would seriously inconvenience the passenger, the transit provider should consider carefully whether such a "double feeder" system, while permissible, is truly workable in its system (as opposed to a simpler system that used feeder service only at one end of a trip when the bus let the person off at a place from which he or she could independently get to the destination). There may be some situations in which origin to destination service is easier and less expensive.

- The headways of the fixed route service – Attempting feeder service with a route that runs infrequently could lead to an excessively long trip if the planned connection is missed.
- Amenities at the transfer point – If a rider may have to wait at the station or stop, it is important that the facility have a bench and/or shelter. Access to a telephone (or staff who can make a call) may also be important if the rider needs to contact the paratransit dispatch center about a connection issue.

8.4 Complementary Paratransit Service Criteria

Comparability is defined and measured by the following characteristics:

- Hours and days of service (§ 37.131(e))
- Service area (§ 37.131(a))
- Response time (trip reservations) (§ 37.131(b))
- Fares (§ 37.131(c))
- Operating without regard to trip purpose (§ 37.131(d))
- Absence of capacity constraints (§ 37.131(f))

The regulations discussed in this section establish minimum levels of service. Transit agencies may set policies and performance standards that exceed these minimum service levels. (See Circular Section 8.7.) The discussion below explains each of the service characteristics and provides guidance on ensuring the related requirements are met.

8.4.1 Hours and Days of Service

Requirement

"The complementary paratransit service shall be available throughout the same hours and days as the entity's fixed route service" (§ 37.131(e)).

Discussion

As discussed in Appendix D to § 37.131,

> This criterion says simply that if a person can travel to a given destination using a given fixed route at a given time of day, an ADA paratransit eligible person must be able to travel to that same destination on paratransit at that time of day. This criterion recognizes that the shape of the service area can change.

Setting Hours and Days of Service

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

An agency that runs a bus route from 5 a.m. until 9 p.m., for example, must provide complementary paratransit service, at minimum, from 5 a.m. until 9 p.m. corresponding to that route. A rider's pickup time for paratransit is also dictated by the fixed route hours. For example, if the earliest time a rider could depart from a particular fixed route stop is at 6:45 a.m., comparable paratransit trips could be provided starting at 6:45 a.m. (subject to the requirement to negotiate pickup times under § 37.131(b)(2)). (See Circular Section 8.4.5.)

If a transit agency runs fixed route service on weekends and holidays it must provide complementary paratransit on those days as well.

End of Service Day Considerations

To ensure that complementary paratransit drivers can complete their drop-offs no later than the latest fixed route drop-off, establishing latest-available return-trip pickup times that reflect the likely travel times for requested trips is appropriate. For example, to ensure that the last drop-offs for complementary paratransit coincide with a last fixed route drop-off time of 10 p.m., transit agencies might limit the latest paratransit return-trip pickup times to 9:30 p.m. This would provide sufficient travel time (assuming the estimated trip time is approximately 30 minutes) to complete the last drop-off by 10 p.m.

Flexibility in Setting Service Hours

For simplicity of operations, many transit agencies choose to not be overly precise in setting complementary paratransit service hours. Instead of taking a route-by-route approach and having dynamically changing service areas throughout the day and week, many agencies provide complementary paratransit throughout the overall service area whenever one or more fixed routes are operating. Others expand and contract their service areas more broadly by time of day and day of week, as follows:

- Service areas for weekday daytime
- Service areas for weekday nighttime
- Service areas for Saturday
- Service areas for Sunday

Weekday daytime service areas are typically the largest and Sunday service areas are typically the smallest. Such arrangements are appropriate as long as each of the service areas encompass all locations within 3/4 mile of all bus routes and rail stations that are in service during that time of day or day of week, and transit agencies provide service throughout such service areas from the time the earliest routes begin service until the last routes end. For example, if a weekday nighttime service area were generalized as between 7 p.m. and 11 p.m., then no fixed routes would operate past 11 p.m. on weekday evenings.

8.4.2 Service Area – Fixed Route Bus

Requirement

"*Service Area—(1) Bus.* (i) The entity shall provide complementary paratransit service to origins and destinations within corridors with a width of three-fourths of a mile on each side of each fixed route. The corridor shall include an area with a three-fourths of a mile radius at the ends of each fixed route.

(ii) Within the core service area, the entity also shall provide service to small areas not inside any of the corridors but which are surrounded by corridors.

(iii) Outside the core service area, the entity may designate corridors with widths from three-fourths of a mile up to one and one half miles on each side of a fixed route, based on local circumstances.

(iv) For purposes of this paragraph, the core service area is that area in which corridors with a width of three-fourths of a mile on each side of each fixed route merge together such that, with few and small exceptions, all origins and destinations within the area would be served" (§ 37.131(a)).

Discussion

FTA considers the 3/4-mile requirement as a straight-line distance ("as the crow flies" for bus service). In addition to meeting the requirement to provide service within 3/4 mile of each side of each fixed route and a 3/4-mile radius of the ends of each fixed route, this requirement obligates transit agencies to also provide service throughout a "core service area." This refers to the portion of agencies' service areas where many bus routes intersect and/or overlap so that their respective 3/4-mile corridors cover virtually all destinations. For smaller agencies, the core service areas are usually downtown districts served by multiple bus routes. For larger agencies, the core service areas may encompass entire downtowns or suburban activity centers. Inside the fixed route bus core service areas, § 37.131(a)(1)(ii) requires the complementary paratransit service to also include any small areas not inside any of the corridors but which are surrounded by corridors.

"Core service area" is further explained in Appendix D to § 37.131:

> Another concept involved in this service criterion is the core service area. Imagine a bus route map of a typical city. Color the bus routes and their corridors blue, against the white outline map. In the densely populated areas of the city, the routes (which, with their corridors attached, cut 1 1/2 mile swaths) merge together into a solid blue mass. There are few, if any, white spots left uncovered, and they are likely to be very small. Paratransit would serve all origins and destinations in the solid blue mass.
>
> But what of the little white spots surrounded by various bus corridors? Because it would make [no] sense to avoid providing service to such small isolated areas, the rule requires paratransit service there as well. So color them in too.

Figure 8-1 illustrates a delineated service area with a core service area included.

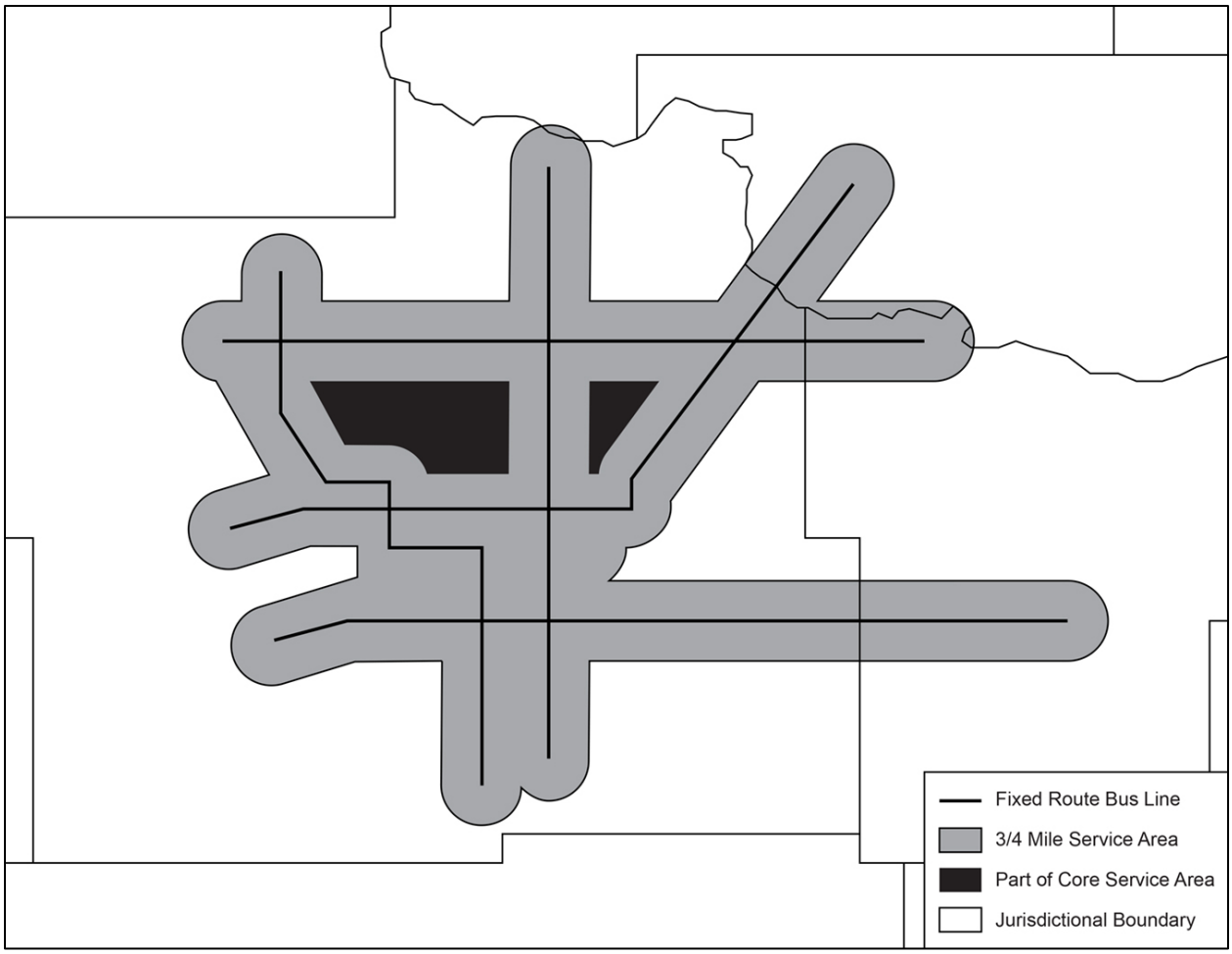

Figure 8-1 – Bus Route Service Area

For purposes of determining the complementary paratransit service area for bus rapid transit (BRT) service, BRT is considered as a fixed route bus service and the above requirements apply.

8.4.3 Service Area – Rail

Requirement

"Rail. (i) For rail systems, the service area shall consist of a circle with a radius of 3⁄4 of a mile around each station.

(ii) At end stations and other stations in outlying areas, the entity may designate circles with radii of up to 1 1⁄2 miles as part of its service area, based on local circumstances" (§ 37.131(a)(2)).

Discussion

The minimum rail service area for complementary paratransit—excluding commuter and intercity rail, which are exempt from the requirement—is defined as circles of 3/4-mile radius from the center of each station, as shown in Figure 8-2. FTA considers the 3/4-mile requirement as a straight-line distance (a radius around rail stations or "air miles"). This requirement obligates transit agencies to provide complementary paratransit trips from any point within one station circle to any point within the station

circle of another station (e.g., from point 1 to point 2 in Figure 8-2), but not between two points within the same station circle (e.g., from point 3 to point 4 or from point 5 to point 6 in Figure 8-2).

Appendix D to § 37.131 provides the following explanation of service area around rail stations:

> Around each station on the line (whether or not a key station), the entity would draw a circle with a radius of 3⁄4 mile. Some circles may touch or overlap. The series of circles is the rail system's service area. (We recognize that, in systems where stations are close together, this could result in a service area that approached being a corridor like that of a bus line.) The rail system would provide paratransit service from any point in one circle to any point in any other circle. The entity would not have to provide service to two points within the same circle, since a trip between two points in the vicinity of the same station is not a trip that typically would be taken by train. Nor would the entity have to provide service to spaces between the circles.

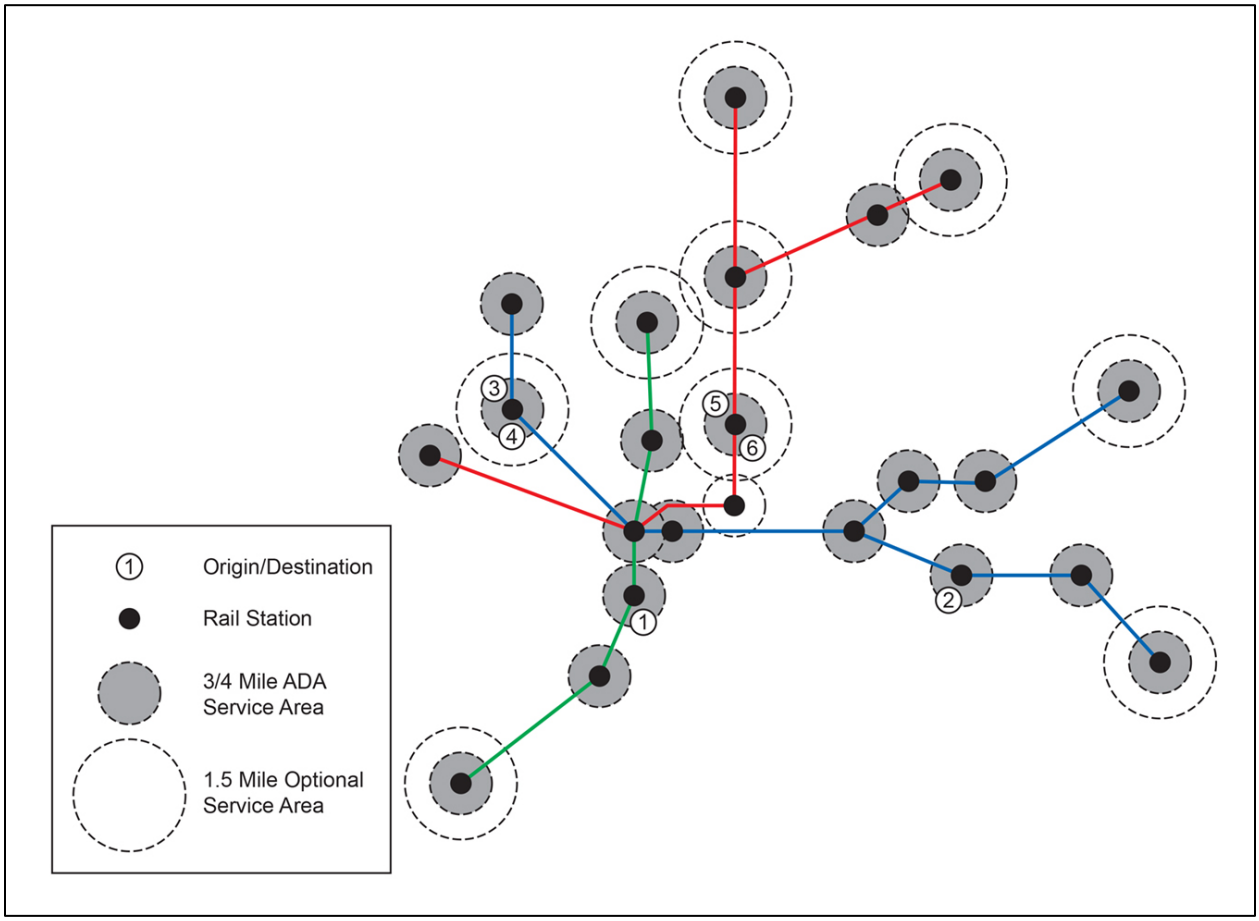

Figure 8-2 – Rail Station Service Area

8.4.4 Jurisdictional Boundaries and Restricted Properties

Requirement

"Notwithstanding any other provision of this paragraph, an entity is not required to provide paratransit service in an area outside the boundaries of the jurisdiction(s) in which it operates, if the entity does not have legal authority to operate in that area. The entity shall take all practicable steps to provide paratransit service to any part of its service area" (§ 37.131(a)(3)).

Discussion

The service areas encompass all points within the 3/4-mile range; where service areas extend beyond political boundaries of a transit agency's jurisdiction, this requirement obligates the agency to provide service to and from such points, except when legal prohibitions prevent service, as discussed below.

For example, "Transit Agency X" provides bus and rail service within 3/4 mile of the border with another state or county, but its vehicles do not have the legal authority to operate across the border. In this situation, § 37.131(a)(3) does not obligate the agency to provide complementary paratransit service in the neighboring state or county, even to locations within 3/4 mile of one of its fixed route services operating near the border. However, political boundaries alone do not constitute legal bars. Similarly, transit agency jurisdictional boundaries and taxing jurisdictions do not by themselves constitute legal bars.

As discussed in Appendix D to § 37.131,

> There may be a part of the service area where part of one of the corridors overlaps a political boundary, resulting in a requirement to serve origins and destinations in a neighboring jurisdiction which the entity lacks legal authority to service. The entity is not required to serve such origins and destinations, even though the area on the other side of the political boundary is within a corridor. This exception to the service area criterion does not automatically apply whenever there is a political boundary, only when there is a legal bar to the entity providing service on the other side of the boundary.
>
> The rule requires, in this situation, that the entity take all practicable steps to get around the problem so that it can provide service throughout its service area. The entity should work with the state or local governments involved, via coordination plans, reciprocity agreements, memoranda of understanding or other means to prevent political boundaries from becoming barriers to the travel of individuals with disabilities.

Access to Private or Restricted Properties

Appendix E to Part 37 (Reasonable Modification Requests) includes the following example with respect to service to restricted properties:

> *Private Property*. Paratransit passengers may sometimes seek to be picked up on private property (e.g., in a gated community or parking lot, mobile home community, business or government facility where vehicle access requires authorized passage through a security barrier). Even if the paratransit operator does not generally have a policy of picking up passengers on such private property, the paratransit operator should make every reasonable effort to gain access to such an area (e.g., work with the passenger to get the permission of the property owner to permit access for the paratransit vehicle). The paratransit operator is not required to violate the law or lawful access restrictions to meet the passenger's requests. A public or private entity that unreasonably denies access to a paratransit vehicle may be subject to a complaint to the U.S. Department of Justice or U.S. Department of Housing and Urban Development for discriminating against services for persons with disabilities.

8.4.5 Trip Reservations and Response Time

Requirement

"The entity shall schedule and provide paratransit service to any ADA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day. Reservations may be taken by reservation agents or by mechanical means.

(1) The entity shall make reservation service available during at least all normal business hours of the entity's administrative offices, as well as during times, comparable to normal business hours, on a day when the entity's offices are not open before a service day.

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

(3) The entity may use real-time scheduling in providing complementary paratransit service.

(4) The entity may permit advance reservations to be made up to 14 days in advance of an ADA paratransit eligible individual's desired trips. When an entity proposes to change its reservations system, it shall comply with the public participation requirements equivalent to those of § 37.137 (b) and (c)" (§ 37.131(b)).

Discussion

These requirements cover a transit agency's obligations to receive and negotiate complementary paratransit trip requests, and to confirm the pickup times, all of which are critical elements of scheduling paratransit service. The following discussion explains how to apply these response time requirements and presents optional good practices in trip scheduling.

Next-Day Service

For any day that a transit agency operates complementary paratransit, § 37.131(b) obligates it to allow individuals to reserve trips on the day before. For example, individuals can request a Wednesday trip by calling during normal business hours on Tuesday. Agencies may not require customers to reserve trips 24 hours in advance, a policy that Appendix D to § 37.131 describes as "inadequate."

Transit agencies must also ensure that customers can reserve trips on a next-day basis even when the administrative office is closed and fixed route may not be running (e.g., on holidays). As discussed in Appendix D to § 37.131, "on days prior to a service day on which the administrative offices are not open at all (e.g., a Sunday prior to a Monday service day), the reservation service would also be open 9 to 5." As explained below and in Appendix D, agencies may use voicemail to accept these reservations.

If a transit agency's normal business hours for its administrative offices are 8 a.m. to 5 p.m. from Monday to Friday and it operates service Monday through Sunday, § 37.131(b) requires the agency—whether with reservation staff or other staff (e.g., dispatch)—to accept trip requests from 8 a.m. to 5 p.m. Sunday through Saturday.

Further, § 37.131(b) requires agencies to permit callers who request trips during these hours to be able to reserve trips for any time during the next service day. If an agency operates service past midnight—or operates service 24 hours a day—this also means allowing callers to call during normal business hours (i.e., during administrative office hours) the day before the trip to request a trip at any time the next day, including a trip that would begin just after midnight.

As noted in § 37.131(b)(4), while next-day service is the base requirement, agencies have the option to adopt a policy permitting advance reservations up to 14 days before a rider's desired trip. If an agency adopts such a policy (e.g., allowing reservations 7 days before a desired trip) and later decides it wants to

change the advance reservation policy (e.g., scaling back the number of days to 3), it must follow the specific public participation requirements outlined in § 37.137 (b) and (c).

Use of Voicemail for Trip Reservations

Section 37.131(b) permits the use of "mechanical means" (e.g., voicemail) to accept trip requests, but doing so may affect a transit agency's ability to negotiate the pickup time with the rider. Most larger agencies with high call volumes on all days have made arrangements to have staff available to accept trip requests every day, including on holidays. Some smaller agencies use voicemail for trip requests when the complementary paratransit office is closed and few calls are made (e.g., Sundays and holidays).

When a transit agency uses voicemail to accept trip requests, meeting the § 37.131(b) requirements means honoring all valid trip requests, i.e., providing the requested trips just as if the callers had spoken to a reservationist. For example, a caller who reaches an agency's voicemail on a Monday holiday and requests a trip for Tuesday at 9 a.m. can expect the agency to provide the requested trip on Tuesday at 9 a.m. in a manner consistent with the agency's operating policies (i.e., the on-time or pickup window, discussed below). In this example, if the agency finds it necessary to negotiate the pickup time or window, any call back must be made within a reasonable amount of time from the rider's message. If the eligible rider cannot be reached, the agency is required to provide the trip at the time requested. Determining the amount of time that is reasonable for a customer to have to wait for the call back is a local decision to be made in consultation with the community served.

Negotiating a Pickup Time with the Rider

Per § 37.131(b)(2), while a transit agency may negotiate pickup times with the individual, it may not require an ADA paratransit eligible individual to schedule a trip to begin more than 1 hour before or after the individual's desired departure time. For example, if a rider requests a trip with a 9 a.m. pickup time, the regulations permit the agency to offer a pickup time between 8 a.m. and 10 a.m.

This negotiation window, however, is subject to the rider's practical travel needs. A true negotiation considers the rider's time constraints. While some trips have inherent flexibility (e.g., shopping or recreation), other trips have constraints with respect to when they can begin (e.g., not before the end of the individual's workday or not until after an appointment is over). For example, a rider may end his or her workday at 4 p.m. and request a 4 p.m. pickup. While § 37.131(b)(2) permits the agency to offer a pickup an hour before the requested time, doing so is not appropriate because the rider would still be working. In such instances, offering a pickup any time between 4 p.m. and 5 p.m. would be appropriate and consistent with the negotiation requirement.

Some transit agencies accept trip requests and do not create run schedules until the evening before the day of service when all requests have been received (commonly called batch scheduling with call-backs). In these instances, call-backs are typically made the evening before the day of service to inform riders of the exact scheduled time. Agencies that use this method of scheduling must have procedures that allow riders to negotiate the times offered consistent with § 37.131(b)(2).

Pickup Windows

For practical purposes, FTA permits transit agencies to establish a reasonable "window" around the negotiated pickup time during which the vehicle may arrive and still be regarded as "on time," to account for day-to-day variability in the operation of complementary paratransit. (See Circular Section 8.5.3.) Most agencies use pickup windows, which are typically 20–30 minutes in length and are also known as on-time windows. Some agencies place the full window after negotiated times, while others "bracket" windows around negotiated times (e.g., -15/+15 window). Either approach is allowable.

FTA considers pickup windows longer than 30 minutes in total to be unacceptable, because they require riders to wait an unreasonably long time for service.

An optional good practice when confirming trips during reservation calls is to restate the beginning and end of the pickup window instead of just the negotiated time. This step reminds riders to be ready throughout the window. For example, for a caller with a negotiated 9 a.m. pickup, a transit agency using a -15/+15 window would confirm the trip as follows: "We are confirming your trip from (origin) to (destination) on (date). The driver will arrive any time between 8:45 a.m. and 9:15 a.m." instead of saying, "Your pickup is at 9 a.m." This reinforces with the rider the concept that vehicles may arrive at any time during the window.

Changing the Negotiated Pickup Time

Once a transit agency communicates the agreed-upon pickup time (and ideally the pickup window) with the rider, the negotiation is complete. Any changes in estimated times of arrival (ETAs) within the pickup window represent internal scheduling adjustments and require no further communication with the rider. The agency may make changes that affect the ETA, such as adding another shared-ride to the same run, but only within the agreed-upon pickup window. In other words, if a passenger agreed upon a 1 p.m. pickup time, and the pickup window is -15/+15 minutes, the vehicle could arrive as early as 12:45 p.m. or as late as 1:15 p.m. The agency may make changes to the associated run schedule on which the trip has been placed that move the ETA within that 30-minute window, but may not make changes to the negotiated trip time that cause the trip's pickup window to change. In other words, the ETA may move to 1:10 p.m. as a result of changes to the run on which the trip was placed, but the negotiated time remains 1 p.m. and the pickup window—the time during which the rider has already been told the vehicle will arrive—remains 12:45–1:15 p.m.

However, if during the scheduling process it becomes necessary to change the pickup time enough to shift the pickup window forward or backward, the transit agency is obligated to renegotiate the pickup time with the rider. Meeting the § 37.131(b) response time requirement means conducting such renegotiations with the rider no later than the day before the scheduled travel day. Although there is no specific time by which an agency is obligated to contact the rider, FTA recommends doing so at a reasonable time up to the evening before the trip and to publicize such practices in rider guides and on websites. Agencies that have this practice generally place the calls to riders by 7 p.m. of the evening before the trip. Scheduling practices that routinely fail to protect the pickup window indicate a capacity constraint, which is prohibited.

Any negotiations are subject to rider acceptance; if the rider refuses, the agency is obligated to provide the trip as previously negotiated. Furthermore, if the agency cannot reach the rider, the agency is obligated to provide the trip as previously negotiated to avoid an agency missed trip or an inappropriately charged no-show penalty to the rider.

Trip Requests with Appointment Times

While the regulations use the phrase "desired departure time," riders are not always in a position to identify on their own or agree to an appropriate pickup time that will meet their time constraints. Certain trips are appointment driven (e.g., medical appointments, work events, and concerts), where arriving at a specific time is especially important. The desired departure time for riders in these cases becomes whatever time will get them to their destination on time. Transit agencies are in the best position to estimate how long a particular trip will take, considering factors such as how many other passengers will be on the vehicle and their destinations. On fixed route, most people check the schedule to see when the bus gets to the stop near their destination and work backwards to determine when they need to be at the bus stop to catch that particular bus. This level of precision is not always possible on complementary paratransit.

A discussion of the rider's need to arrive on time for an appointment, therefore, will sometimes be part of the negotiation between the transit agency and the rider during the trip scheduling process. For example, a

rider may say, “I need to be at my doctor’s office for a 10 a.m. appointment.” In response, it would be appropriate for the agency to offer a pickup time based on expected travel time and service characteristics that lead to a drop-off time at or before 10 a.m. An agency’s negotiation and scheduling process must account for the fact that, for some riders taking some trips, arrival time is more important than departure time, and allow those riders to request either a desired pickup time or a desired drop-off time. “Going” trips with appointments are then scheduled to the stated appointment times while “return” trips are scheduled to the desired pickup time. For trips with requested drop-off times, this means scheduling the trips so that the riders will arrive at or before the requested time.

This does not mean, however, that the transit agency has to allow riders to also specify the pickup times for these trips. In short, when scheduling by appointment time, a rider may request either a pickup time or a drop-off time for a given trip, but not both.

Transit agencies have an implicit obligation to get riders to appointments on time (not late) and an explicit obligation to monitor performance to ensure that complementary paratransit service is operated without any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons. If trip reservation procedures and subsequent poor service performance cause riders to arrive late at appointments and riders are discouraged from using the service as a result, this would constitute a capacity constraint. (See Circular Section 8.5.6.)

Will-Call Trip Requests and No-Strand Policies

As a service to riders who may not be able to predict their desired pickup time for return trips—often due to medical appointments—some transit agencies permit complementary paratransit riders to leave their exact pickup time for their return trips open (i.e., “will-call”). When riders know the time they will be ready for pickup, they contact the agency, which then dispatches a vehicle. Because will-call service is optional, agencies may apply trip purpose restrictions (e.g., limiting will-call availability to medical appointments) and charge higher fares.

In addition, a number of transit agencies have a “no strand” policy, to ensure a rider is not left stranded when he or she misses a scheduled pickup for any reason. Under this optional policy, the agency provides a return trip later than a previously scheduled return trip (but typically within regular service hours).

8.4.6 Fares

Requirement

“The fare for a trip charged to an ADA paratransit eligible user of the complementary paratransit service shall not exceed twice the fare that would be charged to an individual paying full fare (i.e., without regard to discounts) for a trip of similar length, at a similar time of day, on the entity’s fixed route system.

(1) In calculating the full fare that would be paid by an individual using the fixed route system, the entity may include transfer and premium charges applicable to a trip of similar length, at a similar time of day, on the fixed route system.

(2) The fares for individuals accompanying ADA paratransit eligible individuals, who are provided service under § 37.123(f) of [Part 37], shall be the same as for the ADA paratransit eligible individuals they are accompanying.

(3) A personal care attendant shall not be charged for complementary paratransit service.

(4) The entity may charge a fare higher than otherwise permitted by this paragraph to a social service agency or other organization for agency trips (i.e., trips guaranteed to the organization)” (§ 37.131(c)).

Discussion

Under § 37.131(c), the fare for a trip charged to an ADA paratransit eligible rider cannot exceed twice the fare that would be charged to an individual paying full fare (i.e., without regard for discounts) for a similar trip on the agency's fixed route system. The question then becomes what is a "similar trip" on fixed route. Appendix D to § 37.131 explains:

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

FTA has found that monthly passes (e.g., those providing unlimited rides) on fixed route are considered "discounts," which are not used to calculate the maximum complementary paratransit fare.

Transit agencies may determine locally whether to apply a flat fare or a varied fare for paratransit. For agencies with fare structures that vary by time of day or by distance, the § 37.131(c) maximum complementary paratransit fare provisions permit agencies to charge up to twice the fixed route fare. For simplicity and ease of administering fare policies, some agencies charge a flat fare for all complementary paratransit trips regardless of the time of day or distance travelled. In such instances, however, the flat fare cannot exceed twice the lowest non-discounted fixed route fare; otherwise, the complementary paratransit fare for the shortest trips and/or those during off-peak times would not meet the § 37.131(c) provisions. For example, if an agency's fixed route fare ranges from $1.50 to $3.50 (with some trips costing $2.50), charging up to $3, $5, and $7, respectively, for comparable paratransit trips is appropriate. However, if the agency charges a flat complementary paratransit fare, then the fare cannot exceed $3.

Determining Fares Where Multiple Fixed Route Paths Exist

Appendix D to § 37.131 discusses instances where fixed route riders can make trips between two points using different routes:

> Where bus and rail systems are run by the same provider (or where the same bus provider runs parallel local and express buses along the same route), the comparison would be made to the mode on which a typical fixed route user would make the particular trip, based on schedule, length, convenience, avoidance of transfers, etc.

This situation is most common for transit agencies that operate both rail and bus service or operate routes with limited stops (not commuter bus) and local bus service, when there may be origin-destination pairs served by a combination of bus-only, bus-rail, and rail-only itineraries. For example, in a hypothetical large metropolitan system, fixed route riders might have alternative routing options via bus or via rapid rail that connect two points. During peak periods, the bus option is less costly (approximately $2) and requires a transfer. Because the bus is operating in traffic and the trip requires a transfer, it takes 50 minutes to complete. The rail trip, which requires no transfer, costs approximately $4.50, but takes half the time. In setting the fare for the complementary paratransit trip, this means considering which trip typical riders would make. In such instances, FTA recommends documenting in detail the methodology used for determining the fare for these types of trips.

Services provided by commuter bus or rail systems, which are not subject to complementary paratransit requirements, and services provided by other entities are not part of the basis for calculating comparable complementary paratransit fares.

Free-Fare Zones

Some transit agencies offer free trips on their fixed route system within a specific geographic area or on a specific route or set of routes. In cases where complementary paratransit riders are traveling between origins and destinations that are both within 3/4 mile of a zero-fare route, and the typical fixed route user would make use of this zero-fare route to make a comparable trip, applying the § 37.131(c) maximum fare provisions means the complementary paratransit fare for this trip is also zero. FTA recommends that agencies with free-fare zones that wish to determine whether a typical fixed route user would in fact take advantage of the free-fare option compare the following elements in their analysis:

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

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

In some cities, other entities such as downtown business districts or convention authorities assume the responsibility for paying the fixed route fare on a specific route or within a designated zone. Since from the perspective of the passenger, the fare is free, complementary paratransit fares within the designated zone would also be free, subject to the analysis outlined above. Therefore, FTA encourages transit agencies to consider including a requirement that the other entity also pay for complementary paratransit in any such arrangements they make.

Fares for Personal Care Attendants and Companions

When a personal care attendant (PCA) accompanies a complementary paratransit rider, the PCA must not be charged a fare. Transit agencies may charge a companion rider the same fare they charge the complementary paratransit rider, but a PCA must ride fare free. (See Circular Section 9.8.) The requirement for agencies to transport PCAs without charging a fare only applies to complementary paratransit and not to fixed route or general public demand responsive services.

Negotiated Fares for Agency Trips

Social service agencies and other organizations often have responsibilities for client transportation, and some of their clients may be ADA paratransit eligible. FTA encourages transit agencies and social service agencies to enter into coordinated service arrangements for these trips in such arrangements. Social service agencies often pay transit agencies for providing their clients with guaranteed rides to their programs. When providing agency trips, § 37.131(c)(4) states that “the entity may charge a fare higher than otherwise permitted by this paragraph to a social service agency or other organization for agency trips (i.e., trips guaranteed to the organization).” In other words, the negotiated reimbursement is not subject to the maximum complementary paratransit fare of twice the fixed route fare.

Appendix D to § 37.131 provides the following example:

> If an agency wants 12 slots for a trip to the mall on Saturday for clients with disabilities, the agency makes the reservation for the trips in its name, the agency will be paying for the transportation, and the trips are reserved to the agency, for whichever 12 people the agency designates, the provider may then negotiate any price it can with the agency for the trips.

Agency trips may also include services that exceed the complementary paratransit requirements, including dictated rather than negotiated pickup times, direct travel between origins and destinations with no intervening pickups or drop-offs, service to and from points outside of the complementary paratransit service area, or service to individuals who are not ADA paratransit eligible.

When complementary paratransit riders travel to or from a social service agency or a program, such trips are not necessarily "agency trips" unless these trips are prearranged and funded as agency trips. Similarly, the fact that a social service agency employee assists a rider in making a trip reservation does not make the trip an agency trip. Appendix D also states:

> We distinguish this situation from one in which an agency employee, as a service, calls and makes an individual reservation in the name of a client, where the client will be paying for the transportation.

8.4.7 Operating Without Regard to Trip Purpose

Requirement

"The entity shall not impose restrictions or priorities based on trip purpose" (§ 37.131(d)).

Discussion

Just as individuals may ride a fixed route service for any purpose, complementary paratransit riders can also ride the complementary paratransit system for any purpose. Prioritizing one type of trip (e.g., work trips) over another (e.g., shopping trips) in the final scheduling and dispatching processes is prohibited.

As discussed in Appendix D § 37.131,

> This is a simple and straightforward requirement. There can be no restrictions or priorities based on trip purpose in a comparable complementary paratransit system. When a user reserves a trip, the entity will need to know the origin, destination, time of travel, and how many people are traveling. The entity does not need to know why the person is traveling, and should not even ask.

The regulations permit a transit agency to set limitations based on trip purpose for any services it provides beyond the requirements. For example, an agency may limit subscription service or will-call trips to certain trip purposes. (See Circular Section 8.6.)

8.5 Avoiding Capacity Constraints

Requirement

"The entity shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals by any of the following:

(1) Restrictions on the number of trips an individual will be provided;

(2) Waiting lists for access to the service; or

(3) Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons.

(i) Such patterns or practices include, but are not limited to, the following:

(A) Substantial numbers of significantly untimely pickups for initial or return trips;

(B) Substantial numbers of trip denials or missed trips;

(C) Substantial numbers of trips with excessive trip lengths.

(ii) Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists" (§ 37.131(f)).

Discussion

As one of the most important complementary paratransit service requirements, § 37.131(f) prohibits a transit agency from operating complementary paratransit service in a manner that significantly limits the availability of the service through a "pattern or practice" of actions, commonly referred to as capacity constraints. Operational problems outside the control of the agency do not count as part of a pattern or practice under this provision.

8.5.1 Prohibition Against Limiting the Number of Trips

Policies that limit the number of trips, such as "no more than four trips per day," would violate § 37.131(f)(1). It is appropriate for a transit agency, however, to consider in-vehicle times and pickup windows of two closely spaced trips by the same riders so they do not overlap. For example, a rider might request two trips: a pickup from home to travel to a store at 10 a.m. and a pickup at that store to go to a bank at 11 a.m. If the pickup window is 0/+30 minutes and the estimated travel time from home to the store is 35 minutes, an on-time pickup at 10:30 a.m. would deliver the rider to their first destination at 11:05 a.m., after the start of the second pickup window. For this particular origin-destination pair, an agency could justify not accepting the two trip requests separated by only 60 minutes. An appropriate trip policy in this instance would require the two trip requests to be at least 90 minutes apart (to allow a small amount of time at the destination).

8.5.2 Prohibition Against Waiting Lists

In the context of complementary paratransit operations, some reservation practices amount to waiting lists, which are prohibited by § 37.131(f)(2). Placing callers' names on a list when the schedules are full and informing them they will be contacted if space becomes available would constitute a prohibited waiting list. Similarly, telling callers the schedules are full and suggesting they call back at a later time to see if space becomes available would be a waiting list.

Accepting a trip request during a reservation call and scheduling the trip later internally is not the same as placing a trip request on a prohibited waiting list. It may not always be possible for an agency to identify a scheduling solution during the course of a reservations call. In these instances, as long as the call-taker accepts the trip request and confirms the requested time with the rider, this is not a waiting list. Transit agencies that use this approach refer to these trips as "confirmed but unscheduled." (See Circular Section 8.4.5.)

8.5.3 Untimely Service – Prohibited Operational Practices

As stated in § 37.131(f)(3)(i)(A), "substantial numbers of significantly untimely pickups for initial or return trips" are considered a capacity constraint and not permitted. The regulations do not provide an explicit threshold for what constitutes a "substantial number" or define "significantly untimely."

Timely pickups and arrivals are fundamental elements of any transportation service. Poor on-time performance for complementary paratransit, whether for pickups or drop-offs (if scheduling to appointment times), may discourage riders from using such services and may discourage other individuals with disabilities from applying to become eligible riders.

Pickup Windows and Timely Service

As discussed in Circular Section 8.4.5, many transit agencies use pickup windows to enable shared-ride scheduling and manage the daily variability of complementary paratransit service. FTA considers pickups on time as long as drivers arrive at pickup locations within these established windows. For example, for a pickup window of 9–9:30 a.m., pickups at 9:01, 9:10, or 9:30 a.m. are all considered on time.

Many agencies have established a policy requiring drivers to wait at least 5 minutes for riders to board the vehicle after arriving at the pickup address. In such cases, it is important that such policies also require drivers to wait until the *start* of the pickup window to begin a 5-minute countdown and to wait until the full 5 minutes have elapsed before departing without the rider. For example, when the pickup window begins at 11 a.m. and the vehicle arrives at 10:55 a.m., the driver would wait for the rider at least until 11:05 a.m. before departing.

On-Time, Early, and Late Pickups

When assessing the timeliness of service, it is important to distinguish among on-time, early, and late pickups, as follows:

- On time – FTA considers pickups as on time when a driver arrives at the pickup location within the established pickup window.
- Early – FTA considers pickups early if a driver arrives and departs with the rider before the established pickup window begins.
- Late – FTA considers pickups late if a driver arrives after the end of the established pickup window and the rider boards the vehicle.

Assessing On-Time Performance

To maintain good service quality, most transit agencies establish a standard for on-time pickups, such as "X percent of pickups will be on-time (i.e., within the 30-minute window) or early." In addition, some agencies have a standard related to very early pickups, such as "no more than Y percent of pickups will be more than Z minutes before the start of the on-time window."

In order to ensure that a pattern or practice of substantial numbers of untimely pickups is not occurring, FTA expects transit agencies to document and analyze on-time performance. Analyzing on-time performance enables agencies to make appropriate operational changes when performance falls below an established standard. Ensuring that the number of significantly untimely pickups is not substantial means accurately recording arrival times in relation to scheduled pickup times and compiling this information for analysis. (Missed trips need their own separate analysis, which is discussed in Circular Section 8.5.4.)

When calculating on-time performance, transit agencies often combine early pickups together with on-time pickups when documenting on-time performance. While such an approach is appropriate for analysis purposes, it is not appropriate to pressure or require riders to board and depart earlier than the established pickup window. To avoid this, some agency policies direct drivers to wait "around the corner" and to not

attempt a pickup until the start of the window. For analysis purposes, transit agencies typically report this combined metric as "early arrivals plus on-time arrivals" and separately track the number and rate of early pickups, late pickups, and on-time pickups. FTA recommends that agencies review their scheduling practices and overall capacity whenever the analysis shows a high number and rate of early pickups (e.g., the vehicle consistently arrives before the start of a rider's pickup window).

In addition, for the on-time performance analysis, FTA considers instances when drivers arrive on time and follow transit agency policies (e.g., wait the full 5 minutes), and riders are still no-shows, as on-time arrivals.

Operational problems attributable to causes beyond a transit agency's control, such as weather or traffic conditions that could not be anticipated at the time the trip was scheduled, are not a basis for determining that capacity constraints exist. However, scheduling practices that fail to take into account regularly occurring traffic conditions (i.e., known peak-period traffic delays) could result in prohibited capacity constraints.

8.5.4 Trip Denials and Missed Trips – Prohibited Operational Practices

A transit agency cannot have substantial numbers of trip denials and missed trips, as they are also considered capacity constraints and are not permitted under § 37.131(f)(3)(i)(B).

Trip Denials

Trip denials result when agencies do not accept trip requests. Avoiding denials means properly planning service, allocating resources, and managing operations in order to meet 100 percent of expected demand.

Examples of trip denials include:

- A rider requests a next-day trip and the transit agency says it cannot provide that trip.
- A rider requests a next-day trip and the transit agency can only offer a trip that is outside of the 1-hour negotiating window. This represents a denial regardless of whether the rider accepts such an offer.
- A rider requests a round-trip and the agency can only provide one leg of the trip. If the rider does not take the offered one-way trip, both portions of the trip are denials.

Counting the number of denials means accounting for *all* trips that the rider is unable to take because of a denial. For example, say a transit agency denies a rider the outbound portion of a requested round-trip and only offers a return trip. If the rider then elects not to travel at all, this represents two denials. However, if an agency denies a "going" trip and the rider accepts a return trip, then this is counted as one denial. The preamble to DOT's September 2011 amendment to its ADA regulations offered the following statement with respect to counting trip denials and missed trips:

> The Department believes that when a denied or missed trip makes a subsequent requested trip impossible, two opportunities to travel have been lost from the point of view of the passenger. In the context of a statute and regulation intended to protect the opportunities of passengers with disabilities to use transportation systems in a nondiscriminatory way, that is the point of view that most matters. To count denials otherwise would understate the performance deficit of the operator. The complementary paratransit operator obviously would not need to count as a denial a trip that was actually made (e.g., trip from Point A to Point B missed, passenger gets to Point B in a taxi, and complementary paratransit operator carries him from Point B back to Point A).

In order to ensure that a pattern or practice of substantial numbers of trip denials is not occurring, FTA expects transit agencies to document and analyze trip denials. FTA recommends including such details as the rider's identification, date of request, date and time of requested trip(s), origin and destination, and

reason for denial. Reviewing the characteristics of these denials can help an agency determine their underlying causes in order to take steps necessary to prevent future denials.

Missed Trips

Missed trips, which are caused by agencies and not by riders, result from trips that are requested, confirmed, and scheduled, but do not take place because:

- The vehicle arrives and leaves before the beginning of the pickup window without picking up the rider and without any indication from the rider that he or she no longer wants to make the trip. Note that a rider is not obligated to board until the beginning of the pickup window or—for transit agencies that have a 5-minute wait-time policy—from the start of the pickup window until 5 minutes have elapsed.
- The vehicle does not wait the required time within the pickup window, there is no contact with the rider, and the vehicle departs without the rider. Note that if during the wait time the rider indicates he or she no longer wants to take the trip, this is typically recorded as a "cancel at the door."
- The vehicle arrives after the end of the pickup window and departs without picking up the rider (either because the rider is not there or declines to take the trip because it is now late).
- The vehicle does not arrive at the pickup location.

Based on reviews conducted by the FTA Office of Civil Rights, transit agencies experiencing high rates of missed trips due to late arrivals often need to add capacity.

As discussed above, riders are not obligated to board the vehicle before the start of pickup windows. In addition, in cases when vehicles arrive after the end of pickup windows, riders can choose to board vehicles, but if they refuse trips because they are late, FTA considers these as missed trips and not no-shows or "late cancellations" on the part of riders. (See Circular Section 9.12.)

When riders do not board as scheduled, communication between drivers and dispatchers can often resolve issues. Dispatchers can verify the pickup location (through a combination of an automated vehicle location system and driver information), the vehicle arrival time, and the negotiated pickup time and associated on-time window. After confirming the information, dispatchers can then be confident in directing drivers and in documenting such events in their records. To help minimize the likelihood of both missed trips and passenger no-shows, dispatchers (and supervisors) can instruct drivers who arrive early to wait the full wait time (established by each transit agency) within the on-time window. Finally, it is important to ensure that dispatchers differentiate and record no-shows and missed trips appropriately.

Given the prohibition against a pattern or practice of a substantial number of missed trips, FTA expects transit agencies to document and analyze missed trips. Such analyses can identify potential geocoding errors or problems in the underlying maps used for scheduling trips. Analysis of actual vehicle arrival and departure times, as well as dispatcher notes, will also help to ensure that the documentation of events is accurate.

When missed trips arise from improper actions by drivers and dispatchers (e.g., dispatchers of a transit agency with a 5-minute wait time policy advise, "Wait 3 minutes, then you can leave," or drivers leave early without first contacting dispatchers), the appropriate remedy is typically proper training or re-training (see Circular Section 2.9), any applicable disciplinary action, and subsequent performance monitoring.

8.5.5 Excessive Trip Lengths – Prohibited Operational Practices

The length of complementary paratransit trips (also called travel time, trip duration, on-board time, or in-vehicle time) is another important measure of service. A pattern or practice of substantial numbers of trips with excessive trip lengths is a form of capacity constraint per § 37.131(f)(3)(i)(C); excessively long trips may discourage riders from using complementary paratransit services.

It is important to understand that "excessive" is in comparison to the time required to make a similar trip using the fixed route system; while a 1-hour travel time for a 5-mile complementary paratransit trip may seem excessive in the abstract, if the same trip takes an hour using the fixed route system, it is comparable, not excessive. Complementary paratransit service is by nature a shared-ride service. The standard of service is not intended to reflect that of a taxi service, which typically transports passengers directly to their destination.

Trip-Length Standards

To help minimize the number of excessively long trips, transit agencies typically establish a trip-length performance standard, defined in relation to the length of comparable fixed route trips (as presented below). As with other policies, public input is valuable to inform such a standard.

FTA notes that transit agencies may consider all elements of fixed route trips between origins and destinations when determining comparability in paratransit travel time, including:

- Walking time to the stop/station from the origin address
- Waiting time
- In-vehicle time (for all trip segments)
- Transfer times (if any)
- Walking time from the final stop/station to the destination address

Some agencies have adopted policies based on absolute maximum trip lengths. Such standards do not properly reflect comparability to the length of time a specific trip would take on fixed route. For example, having a standard that no complementary paratransit trip can exceed 90 minutes is not appropriate for comparing short trips taken on the fixed route system.

Some agencies also allow complementary paratransit ride times to be up to a multiple of the fixed route ride time (e.g., twice as long). Such standards are not reasonable or appropriate for longer trips. Allowing rides on complementary paratransit to be up to 2 hours for trips that took 1 hour by fixed route would be outside the bounds of comparability. FTA encourages standards that are variable and consider trip distances and associated travel times on fixed route. Many transit agencies using scheduling software set system parameters to address trips of varying length (rather than just set single, global settings).

To account for in-vehicle time and transfer times that may vary by day of week and time of day, FTA encourages transit agencies to use performance standards that account for such variations. Many agencies now have online trip planners that estimate the varying travel times for specific trips. However, the calculation of trip lengths for comparable fixed route trips can be time consuming, even when aided by an online trip planner. FTA suggests analyzing a sample of complementary paratransit trip lengths periodically (weekly or monthly), focusing on trips longer than a certain duration (e.g., more than 45 or 60 minutes).

As with on-time performance, operational problems that are attributable to causes beyond the control of the transit agency are not a basis for determining that a pattern or practice of excessive trip length exists. However, effective complementary paratransit operations account for recurring factors such as known peak-period traffic conditions. FTA encourages transit agencies to establish travel time performance

standards, such as "at least X percent of complementary paratransit trips shall have travel times equal to or less than comparable fixed route travel times," and expects agencies to closely monitor trip length performance. By monitoring and analyzing trip lengths, agencies can be aware of service issues and, if necessary, make operational adjustments to improve performance.

8.5.6 Other Potential Limits to Paratransit Service Availability

While § 37.131(f)(3)(i) lists three examples of patterns or practices that significantly limit the availability of service, the regulations specifically prohibit "any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons" (§ 37.131(f)(3)). Other capacity constraints, including untimely drop-offs, poor telephone performance, and general practices that can discourage use of complementary paratransit, are discussed in this section.

Untimely Drop-Offs

All travelers using a transportation provider to travel to a time-sensitive appointment want to have confidence in the provider's reliability. This is also true for complementary paratransit. Frequently arriving late to appointments could discourage use of the service. As such, FTA considers a pattern or practice of untimely drop-offs for trips with stated appointment times as a capacity constraint. As in pickup performance, monitoring on-time performance for trips with requested drop-offs is necessary. If the analysis indicates a pattern of late drop-offs, agencies can then make appropriate operational changes.

FTA encourages establishing policies to drop off riders no more than 30 minutes before appointment times and no later than appointment times. Some transit agencies schedule drop-offs no later than 5 minutes before appointment times to allow riders time to get from vehicles to appointments.

Poor Telephone Performance

Despite the increasing use of other technologies, the telephone remains the primary means for complementary paratransit riders to request trips and to check on the status of a ride. Poor telephone performance can limit the availability of complementary paratransit service to ADA paratransit eligible riders and has the potential to constitute a capacity constraint under § 37.131(f)(3)(i).

Properly functioning telephone systems for complementary paratransit have sufficient capacity to handle calls from riders, along with the appropriate staffing to answer calls in a timely manner; they do not have busy signals or excessively long hold times. For trip reservations, interactive voice response systems or online transactions offer alternatives to personal communications, but telephone calls with transit agency employees often remain the best communication method for many riders. Telephone conversations are especially helpful when riders have a complicated request or are checking on the status of a trip. (See Circular Section 2.8.3.)

Promptly responding to trip-status calls for late pickups, commonly known as "where's my ride?" calls, is especially important. Riders may not be in a suitable position to remain on hold while waiting for a response from transit agency representatives.

Besides making reservations and checking on trip status, complementary paratransit riders may call transit agencies to:

- Cancel or revise previous reservations
- Confirm times for future trips
- Obtain information on eligibility and other service issues

While these calls may be less time sensitive than trip-status calls, good customer service also includes having the capacity to answer and respond to such requests in a timely manner.

Long secondary hold times can also be a constraint. Calls may be answered, but then put back on hold or transferred to another line where a long hold occurs. Tracking such secondary holds can be difficult and is typically done through first-hand observations of the service.

Setting Telephone Hold-Time Standards

To evaluate their telephone performance, many transit agencies have established performance standards for telephone hold times. An optional good practice is to define a minimum percentage (e.g., X percent) of calls with hold times shorter than a specific threshold (e.g., 2 minutes) and a second (higher) percentage (e.g., Y percent) of calls with hold times shorter than a longer threshold (e.g., 5 minutes).

FTA discourages the use of performance standards based on *average* hold times over a defined period because doing so can mask poor performance at certain times. If using average hold times, however, it is important to narrow the period within which the averages are calculated. Measuring averages over an entire day, week, or month can obscure any issues. FTA recommends measuring averages over hourly periods. The standard using average hold times would then be set as a minimum percentage (e.g., X percent) of hours for which the average hold times are shorter than one threshold (e.g., 1 minute), and a second (higher) percentage (e.g., Y percent) of hours for which the average hold times are shorter than a second (higher) threshold (e.g., 3 minutes).

When transit agencies direct calls to different lines depending on the purpose of the call (e.g., reservation lines and dispatch lines), applying these standards to all public lines provides transit agencies with a complete view of their phone service. Another optional good practice is for agencies to track performance for each telephone line separately.

Automatic Call Distribution Systems

Larger transit agencies use an automatic call distribution (ACD) system to measure the number and length of calls placed on hold. Besides assigning incoming calls to reservationists, such systems can measure hold times and the length of calls by time of day. These measurements enable agencies to analyze call patterns to determine the percentage of calls that exceeded the standard and identify when these calls took place. Based on this analysis, agencies can make suitable adjustments to reduce hold times.

Smaller transit agencies—or the contractors who accept calls on their behalf—may not have ACD technology. Instead, they may have telephone systems that forward incoming calls to available open lines. When using this approach, FTA encourages agencies to use other methods to determine if calls are placed on hold. A simple way to test telephone capacity is to place calls from outside locations during the busiest times to see if there are busy signals or if the calls are placed on hold. Agencies can also make first-hand observations in the reservation office and manually record hold times.

If hold times are excessive at particular periods during the week, FTA recommends first determining if sufficient telephone capacity and workstations exist to handle peak volumes. If the technology is sufficient, transit agencies might then add reservationists or reassign reservationists' hours to better match peak demand.

Taking Calls in Languages Other Than English

Transit agencies that receive federal funds also have obligations under Title VI of the Civil Rights Act of 1964 for ensuring individuals with limited English proficiency (LEP) can access their programs and activities. These obligations are described in FTA's Title VI Circular 4702.1B, Chapter III-6. Because of these requirements, and in response to customer needs, some agencies employ reservationists who have been assessed for competency in English and a non-English language. An insufficient number of reservationists available to respond to calls in the caller's language can lead to longer-than-average hold times for these LEP callers and therefore may constitute a capacity constraint affecting this group. An

agency may also decide to subscribe to a remote interpreter service that provides real-time interpretation in multiple languages.

Limiting the Number of Trip Requests per Call

Some transit agencies have adopted the policy of limiting the number of trip reservations per call to reduce the amount of time reservationists spend with each caller. However, if riders want to make more trip reservations than a policy allows for a single call, they will simply make multiple calls. This places an unnecessary burden on riders and leads to higher call volumes. Often, multiple trip requests occur because riders are scheduling repeat trips for the next several days and subscription service is not available or is limited. If this is the case, FTA encourages agencies to consider making subscription service available, or expanding the amount of subscription service provided. (See Circular Section 8.6.)

Discouraging Use of the Service

Other practices that discourage individuals from applying for or using complementary paratransit may also constitute capacity constraints. Here are some examples of actions that potentially limit service:

- A transit agency omits the availability of complementary paratransit service from its public information.
- A transit agency operates demand responsive service for senior citizens in addition to its complementary paratransit service. For individuals who are 65 years or older, the agency only provides an application for its senior service when these individuals inquire about travel options.
- An individual lives in a private senior housing community that provides a van service on weekdays between 8 a.m. and 5 p.m. When that individual calls a transit agency to learn about how to get transportation on weekends, the agency suggests that they reschedule the trip for a weekday when the van service is operating.

At the same time, FTA encourages transit agencies to coordinate their complementary paratransit services with their other services available for individuals with disabilities, as well as transportation services provided and/or funded by other public agencies and private organizations. Similarly, FTA encourages agencies to inform current and potential complementary paratransit riders of the range of transportation options available in their service area. FTA especially encourages agencies to establish travel training programs that promote the use of fixed route services for individuals who have the ability to use the fixed route for a portion of their trips. Making sure people are aware of their transportation options so that they can make informed decisions is very different from discouraging complementary paratransit use.

8.5.7 Identifying and Addressing Patterns and Practices in Capacity Constraints

For any of the capacity constraints discussed earlier in this chapter, either due to policies or resulting from operational practices, FTA encourages transit agencies when monitoring their service delivery to consider performance, not only in terms of systemwide percentages and frequency, but to also in terms of potential patterns. Agencies can search for instances of patterns of poor service in the following areas:

- Certain portion(s) of the service area
- Certain destinations
- Certain day(s) of week or time(s) of day
- Ambulatory versus non-ambulatory riders (particularly when using a mix of accessible and inaccessible vehicles)
- Certain individuals

Below are several examples of patterns of poor service quality that are not necessarily apparent at the system level.

- A transit agency's on-time pickup performance might be very high on a systemwide basis. However, a more detailed analysis of performance may indicate that on-time performance on weekday mornings is significantly lower, or that trips for riders who need accessible vehicles have much lower rates of on-time performance. A reallocation of existing resources might remedy this problem, but in some cases this situation might require additional resources.
- A transit agency's overall telephone hold time might be very good. However, particular hours during the week may have significantly longer average hold times. This may result from higher call volume and/or lower staffing levels during these hours.

An agency can review these and other components of its complementary paratransit service for subsets of riders to identify potential patterns of poor service quality that could deny or limit service for them, and potentially discourage use of the service.

8.5.8 Circumstances Beyond a Transit Agency's Control

As stated in § 37.131(f)(3)(ii), certain causes of poor complementary paratransit service are beyond a transit agency's control and, therefore, are not causes for determining whether a pattern or practice exists. These situations include, for example, severe inclement weather, unpredictable traffic delays, and occasional vehicle breakdowns. Although it is not possible to plan for all conditions that disrupt service, FTA encourages agencies to plan for disruptions or delays as follows:

- Rain or snow may cause vehicles to fall behind schedule. However, if there is snow on the roads from a previous storm, transit agencies can adjust schedules to account for slower vehicle speeds.
- Some traffic conditions cannot be anticipated. However, transit agencies can base their run schedules on the assumption that vehicles travel at lower speeds during peak periods—just as fixed route schedules assume longer travel times during the morning and afternoon peaks—or can determine where and when heavy traffic is predictable and incorporate such delays into scheduling.
- While vehicle breakdowns cannot be anticipated, many transit agencies have readily available backup capacity that allows for rapid response when breakdowns occur, such as "floater" vehicles, backup drivers, or supervisors who can respond with spare vehicles. Agencies can also contract with other providers for backup service on an as-needed basis.

An excessive number of breakdowns may be due to poor maintenance practices or running vehicles past their useful lives. Such instances are within transit agencies' control and are not justifications for poor performance.

8.6 Subscription Service

Requirement

"[Part 37] does not prohibit the use of subscription service by public entities as part of a complementary paratransit system, subject to the limitations in this section" (§ 37.133(a)).

"Subscription service may not absorb more than fifty percent of the number of trips available at a given time of day, unless there is non-subscription capacity" (§ 37.133(b)).

"Notwithstanding any other provision of [Part 37], the entity may establish waiting lists or other capacity constraints and trip purpose restrictions or priorities for participation in the subscription service only" (§ 37.133(c)).

Discussion

This requirement establishes the parameters for implementing subscription service as a method of efficient reservations and scheduling for trips with a repeated pattern—same origin and destination, same pickup or drop-off time, and same day(s). Riders subscribe to the service once and then transit agencies provide the repeated service. Some agencies require riders to make a minimum number of trips per week to qualify for subscription service. Typical uses for subscription service include:

- Traveling to work or school each weekday
- Traveling to dialysis or other medical appointments several times per week
- Traveling to religious services once per week

After riders and transit agencies set up the subscription service, there is no need to make further arrangements until a rider's travel needs change.

Subscription service is helpful both to transit agencies and the riders who receive it. For agencies, such service provides predictability for a portion of their service, so they can assign these trips to vehicle runs in advance. Because riders only have to call once, subscription trips make traveling easier for riders and can lower call volumes for agencies.

While subscription service is generally beneficial, requests may need to be reviewed for efficiency. Some trips may run counter to the typical travel flows and may then not be able to be effectively grouped with other requests. In addition, placement of subscription trips on the most efficient runs may also change over time. An optional good practice is to have schedulers regularly review requests for subscription service and to actively manage subscription trips that have been accepted.

Subscription trips are still complementary paratransit trips. Even if transit agencies choose to reserve and schedule certain trips in this way, trips reserved and scheduled on a subscription basis remain subject to the regulatory requirements pertaining to service performance (e.g., agencies must ensure trip lengths are comparable to the fixed route and pickups are timely).

8.6.1 Limits on Subscription Trips Under Certain Circumstances

Section 37.133(b) allows a transit agency to provide subscription service as any proportion of its total complementary paratransit service as long as it has capacity for demand trips (i.e., non-subscription trips). However, when agencies experience capacity constraints on particular days or times, then subscription service may not absorb more than 50 percent of the number of trips available at a given time of day. For example, if an agency only has the capacity to provide 50 complementary paratransit trips between 8 a.m. and 9 a.m. Mondays, then the number of subscription trips during that period is limited to 25, since capacity constraints are present during that hour. Some agencies limit subscription service to 50 percent of available capacity even if they never experience capacity constraints.

8.7 Exceeding Minimum Requirements (Premium Service)

Requirement

"Public entities may provide complementary paratransit service to ADA paratransit eligible individuals exceeding that provided for in this section. However, only the cost of service provided for in this section may be considered in a public entity's request for an undue financial burden waiver under §§ 37.151–37.155 of [Part 37]" (§ 37.131(g)).

Discussion

The following are examples of services that can be viewed as a form of premium service:

- Same-day trips
- "Will-call" trips
- Trips beyond the defined service area
- Trips before or after the established service hours

Because premium services are optional under § 37.131(g) and otherwise do not fall under the complementary paratransit requirements, transit agencies may charge higher fares for premium service trips. For example, agencies may charge higher fares for trips requested on the same day of service. The exact fare for this extra service is a local decision.

In addition, transit agencies have the option to limit premium service to certain types of trips, where such a distinction would not be allowed for standard complementary paratransit service. For example:

- An agency provides out-of-area service, but only for trips associated with appointments to regional medical centers.
- An agency's regular service hours on weekdays begin at 5 a.m., but its complementary paratransit service makes earlier pickups for riders going to dialysis treatment.

It is important to ensure that providing premium service does not lead to lower service quality for riders using the regular complementary paratransit service. For example, providing trips beyond the minimum service area is inadvisable if doing so might limit the service quality for trips within the 3/4-mile service area.

FTA recommends that transit agencies obtain public input when developing premium services, particularly when imposing premium fares. For more information on exceeding minimum requirements, see FTA Bulletin "Premium Charges for Paratransit Services."

8.8 Complementary Paratransit Plans

Most of the Part 37 Subpart F requirements for complementary paratransit plans and related updates in §§ 37.135–37.155 pertain to transit agencies' transitions to compliance with the regulations, from issuance of the requirements in 1991 to full compliance by 1997. In 1996, DOT amended the regulations to eliminate the requirement for annual updates to complementary paratransit plans. While some agencies may continue to update their plans for their own internal planning purposes, the annual updates are no longer required under the regulations. Because the need to develop a complementary paratransit plan is now rare, this Circular does not discuss plan requirements in depth. There are three circumstances, however, where an agency may still be required to prepare a paratransit plan:

- An agency is starting up a new fixed route service that will require complementary paratransit service.
- A previously compliant transit agency has determined that it is falling short of compliance and reported the change in circumstances to FTA, as required.
- FTA determines or believes a transit agency may not be fully complying with all service criteria.

FTA notes that transit agencies are required to implement complementary paratransit service at the same time they introduce new fixed route service; implementation of complementary paratransit at a later date is not permitted.

8.9 Ongoing Public Participation

Requirement

"*Ongoing requirement*. The entity shall create an ongoing mechanism for the participation of individuals with disabilities in the continued development and assessment of services to persons with disabilities. This includes, but is not limited to, the development of the initial plan, any request for an undue financial burden waiver, and each annual submission" (§ 37.137(c)).

Discussion

A transit agency must have ways to obtain feedback from the disability community on its paratransit service. Examples of ongoing participation mechanisms include citizen or rider committees and holding periodic meetings and workshops. This input is very important when transit agencies are considering modifications to complementary paratransit service policies, particularly when such modifications result in reductions in service.

In addition, when considering fare increases or major reductions in service, there are § 5307 requirements for public comment on fare and service changes. The law requires transit agencies receiving § 5307 urbanized area formula grants to certify that they have "a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation service" (49 U.S.C. § 5307(d)(1)(I)). A major reduction in fixed route service must also include consideration of the impact on complementary paratransit service.

Chapter 9 – ADA Paratransit Eligibility

9.1 Introduction

As described in Circular Chapter 8, public entities that operate non-commuter fixed route bus or rail services are required to provide complementary paratransit services. This chapter explains the U.S. Department of Transportation (DOT) Americans with Disabilities Act (ADA) regulations in 49 CFR Part 37 Subpart F related to eligibility for complementary paratransit, covering who is eligible and the requirements for eligibility determinations.

This Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves or replace the need for readers to reference the detailed information in the regulations. FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.

9.2 Eligibility Standards

Requirement

"[Transit agencies] required by § 37.121 . . . to provide complementary paratransit service shall provide the service to the ADA paratransit eligible individuals described in [§ 37.123(e)]" (§ 37.123(a)).

Discussion

As a civil rights statute, the ADA emphasizes nondiscriminatory access to fixed route services. Complementary paratransit service is intended to serve as a "safety net" for individuals who, because of their disabilities, are unable to use fixed route services, as discussed in Appendix D to § 37.121. The criteria for ADA paratransit eligibility, spelled out in § 37.123 and discussed below, reflect the safety net role of complementary paratransit.

9.2.1 Eligible Individuals

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

The regulations define criteria for determining whether individuals with disabilities are ADA paratransit eligible based on their ability to use fixed route services. Appendix D to § 37.123 breaks eligibility types into three categories, which are described further below.

Eligibility Category 1 – Inability to Navigate System Independently

Requirement

"Any individual with a disability who is unable, as the result of a physical or mental impairment (including a vision impairment), and without the assistance of another individual (except the operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities [is eligible for ADA paratransit]" (§ 37.123(e)(1)).

Discussion

The first category of eligibility includes individuals who, because of their disabilities, cannot independently navigate and use accessible fixed route services. In determining eligibility under this category, basic required assistance from vehicle operators may be assumed (e.g., help with using vehicle lifts or ramps).

Examples of eligibility under this category include:

- Individuals with intellectual or cognitive disabilities who cannot navigate the system. These individuals may not be able to understand, remember, or independently undertake the actions necessary to plan and use fixed route transit services. They also may not be oriented to person, place, and time, which are necessary abilities for independent travel by fixed route transit.
- Individuals with intellectual or cognitive disabilities who may have the functional ability to use a single bus route, but who are unable to make complex trips that require transfers between routes.
- Individuals with vision disabilities who cannot navigate through complex transit stations.
- Individuals with intellectual, cognitive, or vision disabilities who have received travel training or orientation and mobility instruction to make specific trips, but who are unable to use fixed route service for trips they have not been successfully trained to take.
- Individuals with significant psychiatric disabilities who cannot complete the tasks necessary to ride fixed route service independently. For example, some individuals with severe anxiety disorders may experience overwhelming physical and psychiatric reactions that prevent them from concentrating on and completing the tasks needed to independently use fixed route transit.
- Individuals with physical disabilities who can ride while seated but not while standing on a moving vehicle and who cannot be guaranteed a seat on a vehicle at all times of the day.
- Individuals with psychiatric or seizure conditions whose medications affect balance, memory, or other functional abilities needed to independently use fixed route transit.
- Individuals with significant intellectual or psychiatric conditions that impair judgment and decisionmaking ability needed to travel safely and independently on fixed route services.

Regarding the last example above, the legislative history indicates that general public safety concerns such as using fixed route transit late at night or in certain high-crime areas are not a basis for conferring eligibility under this category. However, individuals whose judgment, awareness, and decisionmaking are significantly affected by a disability and who would be at unreasonable risk if they attempted to use the fixed route service independently are eligible. This might apply to an individual with an intellectual disability lacking the judgment and awareness to respond appropriately to strangers and thus could be at significant risk when using fixed route service independently.

To some degree, the size and complexity of the fixed route system and a transit agency's operating policies may affect eligibility under this category. For example, individuals may be able to navigate a rural fixed route system with a limited number of routes or local community bus services, but they may not be able to independently navigate complex transit stations in larger cities. Similarly, individuals with balance issues may be assured of getting a seat when riding buses in rural areas, but cannot be guaranteed

a seat on crowded urban systems. However, if an agency were to adopt an operating policy ensuring all riders with disabilities a seat, such a policy might allow individuals with balance issues to use the agency's fixed route services.

Eligibility Category 2 – Lack of Accessible Vehicles, Stations, or Bus Stops

Requirement

"Any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device and is able, with such assistance, to board, ride and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time, or within a reasonable period of such time, when such a vehicle is not being used to provide designated public transportation on the route [is eligible for ADA paratransit].

> (i) An individual is eligible under this paragraph with respect to travel on an otherwise accessible route on which the boarding or disembarking location which the individual would use is one at which boarding or disembarking from the vehicle is precluded as provided in § 37.167(g) of [Part 37].
>
> (ii) An individual using a common wheelchair is eligible under this paragraph if the individual's wheelchair cannot be accommodated on an existing vehicle (e.g., because the vehicle's lift does not meet the standards of Part 38 of this title), even if that vehicle is accessible to other individuals with disabilities and their mobility wheelchairs.[1]
>
> (iii) With respect to rail systems, an individual is eligible under this paragraph if the individual could use an accessible rail system, but—
>
> > (A) There is not yet one accessible car per train on the system; or
> >
> > (B) Key stations have not yet been made accessible" (§ 37.123(e)(2)).

Discussion

Individuals are eligible for complementary paratransit service under Category 2 if accessible vehicles are not being used to provide service on the bus route they wish to use, if a boarding or disembarking location is inaccessible, or if key stations are not yet accessible. (See Circular Section 3.9.) The determination under Category 2 is specific to the routes, stops, or stations that individuals need to use. As fixed route systems become more accessible, eligibility under this category will continue to become less common.

Accessible Bus Service

A bus route is considered accessible under this category when *all* buses scheduled on the route are accessible. When only some of the runs on a route are accessible (e.g., every other run), the route itself is considered inaccessible, and individuals with disabilities who require accessible fixed route vehicles are eligible for complementary paratransit travel anywhere in that bus corridor.

Section 37.7 considers fixed route buses to be accessible if they meet or exceed the Part 38 vehicle specifications. (See Circular Section 4.2.) If buses do not have lifts, ramps, or securement systems that comply with the Part 38 standards, individuals who use wheelchairs who could otherwise travel on accessible vehicles are eligible for complementary paratransit service. This provision was more relevant immediately following the ADA's enactment in 1991, since many of the buses in use at the time were

[1] When amending the DOT ADA regulations in 2011, DOT removed the "common wheelchair" concept. (See Circular Section 2.4.1.)

inaccessible. Because virtually all buses used in fixed route service are now accessible, this is no longer a significant factor in ADA paratransit eligibility.

Bus Stop Accessibility

When drivers cannot deploy lifts or ramps at a particular bus stop, Category 2 applies to individuals whose trips involve using that stop. Category 2 also applies to a stop at which drivers can deploy lifts or ramps but individuals cannot use them because the stop itself is inaccessible. As discussed in Appendix D to § 37.123,

> If the lift on a vehicle cannot be deployed at a particular stop, an individual is eligible for paratransit under this category with respect to the service to the inaccessible stop. If on otherwise accessible route 1, an individual wants to travel from Point A to Point E, and the lift cannot be deployed at E, the individual is eligible for paratransit for the trip. . . . This is true even though service from Point A to all other points on the line is fully accessible. In this circumstance, the entity should probably think seriously about working with the local government involved to have the stop moved or made accessible.
>
> When we say that a lift cannot be deployed, we mean literally that the mechanism will not work at the location to permit a wheelchair user or other person with a disability to disembark or that the lift will be damaged if it is used there. It is not consistent with the rule for a transit provider to declare a stop off-limits to someone who uses the lift while allowing other passengers to use the stop. However, if temporary conditions not under the operator's control (e.g., construction, an accident, a landslide) make it so hazardous for anyone to disembark that the stop is temporarily out of service for all passengers . . . the operator [may] refuse to allow a passenger to disembark using the lift.

While nearly all fixed route buses are now accessible, most transit systems have some inaccessible bus stops, particularly in cases where someone else owns the stop (e.g., municipalities or other entities).

Accessible Rail Service

For light rail and rapid rail systems, individuals are eligible under this category if the rail line they need to use does not have at least one accessible car per train or if stations on that line are not accessible.[2] Eligibility based on the inaccessibility of a rail system is unchanged even when fully accessible fixed route bus service is also available in the area. As discussed in Appendix D to § 37.123, this is required because:

> [P]eople use rail systems for different kinds of trips than bus systems. It would often take much more in the way of time, trouble, and transfers for a person to go on the buses of one or more transit authorities than to have a direct trip provided by the rail operator. Since bus route systems are often designed to feed rail systems rather than duplicate them, it may often be true that "you can't get there from here" relying entirely on bus routes or the paratransit service area that parallels them.

FTA notes that accessibility of rail systems depends not just on having at least one accessible car per train and on having accessible stations, but also depends on the platform-to-car interface. Depending on whether new or retrofitted vehicles are operating in new, existing, or key stations, the platform-to-rail-car gap can be as large as 2 inches vertically and as much as 4 inches horizontally; individuals for whom this represents a barrier to the use of the station would be eligible for complementary paratransit when traveling to and from locations within 3/4 mile of two different rail stations. (See Circular Section 0.)

[2] The deadline for compliance with the one-car-per train requirement expired on July 26, 1995; there should no longer be any circumstances under which a train with no accessible cars is encountered.

Eligibility Category 3 – Inability to Reach a Boarding Point or Final Destination

Requirement

"Any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system [is eligible for ADA paratransit].

> (i) Only a specific impairment-related condition which prevents the individual from traveling to a boarding location or from a disembarking location is a basis for eligibility under this paragraph. A condition which makes traveling to boarding location or from a disembarking location more difficult for a person with a specific impairment-related condition than for an individual who does not have the condition, but does not prevent the travel, is not a basis for eligibility under this paragraph.
>
> (ii) Architectural barriers not under the control of the public entity providing fixed route service and environmental barriers (e.g., distance, terrain, weather) do not, standing alone, form a basis for eligibility under this paragraph. The interaction of such barriers with an individual's specific impairment-related condition may form a basis for eligibility under this paragraph, if the effect is to prevent the individual from traveling to a boarding location or from a disembarking location" (§ 37.123(e)(3)).

Discussion

Under Category 3, individuals are ADA paratransit eligible only if their disability ("specific impairment-related condition") prevents them from traveling to or from fixed route transit stops and stations. Individuals are not ADA paratransit eligible if getting to or from fixed route stops and stations is only more difficult or inconvenient. Appendix D to § 37.123 offers the following guidance on how to determine if travel to and from stops and stations is "prevented" or simply "difficult":

> Inevitably, some judgment is required to distinguish between situations in which travel is prevented and situations in which it is merely made more difficult. In the Department's view, a case of "prevented travel" can be made not only where travel is literally impossible (e.g., someone cannot find the bus stop, someone cannot push a wheelchair through the foot of snow or up a steep hill) but also where the difficulties are so substantial that a reasonable person with the impairment-related condition in question would be deterred from making the trip.

Figure 9-1 illustrates this concept of a "reasonable person test." At the left end of the spectrum, traveling to or from stops and stations rather than receiving origin-to-destination service may be more difficult or inconvenient and eligibility is not conferred. At the right end of the spectrum, it may be impossible for individuals with disabilities to get to or from stops and stations. At some point along this spectrum, getting to or from stops and stations becomes an unreasonable effort or risk for individuals with disabilities. It is at this point that ADA paratransit eligibility is granted.

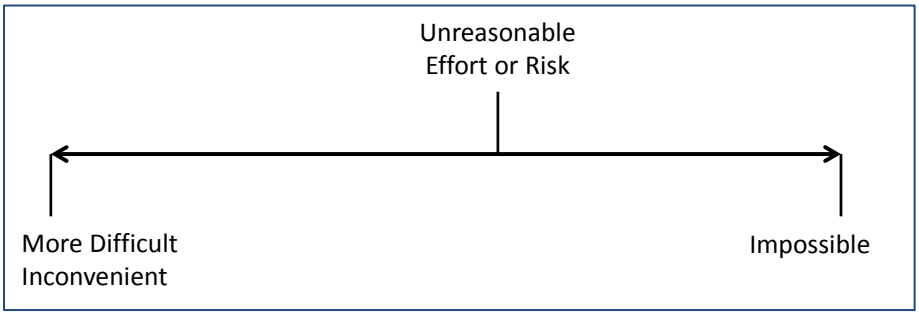

Figure 9-1 – Reasonable Person Test

Here are some examples of unreasonable travel expectations:

- Individuals with an ambulatory disability who use crutches can get to a bus stop four blocks away but doing so requires considerable exertion and leaves them exhausted
- Individuals with a vision disability may be able to cross a busy street where there is constant traffic turning right on the red signal, but in doing so they may be taking an unreasonable risk because they are not able to get an audible cue from the flow of traffic that allows them to know when it is safe to cross
- Individuals with cardiac conditions can walk five blocks to stops and stations, but doing so in very hot weather may put them at unreasonable risk

Under Category 3, the point at which the use of fixed route service becomes unreasonable to attempt varies for different individuals, depending on their particular disabilities or health conditions and their functional abilities. Reviewers determining eligibility need to identify the conditions under which it is reasonable to ask individuals to use fixed route services and when to provide complementary paratransit. Reviewers become the "reasonable people" making such judgments.

Consideration of Architectural Barriers and Environmental Conditions

Eligibility under this category considers the effects of architectural and environmental barriers on travel by individuals with disabilities. Even though such factors may not be under a transit agency's control, the presence of these barriers, in combination with a person's disability, can prevent use of fixed route services.

Examples of architectural and environmental barriers that, in combination with disabilities, might confer ADA paratransit eligibility include:

- A lack of curb ramps or alternative accessible pathways that would prevent individuals who use mobility devices from getting to or from stops and stations without traveling in the street (while others use the sidewalks)
- A lack of sidewalks along busy roadways, where reasonable people do not walk in the street, that would require individuals with disabilities to travel in the street to get to or from stops and stations
- Other barriers in pedestrian pathways to or from stops and stations. For individuals with physical disabilities, this may be sidewalks in poor condition or uneven or unstable surfaces. For individuals with vision disabilities, this may be pathways without detectable edges (e.g., open parking lots) that are not a safe distance from quickly moving traffic or have hazards that are not detectable (e.g., overhanging structures or guy wires)
- Long distances to or from stops and stations that individuals with disabilities cannot travel without an unreasonable level of effort (i.e., distances that would cause exhaustion or significant pain)
- Steep hills that prevent individuals with ambulatory disabilities or those who use manual wheelchairs from getting to or from stops and stations
- Snowy or icy conditions that may prevent individuals with disabilities from getting to or from stops and stations
- Extremes in temperature that may prevent individuals with certain disabilities or health conditions from traveling to or from stops and stations
- Complex intersections, busy streets, or wide streets that certain individuals with disabilities may not be able to cross

Wayfinding Considerations

Individuals with certain types of disabilities may also be prevented from getting to or from stops and stations for other reasons, including:

- Individuals with intellectual, cognitive, or vision disabilities who are able to find their way along specific pedestrian routes, but who may not be able to find their way to or from stops and stations along unfamiliar routes
- Individuals with psychiatric disabilities who may be able to travel in certain settings (e.g., local routes within their neighborhood), but who may not be able to travel in unfamiliar areas or settings

Note that these individuals may also have issues navigating the transit system and may also have eligibility based on Category 1 considerations.

9.2.2 Eligibility Considerations – In General

Important considerations when making ADA paratransit eligibility determinations follow.

Ability to Use Fixed Route Independently

Beyond the required assistance of vehicle operators (see Circular Section 2.5), eligibility is based on the independent ability of individuals to use the fixed route system. Eligibility is not based on the availability of other individuals, including personal care attendants, family, or friends who may be traveling with the passenger with a disability. (See below for a discussion of eligibility for young children.)

Current Functional Ability

Eligibility is based on current functional ability. While some individuals may learn to use fixed route services independently after participating in travel training, actual functional ability at the time of application is the basis for determining eligibility. FTA encourages transit agencies to offer travel training, but agencies cannot require individuals to participate. If an applicant indicates interest in travel training, an optional good practice is to confer temporary eligibility and then determine the applicant's longer-term eligibility if he or she successfully completes training. Agencies cannot limit or deny eligibility based on a presumption of functional ability with training or on an applicant's stated interest in participating in travel training.

Most Limiting Conditions

An applicant's eligibility must also be based on his or her most limiting condition, whether related to the environment or the variable nature of a disability. Determinations of ADA paratransit eligibility consider each applicant's ability to travel to any origins and destinations in the complementary paratransit service area under all conditions. A transit agency may not base initial determinations of ADA paratransit eligibility upon an applicant's ability to use fixed route service some of the time or under typical conditions. For example, if an individual could reasonably be expected to walk up to three blocks to get to and from bus stops, it would be inappropriate to deny eligibility because a bus stop was located only two blocks from her home. This decision incorrectly assumes the individual will only be traveling to and from his or her home and does not consider travel distances to all of the destinations he or she might visit at the other end of the trip.

Similarly, it would not be appropriate to deny eligibility to individuals because there was an accessible path of travel to the bus stop nearest their home. Again, such a denial does not account for architectural barriers elsewhere in the service area that would prevent travel to potential destinations.

The "most limiting condition" concept also applies to disabilities that may cause changes in functional ability from day to day. Determinations must consider the inherent variability of some disabilities. Basing a determination on an applicant's "good day" would not be appropriate.

Considering the Appropriate Mobility Device(s)

For all categories of eligibility, determinations are based on how individuals present themselves at the time of application. For example, some individuals may have both a manual wheelchair and a power wheelchair. They may choose to travel in the community with their manual wheelchair rather than their power wheelchair for a variety of reasons, such as destinations to which they are traveling (or the activities at those destinations) that may be more compatible with use of a manual wheelchair. In these cases, determinations of functional ability and eligibility are based on the mobility aid that individuals say they will use when they travel.

If an applicant states that he or she uses both types of mobility aids when traveling, eligibility determinations are based on the mobility device the applicant would use for particular trips. Alternatively, the transit agency could decide to simply grant the greater degree of eligibility regardless of which mobility device the applicant uses. It is not appropriate to require individuals to use specific mobility devices or to base eligibility decisions on devices that provide the greatest ability to use fixed route service if those mobility devices are not the devices applicants use when traveling.

Mobility Devices that Exceed Maximum Size or Weight

Since ADA paratransit eligibility is based on an individual's functional ability, denying eligibility solely because the applicant's mobility device exceeds maximum vehicle size or weight capacities is not permitted. This means in some cases a transit agency will grant ADA paratransit eligibility to applicants but will not be able to transport them. In these situations, it is important for the agency to communicate the vehicle fleet capacity limitations to the affected eligible person, and for the person to understand that he or she may be able to start riding the service with a different (e.g., smaller/lighter mobility device) or other changed circumstances.

Eligibility for Young Children

As discussed in Circular Section 2.2.1, § 37.5(a) prohibits discrimination against an individual with a disability in connection with the provision of transportation service. Thus, policies limiting the availability of transit to children under a certain age or requiring children under a certain age to be accompanied by an adult cannot be created solely for complementary paratransit. Any policy would also need to apply to the fixed route service to avoid a discriminatory practice.

Transit agencies that have systemwide policies requiring all children under a certain age to travel with an adult (for fixed route transit as well as complementary paratransit) may apply these policies to eligibility determinations for children. For example, if an agency's systemwide policy requires an adult to accompany all children under the age of 6, then eligibility determinations for children under 6 years old assume an accompanying adult. The abilities of the team (e.g., the child with a parent/guardian) are considered, rather than the independent ability of the child, since all children are required to travel with accompanying adults. In this example, a child's age (not disability) would govern his or her inability to use the fixed route system independently. Agencies with such policies would then base eligibility determinations for children 6 and older on independent functional ability.

Some transit agencies have age-related fare policies such as "children under the age of 6 ride free when accompanied by a fare-paying adult." While such policies provide free rides to children under 6, they do not by themselves represent a requirement for adults to accompany younger children.

Residence and Eligibility Determinations

As discussed in Appendix D to § 37.123, "All fixed route operators providing complementary paratransit must make service available at least to individuals meeting these standards." Limiting reviews of applications and determinations of eligibility to individuals residing within a transit agency's service area is not appropriate.[3] If an otherwise eligible applicant is able to travel to a point within an agency's complementary paratransit service area and wishes to use complementary paratransit within the service area, the Part 37 Subpart F requirements obligate the agency to grant the applicant eligibility and accommodate the trip request.

Half-Fare and Eligibility Determinations

An applicant's eligibility for a transit agency's half-fare program on fixed route is not a basis for determining ADA paratransit eligibility. While there is a requirement for recipients of § 5307 funding to provide reduced fares for seniors and persons with disabilities riding fixed route during off-peak hours, it is not an ADA requirement; rather, it is a general requirement under 49 U.S.C. Chapter 53. The eligibility standards for reduced fare as outlined in 49 CFR Part 609 are very different from the ADA paratransit eligibility standards.

9.3 Types of Eligibility

Transit agencies generally grant unconditional or conditional eligibility and may apply temporary eligibility (see Circular Section 9.3.3) to either type.

9.3.1 Unconditional Eligibility

Sometimes called "unrestricted eligibility" or "all-trip eligibility," unconditional eligibility means that an individual is unable to use fixed route transit services under any circumstances and is thus eligible to make all trips using complementary paratransit. Examples of applicants granted unconditional eligibility include:

- Individuals who cannot travel independently due to severe or profound intellectual disabilities or advanced dementia
- Individuals with physical disabilities who have limited functional ability (e.g., riders who use a manual wheelchair and who cannot sufficiently propel themselves)
- Individuals who have lost vision late in life and have not learned to travel independently in the community

9.3.2 Conditional Eligibility

Requirement

"If an individual meets the eligibility criteria of this section with respect to some trips but not others, the individual shall be ADA paratransit eligible only for those trips for which he or she meets the criteria" (§ 37.123(b)).

[3] In regions served by two or more transit agencies that coordinate service, it is appropriate to direct individuals to apply for eligibility with the agency providing complementary paratransit service to their residence.

Discussion

ADA paratransit eligibility does not have to be an all or nothing decision. As Appendix D to § 37.123 explains, "A person may be ADA paratransit eligible for some trips but not others. Eligibility does not inhere in the individual or his or her disability, as such, but in meeting the functional criteria of inability to use the fixed route system established by the ADA. This inability is likely to change with differing circumstances."

Sometimes called "restricted eligibility" or "some-trip eligibility," conditional eligibility applies to individuals who are able to independently use fixed route transit services under some circumstances.

Factors for determining conditional eligibility typically include:

- The maximum distance that individuals are able to walk to get to or from stops and stations
- Environmental conditions that prevent use of fixed route service (e.g., heat, cold, snow, ice, or air quality)
- Architectural and path-of-travel barriers that prevent use of fixed route service (e.g., lack of sidewalks, lack of curb ramps, uneven or unstable surfaces, or steep hills)
- Types of intersections or streets (e.g., complex intersections, busy streets, or wide streets) that individuals cannot cross safely
- Complexity of fixed route trips (e.g., transfers are required)
- Unfamiliar locations (e.g., destinations to which individuals have not been successfully trained to travel via fixed route)
- Severe fatigue after receiving treatment, including the potential for experiencing severe fatigue at other times
- Other variable effects of individuals' disabilities, such as increased symptoms of multiple sclerosis on certain days
- Time of day (for individuals affected by low or bright light or for those who require a seat on the bus in order to travel and a seat cannot be guaranteed during certain times, such as peak hours)
- Inaccessible fixed route vehicles or facilities (i.e., routes, lines, stations, or stops are not accessible)

For transit agencies using conditional eligibility or considering doing so, the following are examples of individuals who might be candidates for this type of eligibility:

- Individuals with intellectual disabilities who have learned how to make certain trips on fixed routes but cannot make all trips independently – They would not be eligible for the trips they have learned to take by fixed route, but would be eligible for all other trips.
- Individuals with physical disabilities who can reach a bus stop or rail station within four blocks when the route is accessible – An appropriate condition on eligibility in this instance is "when the distance to or from stops and stations is more than four blocks or when the route to stops and stations is inaccessible."
- Individuals with health conditions who can get to and from stops and stations when the temperature is not too hot (e.g., less than 80°F) or the distance is not too far (e.g., closer than four blocks) – They would be ADA paratransit eligible when the temperature exceeds 80°F or the stop or station is more than four blocks away.[4]

[4] 80°F is used as an example. Because climatic conditions (e.g., temperature and humidity) may vary by region, establishing thresholds for specific regions and individual applicants is appropriate.

Use of conditional eligibility is optional. If a transit agency's process does not include conditional eligibility, unconditional eligibility is granted to applicants who are only able to use fixed route under some conditions and who would otherwise be conditionally eligible. The individuals are not denied eligibility because they can use fixed route service some of the time.

Properly applying conditional eligibility (either on a full-term or temporary basis) means identifying the specific conditions under which each applicant is ADA paratransit eligible and communicating these conditions to the applicant.

As noted above, transit agencies may grant temporary eligibility to individuals whose health condition or disability is expected to change in the short term or whose mobility device will soon change. Temporary eligibility can be either unconditional or conditional, depending on the individual's functional ability.

Considerations in Applying Conditional Eligibility

Correctly applying conditional eligibility includes ensuring the stated conditions placed on the rider's eligibility are specific, measurable, and thorough. For example, conditions on eligibility such as "when the distance to or from bus stops is too far" or "when you are unable to safely cross the street" are too vague. Appropriate examples of thorough conditions of eligibility include "when the distance to or from fixed route stops and stations is more than three blocks" or "when you must cross streets wider than two lanes or intersections without traffic lights and pedestrian controls."

Conditions of eligibility reflect functional abilities, not trip purposes. For example, giving eligibility to riders who experience extreme fatigue due to end stage renal failure and associated treatments "for dialysis trips only" is not appropriate. Instead, an appropriate condition of eligibility is expressed as "when severe fatigue from your medical condition or treatment prevents you from using the fixed route service."

When granting conditional eligibility, it is also important to identify barriers that can affect travel. Not doing so would inappropriately limit an individual's eligibility. For example, individuals who use manual wheelchairs would likely be affected by distances to or from stops and stations, lack of sidewalks or curb ramps, steep hills, snowy or icy conditions, inaccessible bus routes and rail lines, and inaccessible stops and stations. If transit agencies attempted to simplify the process by only granting eligibility "when the distance to or from fixed route stops or stations is more than four blocks" and "when the presence of snow or ice prevents travel to or from bus stops or rail stations," this would be an inappropriate limitation of eligibility. It would imply that during non-winter months, as long as the distance to or from stops was no more than four blocks, individuals would never be prevented from using fixed route services. But this would be incorrect because path-of-travel barriers, steep hills, and bus stop and other system barriers could still prevent travel for some trips.

Individuals encountering architectural or environmental barriers that prevent them from reaching a bus stop often can use another path. For example, an individual using a wheelchair can often circumvent a lack of curb ramps by taking another, less direct route than an ambulatory person might take. This may involve more time, trouble, and effort, but the person can still reach the bus stop. If a reasonable alternative path were available, then that individual would not be eligible to use complementary paratransit for that trip.

9.3.3 Temporary Eligibility

Requirement

"Individuals may be ADA paratransit eligible on the basis of a permanent or temporary disability" (§ 37.123(c)).

Discussion

Individuals who experience a temporary loss of functional ability that prevents them from using fixed route service may apply for temporary ADA paratransit eligibility. For example, an individual may need to undergo two months of treatment for a health condition, resulting in severe fatigue that prevents him or her from using fixed route service. This individual would be ADA paratransit eligible for the duration of the treatment period.

Temporary eligibility may also be appropriate if changes in functional ability are probable in the short term. For example, an individual who has had a stroke may be using a manual wheelchair immediately after the stroke and may not be able to independently self-propel the wheelchair to get to or from bus stops. If the individual were undergoing a year of prescribed therapy, one year of eligibility for all trips would be appropriate, with a review at the end of the year to determine if therapy or a change in mobility devices has changed the individual's functional ability to use fixed route service.

9.4 Eligibility Determination Process

Requirement

"Each public entity required to provide complementary paratransit service by § 37.121 of [Part 37] shall establish a process for determining ADA paratransit eligibility" (§ 37.125).

Discussion

While the DOT ADA regulations are specific in terms of who is ADA paratransit eligible, the regulations do not prescribe the determination process. Transit agencies, with input from the communities they serve, are to devise the specifics of their individual eligibility processes, while following the broad requirements in § 37.125 pertaining, for example, to timelines for decisions and appeal practices.

The following discussion covers the broad process requirements and considerations and provides examples of processes transit agencies have established.

9.4.1 Strictly Limiting Eligibility

Requirement

"The process shall strictly limit ADA paratransit eligibility to individuals specified in § 37.123 of [Part 37]" (§ 37.125(a)).

Discussion

Transit agencies must strictly limit ADA paratransit eligibility to individuals who meet the regulatory criteria for eligibility. (See Circular Section 9.2.1.) This limitation supports the requirement in Title II of the ADA for agencies to provide services in the most appropriate integrated setting and is consistent with the concept that complementary paratransit is a "safety net" for those individuals unable to use fixed route

service. The requirement to strictly limit ADA paratransit eligibility, however, does not preclude agencies from providing paratransit service to other individuals. As explained in Appendix D to § 37.123:

> This section sets forth the minimum requirements for eligibility for complementary paratransit service. All fixed route operators providing complementary paratransit must make service available at least to individuals meeting these standards. The ADA does not prohibit providing paratransit service to anyone. Entities may provide service to additional persons as well.

9.4.2 Types of Eligibility Determination Processes

Designing eligibility processes that reflect local needs and circumstances is appropriate as long as these processes comply with the § 37.125 requirements. It is up to transit agencies and the communities they serve to design eligibility determination processes that meet the regulatory requirements.

Transit agencies that originally designed their eligibility determination processes as part of their complementary paratransit plans did so with the input of individuals with disabilities. Subsequently, if agencies implement new processes, or make significant changes to the existing process, FTA expects them to also incorporate a level of public participation that meets the § 37.137(c) requirements.

9.4.3 Approaches for Determining Eligibility

Transit agencies generally use any or a combination of the following three basic sources of information to determine eligibility:

- Information provided by applicants in the form of paper applications, responses to interview questions, or both.
- Information provided by qualified professionals familiar with the applicants. Transit agencies can provide applicants with forms for collecting the information or can accept information that the individuals may already have received from professionals. Alternatively, agencies can obtain the information by directly contacting professionals whom the applicants identify.
- Assessments of functional abilities. Transit agencies may ask applicants to participate in assessments designed to determine their functional abilities specific to the use of fixed route transit services.

This Circular does not comprehensively address the specifics of these determination approaches since they are not outlined in the regulations; general guidance is below. For technical assistance on the various types of eligibility determination processes, see Easter Seals Project ACTION, "Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials."[5]

Supplementing Paper Applications

FTA notes that many transit agencies find that appropriate determinations of ADA paratransit eligibility, including the application of conditional trip-by-trip eligibility, often require more than a paper application. In-person interviews and functional assessments may be necessary to determine whether a particular individual can perform the functional tasks needed to use fixed route service independently. Interviews, whether in person or by phone, allow those making eligibility determinations to solicit additional information from applicants as needed. Properly designed and administered assessments can provide independent and objective measures of specific functions related to fixed route transit use. These can be important in determining the abilities of applicants who have never used fixed route transit and who may not be sure of their abilities to use these services.

[5] This document, published in 2014, also includes a section on administering the Functional Assessment of Cognitive Transit Skills (FACTS).

Information Provided by Professionals

Appropriate determinations of ADA paratransit eligibility are based on an applicant's functional abilities, not medical diagnoses of health conditions or disabilities. Appendix D to § 37.125 explains:

> The substantive eligibility process is not aimed at making a medical or diagnostic determination. While evaluation by a physician (or professionals in rehabilitation or other relevant fields) may be used as part of the process, a diagnosis of a disability is not dispositive. What is needed is a determination of whether, as a practical matter, the individual can use fixed route transit in his or her own circumstances. That is a transportation decision primarily, not a medical decision.

At the same time, eligibility is based on functional limitations due to disability. Individuals must have a disability to qualify for ADA paratransit eligibility. Obtaining information about disability is therefore appropriate, particularly if a disability is not apparent, such as a psychiatric disability or a seizure condition. Information about the disability can also help transit agencies better understand and confirm the likely associated functional issues.

For transit agencies that solicit professional verification of disability and supporting information regarding pertinent functional abilities, an optional good practice is to accept professional verification from a wide array of professionals, rather than limiting the types of practitioners from whom verification is acceptable (e.g., only licensed physicians). Orientation and mobility specialists, therapists, clinical social workers, job coaches, and registered nurses, among others, may be able to verify the existence of a disability and may provide the best information about an applicant's functional abilities relevant to fixed route transit use.

List of Functional Tasks and Skills

Regardless of the specific determination approach a transit agency adopts, an optional good practice is for the agency to work with individuals with disabilities and disability service organizations to develop a master list of functional transit tasks and skills. Such lists identify the various functional tasks involved in using the local area fixed route transit service and the various functional abilities needed to do so (e.g., physical abilities, cognitive abilities, and sensory abilities). Such lists benefit those involved in making eligibility determinations to ensure that they consider all appropriate issues during the determination process. Attachment 9-1 provides a sample task and skills list. An optional good practice is to refine and customize the sample list with input from individuals with disabilities to reflect local fixed route services and policies.

Emphasizing Ability to Use Fixed Route Transit

Another optional good practice is to develop an eligibility determination process that stresses ability rather than disability. Transit agencies may elect to design holistic processes that assist applicants in identifying their abilities to use fixed route service and all available travel options, rather than processes that focus on applicants' limitations. To this end, some agencies refer to the process as a "transportation assessment" rather than an "ADA paratransit assessment" and incorporate other services into their process. For example, some agencies have co-located travel training and eligibility determination functions, which permits them to provide travel training to applicants who indicate an interest. Other agencies provide applicants with information about accessible fixed route service or other transportation programs as appropriate.

9.4.4 Avoiding Unreasonable Burdens and User Fees

Given the nature of ADA paratransit eligibility, an inherent degree of rigor and complexity in the process is often unavoidable. However, as discussed in Appendix D to § 37.125, "The process may not impose

unreasonable administrative burdens on applicants, and, since it is part of the entity's nondiscrimination obligations, may not involve 'user fees' or application fees to the applicant."

Examples of process requirements FTA considers burdensome include:

- Requiring applicants to appear in person for interviews on one day and then participate in functional assessments on a different day
- Requiring applicants to appear in person for interviews or functional assessments and then make a second trip to another location to have a photo taken for an ID card
- Requesting extraneous or irrelevant information that has no bearing on ADA paratransit eligibility
- Using complex application forms that require applicants to apply for multiple transportation programs or services (e.g., state transportation programs in addition to complementary paratransit)
- Requiring medical documentation unrelated to functional ability to use the fixed route transit service

Effective practices for minimizing administrative burdens include:

- Performing in-person interviews and any needed functional assessments at the same location on the same day
- Taking photos for ID cards during interviews and assessments and then creating and sending IDs to those determined eligible

Appendix D to § 37.125 also explains that the determination process may not involve "user fees" or "application fees." This position is based on § 37.5(d), which prohibits agencies from imposing "special charges, not authorized by [Part 37], on individuals with disabilities, including individuals who use wheelchairs, for providing services required by [Part 37] or otherwise necessary to accommodate them."

The prohibition against fees applies to transportation costs. For transit agencies that require applicants to travel to an interview or assessment center as part of their process, this means offering transportation to and from the center at no charge. If agencies use the complementary paratransit service for this transportation, fares must be waived for applicants.

9.5 Eligibility Decisions

Once a transit agency has received a complete application from an individual, the DOT ADA regulations specify timelines for making a determination of eligibility and for notifying the applicant regarding the determination, as discussed in this section.

9.5.1 Making Timely Determinations

Requirement

"If, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application" (§ 37.125(c)).

Discussion

The requirement for timely determination is explained in Appendix D to § 37.125:

> When the application process is complete—all necessary actions by the applicant taken—the entity should process the application in 21 days. If it is unable to do so, it must begin to provide

service to the applicant on the 22nd day, as if the application had been granted. Service may be terminated only if and when the entity denies the application.

FTA encourages transit agencies to make decisions within 21 days. If decisions take longer, however, agencies must have a process to automatically grant provisional eligibility and provide service beginning on the 22nd day. FTA expects agencies to include information about this right to provisional service in public information describing the ADA paratransit eligibility process, in cover letters accompanying application forms, and/or letters acknowledging the receipt of applications.

As is the case throughout the regulations, "days" means calendar days (unless indicated otherwise). The 21-day timeframe begins at "submission of a completed application." For transit agencies that require in-person interviews and functional assessments, applications are considered complete at the conclusion of interviews and assessments, not when applications are received. As discussed in Appendix D to § 37.125, the application process is complete when the applicant has taken all necessary actions.

When scheduling interviews and assessment appointments, transit agencies are not responsible for delays created by applicants. For example, suppose an agency offers an appointment within seven days, but the applicant indicates he or she will be away and requests an appointment in 17 days. Although the interview is delayed in this case, the agency has met its obligation to offer an appointment within a reasonable period.

In designing eligibility determination processes, it is important to consider the total time necessary for applicants to complete the process, including time to schedule any required in-person interviews or assessments. FTA expects transit agencies that require applicants to first submit paper applications and then appear for in-person interviews or functional assessments to offer these appointments promptly (e.g., within 7–10 days) once applications have been received. FTA considers long wait times for interview appointments to be an unreasonable administrative burden.

Treatment of Incomplete Applications

Some applicants may start but not complete the process of applying for ADA paratransit eligibility. They may submit application forms but leave out required information or they may submit an application form but fail to schedule or appear for a required interview or functional assessment. In such cases, FTA recommends returning the applications and explaining to applicants that the process cannot continue until they supply the missing information. When determining whether application forms are complete, it is important to distinguish between information needed to make an eligibility determination and other requested information such as emergency contact information. Secondary information, not pertinent to the determination, can be obtained at a later time in order to continue the processing of the application.

If applicants submit a completed application but fail to schedule or appear for in-person interviews or assessments, FTA recommends retaining the submitted information for a reasonable period and informing applicants of the time within which they need to complete the process. If applicants do not complete the process within that time, agencies can require them to reapply.

9.5.2 Written Notice of Eligibility Decisions

Requirement

"The entity's determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible, the determination shall state the reasons for the finding" (§ 37.125(d)).

"The public entity shall provide documentation to each eligible individual stating that he or she is 'ADA Paratransit Eligible.' The documentation shall include the name of the eligible individual, the name of the transit provider, the telephone number of the entity's paratransit coordinator, an expiration date for

eligibility, and any conditions or limitations on the individual's eligibility including the use of a personal care attendant" (§ 37.125(e)).

Discussion

This requirement obligates transit agencies to transmit eligibility determinations to applicants in writing, and in accessible formats as applicable per § 37.125(b). (See Circular Section 9.10.1.)

Documentation Provided to Applicants Found Eligible

For applicants found eligible, § 37.125(e) requires the documentation provided by the transit agency to specifically state that the individuals are "ADA paratransit eligible" and also include:

- The name of the eligible individual
- The name of the transit agency issuing the documentation
- The telephone number of the transit agency's paratransit coordinator
- An expiration date of the eligibility (if applicable)
- Any limitations or conditions placed on the individual's eligibility
- Whether the applicant travels with a personal care attendant

FTA notes that while § 37.125 specifically calls for the telephone number of the transit agency's paratransit coordinator, agencies may provide any appropriate telephone number. (See Circular Section 9.9.)

Identification Cards

Although not required, many transit agencies issue identification cards to eligible riders. While agencies have the option to choose which information to include on these cards, § 37.125(e) obligates agencies to also issue letters of determination containing all of the required information if the cards contain some but not all of the required information.

Determination Letters Provided to Applicants Found Ineligible

When informing applicants that they are ineligible, § 37.125(d) obligates transit agencies to explain the reasons for the determination. FTA considers determinations of less than unconditional eligibility (i.e., conditional and temporary eligibility) to be degrees of ineligibility and therefore this requirement applies to any decision other than unconditional eligibility.

As explained in Appendix D to § 37.125, in the determination letter "the reasons must specifically relate the evidence in the matter to the eligibility criteria of this rule and of the entity's process. A mere recital that the applicant can use fixed route transit is not sufficient."

For example, an applicant may claim that arthritis affecting the knees prevents him or her from walking to and from bus stops, but information gathered from professionals or through functional assessments did not substantiate this claim. Section 37.125(d) requires the determination letter to provide specific reasons for the denial. For example, "You indicated that you could not use fixed route services because arthritis in your knees prevented you from walking to and from bus stops. However, information from the professional you identified for verification of your disability indicated that you had mild osteoarthritis that did not limit your ability to walk to or from bus stops. The physical therapist who conducted the assessment of your walking ability also reported that you walked the 1/2-mile route at the assessment center without any apparent discomfort or change in gait." In contrast, it would not be appropriate, for example, to offer the following explanation for a denial: "The information we obtained indicated that you were not prevented from using fixed route transit service."

FTA recommends that those preparing determination letters put themselves in the applicant's position and ask, "Am I providing enough details to allow an applicant to adequately prepare for an appeal should they choose to do so?" If determination letters do not identify which pieces of information were critical in making the decision, then applicants do not know how to challenge that decision.

When denying or granting less than unconditional eligibility (i.e., conditional or temporary eligibility), FTA requires the written determination to also explain an applicant's right to appeal the decision and how to request an appeal. (See Circular Section 9.7.)

Attachment 9-2 provides sample determination letters that illustrate what information to include when making different types of determinations. This attachment includes sample letters for determinations of unconditional eligibility, conditional eligibility, temporary eligibility, and full eligibility denials.

9.6 Recertification

Requirement

"The entity may require recertification of the eligibility of ADA paratransit eligible individuals at reasonable intervals" (§ 37.125(f)).

Discussion

Section 37.125(f) allows agencies to recertify the eligibility of ADA paratransit riders at reasonable intervals, recognizing that many factors might change over time that could affect the ability of individuals with disabilities to use fixed route transit service. These could include changes in the physical environment, changes in the accessibility of the fixed route system, or changes in riders' functional abilities.

Appendix D to § 37.123 provides guidance on establishing reasonable intervals for recertification, noting that requiring recertification too frequently (e.g., more than once per year) would probably be overly burdensome to riders. Too frequent recertification may also prove costly to transit agencies. On the other hand, granting eligibility for very long periods might not be adequate to capture changes in riders' abilities and conditions. Many agencies require recertification every 3 to 5 years as a balance between the need to determine current abilities and conditions and the cost of managing the recertification process.

Regardless of the recertification policies adopted, eligible individuals have the right to reapply at any time. Appendix D to § 37.123 explains that "a user of the service can apply to modify conditions on his or her eligibility at any time." For example, individuals initially granted conditional eligibility might feel that their functional abilities have changed and the conditions established no longer reflect their abilities. They can request reconsideration of their eligibility by submitting new documentation or reapplying during their current term of eligibility. Determinations made during existing terms of eligibility, whether based on additional documentation or new applications, are considered new decisions and, as such, are appealable. (See Circular Section 9.7.) This right to reapply extends to anyone, including those denied eligibility.

Similarly, transit agencies may request that eligible individuals reapply if information shows a significant change in their functional abilities. For example, an individual may initially apply while using a manual wheelchair. At some point during the term of eligibility, the individual might obtain a power wheelchair that could overcome a previous inability to get to and from transit stops and stations. In this case, it would be acceptable for the agency to ask the individual to reapply so that eligibility could be appropriately adjusted. It would not be acceptable to ask or require an individual to reapply for eligibility based on casual anecdotal observations by people not trained in making eligibility determinations, such as drivers or other riders.

9.6.1 Optional Practices for Recertification

Transit agencies have several local options for implementing recertification. An optional good practice is to remind riders of the need to reapply before the end of their term of eligibility. Many agencies send riders a notice 60 to 90 days before their current eligibility expires and include the materials needed to reapply. This reminder helps to avoid lapses in a riders' eligibility and facilitates a smooth recertification process.

Agencies may also decide to use a simplified recertification process for certain riders such as those who have been granted unconditional eligibility and whose functional abilities are not likely to change over time even with different mobility aids. Such simplified recertification forms ask riders to update their contact information and note any changes in their travel abilities or needs. Repeat in-person interviews and functional assessments may not be necessary for these riders. Appropriate use of simplified recertification forms and processes may reduce eligibility determination costs.

FTA notes that many transit agencies have strengthened and improved their eligibility determination processes in recent years. Such changes may result in changes to some individuals' long-standing eligibility determinations (e.g., from unconditional to conditional or even to not eligible) after recertification. FTA encourages agencies to consider the significant impact that such changes can have and to consider implementing recertification in a way that allows people to make necessary transitions, in consultation with the community they serve. This approach can include providing reasonable transition periods or offering travel training to those who express an interest.

9.7 Appeal Process

Requirement

"The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.

(1) The entity may require that an appeal be filed within 60 days of the denial of an individual's application.

(2) The process shall include an opportunity to be heard and to present information and arguments, separation of functions (i.e., a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it.

(3) The entity is not required to provide paratransit service to the individual pending the determination on appeal. However, if the entity has not made a decision within 30 days of the completion of the appeal process, the entity shall provide paratransit service from that time until and unless a decision to deny the appeal is issued" (§ 37.125(g)).

Discussion

Section 37.125(g) obligates transit agencies to establish an administrative process through which individuals can appeal eligibility denials, including those determined conditionally eligible or only eligible on a temporary basis. The right to appeal also extends to decisions resulting from individuals choosing to reapply during their eligibility term.

9.7.1 Notification of Appeal Rights, Appeal Requests, and Right to Be Heard in Person

Section 37.125(g) obligates transit agencies to provide riders the opportunity to appeal an ineligibility determination. FTA requires transit agencies to include notice of the right to appeal and how to request an appeal in letters communicating decisions that deny or limit eligibility in any way. An optional good practice is to also enclose an appeal request form with determination letters. (See Attachment 9-3 for a sample appeal request form.)

Section 37.125(g)(1) obligates transit agencies to accept appeal requests received within 60 days of the initial determinations. Policies that provide a longer period to request appeals are permitted. If an applicant misses the deadline or chooses not to appeal, however, he or she may reapply for service at any time.

Section 37.125(g)(2) requires transit agencies to include an opportunity to be heard in person. While it is appropriate to require individuals to submit requests for appeals in writing, agencies may not require such requests to include the basis or reasons for the appeal. The choice to submit written information in advance of or instead of an appeal hearing is for the appellant to make.

FTA encourages transit agencies to ensure that hearing locations are easy for appellants to reach. Some appellants may be discouraged or prevented from exercising their right to attend an appeal hearing if they have difficulty traveling to a hearing location or if they would incur a significant expense in getting there.

The DOT ADA regulations do not specify a deadline by which agencies must hold an in-person appeal after an applicant requests a hearing. FTA encourages transit agencies to hold the appeal hearing promptly (i.e., within 30 days of the initial request).

9.7.2 Separation of Functions

Section 37.125(g)(2) requires a separation of functions, meaning that, to the extent practicable, the individuals deciding appeals were not involved with the applicant's initial eligibility determination, including working in the same office as, supervising, or working for the original decisionmaker.

One way to check for separation of function (and authority) is to examine a transit agency's organizational chart. A vertical line or lines connecting those involved in initial determinations and those deciding appeals means that these individuals are not sufficiently separated. Appropriate separation means individuals from the agency involved in appeals work in a different office or department from those making the initial decision. In smaller agencies where it is not feasible to fully separate functions, Appendix D to § 37.125 explains that "the second decisionmaker should at least be 'bubbled' with respect to the original decision (i.e., not have participated in the original decision or discussed it with the original decisionmaker)."

9.7.3 Timely Appeal Decisions

Under § 37.125(g)(3), a transit agency is not required to provide complementary paratransit service to the appellant pending the determination on appeal. But if it has not made a decision within 30 days of the completion of the appeal process, the agency is obligated to provide service until and unless it issues a decision to deny the appeal. Some agencies elect to continue to provide complementary paratransit service to current riders whose eligibility was denied or limited during recertification to avoid service interruptions should the appeal overturn the initial decision.

Once a decision is made, § 37.125(g)(2) obligates the agency to provide appellants with written appeal decisions (in accessible formats as appropriate) with specific reasons for the decision provided, similar to the level of detail provided in the initial determination letter.

9.7.4 Suggestions for Appeals Practices

Selecting Individuals to Hear Appeals

In selecting individuals to hear and decide appeals, FTA recommends that transit agencies consider the following general guidelines and suggestions, in consultation with the communities served:

- Select individuals for their ability to maintain objectivity in reviewing appeals; do not select them to "represent" one side or a particular point of view (e.g., the transit agency or the disability community). If agency staff or members of the disability community are selected to hear appeals, it is important they remain impartial throughout the process.
- Select individuals to hear and decide appeals who bring a high level of knowledge about the functional abilities of individuals with disabilities similar to those of appellants. An optional good practice is to compile a roster of specialists to call upon according to each appellant's disability. For example, call on orientation and mobility specialists to hear appeals from individuals with vision disabilities. Call on psychiatrists, mental health professionals, or social workers to hear appeals from individuals with psychiatric or cognitive disabilities. Physical or occupational therapists would be qualified to hear appeals from individuals with physical disabilities.
- Select individuals who have a thorough understanding of the function and intent of complementary paratransit and the regulatory criteria for ADA paratransit eligibility; train them as necessary to ensure they fully understand the regulations.
- Select individuals who also have knowledge of fixed route transit and complementary paratransit policies. This will allow them to more accurately determine if appellants can perform all of the tasks required to use fixed route services and to understand the differences between use of fixed route transit and complementary paratransit.

Optional Internal Review Practices

FTA encourages transit agencies to double-check any determinations that deny or limit eligibility before communicating the decision to the applicant. A second reviewer might review each file to ensure that the decision appears appropriate.

Similarly, when applicants request appeals, FTA encourages transit agencies to double-check applicants' files and the initial decisions. If such internal reviews identify errors in initial determinations, agencies can quickly reverse the initial decisions and obviate the burden and cost of formal appeals.

It is important to note that these double-checks are internal and not considered part of the rider's appeal, since they would be undertaken without additional information from the appellant and without an opportunity for the appellant to be heard in person, and might not meet the requirement for separation of functions. The results of such reviews would only be communicated to applicants if they determined that unconditional, full-term eligibility should have been granted. Otherwise, the appeal would be heard. Communicating less than unconditional eligibility could cause applicants to interpret these internal reviews as an appeal decision and may discourage them from continuing with the appeal process. In such instances, FTA encourages undertaking these reviews within a day or two after receiving appeal requests.

If the internal review suggests less than unconditional eligibility, FTA encourages transit agencies to hold the appeal hearing promptly (i.e., within 30 days of the initial request).

9.8 Personal Care Attendants and Companions

Requirement

"Individuals accompanying an ADA paratransit eligible individual shall be provided service as follows:

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

> (i) If the ADA paratransit eligible individual is traveling with a personal care attendant, the entity shall provide service to one other individual in addition to the attendant who is accompanying the eligible individual;
>
> (ii) A family member or friend is regarded as a person accompanying the eligible individual, and not as a personal care attendant, unless the family member or friend registered is acting in the capacity of a personal care attendant;

(2) Additional individuals accompanying the ADA paratransit eligible individual shall be provided service, provided that space is available for them on the paratransit vehicle carrying the ADA paratransit eligible individual and that transportation of the additional individuals will not result in a denial of service to ADA paratransit eligible individuals;

(3) In order to be considered as 'accompanying' the eligible individual for purposes of this paragraph (f), the other individual(s) shall have the same origin and destination as the eligible individual" (§ 37.123(f)).

"In applications for ADA paratransit eligibility, the entity may require the applicant to indicate whether or not he or she travels with a personal care attendant" (§ 37.125(i)).

Discussion

A personal care attendant (PCA), as explained in Appendix D to § 37.121, is "someone designated or employed specifically to help the eligible individual meet his or her personal needs." [6] A PCA typically assists with one or more daily life activities such as providing personal care, performing manual tasks, or providing assistance with mobility or communication. PCA assistance is not always needed during a complementary paratransit trip itself; because of the nature of typical PCA functions, it is most likely the services provided by a PCA would be required throughout the day at the passenger's destination.

PCAs are sometimes family members or friends. In some instances, PCAs are other individuals with a disability. This might be an individual with a physical disability who assists someone with a vision disability or who accompanies an individual with an intellectual disability who cannot travel independently.

Section 37.123(f)(1) grants complementary paratransit riders the right to be accompanied by "at least one" companion. Section 37.123(f)(2) obligates transit agencies to accommodate additional companions if space is available, meaning that they do not displace other eligible riders. Such companions can be a spouse, a child, a coworker, a friend, or anyone else traveling with riders.

PCAs differ from companions. While both accompany riders with disabilities, PCAs also assist riders with a daily life activity. Appendix D to § 37.123 notes, "a companion (e.g., friend or family member) does not count as a personal care attendant unless the eligible individual regularly makes use of a personal care attendant and the companion is actually acting in that capacity."

[6] State agency requirements governing attendant services that may be more restrictive (i.e., limited to certain paid or licensed individuals) are not relevant for complementary paratransit purposes. Transit agencies may not require attendants to be paid or deemed "attendants" by state agencies to qualify as a PCA.

To be viewed as "accompanying" an eligible rider, PCAs and companions must board and disembark at the same locations as eligible individuals. This means that transit agencies are not required to transport PCAs and companions to or from other locations.

To ensure space availability for all riders, it is appropriate for transit agencies to require riders making trip reservations to indicate that they will be traveling with a PCA or companion.

As noted in Circular Section 8.4.6, PCAs pay no fare but transit agencies are permitted to charge companions the same fare charged to ADA paratransit eligible riders. Agencies are not required under § 37.123(f) to allow a complementary paratransit rider to be accompanied by more than one PCA at a time. The section of the regulations references "a personal care attendant" in the singular. In some cases, however, a complementary paratransit rider might want to bring along more than one companion.

9.8.1 Eligibility Considerations and PCAs

During the eligibility determination process, a transit agency may ask applicants if they sometimes travel with a PCA. However, whether a rider travels with a PCA does not have a bearing on eligibility. As noted in Appendix D to § 37.123, this step is taken to "prevent potential abuse" of the PCA provision by documenting that the rider travels with a PCA. By noting the need for a PCA in a rider's application, the agency can more easily determine if an individual traveling with the rider is a PCA or simply a companion, which in turn simplifies determining required fares, because a companion pays the fare while a PCA does not.

Even when applicants seeking ADA paratransit eligibility indicate they always need a PCA for travel, a transit agency-imposed requirement to always travel with a PCA is inconsistent with § 37.5(e).[7] (See Circular Section 2.2.5.) Some riders may be able to use complementary paratransit unattended by a PCA for some trips (e.g., those ending at a destination familiar to them).

9.9 Service for Visitors

Requirement

"Each public entity required to provide complementary paratransit service under § 37.121 of [Part 37] shall make the service available to visitors as provided in this section" (§ 37.127(a)).

"For purposes of this section, a visitor is an individual with disabilities who does not reside in the jurisdiction(s) served by the public entity or other entities with which the public entity provides coordinated complementary paratransit service within a region" (§ 37.127(b)).

Discussion

This requirement obligates transit agencies to provide complementary paratransit service to individuals with disabilities visiting their area. Visitors are defined as individuals who reside outside an agency's jurisdiction. In cases where multiple transit agencies have developed a coordinated regional paratransit service, visitors are defined as those residing outside of the regional jurisdiction. Appendix D to § 37.127 explains:

> [Section 37.127] requires each entity having a complementary paratransit system to provide service to visitors from out of town on the same basis as it is provided to local residents. By "on

[7] There is one exception. An agency may require an attendant as a condition of providing service to an individual it otherwise had the right to refuse for conduct reasons under § 37.5(h). For more information, see Circular Section 2.2.5.

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

FTA notes that granting visitor eligibility is a fairly simple and quick process enabling individuals to contact the host agency to learn what is required and then being able to easily meet the requirements. This also means that upon receipt of any required documentation described below, transit agencies are to quickly enter necessary information into any databases or systems to permit visitors to place trip requests. FTA envisions this as a process that can often be completed the same day or no more than one day later.

9.9.1 Visitors with Eligibility from Another Transit Agency

Requirement

"Each public entity shall treat as eligible for its complementary paratransit service all visitors who present documentation that they are ADA paratransit eligible, under the criteria of § 37.125 of [Part 37], in the jurisdiction in which they reside" (§ 37.127(c)).

Discussion

Individuals that other transit agencies have determined to be ADA paratransit eligible can present documentation of eligibility received from these other agencies. As discussed in Appendix D to § 37.123, host transit agencies "will give 'full faith and credit' to the ID card or other documentation from the other [transit agency]." Agencies must accept this documentation directly from the individual and not require that the documentation be provided directly from the individual's home transit agency.

9.9.2 Visitors Without Eligibility from Another Transit Agency

Requirement

"With respect to visitors with disabilities who do not present such documentation, the public entity may require the documentation of the individual's place of residence and, if the individual's disability is not apparent, of his or her disability. The entity shall provide paratransit service to individuals with disabilities who qualify as visitors under paragraph (b) of this section. The entity shall accept a certification by such individuals that they are unable to use fixed route transit" (§ 37.127(d)).

Discussion

Individuals with disabilities might not have documentation of ADA paratransit eligibility from another transit agency because they reside in areas without public transit or they have not applied for eligibility in their home area. Asking such individuals to provide proof of residence to verify they qualify as a visitor is appropriate. For visitors whose disability is apparent, § 37.127(d) prohibits agencies from requiring additional documentation. For visitors whose disability is not apparent (e.g., cognitive disability or cardiac condition), requiring documentation of disability, such as a letter from a medical professional or eligibility for other services based on a determination of disability, is permitted. Once this basic documentation is provided, Appendix D to § 37.127 states that "the local provider will make service available on the basis of the individual's statement that he or she is unable to use the fixed route transit system."

9.9.3 Duration of Visitor Eligibility

Requirement

"A public entity shall make the service to a visitor required by this section available for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during such 365-day period. In no case shall the public entity require a visitor to apply for or receive eligibility certification from the public entity before receiving the service required by this section" (§ 37.127(e)).

Discussion

This requirement obligates transit agencies to provide visitors with complementary paratransit service for any combination of 21 days during a 365-day period beginning with the visitor's first use of the service. This requirement prohibits agencies from requiring visitors to apply for ADA paratransit eligibility. However, for visitors requesting service beyond the 21 days in the 365-day period, it is appropriate to ask such visitors to apply through the agency's eligibility process. An optional good practice is to ask visitors when they first call if they expect to use the service for more than 21 days in the next 365-day period and to offer application materials if they answer in the affirmative.

9.10 Access to Information

9.10.1 Providing Accessible Information and Materials

Requirement

"All information about the process, materials necessary to apply for eligibility, and notices and determinations concerning eligibility shall be made available in accessible formats, upon request" (§ 37.125(b)).

Discussion

In addition to the general requirement in § 37.167(f) for transit agencies to provide service information in accessible formats (see Circular Section 2.8), the DOT ADA regulations in § 37.125(b) specifically require ADA paratransit materials to be in accessible formats. This accessible format requirement covers brochures or public information describing ADA paratransit eligibility and the application process, the application form, letters of determination, and information on the appeal process, as well as other information and materials.

As discussed in Appendix D to § 37.125, "A document does not necessarily need to be made available in the format a requester prefers, but it does have to be made available in a format the person can use. There is no use giving a computer disk to someone who does not have a computer, for instance, or a braille document to a person who does not read braille."

9.10.2 Providing Title VI Language Access

Transit agencies that receive Federal funds also have obligations under Title VI of the Civil Rights Act of 1964 for ensuring individuals with limited English proficiency (LEP) can access their programs and activities. These obligations are described in FTA Circular 4702.1B, Chapter III. Because of these requirements, agencies must ensure, for example, that LEP individuals are able to have access to information on complementary paratransit service and how to apply. The Title VI Circular notes specifically that agencies must translate vital text, including "an ADA complementary paratransit eligibility application." Agencies must also in some cases provide foreign language interpreter services so

that LEP individuals may participate, for example, in interviews, assessments, and appeal processes related to eligibility denials or no-show suspensions. A failure to translate vital text or to provide foreign language interpreter services at no cost to an LEP individual could result in a denial of meaningful access by a transit agency to that individual in violation of Title VI. (See Circular Section 9.12.)

9.11 Other Process Considerations

9.11.1 Confidentiality of Applicant Information

Determination of ADA paratransit eligibility is likely to include collecting personally identifiable information (PII), including information about disabilities and health conditions. Transit agencies are not subject to the Health Insurance Portability and Accountability Act's (HIPAA) privacy and security rules. However, according to the Transit Cooperative Research Program's (TCRP) Legal Research Digest 46:

> [S]ome state statutes impose an obligation on a person or entity not to disclose health information without an individual's reauthorization of its disclosure. Even in the absence of a state statute, persons or entities that disclose an individual's health information may be subject to civil claims under state constitutional or statutory provisions or at common law for invasions of privacy and other claims in tort or for breach of contract.[8]

FTA recommends that transit agencies keep PII confidential, limit distribution to only those who need access, and keep application files in a secure location. FTA also recommends informing those involved in reviewing applications and making determinations of the need to maintain confidentiality.

Optional good practices include developing information security and confidentiality policies and plans, informing and training all employees who receive protected information of their responsibilities, and requiring all employees to sign statements acknowledging their responsibilities and agreeing to protect and keep information confidential. Such optional practices also apply to the appeal process, including requiring individuals hearing appeals to maintain strict confidentiality and requiring individuals involved in hearing appeals to sign confidentiality policy statements. Another optional good practice is to require those involved in hearing appeals to return all application information after deciding an appeal.

FTA notes that some transit agencies request social security numbers (SSNs) as part of the application process in order to establish a unique identifier for each applicant. FTA discourages agencies from requesting SSNs because the information is not needed for a determination of eligibility and collecting and storing SSNs creates additional data security responsibilities. FTA encourages agencies to use other unique identifiers.

In some instances, it is important to communicate rider information to drivers to ensure safe, appropriate service while maintaining confidentiality. In these cases, an optional good practice is to add information to run manifests without including specific information on the rider's specific disability. This practice protects confidentiality while providing drivers important operational information.

9.11.2 Coordination of Eligibility Determination Processes

FTA encourages transit agencies with contiguous service areas or serving a defined region to coordinate eligibility determinations to facilitate regional travel. An example of such coordination is in the San

[8] Transportation Research Board, Transit Cooperative Research Program (TCRP), Legal Research Digest 46, "How the Health Insurance Portability and Accountability Act (HIPAA) and Other Privacy Laws Affect Public Transportation Operations" (July 2014).

Francisco Bay area, which has a Regional Eligibility Database (RED). Approximately 20 area transit providers record eligibility data for their riders into the RED and then access this data to verify eligibility for riders approved by another provider.

9.12 No-Show Suspensions

Requirement

"The entity may establish an administrative process to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips.

(1) Trips missed by the individual for reasons beyond his or her control (including, but not limited to, trips which are missed due to operator error) shall not be a basis for determining that such a pattern or practice exists.

(2) Before suspending service, the entity shall take the following steps:

> (i) Notify the individual in writing that the entity proposes to suspend service, citing with specificity the basis of the proposed suspension and setting forth the proposed sanction.
>
> (ii) Provide the individual an opportunity to be heard and to present information and arguments;
>
> (iii) Provide the individual with written notification of the decision and the reasons for it.

(3) The appeals process of paragraph (g) of this section is available to an individual on whom sanctions have been imposed under this paragraph. The sanction is stayed pending the outcome of the appeal" (§ 37.125(h)).

Discussion

Section 37.125(h) permits transit agencies to suspend riders who "establish a pattern or practice of missing scheduled trips" after providing a rider due process. As discussed in Appendix D to § 37.125, a "pattern or practice" involves "intentional, repeated or regular actions, not isolated, accidental, or singular incidents." The purpose of a suspension process would be to deter or deal with chronic "no-shows."

Only actions within the control of the individual may count as part of a pattern or practice. As Appendix D to § 37.125 explains,

> Missed trips due to operator error are not attributable to the individual passenger for this purpose. If the vehicle arrives substantially after the scheduled pickup time, and the passenger has given up on the vehicle and taken a taxi or gone down the street to talk to a neighbor, that is not a missed trip attributable to the passenger. If the vehicle does not arrive at all, or is sent to the wrong address, or to the wrong entrance to a building, that is not a missed trip attributable to the passenger. There may be other circumstances beyond the individual's control (e.g., a sudden turn for the worse in someone with a variable condition, a sudden family emergency) that make it impracticable for the individual to travel at the scheduled time and also for the individual to notify the entity in time to cancel the trip before the vehicle comes. Such circumstances also would not form part of a sanctionable pattern or practice.

9.12.1 Late Cancellations

The regulations only address proposed service suspensions due to a pattern or practice of missing scheduled trips. However, FTA permits transit agencies to count late cancellations as no-shows for trips

cancelled less than 1 to 2 hours prior to the pickup time negotiated with the rider, and only under the same circumstances (i.e., not due to reasons beyond the rider's control).

9.12.2 Establishing that a Pattern or Practice Exists

In order to establish whether or not a particular rider has established a "pattern or practice" of missing scheduled trips, a transit agency must consider the rider's frequency of use of the paratransit service. Three no-shows in 30 days for a regular rider who uses the service daily to commute to and from work as well as for other purposes, for example, is very different from three no-shows by a customer who schedules only five trips per month.

To help define what constitutes an abuse of the service, FTA recommends that transit agencies establish a two-step process for determining whether a pattern or practice exists. The first step is to establish thresholds for suspensions that represent multiples of the systemwide average. For example, if the systemwide average for no-shows is 5 percent of all scheduled trips, the threshold for potential suspensions might be greater than 10–15 percent.

The second part of this two-step process is to establish thresholds for the minimum number of no-shows within a given interval, below which suspensions would not be imposed. For example, a pattern or practice might be defined as three or more no-shows in a given month that exceed 10 percent of scheduled trips. If the policy only set a 10 percent frequency and did not also include at least three no-shows, a passenger taking only 10 trips in a month would face suspension after a single no-show, which would not represent a pattern or practice.

A sample no-show policy that offers an example of how to address both the absolute number and frequency of no-shows is provided in Attachment 9-4.

Regardless of the methodology chosen, agencies must be prepared to explain to FTA during oversight activity how their threshold represents a pattern or practice consistent with § 37.125(h).

Because transit agencies cannot use no-shows beyond a rider's control as a basis for determining a pattern or practice of missing scheduled trips, an optional good practice is to include statements to this effect in all public information describing no-show policies.

9.12.3 Notifying Riders of Proposed Suspensions and Right to Appeal

Section 37.125(h)(3) extends the appeal requirements (e.g., notification and an opportunity to be heard in person) for ADA paratransit eligibility denials under § 37.125(g) to suspensions for no-shows. As Appendix D to § 37.125 notes, "Once an entity has certified someone as eligible, the individual's eligibility takes on the coloration of a property right. . . . Consequently, before eligibility may be removed 'for cause' under this provision, the entity must provide administrative due process to the individual."

If a transit agency proposes to suspend a rider, it must first notify the individual in writing (using accessible formats where necessary) and cite with specificity the basis of the proposed suspension consistent with § 37.125(h)(2). As Appendix D to § 37.125 explains,

> If the entity proposes to impose sanctions on someone, it must first notify the individual in writing (using accessible formats where necessary). The notice must specify the basis of the proposed action (e.g., Mr. Smith scheduled trips for 8 a.m. on May 15, 2 p.m. on June 3, 9 a.m. on June 21, and 9:20 p.m. on July 10, and on each occasion the vehicle appeared at the scheduled time and Mr. Smith was nowhere to be found) and set forth the proposed sanction (e.g., Mr. Smith would not receive service for 15 days).

FTA recommends that the notifications also inform riders that no-shows beyond their control will not be counted and indicate how riders can explain the no-shows were beyond their control.

Section 37.125(g)(2) also obligates transit agencies to inform riders that they have the right to appeal the proposed suspension (with an option for an in-person appeal), consistent with the appeals process outlined in § 37.125(g). (See Circular Section 9.7.) This means including instructions on the appeal process, and how to request an appeal. Under § 37.125(h)(3), suspensions are stayed pending the outcome of the appeal.

An optional good practice is to regularly notify riders of individual no-show charges to allow them an opportunity to dispute or explain no-shows beyond their control, or have a mechanism in place for riders to call or otherwise proactively report why they missed specific trips. FTA notes, however, that riders can appeal the basis for proposed suspensions even if they elect not to dispute any individual no-show.

For riders who have accumulated several no-shows and may soon be facing service suspensions, another optional good practice is to send warning letters before a rider has reached the point of suspension. Effective no-show suspension warning letters list the no-shows recorded, note that additional no-shows could result in a suspension, and encourage riders to call if they feel any of the no-shows were recorded in error or were outside the rider's control. Providing this notification after only a few no-shows makes it easier for riders to recall the actual circumstances surrounding the no-shows and discourages future no-shows by the rider.

FTA recommends that transit agencies have robust procedures to verify that no-shows were recorded correctly before proposing service suspensions, including reviewing a vehicle's location and arrival and departure times for each trip, and to remove any incorrectly recorded no-shows. For example, for agencies that use 30-minute pickup windows and require drivers to wait at least 5 minutes before departing without a rider (see Circular Section 8.5.3), this means verifying that drivers did not:

- Arrive before the 30-minute window and depart before waiting at least 5 minutes within the 30-minute pickup window without picking up the rider (a missed trip)
- Arrive within the 30-minute window and depart before waiting at least 5 minutes without making contact with the rider (a missed trip)
- Arrive after the 30-minute window without picking up the rider (a missed trip)

This also means verifying trip addresses to ensure that trip-booking errors did not occur and that vehicles were at the correct location.

9.12.4 Duration of Suspensions

Section 37.125(h) requires suspensions to be "for a reasonable period of time." FTA considers up to 1 week for the first offense a reasonable duration. Subsequent offenses may justify longer suspensions. A second violation might result in a suspension for a few days longer than the first violation and so forth. While it is reasonable to gradually increase the duration of suspensions to address chronic no-shows, FTA generally considers suspensions longer than 30 days to be excessive.

9.12.5 Prohibition Against Financial Penalties

While § 37.125(h) permits a transit agency to establish an administrative process to suspend, for a reasonable amount of time, complementary paratransit service to eligible individuals who establish a pattern or practice of missing scheduled trips, there are no provisions for imposing other types of penalties for no-shows. This includes financial penalties, including charging fares for trips scheduled but not taken or requiring payment of a fine in order to restore complementary paratransit service. In some cases, however, agencies and riders facing suspensions have mutually agreed on payments for missed

trips in lieu of suspensions. Where such arrangements are made voluntarily, FTA has elected not to intervene.

9.12.6 Round-Trips and No-Shows

Because riders have an independent right to each trip, transit agencies that assess riders with no-shows for the outgoing portion of a round-trip are advised not to automatically assume that the return trip is not needed. Absent indications from riders or other reliable sources that they will not need return trips, FTA requires return trips and subsequent trips to remain on schedules. In these instances, an optional good practice is to attempt to contact riders who no-showed the outgoing trip to inquire about return trips to avoid the cost of sending vehicles unnecessarily and penalizing the rider for another no-show.

9.12.7 Optional Practices for Minimizing No-Shows

FTA encourages transit agencies to develop operating procedures that minimize no-shows. Optional good practices include:

- Establishing a brief period (e.g., 5 minutes) within on-time pickup windows during which drivers will wait for riders before departing.
- Ensuring all drivers provide the same level of rider assistance. Inconsistencies can create rider expectations that result in no-shows if some drivers go to a rider's door while others only wait at the curb or if policies for assistance beyond the curb are not consistently implemented.
- Repeating and verifying key information during trip booking. This includes day and date, addresses, special pickup instructions (e.g., "side door"), and scheduled pickup times and windows.
- Making it easy for riders to cancel trips they no longer need. For example, transit agencies might provide a 24-hour trip cancellation phone number for riders to leave messages when the office is closed.
- Contacting riders who have repeat no-shows before a pattern or practice develops to determine if they understand how to use the service.
- Establishing a process to adjust subscription schedules for riders whose subscription trips are affected. No-shows often occur from a failure to adjust subscription schedules when temporary changes occur. For example, a rider who has subscription services may go on vacation and inform the transit agency of the vacation, but the subscription schedule may remain unchanged. Note that failure to properly manage subscription trips is an agency failure and would not be held against the rider.
- Maintaining close communications with agencies that may provide lists of riders who receive subscription service. No-shows sometimes occur if these lists are not updated or if agencies do not accurately communicate which riders are to be scheduled each day. Again, this would be a failure between the two agencies, not something that would be held against the rider.

Attachment 9-1
Assessing Abilities to Use Fixed Route Transit Services

Sample/Draft Task List (to be Discussed and Refined with Local Input)

Following is an optional draft list of tasks to be considered when developing a master task list with local input. Tasks must be performed independently, with the exception of transit personnel providing assistance with boarding, alighting, and operation of lifts, ramps and securement systems. With a reasonable level of effort or risk, can the applicant independently and consistently:

- Get and remember transit system information
- Walk/wheel to and from transit stop/station
  - Throughout area – up to 3/4 mile
  - Over various surfaces
  - Over various terrain
  - Up/down curbs
  - Up/down curb ramps
  - Cross streets of various widths and with various controls
  - Find way in familiar and unfamiliar settings
- Enter and exit transit stations
  - Flights of stairs
  - Elevators and escalators
  - Navigating complex stations
- Wait at a stop/station for transit vehicle with and without benches/shelters
- Locate and recognize bus/train to take Single route and multiple routes with transfers
- Board and exit vehicle
  - Inaccessible vehicles
  - Accessible vehicles (lift, ramp)
- Pay fare
- Get to seat/securement area
- Ride in seated or standing position
- Recognize destination
- Signal for stop
- Perform above tasks in various weather and environmental conditions
  - Snow, ice, rain, heat, humidity, cold, smog
  - Bright light, low light, background noise
- Handle unexpected situations
- Remain safe when traveling alone (related to personal judgment and safety skills, not general public safety)[1]

[1] See Circular Section 9.2.1.

Sample/Draft Functional Skills Lists (to be Discussed and Refined with Local Input)

Physical Functional Skills List

Physical functional abilities needed to perform tasks required to use fixed route transit system:

- Walking speed
- Endurance
- Coordination
- Strength
- Balance
- Gait
- Range of motion
- Dexterity

Cognitive Functional Skills List

Cognitive functional abilities needed to perform tasks required to use fixed route transit system:

- Orientation to person, place and time
- Judgment and safety skills
- Problem solving
- Coping skills
- Short and long-term memory
- Concentration (attention to task)
- Ability to seek and act on directions
- Ability to process information
- Ability to communicate needs
- Consistency
- Behavioral skills

Sensory Functional Skills List

Sensory functional abilities needed to perform tasks required to use fixed route transit system:

- Orientation to place
- Directional wayfinding
- Ability to detect changes on surfaces
- Ability to detect environmental cues (hearing)
- Proficiency in using mobility aids

Attachment 9-2A
Sample Unconditional ADA Paratransit Eligibility Letter

[On Transit Agency Letterhead]

[Date]

[Name]
[Mailing Address]

Dear [Applicant Name]:

We have completed our review of your recent request for [name of complementary paratransit service], [transit agency's] ADA paratransit service. Based on the information provided, we have determined that you are UNCONDITIONALLY ELIGIBLE for [name of complementary paratransit service] service. This means that you can use [name of complementary paratransit service] for any trips you need to make.

We have noted in your rider file that you sometimes travel with a personal care attendant (PCA). A PCA is someone designated or employed specifically to help you meet your personal needs, and is different from a guest or a companion. Your PCA may accompany you at no additional charge.

Your eligibility for [name of complementary paratransit service] is valid through [EXPIRATION DATE], after which you will need to request a continuation of your eligibility. We will notify you in advance of this expiration date to remind you to reapply and will send you a recertification request form at that time.

Enclosed is a copy of [insert name of a rider's guide], which explains the [name of complementary paratransit service] service and how to use it. The rider's guide includes helpful tips for using the service, so please be sure to read it. If you have any questions about the service, please call our Customer Service office at [phone number].

In addition to using [name of complementary paratransit service], this letter of eligibility also entitles you to use similar ADA paratransit services at other transit systems across the country as a visitor for up to 21 days per year. Simply provide the transit agency in the city you plan to visit with a copy of this letter to obtain approval to travel as a visitor.

If you have any questions about this determination of eligibility, please call our ADA Paratransit Eligibility office at [phone number].

Sincerely,

[ADA Paratransit Eligibility Manager]

Attachment: Rider's Guide

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Attachment 9-2B
Sample Conditional ADA Paratransit Eligibility Letter

[On Transit Agency Letterhead]

[Date]

[Name]
[Mailing Address]

Dear [Applicant Name]:

We have completed our review of your recent request for [name of complementary paratransit service], the ADA paratransit service provided by the [transit agency's]. Based on the information provided, we have determined that you are CONDITIONALLY ELIGIBLE for [name of complementary paratransit service] service. This means we determined that you are able to use fixed route bus [and rail] service(s) under certain conditions and are eligible to use [name of complementary paratransit service] service when you are not able to use fixed route buses [and trains]. Please review the attached pages, which describe the conditions under which you can use the [name of complementary paratransit service] service as well as the basis for our determination.

We have noted in your rider file that you sometimes travel with a personal care attendant (PCA). A PCA is someone designated or employed specifically to help you meet your personal needs and is different from a guest or a companion. Your PCA may accompany you at no additional charge.

Your eligibility for [name of complementary paratransit service] is valid through [EXPIRATION DATE], after which you will need to request a continuation of your eligibility. We will notify you in advance of this expiration date to remind you to reapply, and will send you a copy of a recertification request form at that time.

Enclosed is a Rider's Guide that explains the [name of complementary paratransit service] service and how to use it. The Rider's Guide includes helpful tips for using the service, so please be sure to read it. If you have any questions about the service, please call our Customer Service Office at [phone number].

In addition to using [name of complementary paratransit service], this letter of eligibility also entitles you to use similar ADA paratransit services at other transit agencies across the country for up to 21 days of visitor service per year. Simply provide a copy of this letter to receive approval to travel as a visitor.

If you have any questions about this determination of eligibility, please call the [transit agency's] ADA Paratransit Eligibility Office at [phone number]. If you do not agree with the eligibility you have been granted, you have the right to appeal this determination. Requests for appeals must be submitted in writing. Copies of the Appeal Policy, as well as an Appeal Request Form, are attached.

Sincerely,

[ADA Paratransit Eligibility Manager]

Attachments:

Rider's Guide
Conditions of eligibility
Basis for the determination
Appeal policy and Appeal request form

Conditions of Eligibility (Sample)

Example A

The following might be appropriate for an applicant who uses a manual wheelchair:

We determined that, because of your disability, you are not able to use the fixed route bus [and rail] service(s) under the following conditions. When these conditions exist, you are therefore eligible for [name of complementary paratransit service] service.

- You must travel more than 4 blocks to get to a bus stop [or train station], or from a bus stop [or train station] to your destination
- Sidewalks do not exist or are inaccessible (absence of curb ramps, broken pavement, or steep cross-slopes), which prevents you from getting to or from bus stops [or train stations]
- [Train stations that have stairs but no elevators prevent you from entering or exiting these stations]
- Steep hills prevent you from getting to or from bus stops [or train stations]
- The presence of snow or ice prevents you from getting to or from bus stops [or train stations]
- Conditions at bus stops you wish to use prevent bus drivers from deploying lifts or ramps at these stops

Example B

The following might be appropriate for an applicant with an intellectual disability who has completed travel training to make one trip on the fixed route bus system:

You successfully completed travel training to use the fixed route bus service for some trips. Therefore, you are not eligible to use [name of complementary paratransit service] service for:

- Your trips from 50 Elm Street to 10 Main Street, or returning from 10 Main Street to 50 Elm Street (your trips to and from work)

Please continue to ride the fixed route bus for the above trips. For other trips, which you have not learned how to make by fixed route bus, you are eligible to use the [name of complementary paratransit service].

Basis for the Determination (Sample)

Example A

The following language might be appropriate for a rider granted conditional eligibility:

You indicated in your application (and interview) that you are able to travel up to 4 blocks to get to and from bus stops [or train stations]. You also indicated that you are able to get to and from bus stops [and train stations] as long as the route features level, accessible sidewalks and curb ramps. You also indicated that when there is an accumulation of snow you are not able to get to or from bus stops [or train stations].

During your in-person assessment, you were able to travel along the outdoor route at the Transportation Assessment Center for the first 3 blocks at a steady pace and completed these 3 blocks in 10 minutes. Your pace slowed during the 4th block along the route and this fourth block took 4 minutes to complete. We also contacted [name of professional contacted to verify disability and functional abilities], who also indicated that you could go 4 blocks to get to or from bus stops and [train stations].

Example B

The following language might be appropriate for a rider granted conditional eligibility:

You indicated in your application (and interview) that you had successfully completed travel training provided by the Center for Independent Living (CIL) and learned to take the bus from your home at 50 Elm Street to and from work at 10 Main Street. You said that you are currently using fixed route buses to make these trips to and from work. With your permission, we contacted the CIL and they confirmed that you completed travel training for these trips and that you are currently making these trips independently using fixed route buses.

Your score on the FACTS (Functional Assessment of Cognitive Transit Skills) test (115 out of 146 points), which you took at the Transportation Assessment Center, also confirmed that you are able to learn to make some trips by fixed route buses with instruction.

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Attachment 9-2C
Sample Temporary ADA Paratransit Eligibility Letter

[On Transit Agency Letterhead]

Date

Name
[Mailing Address]

Dear [Applicant Name]:

We have completed our review of your recent request for [name of complementary paratransit service], [transit agency's] ADA paratransit service. Based on the information provided, we have determined that you are eligible for [name of complementary paratransit service] service on a TEMPORARY basis.

Your eligibility for [name of complementary paratransit service] is valid for [xx] months, through [EXPIRATION DATE]. Should you need [name of complementary paratransit service] service beyond this date, you will need to request a continuation of your eligibility.

We are granting you temporary eligibility because [indicate reasons for temporary eligibility, such as:] "this was the period of time you indicated your current condition would prevent you from using the fixed route transit service"; or "the information provided by you and [professional contacted] indicated that there could be a change in your ability to use the fixed route service after [xx] months as a result of treatment you are receiving"; or "your application materials indicated that you have the ability to use fixed route transit when provided instruction to use the service. Attached is information about our free travel training service. We recommend that you contact [contact person] to enroll in the service. We will determine your ongoing eligibility for [name of complementary paratransit service] after you have participated in the travel training program."

We have noted in your rider file that you sometimes travel with a personal care attendant (PCA). A PCA is someone designated or employed specifically to help you meet your personal needs and is different from a guest or a companion. Your PCA may accompany you at no additional charge.

Enclosed is a Rider's Guide that explains the [name of complementary paratransit service] service and how to use it. The Rider's Guide includes helpful tips for using the service, so please be sure to read it. If you have any questions about the service, please call our Customer Service office at [phone number].

In addition to using [name of complementary paratransit service], this letter of eligibility also entitles you to use similar ADA paratransit services at other transit systems across the country as a visitor for up to 21 days per year. Simply provide the transit agency in the city you plan to visit with a copy of this letter to obtain approval to travel as a visitor.

If you have any questions about this determination of eligibility, please call the [transit agency's] ADA Paratransit Eligibility office at [phone number]. If you do not agree with this eligibility determination, you have the right to appeal this decision. We require that you request an appeal in writing. Copies of our appeal policy, as well as an appeal request form, are attached.

Sincerely,

[ADA Paratransit Eligibility Manager]

Attachments:

Rider's Guide
Appeal policy and Appeal request form

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Attachment 9-2D
Sample Denial of ADA Paratransit Eligibility Letter

[On Transit Agency Letterhead]

Date

Name
[Mailing Address]

Dear [Applicant Name]:

We have completed our review of your recent request for [name of complementary paratransit service], [transit agency's] ADA paratransit service. Based on the information provided, we have determined that you are able to use fixed route buses [and trains] and are not prevented by a disability from using the regular fixed route transit service. You are therefore NOT ELIGIBLE for [name of complementary paratransit service] service.

The basis for our decision is explained on the attached page, Basis for the Determination. If you do not agree with this eligibility determination, you have the right to appeal this decision. We require that you request an appeal in writing. Copies of our appeal policy, as well as an appeal request form, are attached.

Attached is information about [transit agency's] fixed route bus [and train] service(s). Also attached is information about our free Travel Training program, which is designed to assist people with using buses and trains. Please contact us if we can assist you with using our bus [or train] service. For information about bus and train schedules, or for assistance planning trips by bus or train, call our Customer Service office at [phone number].

If you have any questions about this eligibility determination, please call the [transit agency] ADA Paratransit Eligibility office at [phone number].

Sincerely,

[ADA Paratransit Eligibility Manager]

Attachments:

Basis for the Determination
Fixed route bus [and train] information
Travel training program information
Appeal policy and Appeal request form

Basis for the Determination (Sample)

You did not indicate in your application (or interview) that you are prevented by a disability from using fixed route buses and trains. You indicated you could obtain, use and remember bus schedule information, find your way to and from bus stops and train stations, walk up to 12 blocks, and cross streets and intersections. You also indicated that you sometimes don't travel when it is too hot or cold, or when it is snowing. While these weather conditions make travel outside more difficult and uncomfortable, they do not prevent you from traveling outside. You indicated that your main problem was that buses and trains do not go to all the places you need to travel and that sometimes you would need to take several buses to get where you need to go.

With your permission, we contacted [name of professional who provided information], who confirmed that you have high blood pressure and hypertension and that you were taking medications for these health conditions, which were not serious enough to prevent you from using fixed route buses and trains.

You participated in the outdoor walk at the Transportation Assessment Center and were able to complete the 1/2-mile route in 16 minutes with no difficulty.

While using fixed route public transit may be less convenient than [name of complementary paratransit service] service, ADA paratransit eligibility is limited to people whose disabilities prevent them from using fixed route buses and trains.

Attachment 9-3
Sample ADA Paratransit
Eligibility Determination Appeal Request Form

Please complete this form if you would like to appeal our determination regarding your eligibility for the [name of complementary paratransit service]. Once completed, please return it to the address listed below. Completed forms must be postmarked within 60 days of the date of your eligibility determination letter.

Name: _____

Street address: _____

City: _____ State _____ Zip _____

Telephone number with area code: (_____) - _____

Select one of the following:

____ I choose to submit additional information for the Appeal Panel to consider, but do not want to appeal in person. (If you choose this option, please send all additional information you would like the Appeal Panel to consider along with this form. Please consider the information on the page attached to your letter of determination titled "Basis for the Determination" when preparing additional information.)

____ I choose to appeal in person. (If you choose this option, we will contact you to schedule a mutually agreeable day and time for the appeal hearing. You may bring additional information to the hearing and can attend with others who are able to provide information on your behalf.)

Applicant signature: _____

Date: _____

Return completed form to:

[Office]
[Transit agency]
[Address]

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Attachment 9-4
Sample No-Show Policy

[Transit Agency Instructions]

FTA recommends that a transit agency's no-show policy include, at a minimum:[1]

- General policy statement
- Definition of no-shows
- Description of minimum driver wait times within pickup windows
- Definition of late cancellations and how to cancel trips (optional)
- Examples of no-shows (and late cancellations) beyond a rider's control and how riders should communicate such instances
- Statement that no-shows due to transit agency errors do not count
- Statement that subsequent trips after a no-show will not be automatically cancelled, and that passengers need to cancel any trips they do not intend to take
- The transit agency's process to notify riders of recorded no-shows (or late cancellations)
- What constitutes a pattern and practice of excessive no-shows
- Time periods of potential service suspensions
- Instructions for appealing proposed suspensions

[1] FTA recommends that transit agencies develop their no-show policies with input from complementary paratransit riders and other people with disabilities. (See Circular Section 9.12 for a discussion of the regulatory requirements related to § 37.125(h).)

General Policy Statement on No-Shows (Sample)

[Transit agency][2] understands that because [name if complementary paratransit service] requires trips to be scheduled in advance, riders may sometimes miss scheduled rides or forget to cancel rides they no longer need. [Transit agency] also understands that riders may sometimes miss scheduled trips or be unable to cancel trips in a timely way for reasons that are beyond their control. However, repeatedly missing scheduled trips [or failing to cancel trips in a timely way] can lead to suspension of service. The following information explains [transit agency's] no-show policy.

Definitions: No-Show, Pickup Window, and Late Cancellation (Sample)

No-show

A no-show occurs when a rider fails to appear to board the vehicle for a scheduled trip. This presumes the vehicle arrives at the scheduled pickup location within the pickup window and the driver waits at least [5] minutes.

Pickup Window

The pickup window is defined as [from 15 minutes before the scheduled pickup time to 15 minutes after the scheduled pickup time]. Riders must be ready to board a vehicle that arrives within the pickup window. The driver will wait for a maximum of [5] minutes within the pickup window for the rider to appear.

Late Cancellation[3]

A late cancellation is defined as either: a cancellation made less than [1 hour][4] before the scheduled pickup time or as a cancellation made at the door or a refusal to board a vehicle that has arrived within the pickup window.

Definition: No-Shows Due to Operator Error or to Circumstances Beyond a Rider's Control (Sample)[5]

[Transit agency] does not count as no-shows [or late cancellations] any missed trips due to our error, such as:

- Trips placed on the schedule in error
- Pickups scheduled at the wrong pickup location
- Drivers arriving and departing before the pickup window begins
- Drivers arriving late (after the end of the pickup window)
- Drivers arriving within the pickup window, but departing without waiting the required [5] minutes

[Transit agency] does not count as no-shows [or late cancellations] situations beyond a rider's control that prevent the rider from notifying us that the trip cannot be taken, such as:

- Medical emergency
- Family emergency

[2] Information in brackets is subject to local agency input.

[3] For transit agencies that choose to count late cancellations as well as no-shows.

[4] FTA permits transit agencies to consider late cancellations as no-shows for trips cancelled less than 1 or 2 hours before the pickup time provided to the passenger at the time the trip was reserved, and only under the same circumstances (i.e., not due to circumstances beyond the rider's control).

[5] Agencies using this sample as a template for their own no-show suspension policies are advised to first familiarize themselves with the content of Circular Section 9.12, consult with the disability community to develop the variables, and ensure that the variables actually represent a pattern or practice of missing scheduled trips and a reasonable period of suspension.

- Sudden illness or change in condition
- Appointment that runs unexpectedly late without sufficient notice

Riders should contact the [complementary paratransit service name] operations center when experiencing no-shows [or late cancellations] due to circumstances beyond their control.

Policy for Handling Subsequent Trips Following No-shows (Sample)

When a rider is a no-show for one trip, all subsequent trips on that day remain on the schedule unless the rider specifically cancels the trips. To avoid multiple no-shows on the same day, riders are strongly encouraged to cancel any subsequent trips they no longer need that day.

Suspension Policies for a Pattern or Practice of Excessive No-shows and Late Cancellations (Sample)

[Transit agency] reviews all recorded no-shows [and late cancellations] to ensure accuracy before recording them in a rider's account.

Each verified no-show [or late cancellation] consistent with the above definitions counts as [1] penalty point. Riders will be subject to suspension after the meet all of the following conditions:

- Accumulate [x] penalty points in one calendar month
- Have booked at least [y] trips that month
- Have "no-showed" or "late cancelled" at least [xx] percent of those trips

A rider will be subject to suspension only if both the minimum number of trips booked and the minimum number of penalty points are reached during the calendar month. [Transit agency] will notify riders by telephone after they have accumulated [x] penalty points and would be subject to suspension should they accumulate [y] additional penalty point[s] that month consistent with the criteria listed in this section of the policy above.

All suspension notices include a copy of this policy, information on disputing no-shows [or late cancellations], and how to appeal suspensions.

Suspensions begin on [Mondays]. The [first violation in a calendar year triggers a warning letter but no suspension]. Subsequent violations result in the following suspensions:

- Second violation: [w-day] suspension
- Third violation: [x-day] suspension
- Fourth violation: [y-day] suspension
- Fifth and subsequent violations: [z-day] suspension

Policy for Disputing Specific No-Shows or Late Cancellations (Sample)

Riders wishing to dispute specific no-shows [or late cancellations] must do so within [x] business days of receiving suspension letters. Riders should contact the [name of complementary paratransit service] operations center at [telephone number], [day] through [day] from [time] a.m. to [time] p.m. to explain the circumstance, and request the removal of the no-show or late cancellation.

Policy for Appealing Proposed Suspensions (Sample)

Riders wishing to appeal suspensions under this policy have the right to file an appeal request, which must be in writing by letter or via email. Riders must submit written appeal requests within [x] business days of receiving suspension letters. Riders who miss the appeal request deadline will be suspended from [name of complementary paratransit service] on the date listed on the suspension notice.

All suspension appeals follow [transit agency's] appeal policy.

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Chapter 10 – Passenger Vessels

10.1 Introduction

This chapter covers passenger vessel service requirements in the U.S. Department of Transportation (DOT) Americans with Disabilities Act (ADA) regulations, which are focused on ensuring nondiscrimination in passenger vessel operations.

Regulations covered in this chapter are from 49 CFR Part 39 and include requirements pertaining to nondiscrimination and access to services, information for passengers, accessibility of landside facilities, assistance to passengers with disabilities, and vessel-related complaint procedures. In addition to FTA grantees that operate ferry service, Part 39 also covers cruise ships and other private entities that fall under the Department of Justice's jurisdiction under Title III of the ADA and its implementing regulations at 28 CFR Part 36. Some provisions in Part 39 are not typically relevant to public water transportation, such as requirements pertaining to reserving accessible cabins for overnight trips or requiring medical documentation of passengers. Other issues such as service animals differ between Part 39 and Part 37, meaning that there are some nuances to accommodating individuals with disabilities on boats versus buses.

The accessibility standards of the vessels themselves are currently reserved under Subpart E of Part 37. The U.S. Architectural and Transportation Barriers Access Board (Access Board), which is charged with establishing accessibility guidelines for the construction and alteration of passenger vessels covered by the ADA, is developing these guidelines, which have not yet been issued. Further information is available at the Access Board's website.

This Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves or replace the need for readers to reference the detailed information in the regulations. FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.

10.1.1 Marine Environments

Compared to land-based transit modes, passenger vessel operators (PVOs) face unique challenges in complying with access requirements because of the marine context in which the vessels operate. The boarding facilities and vessels operate in dynamic marine environments that require site-specific approaches to ensure the safety of all passengers, including those with disabilities, under variable access conditions.

For example, in a salt water tidal context such as New York Harbor or Puget Sound in Washington, an accessible path of travel may differ from one site to another based on different tidal ranges or wind and weather exposure conditions. Passenger vessel operations in a river or lake may need to adapt boarding approaches to a different set of environmental conditions, such as seasonal changes in water levels.

Passenger vessels are also subject to regulatory requirements from multiple agencies on the Federal and local level. These may include Coast Guard licenses and inspection procedures for vessels and crew. New or altered passenger vessel facilities are subject to ADA requirements in addition to Army Corps of

Engineers and local environmental permitting requirements for constructing terminals, piers, and landings.

10.1.2 Applicability

Requirement

"Except as provided in paragraph (b) . . . of this section, [Part 39] applies to you if you are the owner or operator of any passenger vessel, and you are:

(1) A public entity that provides designated public transportation; or

(2) A private entity primarily engaged in the business of transporting people whose operations affect commerce and that provides specified public transportation" (§ 39.5(a)).

"If you are the PVO of a foreign-flag passenger vessel, [Part 39] applies to you only if your vessel picks up passengers at a port in the United States, its territories, possessions, or commonwealths" (§ 39.5(b)).

Discussion

Part 39 covers any PVOs that receive FTA financial assistance to provide public transportation. Specifically, the requirements apply to public entities operating passenger vessels directly and to public or private entities providing services under contract to public entities. Such financial assistance may be used for terminal construction, terminal maintenance, vessel purchase, vessel maintenance, or vessel lease.

Public PVOs

Examples of public PVOs include Washington State Ferries, New York City's Staten Island Ferry, the Casco Bay Lines (Maine), and the San Francisco Bay Ferries. Other public PVOs include parks agencies that operate ferry services to and from park facilities such as the Boston Harbor Islands National Park. Parks agencies that receive FTA funding for vessels or terminals are also subject to the Part 39 requirements.

Private PVOs Operating Under Contract to Public Entities

Private entities operating under contract to public entities are "standing in the shoes" of public entities and are therefore subject to the DOT ADA regulations. (See Circular Section 1.3.2.) Variations of such public/private passenger arrangements include:

- PVOs operating privately owned vessels under contract or franchise agreement to provide scheduled passenger services, using one or more public terminal facilities constructed with FTA funds. One such example is New York Waterways, which has leased terminal space through service franchise agreements with the City of New York and Monmouth County, New Jersey, to provide year-round public commuter ferry service.
- PVOs contracted to operate and maintain publicly owned vessels acquired with FTA funds and using public or private terminal facilities. One such example is Boston Harbor Cruises, which has had contracts with the Massachusetts Bay Transportation Authority (MBTA) to provide year-round commuter ferry service on MBTA-owned vessels.
- PVOs operating both commuter and non-commuter services using vessels acquired with FTA funds. One such example is Boston Harbor Cruises, which has operated a combined-scheduled ferry service and private excursion service under contract with the City of Salem, Massachusetts.

10.1.3 Services Not Covered in This Circular

PVOs providing excursion services such as harbor tours, whale watches, dinner cruises, or charters are not covered in this Circular. Nor does this Circular address passenger vessel operators of U.S. or foreign-flag vessels, including cruise ships. Accordingly, references in the remainder of this chapter to PVOs are for public entities or their contractors.

10.2 Nondiscrimination and Access to Services

Requirement

"As a PVO, you must not do any of the following things, either directly or through a contractual, licensing, or other arrangement:

(1) You must not discriminate against any qualified individual with a disability, by reason of such disability, with respect to the individual's use of a vessel;

(2) You must not require a qualified individual with a disability to accept special services that the individual does not request;

(3) You must not exclude a qualified individual with a disability from or deny the person the benefit of any vessel transportation or related services that are available to other persons, except when specifically permitted by another section of [Part 39]; and

(4) You must not take any action against an individual (e.g., refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by [Part 39] or the ADA" (§ 39.21(a)).

Discussion

This general nondiscrimination requirement represents the foundation for the rest of the regulatory requirements. In the absence of a specific provision covering a particular policy or operating issue, the general nondiscrimination requirements would apply. Specific provisions applicable to PVOs covered under this Circular include:

- Refusing service due to legitimate safety requirements (See Circular Sections 10.2.2 and 10.2.3.)
- Limiting the number of passengers with disabilities on board vessels (See Circular Section 10.2.5.)
- Conditions under which requiring advance notification from passengers with disabilities is permitted (See Circular Section 10.2.6.)

10.2.1 Reasonable Modifications

Requirement

"(1) As a PVO that is a private entity, you must make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless you can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

(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" (§ 39.21(b)).

Discussion

Section 39.21 requires PVOs to make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless they can demonstrate that making the modifications would fundamentally alter the nature of the services, programs, or activities they offer. An example of a reasonable modification might be for emergency evacuation plans.

For example, in collaboration with local public safety officials, the U.S. Coast Guard requires PVOs to have an evacuation plan for fires or emergencies at ferry terminals. For ferry terminals in a tidal coastal setting, the path of travel from terminal to vessel varies. Accordingly, PVOs could employ various systems to provide access under different tide conditions, including (1) multiple types of power-drive mechanical boarding systems including transfer bridges and ramp elevators, (2) non-mechanical ramps and transfer bridges, or (3) a combination of mechanical and non-mechanical ramps and transfer bridges to provide access for different tide conditions.

During an emergency and loss of shoreside power for access systems including mechanical devices, mechanical transfer systems may be shut off. PVOs are obligated to modify their evacuation policies, if necessary, to provide alternative means for passengers with disabilities or impairments to be safely evacuated from a vessel to shore (or alternatively from shore to vessel) by having alternative evacuation equipment and procedures in place. For example, the transfer points typically include one or a combination of the following: manual operating systems for the electrical transfer bridges or ramps, an alternative non-mechanical path of travel ramp system, and/or manually operated gangways. With such alternative equipment in place, a PVO's policy modifications would need to include training programs for personnel to assist all passengers, including those with disabilities or impairments, in the event of mechanical failure of the boarding devices. In addition, policy modifications would also take into account the needs of passengers with visual, hearing, and other disabilities, so that evacuation information is available to all in the event of an emergency.

10.2.2 Refusing Service

Requirement

"As a PVO, you must not refuse to provide transportation or use of a vessel to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part" (§ 39.25(a)).

"You must not refuse to provide transportation or use of a vessel to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers" (§ 39.25(b)).

"If you refuse to provide transportation or use of a vessel to a passenger on a basis relating to the individual's disability, you must provide to the person a written statement of the reason for the refusal. This statement must include the specific basis for your opinion that the refusal meets the standards of § 39.27 or is otherwise specifically permitted by this part. You must provide this written statement to the person within 10 calendar days of the refusal of transportation or use of the vessel" (§ 39.25(c)).

Discussion

The circumstances under which PVOs can refuse service are described in the following sections.

10.2.3 Refusing Service Based on Safety Concerns

Requirement

"As a PVO, you may take action to deny transportation or restrict services to a passenger with a disability if necessitated by legitimate safety requirements. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Example 1 to paragraph 39.27(a): You may take such action in order to comply with Coast Guard safety regulations.

Example 2 to paragraph 39.27(a): You may take such action if accommodating a large or heavy wheelchair would, together with its occupant, create weight and balance problem that could affect adversely the seaworthiness of the vessel or impede emergency egress from the vessel.

Example 3 to paragraph 39.27(a): You could restrict access to a lifeboat for a mobility device that would limit access to the lifeboat for other passengers" (§ 39.27(a)).

"In taking action pursuant to legitimate safety requirements, you must take the action that imposes the minimum feasible burdens or limitations from the point of view of the passenger. For example, if you can meet legitimate safety requirements by a means short of refusing transportation to a passenger, you must do so" (§ 39.27(b)).

"You may take action to deny transportation or restrict services to a passenger if the passenger poses a direct threat to others. In determining whether an individual poses a direct threat to the health or safety of others, the PVO must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk" (§ 39.27(c)).

10.2.4 Requiring Passengers to Provide Medical Certificates

Requirement

"Except as provided in § 39.31, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation on your vessel" (§ 39.33).

Discussion

Section 39.31 outlines specific instances under which PVOs may require passengers with disabilities to provide medical certificates to travel on a passenger vessel. These circumstances generally would not apply to passenger vessel services addressed in this Circular.

10.2.5 Limiting the Number of Passengers with Disabilities on Vessels

Requirement

"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 . . . avoid such a conflict" (§ 39.29).

10.2.6 When Requiring Advance Notice from Passengers Is Permitted

Requirement

"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. The PVO always has an obligation to provide effective communication between the PVO and individuals who are deaf or hard of hearing or blind or visually impaired through the use of appropriate auxiliary aids and services" (§ 39.35).

"Except as provided in this section, as a PVO you must not require a passenger with a disability to provide advance notice in order to obtain services or privileges required by this part" (§ 39.37(a)).

"If 10 or more passengers with a disability seek to travel as a group, you may require 72 hours advance notice for the group's travel" (§ 39.37(b)).

"With respect to providing particular auxiliary aids and services, you may request reasonable advance notice to guarantee the availability of those aids or services" (§ 39.37(c)).

"Your reservation and other administrative systems must ensure that when passengers provide the advance notice that you require, consistent with this section, for services and privileges, the notice is communicated, clearly and on time, to the people responsible for providing the requested service or accommodation" (§ 39.37(d)).

Discussion

The passenger vessel services addressed in this Circular are typically used for commuter purposes and are thus unlikely to serve large groups of passengers with disabilities.

10.3 Accessible Information for Passengers

10.3.1 Auxiliary Aids and Services

Requirement

"If you are a PVO that is a public entity, you must furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity. In determining what type of auxiliary aid or service is necessary, you must give primary consideration to the requests of individuals with disabilities" (§ 39.51(a)).

"If you are a PVO that is a private entity, you must furnish appropriate auxiliary aids or services where necessary to ensure effective communication with individuals with disabilities" (§ 39.51(b)).

"If a provision of a particular auxiliary aid or service would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, you shall provide an alternative auxiliary aid or service, if one exists, that would not result in a fundamental alteration or undue burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations you offer" (§ 39.51(c)).

"As a PVO, it is your responsibility, not that of a passenger with a disability, to provide needed auxiliary aids and services" (§ 39.51(d)).

Discussion

PVOs providing designated public transportation are subject to the same requirements as all public transportation providers with respect to providing information in accessible formats.

In 2011, DOT provided additional guidance on auxiliary aids and services, "Guidance Questions and Answers Concerning 49 CFR Part 39, ADA Rules Concerning Passenger Vessels" (DOT Passenger Vessels Guidance). Although it is the responsibility of the PVO and not that of a passenger with a disability to provide needed auxiliary aids and services, DOT emphasized the importance of consulting passengers with disabilities to determine what type of auxiliary aid or service will ensure effective communication.

To facilitate arrangements, FTA encourages passengers to notify the PVO as soon as possible if they require a particular auxiliary aid or service (e.g., a document in braille or large print, use of a sign-language interpreter, or a TTY). (See Circular Section 2.8.)

10.3.2 Vessel-Specific Information

Requirement

"As a PVO, you must provide the following information to individuals who self-identify as having a disability (including those who are deaf or hard of hearing or who are blind or visually impaired) or who request disability-related information, or persons making inquiries on the behalf of such persons. The information you provide must, to the maximum extent feasible, be specific to the vessel a person is seeking to travel on or use.

The availability of accessible facilities on the vessel including, but not limited to, means of boarding the vessel, toilet rooms, staterooms, decks, dining, and recreational facilities" (§ 39.53(a)).

"Any limitations of the usability of the vessel or portions of the vessel by people with mobility impairments" (§ 39.53(b)).

"Any limitations on the accessibility of boarding and disembarking at ports at which the vessel will call (e.g., because of the use of inaccessible lighters or tenders as the means of coming to or from the vessel) " (§ 39.53(c)).

"Any limitations on the accessibility of services or tours ancillary to the transportation provided by the vessel concerning which the PVO makes arrangements available to passengers" (§ 39.53(d)).

"Any limitations on the ability of a passenger to take a service animal off the vessel at foreign ports at which the vessel will call (e.g., because of quarantine regulations) and provisions for the care of an animal acceptable to the PVO that the passenger must meet when the passenger disembarks at a port at which the animal must remain aboard the vessel" (§ 39.53(e)).

"The services, including auxiliary aids and services, available to individuals who are deaf or hard of hearing or blind or visually impaired" (§ 39.53(f)).

"Any limitations on the ability of the vessel to accommodate passengers with a disability" (§ 39.53(g)).

"Any limitations on the accessibility of boarding and disembarking at ports at which the vessel will call and services or tours ancillary to the transportation provided by the vessel concerning which the PVO makes arrangements available to passengers" (§ 39.53(h)).

Discussion

Section 39.53 requires PVOs to provide information about accessibility features of their vessels to individuals with a disability or to people making inquiries on the behalf of such individuals. An example

of how the Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority provides vessel-specific information for their vehicle and passenger ferries is included in the accessibility section of the Steamship Authority's website and as Attachment 10-1.

10.3.3 Accommodating Individuals with Hearing or Vision Impairments

Requirement

"This section applies to information and reservation services made available to persons in the United States.

If, as a PVO, you provide telephone reservation or information service to the public, you must make this service available to individuals who are deaf or hard-of-hearing and who use a text telephone (TTY) or a TTY relay service (TRS).

(1) You must make service to TTY/TRS users available during the same hours as telephone service for the general public.

(2) Your response time to TTY/TRS calls must be equivalent to your response time for your telephone service to the general public.

(3) You must meet this requirement by [date one year from the effective date of [Part 39]" (§ 39.55(a)).

"If, as a PVO, you provide written (i.e., hard copy) information to the public, you must ensure that this information is able to be communicated effectively, on request, to persons with vision impairments. You must provide this information in the same language(s) in which you make it available to the general public" (§ 39.55(b)).

Discussion

Providing information in multiple formats gives users the option to suit their own personal communications needs. To better meet passenger needs, many PVOs are providing information about service and accessibility on their websites. As mobile personal communication devices with Internet connections have become increasingly available, individuals with vision or hearing impairments can benefit from well-organized websites that provide information about ADA accessibility, including information on making arrangements in advance of travel, relevant phone numbers and wayfinding guidance when approaching terminals and vessels. For example, the Steamship Authority website referenced above and the Washington State Ferries website both provide information about accessibility for their terminals and vessels.

10.4 Accessibility of Landside Facilities

Ferry terminal facilities vary widely, depending on factors such as the purpose and capacity of the ferry service and vessel, coastal conditions, and the types of vessels each terminal may handle. Examples of different types of facilities include:

- Terminals for high-capacity passenger-only ferries such as the Staten Island Ferry in New York
- Medium-capacity passenger-only commuter ferries such as the San Francisco Bay and Golden Gate Bridge Ferries
- Small-capacity passenger-only ferries such as those managed by the MBTA in Boston
- High-capacity passenger and vehicle ferries such as Washington State Ferries
- Small-capacity passenger and vehicle ferries such as the Maine State Ferry System

Terminals that serve vehicles and passengers are often more complex than passenger-only terminals. In addition, all terminals in tidal locations with tides of 5 feet or higher have more complex ramp or transfer bridge boarding systems compared to those with tide ranges of 5 feet or less. Terminals in river locations may need to provide varying access to accommodate seasonal changes in river levels.

10.4.1 New Facilities

Requirement

"As a PVO, you must comply with the following requirements with respect to all terminal and other landside facilities you own, lease, or control in the United States (including its territories, possessions, and commonwealths):

With respect to new facilities, you must do the following:

(1) You must ensure that terminal facilities are readily accessible to and usable by individuals with disabilities, including individuals who use wheeled mobility assistive devices. You are deemed to comply with this obligation if the facilities meet the requirements of 49 CFR 37.9, and the standards referenced in that section.

(2) You must ensure that there is an accessible route between the terminal or other passenger waiting area and the boarding ramp or device used for the vessel. An accessible route is one meeting the requirements of the standards referenced in 49 CFR 37.9" (§ 39.61(a)).

Discussion

When constructing new terminals and other landside facilities, § 39.61(a) requires public or private PVOs to meet specific accessibility requirements. These requirements are based on the ADA Standards for Transportation Facilities (DOT Standards) covered in § 37.9 and discussed in Circular Chapter 3.

In addition to incorporating accessibility features covered by the ADA, § 39.61(a)(2) requires passenger vessel facilities to include an accessible route between the terminal or other passenger waiting area and the boarding ramp or device used for the vessel. An accessible route is one meeting the DOT Standards.

For example, as part of reconstruction following fire damage, the Staten Island Ferry Whitehall terminal incorporated a high-capacity accessible ramp and elevator system to accommodate very large crowds of pedestrians for boarding and unloading on multiple levels. The new high-capacity passenger-only access system replaced a combined vehicle and passenger access system.

10.4.2 Alterations

Requirement

"When a facility is altered, the altered portion must meet the same standards that would apply to a new facility" (§ 39.61(b)).

Discussion

When altering existing terminal and other landside facilities, § 39.61(b) requires PVOs to meet the same standards that apply to a new facility. For example, when the Staten Island Ferry terminal at St. Georges underwent alterations, the project converted vehicle ramps into accessible passenger ramps and added elevators. As another example, boarding systems at other locations such as Larkspur and the San Francisco Ferry Building in California have been constructed with either ramps and float systems or mechanical transfer bridges, depending on the vessels used on different routes.

10.4.3 Program Accessibility Requirements

Requirement

"With respect to an existing facility, your obligations are the following:

(1) If you are a public entity, you must ensure that your terminals and other landside facilities meet program accessibility requirements, consistent with Department of Justice requirements at 28 CFR 35.150.

(2) If you are a private entity, you are required to remove architectural barriers where doing so is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense, consistent with Department of Justice requirements at 28 CFR 36.304 or, if not readily achievable, ensure that your goods, services, facilities, privileges, advantages, or accommodations are available through alternative methods if those methods are readily achievable, consistent with Department of Justice regulations at 28 CFR 36.305" (§ 39.61(c)).

Discussion

Section 39.61(c)(1) requires public entities to conduct their programs in an accessible manner. The following are examples of accessible and usable programs and activities for passenger vessel services and terminals:

- Accessible fare cards and ticketing options
- Accessible websites and mobile applications
- Accessible ferry schedules
- Adequate lighting
- Enhanced wayfinding and signage for persons with speech and hearing impairments, including use of TDDs, 711 Relay telephones, broadcast text messaging, and similar devices
- Enhanced wayfinding and signage for individuals with visual impairments, including public address announcements and text-to-speech devices
- Continuous accessible pathways for individuals with visual and ambulatory impairments
- Public address systems and clocks
- User guidance in multiple formats on site-specific marine conditions that might affect boarding or use of the ferries for all passengers including people with disabilities. These might include weather reports, operating conditions, tide reports, and any variations in accessible paths of travel related to tide or weather factors.

10.4.4 Shared Facilities

Requirement

"Where you share responsibility for ensuring accessibility of a facility with another entity, you and the other entity are jointly and severally responsible for meeting applicable accessibility requirements" (§ 39.61(d)).

Discussion

When PVOs share a terminal facility with another entity, both entities share responsibility for ensuring accessibility of that facility. Some PVOs provide public transportation services that operate from privately owned landings that use publicly owned vessels acquired with FTA funds. Such shared terminal facilities are subject to the same access requirements as public terminals. For example, a privately owned ferry

terminal at Fan Pier Cove in Boston Harbor was constructed in anticipation of publicly operated FTA-funded commuter ferries and includes boarding ramps and terminal facilities designed to comply with § 39.61(d).

10.4.5 Facility Requirements for Individuals with Hearing or Vision Impairments

Requirement

"As a PVO, you must ensure that the information you provide to the general public at terminals and other landside facilities is effectively communicated to individuals who are blind or who have impaired vision and deaf or hard-of-hearing individuals, through the use of auxiliary aids and services. To the extent that this information is not available to these individuals through accessible signage and/or verbal public address announcements or other means, your personnel must promptly provide the information to such individuals on their request, in languages (e.g., English, Norwegian, Japanese) in which the information is provided to the general public" (§ 39.63(a)).

"The types of information you must make available include, but are not limited to, information concerning ticketing, fares, schedules and delays, and the checking and claiming of luggage" (§ 39.63(b)).

Discussion

In 2011, Washington State Ferries began implementing a visual paging system that displays important travel-related information on video screens for passengers with hearing impairments. This system, which transmits the same information via text message, is a good example of accessible activities discussed in Circular Section 10.4.3.

10.5 Assistance and Services

10.5.1 Transfer Shuttle and Terminal Assistance

Requirement

"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 [Part 39]" (§ 39.81(a)).

"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" (§ 39.81(b)).

Discussion

Providing service to passengers with disabilities includes more than just on-board assistance. As with other elements of accessible service, it is useful to consider a passenger's entire trip. For those driving to a ferry terminal, the facility requirements for accessible parking spaces and accessible path of travel outlined in Circular Chapter 3 apply. Section 39.81(a) requires passengers traveling to and from ferry terminals by shuttle vehicle to have access to those shuttle vehicles. Finally, given the unique characteristics of boarding facilities, there are specific requirements for providing boarding assistance on land and on-board the vessel, as described below.

10.5.2 Boarding Assistance

Requirement

"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" (§ 39.83(a)).

"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" (§ 39.83(b)).

"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)" (§ 39.83(c)).

Discussion

The DOT Passenger Vessels Guidance provides additional information on providing boarding assistance to passengers with disabilities. Given that passengers with disabilities should expect to be able to experience the same aspects of a passenger vessel operation as passengers without disabilities, § 39.83(b) requires PVOs to provide needed assistance to passengers to enable them to get on or off the vessel. To meet this requirement, PVOs must be prepared to ask passengers whether they want or need assistance and what method of assistance they prefer.

However, DOT recognizes that there may be occasional circumstances where it is impracticable to ensure that a passenger can get on or off the vessel (e.g., because of adverse weather, tidal, or sea conditions). Part 39 does not require PVOs to transfer passengers to or from a vessel where a transfer would be contrary to legitimate safety requirements. Finally, except in emergencies, DOT strongly discourages hand carrying (i.e., PVO personnel physically picking up a passenger) as a means of providing assistance, since it raises serious safety and dignity concerns.

10.5.3 Service Animals

Requirement

"As a PVO, you must permit service animals to accompany passengers with a disability" (§ 39.91(a)).

"You must permit the service animal to accompany the passenger in all locations that passengers can use on a vessel, including in lifeboats" (§ 39.91(b)).

"You must permit the passenger accompanied by the service animal to bring aboard a reasonable quantity of food for the animal aboard the vessel at no additional charge. If your vessel provides overnight accommodations, you must also provide reasonable refrigeration space for the service animal food" (§ 39.91(c)).

"You must accept the following as evidence that an animal is a service animal: Identification cards, other written documentation, presence of harnesses, tags, and/or the credible verbal assurances of a passenger with a disability using the animal" (§ 39.91(d)).

Discussion

The DOT Passenger Vessel Guidance indicates that the service animal provisions of Part 39 are interpreted to be consistent with the service animal provisions of Department of Justice (DOJ) rules under

Titles II and III of the ADA. While DOT's definition of a service animal is different from DOJ's in Part 37 when applied to fixed route and demand responsive surface transportation, the definition is the same as DOJ's in the water transportation environment. The guidance explains, "Consequently, the Department understands a service animal to be any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other types of animals (e.g., cats, primates) are not considered service animals under DOJ rules."

10.5.4 Wheelchairs and Other Assistive Devices

Requirement

"As a PVO subject to Title III of the ADA, you must permit individuals with mobility disabilities to use wheelchairs and manually powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use" (§ 39.93(a)).

"(1) As a PVO subject to Title III of the ADA, you must make reasonable modifications in your policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless you can demonstrate that a device cannot be operated on board the vessel consistent with legitimate safety requirements you have established for the vessel.

(2) In determining whether a particular other power-driven mobility device can be allowed on a specific vessel as a reasonable modification under [the previous paragraph], the PVO must consider:

(i) The type, size, weight, dimensions, and speed of the device;

(ii) The vessel's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);

(iii) The vessel's design and operational characteristics (e.g., the size and balance requirements of the vessel, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

(iv) Whether legitimate safety requirements can be established to permit the safe operation of a device in the specific vessel" (§ 39.93(b)); and

"(1) As a PVO subject to Title III of the ADA, you must not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.

(2) You may ask a person using an other power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability. In response to this inquiry, you must accept the presentation of a valid, state-issued disability parking placard or card, or state-issued proof of disability as a credible assurance that the use of the other power-driven mobility device is for the individual's mobility disability. In lieu of a valid, state-issued disability parking placard or card or state-issued proof of disability, a PVO shall accept as a credible assurance a verbal representation not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability" (§ 39.93(c)).

"As a PVO subject to Title II of the ADA, you must follow the requirements of paragraphs (a) through (c) of this section. In addition, any restriction you impose on the use of another powered mobility device on your vessel must be limited to the minimum necessary to meet a legitimate safety requirement. For example, if a device can be accommodated in some spaces of the vessel but not others because of a legitimate safety requirement, you could not completely exclude the device from the vessel" (§ 39.93(d)).

"As a PVO, you are not required to permit passengers with a disability to bring wheelchairs or other powered mobility devices into lifeboats or other survival craft, in the context of an emergency evacuation of the vessel" (§ 39.93(e)).

Discussion

A PVO must accommodate wheelchairs on the vessel, which § 39.3 defines as "any mobility aid belonging to any class of three or four-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered." Wheelchairs, while many are powered as opposed to manual, are distinct from the concept of "other power-driven mobility devices." (See Circular Section 2.4.1.)

10.5.5 Prohibition Against Limits on Liability

Requirement

"Consistent with any applicable requirements of international law, you must not apply any liability limits with respect to loss of or damage to wheeled mobility assistive devices or other assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device is the original purchase price of the device" (§ 39.95).

Discussion

The DOT Passenger Vessels Guidance provides additional direction on compensation requirements for loss of or damage to wheelchairs, as follows:

> Generally, a PVO must compensate a passenger with a disability for the full value (measured by the original purchase price) of a lost or damaged wheelchair or mobility device.
>
> This obligation applies in any situation in which the device is under the control or care of the PVO or a party acting on behalf of the PVO (e.g., an agent or contractor).
>
> However, there may be circumstances in which a wheelchair or mobility device is damaged as the result of action by the passenger, who is in control of the device at the time. For example, a passenger riding a scooter might run into a fixed object, damaging the scooter. In such a case, the PVO would not be responsible for compensating the owner.

10.6 Complaint Procedures

The complaint reporting and resolution process for passenger vessels differs from land transit modes for several reasons. With some exceptions, most passenger vessel services are operated independently from bus and rail services. Compared with other transit modes, most passenger ferry operations are limited in scale, management, and location. Often, each ferry route essentially functions as an independent transportation management entity. For example, a typical metropolitan area passenger ferry service operating between two terminals might use vessels with capacity for 150–400 passengers and a designated captain and a small crew (two to four members) for each vessel. Each vessel's captain is responsible for all passengers, including passengers with disabilities, and in many cases the captain and crew are the only point of PVO contact on the vessel and at an unattended terminal.

10.6.1 Designating Complaints Resolution Officials

Requirement

"As a PVO, you must designate one or more Complaints Resolution Officials (CROs) " (§ 39.101(a)).

"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" (§ 39.101(b)).

"You must make passengers with a disability aware of the availability of a CRO and how to contact the CRO in the following circumstances:

(1) In any situation in which any person complains or raises a concern with your personnel about discrimination, policies, or services with respect to passengers with a disability, and your personnel do not immediately resolve the issue to the customer's satisfaction or provide a requested accommodation, your personnel must immediately inform the passenger of the right to contact a CRO and the location and/or phone number of the CRO available on the vessel or at the terminal. Your personnel must provide this information to the passenger in a format he or she can use.

(2) Your reservation agents, contractors, and Web sites must provide information equivalent to that required by paragraph (c)(1) of this section to passengers with a disability using those services" (§ 39.101(c)).

"Each CRO must be thoroughly familiar with the requirements of [Part 39] and the PVO's procedures with respect to passengers with a disability. The CRO is intended to be the PVO's 'expert' in compliance with the requirements of [Part 39] " (§ 39.101(d)).

"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" (§ 39.101(e)).

Discussion

Section 39.101(a)–(b) requires PVOs to designate one or more Complaints Resolution Officials (CRO), and have one available on each vessel. In passenger ferry operations, the CRO is most often the captain. CROs who cannot resolve complaints immediately must follow specific reporting requirements to the PVO. (See Circular Section 10.6.3.) The CRO requirement here is similar to that found in DOT's regulations implementing the Air Carrier Access Act, which applies to airlines.

10.6.2 Responding to Direct Complaints

Requirement

"When a complaint is made directly to a CRO (e.g., orally, by phone, TTY) the CRO must promptly take dispositive action as follows:

"If the complaint is made to a CRO before the action or proposed action of PVO personnel has resulted in a violation of a provision of [Part 39], the CRO must take, or direct other PVO personnel to take, whatever action is necessary to ensure compliance with [Part 39]" (§ 39.103(a)).

"If an alleged violation of a provision of [Part 39] has already occurred, and the CRO agrees that a violation has occurred, the CRO must provide to the complainant a written statement setting forth a

summary of the facts and what steps, if any, the PVO proposes to take in response to the violation" (§ 39.103(b)).

"If the CRO determines that the PVO's action does not violate a provision of [Part 39], the CRO must provide to the complainant a written statement including a summary of the facts and the reasons, under [Part 39], for the determination" (§ 39.103(c)).

"The statements required to be provided under this section must inform the complainant of his or her right to complain to the Department of Transportation and/or Department of Justice. The CRO must provide the statement in person to the complainant in person if possible; otherwise, it must be transmitted to the complainant within 10 calendar days of the complaint" (§ 39.103(d)).

Discussion

While § 39.103 specifically mentions contacting CROs in person or via telephone, the DOT Passenger Vessels Guidance explains that other equivalent means of communication are permitted, including electronic communications. But the guidance emphasizes that "the means of communication provided must ensure direct, interactive contact between the passenger and the CRO." It is not sufficient only to provide an opportunity to leave a voicemail or email message for a CRO to return later.

The DOT Passenger Vessels Guidance explains the use of "dispositive" in the context of complaint resolution:

> The word "dispositive" is used in its dictionary sense: "[an action] that disposes of, or settles, a dispute, question, etc.; conclusive; decisive." It is intended to be the PVO's final word on the matter. The dispositive response should summarize the facts of the matter, as the CRO understands them. The dispositive response then says one of two things:
>
> (1) The PVO acted in accordance with the regulation, or
>
> (2) The PVO did not act in accordance with the regulation.
>
> It is possible that, with respect to some complaints, the CRO will conclude that the PVO acted in accordance with the regulation in some respects but not in others. In any case, the CRO's responses should explain why the PVOs actions were consistent with the regulation or not. If the CRO concludes that the PVO did not act in accordance with the regulation, the response should offer appropriate redress to the passenger.

10.6.3 Responding to Written Complaints

Requirement

"As a PVO, you must respond to written complaints received by any means (e.g., letter, fax, e-mail, electronic instant message) concerning matters covered by [Part 39]" (§ 39.105(a)).

"A passenger making a written complaint, must state whether he or she had contacted a CRO in the matter, provide the name of the CRO and the date of the contact, if available, and enclose any written response received from the CRO" (§ 39.105(b)).

"As a PVO, you are not required to respond to a complaint from a passenger postmarked or transmitted more than 45 days after the date of the incident" (§ 39.105(c)).

"As a PVO, you must make a dispositive written response to a written disability complaint within 30 days of its receipt. The response must specifically admit or deny that a violation of [Part 39] has occurred. The response must be effectively communicated to the recipient.

(1) If you admit that a violation has occurred, you must provide to the complainant a written statement setting forth a summary of the facts and the steps, if any, you will take in response to the violation.

(2) If you deny that a violation has occurred, your response must include a summary of the facts and your reasons, under [Part 39], for the determination.

(3) Your response must also inform the complainant of his or her right to pursue DOT or DOJ enforcement action under [Part 39], as applicable. DOT has enforcement authority under Title II of the ADA for public entities and under Section 504 of the Rehabilitation Act for entities that receive Federal financial assistance; DOJ has enforcement authority under Title III of the ADA for private entities" (§ 39.105(d)).

Discussion

The DOT Passenger Vessels Guidance offers additional direction on providing interim responses to complaints, as follows:

> Complaints should be as detailed and specific as possible, and should be filed as soon as possible after the matter that gave rise to the complaint. If a written complaint is filed more than 45 days after the matter giving rise to the complaint, the CRO is not required to respond.
>
> If the complaint does not have enough information to permit the CRO to make a decision, or if the CRO needs to make an extended factual inquiry to determine the facts of the matter, the CRO may provide an interim response to the complainant, within 30 days of receiving the complaint. The interim response should state the reasons for needing additional time and inform the complainant of when the CRO expects to issue a determination. [However, overuse] or abuse of interim responses (e.g., routine issuance of interim responses because of insufficient resources to respond in a timely manner) may result in a finding of noncompliance.

Attachment 10-2 includes a sample complaint resolution policy.

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Attachment 10-1
Sample Ferry Accessibility Information

Traditional Ferries

All passenger decks of all four of the Steamship Authority's traditional passenger/vehicle ferries (the M/V Eagle, the M/V Island Home, the M/V Martha's Vineyard and the M/V Nantucket) are fully accessible.

Each ferry is equipped with elevators that transport passengers between the vehicle deck and all passenger decks (including the food and beverage service area). Access to the elevator is by the transfer bridge that is used to load vehicles onto the ferry.

Passengers wishing to use the elevator should arrive at the ferry terminal 30 minutes prior to their scheduled departure time. Upon arriving, they should notify a Terminal Agent (or the terminal employee checking them in) that they require access to the elevator for boarding. This applies to all passengers who wish to use the elevator whether or not they are traveling with their vehicles.

Accessible rest rooms are also available on all four of our large passenger/vehicle ferries.

High Speed Ferry

The main passenger deck of the M/V Iyanough is fully accessible (including rest rooms and the food and beverage service area). Access to the M/V Iyanough's main passenger deck is by the transfer bridge that is used to board all passengers onto the ferry. The M/V Iyanough's upper deck is not accessible.

Ferries with Limited or No Accessibility

The Steamship Authority encourages passengers with disabilities to travel on our four traditional passenger/vehicle ferries and our high-speed passenger-only ferry, the M/V Iyanough, all of which are accessible and have passenger amenities, including food and beverage service and accessible rest rooms. However, because passengers with disabilities may also travel on our freight boats, please be aware that not all of them are accessible. The freight boats are described below:

M/V Governor & M/V Sankaty: Access to each of these freight boats is by the transfer bridge that is used to board all passengers and vehicles onto the ferry. The interior passenger compartment that is located on the vehicle deck and the rest rooms are also accessible. Vending machines that offer beverages and snacks are available on both of these vessels.

M/V Gay Head & M/V Katama: The[se] two freight boats are not accessible for passengers with disabilities who require assistance. Passengers will need to climb a set of stairs to reach the interior passenger compartment. Vending machines that offer beverages only are available on both of these vessels.

Source: Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority

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Attachment 10-2
Sample Ferry Complaint Resolution Policy

This example of a complaint resolution process is described in the Accessibility Section of the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority's Customer Policy Handbook, available on its website:

> In any situation when any person complains or raises a concern with a Steamship Authority employee about discrimination, policies or services with respect to passengers with a disability, and the employee (or the employee's supervisor) does not immediately resolve the issue to the customer's satisfaction or provide a requested accommodation, the customer has the right to contact our Complaints Resolution Official ("CRO"). The employee will provide the customer with the CRO's phone number and, if requested by the customer, the number of the Massachusetts TRS service (which is a relay service for individuals who use text telephones called "MassRelay"). The employee will also provide this information to the passenger in a format he or she can use.
>
> The CRO will be available for contact on each vessel and at each terminal via telephone. The customer will be allowed to use a Steamship Authority phone (either the vessel's phone or the terminal's phone, as the case may be) to contact the CRO so that the call will be at no cost to the customer. In addition, the number for the MassRelay service will be available so that persons with hearing impairments may readily communicate with the CRO."

The CRO's name and contact information is also included in the written information.

Source: Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority

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Chapter 11 – Other Modes

11.1 Introduction

The U.S. Department of Transportation (DOT) Americans with Disabilities Act (ADA) regulations anticipated that entities may employ new and different types of vehicles and systems in transportation service, including modes that had yet to be envisioned. The regulations in 49 CFR Part 38, Subpart H, include basic standards for some of these modes, and establish a process for determining accessibility standards for others that have not yet been developed.

Basic accessibility standards are set forth in Subpart H for the following existing modes of transportation:

- Automated guideway transit vehicles and systems
- High-speed rail cars, monorails, and systems
- Trams and similar vehicles and systems

In addition, Subpart H also establishes a process for determining standards for new types of vehicles and systems that may be developed, for which specific accessibility standards do not yet exist.

This chapter introduces the two purposes of Subpart H.

This Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves or replace the need for readers to reference the detailed information in the regulations. FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.

11.2 General Requirements

Requirement

"New, used and remanufactured vehicles and conveyances for systems not covered by other subparts of [Part 38], to be considered accessible by regulations in Part 37 of this title shall comply with this subpart" (§ 38.171(a)).

"If portions of the vehicle or conveyance are modified in a way that affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices" (§ 38.171(b)).

"Requirements for vehicles and systems not covered by [Part 38] shall be determined on a case-by-case basis by the Department of Transportation in consultation with the U.S. Architectural and Transportation Barriers Compliance Board (Access Board)" (§ 38.171(c)).

Discussion

Because the DOT ADA regulations cover both public and private entities that operate transportation systems, they contain additional standards for modes of transportation that are not typically used by transit agencies, such as trams, automated guideway transit systems, and monorails. They also establish a process by which standards are to be developed for new forms of transportation that may not have been

developed at the time these regulations were written. To the extent that transit agencies use these types of vehicles and systems, § 38.171(a) obligates them to comply with Subpart H.

When modifying vehicles, § 38.171(b) requires agencies to make them accessible to the extent practicable. This can include removing stanchions that interfere with entry and exit by individuals using wheelchairs or other mobility aids, replacing fixed seating with fold-up seats to increase clear floor space, or replacing signage.

The regulations permit transit agencies to develop and operate new vehicles and modes of transportation through advances in technology and innovative methods of delivering services. Under § 38.171(c), DOT and the Access Board must establish accessibility standards and specifications for new vehicles, modes, and services on a case-by-case basis.

Transit agencies are encouraged to contact the FTA Office of Civil Rights with questions if they believe they will be operating a mode not covered by the existing regulations or acquiring vehicles not covered by the existing Part 38 specifications. FTA recommends that agencies review all elements of new services that they plan to operate to determine the applicability of Part 38. Similarly, FTA recommends that agencies review any new vehicles and systems to determine whether the Part 38 specifications in Subparts B, C, D, or E already apply.

11.3 Mode-Specific Requirements

As noted above, in addition to establishing a process for determining standards for new modes of transportation, Subpart H sets requirements for three specific existing types of vehicles and systems.

- Section 38.173 explains which vehicle specifications apply to automated guideway transit (AGT) vehicles and systems, with different specifications for vehicles operating (1) at 20 miles per hour (MPH) or less or (2) at more than 20 MPH. The section also establishes platform gaps and requirements for when open platforms are not protected by platform screens.
- Section 38.175 explains the requirements for high-speed rail cars, monorails and systems, including but not limited to magnetic levitation, monorail, and high-speed steel-wheel-on-steel-rail technology. Where such systems are operated on dedicated rail (i.e., not used by freight trains) or guideway, they must be designed for high-platform, level boarding and comply with specific provisions found in the standards for intercity rail cars and systems. Maximum horizontal and vertical gaps are specified that must be met at rest under all normal passenger load conditions.
- Section 38.179 explains the requirements for trams and similar vehicles and systems. Each tractor unit that accommodates passengers and each trailer unit must comply with requirements for doors, steps, and thresholds and for interior circulation, handrails, and stanchions specified in §§ 38.25 and 38.29 for buses, vans, and systems, and provide at least one space for wheelchair or mobility aid users complying with § 38.23(d) unless the complete operating unit (or “train”) can already accommodate at least two.

Chapter 12 – Oversight, Complaints, and Monitoring

12.1 Introduction

This chapter explains how FTA carries out its oversight and enforcement responsibilities, including complaint investigations, under the Americans with Disabilities Act (ADA), and covers transit agencies' own responsibilities for resolving and tracking disability-related complaints. This chapter also highlights topics in the Circular that include related information on the monitoring of service for compliance.

This Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves or replace the need for readers to reference the detailed information in the regulations. FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.

12.2 FTA Oversight of Recipients

Requirement

"Recipients of Federal financial assistance from the Department of Transportation are subject to administrative enforcement of the requirements of [Part 37] under the provisions of 49 CFR Part 27, Subpart C" (§ 37.11(a)).

"Public entities, whether or not they receive Federal financial assistance, also are subject to enforcement action as provided by the Department of Justice" (§ 37.11(b)).

"Private entities, whether or not they receive Federal financial assistance, are also subject to enforcement action as provided in the regulations of the Department of Justice implementing title III of the ADA (28 CFR Part 36) " (§ 37.11(c)).

Discussion

FTA is charged with ensuring recipients of Federal transit funding (grantees) do not discriminate against individuals with disabilities. The responsibility falls under 49 CFR § 37.11(a) and Subpart C (Enforcement) of 49 CFR Part 27.

Each grantee annually signs FTA's Master Agreement, thus agreeing it will comply with Federal law. In addition, each grantee annually signs FTA's certifications and assurances, self-certifying that it is complying with Federal law. FTA assesses compliance through grantee self-certification, as well as grant reviews, complaint investigations, and site visits such as:

- Triennial Reviews of grantees receiving § 5307 Urbanized Area Formula Grants
- State Management Reviews of grantees receiving § 5311 Non-Urbanized Area Formula Grants and § 5310 Enhanced Mobility for Seniors and Individuals with Disabilities Grants
- Civil Rights Specialized Compliance Reviews of grantees' fixed route, complementary paratransit, and rail service

FTA also conducts oversight reviews in specific areas when grantees either (1) are participating in special programs (e.g., Project Management Oversight reviews for grantees receiving § 5309 New Starts funding) or (2) may be at risk for deficiencies in specific areas, including the ADA. Further information on other program reviews is available on the FTA website.

12.3 FTA Informal Resolution

Requirement

"Cooperation and assistance. The responsible Departmental official, to the fullest extent practicable, seeks the cooperation of recipients in securing compliance with this part and provides assistance and guidance to recipients to help them comply with [Part 27]" (§ 27.121(a)).

Discussion

FTA's role in overseeing ADA compliance is rooted in DOT's overall administrative enforcement policy, as discussed in Appendix D to § 37.11:

> In considering enforcement matters, the Department is guided by a policy that emphasizes compliance. The aim of enforcement action, as we see it, is to make sure that entities meet their obligations, not to impose sanctions for their own sake. The Department's enforcement priority is on failures to comply with basic requirements and "pattern or practice" kinds of problems, rather than on isolated operational errors.

If through a compliance review, complaint investigation, or other means, FTA identifies a grantee's failure to comply with applicable ADA requirements, it notifies the grantee, gives it an opportunity to correct the deficiency, and provides technical assistance if needed.

12.4 FTA Administrative Enforcement

Requirement

"Recipients of Federal financial assistance from the Department of Transportation are subject to administrative enforcement of the requirements of [Part 37] under the provisions of 49 CFR Part 27, Subpart C" (§ 37.11(a)).

"*General.* If there is reasonable cause for the responsible Departmental official to believe that there is a failure to comply with any provision of [Part 27] that cannot be corrected by informal means, the responsible Departmental official may recommend suspension or termination of, or refusal to grant or to continue Federal financial assistance, or take any other steps authorized by law. Such other steps may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law" (§ 27.125(a)).

"*Refusal of Federal financial assistance*. (1) No order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective until:

> (i) The responsible Departmental official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means; and

(ii) There has been an express finding by the Secretary on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to [Part 27].

(2) Any action to suspend, terminate, or refuse to grant or to continue Federal financial assistance is limited to the particular recipient who has failed to comply, and is limited in its effect to the particular program or activity, or part thereof, in which noncompliance has been found" (§ 27.125(b)).

"*Other means authorized by law.* No other action is taken until: (1) The responsible Departmental official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified by the responsible Departmental official of its failure to comply and of the proposed action;

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period, additional efforts are made to persuade the recipient or other person to comply with the regulations and to take such corrective action as may be appropriate" (§ 27.125(c)).

Discussion

If DOT/FTA determines a matter cannot be resolved voluntarily, DOT/FTA may take action, including suspension or termination of Federal financial assistance or referral of the matter to the Department of Justice (DOJ) for enforcement, or any other steps authorized by law.

In order to suspend or terminate Federal financial assistance, the regulations at § 27.125(b) require:

- DOT/FTA to determine that compliance cannot be secured by voluntary means
- DOT/FTA to advise the grantee of its failure to comply
- The Secretary of Transportation to make an express finding on the record, after opportunity for hearing, that the grantee has failed to comply

12.4.1 DOJ Authority

DOJ may initiate action on a referral from DOT/FTA. Upon such referral, DOJ may conduct further investigation and legal analysis to determine what enforcement means are appropriate, including litigation. DOJ will then initiate its own efforts to resolve the matter without litigation, before proceeding with a court filing. DOJ may also entertain litigation by intervening into lawsuits already pending in the courts filed by private plaintiffs.

In addition, Part 35 of DOJ's updated 2010 ADA Title II regulations (Nondiscrimination on the Basis of Disability in State and Local Government Services) includes a provision in Subpart G (Designated Agencies) that allows DOJ to investigate a complaint on its own, without referring the complaint to the designated agency. (See 28 CFR 35.190(e).) This means an FTA grantee may be subject to a DOJ complaint investigation independent of FTA.

12.4.2 DOJ-FTA Memorandum of Understanding

In 2005, FTA and DOJ executed a Memorandum of Understanding (MOU) to strengthen the respective enforcement efforts of both agencies, to eliminate possible duplication of effort, to streamline the enforcement process, and to ensure coordinated and consistent nationwide enforcement.

12.5 FTA On-Site Reviews

Requirement

"*Periodic compliance reviews.* The responsible Departmental official or his/her designee, from time to time, reviews the practices of recipients to determine whether they are complying with [Part 27]" (§ 27.123(a)).

Discussion

FTA's onsite reviews for ADA compliance include Triennial or State Management Reviews and a select number of discretionary compliance reviews. FTA conducts Triennial or State Management Reviews of all § 5307, § 5310, and § 5311 funding recipients on a rotating basis. Other reviews are conducted following the criteria outlined below.

12.5.1 Compliance Review Selection Criteria

The following factors contribute to the selection of grantees for civil rights specialized reviews or enhanced reviews through the Triennial and State Management Review process:

- Risk factors identified by the FTA annual Grantee Oversight Assessment
- FTA complaints (triggered either by the volume of complaints or the scope of a specific complaint, requiring an in-person investigation)
- ADA findings or recommendations on prior Triennial, State Management, or other reviews that grantees have not sufficiently resolved or implemented, or repeat findings in any FTA review concerning ADA
- Lawsuits, complaints, or investigations conducted by organizations other than FTA alleging a grantee's noncompliance
- Alleged noncompliance brought to FTA's attention by other entities

12.5.2 Compliance Reporting and Follow-up

After conducting an on-site review, FTA issues a report that includes findings of deficiency or no deficiency for each of the relevant requirements.

Transit agencies are required to undertake corrective actions to address findings of deficiency within a specified timeframe following finalization of the report. FTA works with agencies to confirm implementation of corrective actions.

12.6 FTA Complaint Process

Requirement

"*Complaints*. Any person who believes himself/herself or any specific class of individuals to be harmed by failure to comply with [Part 27] may, personally or through a representative, file a written complaint with the responsible Departmental official. A Complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Departmental official or his/her designee" (§ 27.123(b)).

"*Investigations*. The responsible Departmental official or his/her designee makes a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to

comply with [Part 27]. The investigation includes, where appropriate, a review of the pertinent practices and policies of the recipient, and the circumstances under which the possible noncompliance with [Part 27] occurred" (§ 27.123(c)).

"*Resolution of matters*. (1) If, after an investigation pursuant to paragraph (c) of this section, the responsible Departmental official finds reasonable cause to believe that there is a failure to comply with [Part 27], the responsible Departmental official will inform the recipient. The matter is resolved by informal means whenever possible. If the responsible Departmental official determines that the matter cannot be resolved by informal means, action is taken as provided in § 27.125.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Departmental official or his/her designee so informs the recipient and the complainant, if any, in writing" (§ 27.123(d)).

Discussion

As part of its ADA oversight responsibilities, FTA processes complaints filed against transit providers by members of the public alleging noncompliance. Under DOJ's 2010 Title II regulations in 28 CFR § 35.172, FTA is charged with investigating complaints generally, not necessarily "each" complaint received as stated in DOJ's 1991 regulations. With this rule change, FTA has discretion in determining which complaints it will investigate.

FTA does not represent the interests of individual complainants but rather the interests of the Federal government. FTA's objective during the complaint process is to ensure grantees comply with the ADA requirements as a condition to receiving Federal funds and that they correct any deficiencies identified in order to provide ADA compliant service.

FTA also investigates complaints filed against non-grantees consistent with Part 37. This involvement is unique to the ADA, as generally civil rights statutes require the presence of Federal funding in order for FTA to intervene. Appendix D to § 37.11 states:

> Under the DOJ rules implementing title II of the ADA (28 CFR Part 35), DOT is a "designated agency" for enforcement of complaints relating to transportation programs of public entities, even if they do not receive Federal financial assistance. When it receives such a complaint, the Department will investigate the complaint, attempt conciliation and, if conciliation is not possible, take action under Section 504 and/or refer the matter to the DOJ for possible further action.

12.6.1 Complaint Investigations

If FTA investigates a complaint, it contacts the affected transit agency, notifying it of the complaint and asking it to provide a response to the allegations, along with supplemental information. After reviewing all of the information gathered, FTA issues a decision letter detailing whether any concerns or deficiencies were identified through the investigation. For any deficiencies, FTA typically requests a response from the agency, usually within 30 days, outlining the corrective actions taken or a timetable for implementing changes. If FTA cannot work with an agency to resolve apparent violations of the ADA or the DOT ADA regulations by voluntary means, it may pursue the enforcement provisions discussed previously.

In responding to complaints, FTA considers the facts and circumstances at issue. Determinations resulting from FTA's investigations are not intended to be an expression of an opinion about a transit agency's overall compliance with ADA requirements.

To assist transit agencies and others, FTA publishes complaint decision letters on the FTA website. Generally, these letters, which are normally addressed to a specific individual or agency, set forth FTA's determinations regarding an issue involving a specific factual situation. FTA notes that these determinations are applicable to only the specific facts in question and, as such, are not necessarily broadly applicable to other situations, which may or may not involve the same facts. References to FTA complaint decision letters provided in this Circular serve as illustrative examples of how regulations have been applied by FTA in specific instances.

In lieu of sending an information request to the transit provider and issuing a decision letter, FTA may address a complaint through a civil rights specialized review or a Triennial or State Management Review when the complaint allegations are within the scope of a recent or upcoming review. In this case, the final review report serves as the response to the complaint allegations.

12.6.2 Administrative Closures

FTA will generally administratively close ADA complaints, shortly after the intake stage or later in the investigative process, under any of the following circumstances:

- The complainant decides to withdraw the complaint.
- The complainant is not responsive to FTA's requests for information.
- FTA obtains credible information that the allegations raised by the complaint have been resolved.
- FTA has conducted or plans to conduct a related compliance review of the agency against which the complaint is lodged, as mentioned in Circular Section 12.6.1.
- The complaint has been investigated by another agency and the resolution of the complaint meets the DOT regulatory standards.
- The complaint allegations are foreclosed by previous decisions of the Federal courts, the Secretary, DOT policy determinations, or the DOT's Office of Civil Rights.
- The complaint is identified to be a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same recipient or other recipients that have been found factually or legally insubstantial by FTA.
- The same complaint allegations have been filed with another Federal, state, or local agency, and FTA anticipates that the other agency will provide the complainant with a comparable resolution process under comparable legal standards.
- Litigation has been filed raising similar allegations involved in the complaint.[1]
- The death of the complainant or injured party makes it impossible to investigate the allegations fully.

Most administrative closures do not involve outreach to the affected transit agency.

12.6.3 How to File a Complaint

Individuals or any specific class of individuals, personally or through a representative, may submit a complaint to FTA. Those wishing to submit a complaint may do so independent of a transit agency's complaint process. FTA provides an optional Civil Rights Complaint Form on its website for complainants to complete within 180 days from the date of the alleged discrimination. FTA's practice is

[1] FTA maintains its responsibility to ensure full compliance with Federal law by its grantees, and as such may renew an investigation of a complaint subject to litigation as part of its oversight responsibility, if a settlement agreement or other information suggests less than full compliance.

to encourage riders and others to resolve issues with local agencies when possible before filing a complaint with FTA.

12.7 Transit Agency Complaint Process

While providing good customer service is a goal all transit agencies share, issues arise that lead to customer complaints. Many agencies have robust customer service programs in place to address such issues, and while these are important to agency activities, § 37.17 and § 27.13 require all agencies to designate an employee to coordinate Part 37 and Part 27 compliance, respectively, and to have procedures in place specifically to address complaints alleging ADA violations.

12.7.1 Designation of Responsible Employee

Requirement

"*Designation of responsible employee*. Each public or private entity subject to [Part 37] shall designate at least one person to coordinate its efforts to comply with [Part 37]" (§ 37.17(a)).

This requirement is also in § 27.13(a).

Discussion

The regulations require transit agencies to designate at least one individual to coordinate ADA compliance. Many agencies designate this individual as the "ADA Coordinator."

12.7.2 Complaint Procedures

Requirement

"*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, including the name, address, telephone number, and email address of the employee designated under paragraph (a) of this section, 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" (§ 37.17(b)).

This requirement is also in § 27.13(b).

Discussion

DOT's 2015 Reasonable Modification of Policy and Practices final rule included revisions to the local complaint process requirement that affect the local handling of all complaints, not just those involving reasonable modification of policy. The Section 504 regulations have long required transit agencies to have administrative procedures in place that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints. The regulations now require additional steps described below.

Advertising the Process for Filing a Complaint

Section 37.17(b)(1) requires transit agencies to sufficiently advertise the process for filing a complaint, so that individuals know where to direct their complaints. Having a well-defined and advertised central point for collecting complaints helps prevent riders from mistakenly assuming they have filed formal complaints when communicating with transit personnel outside the established process. At the same time, the procedures help the agency ensure it provides appropriate due process for any actual ADA complaints received.

Agencies must advertise the process through means such as agency 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, 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.

Section 37.17(b)(2) requires a transit agency's complaint procedures to be accessible to and usable by individuals with disabilities. Alternative formats must be provided to individuals as necessary. (See Circular Section 2.8.)

Communicating the Response to the Complainant

One of the primary changes to the local complaint process requirement in the reasonable modification rule involves communication. Per § 37.17(b)(3), a transit agency must promptly communicate its response to the complainant, including the reasons for the response, and document this response for purposes of recordkeeping.

To facilitate prompt resolution, many transit agencies offer various means of communication, including written, electronic, in-person, and telephonic. Many agencies have also created interactive forms on their websites to receive complaints and use such procedures to share the information with the agency's ADA Coordinator. Typically, such interactive forms also generate automated emails to the complainant acknowledging receipt of the complaint and indicating further communications will occur once the investigation is complete.

The regulations do not require a written response to the complainant. The agency, however, must communicate its response to the complaint allegations to the complainant and document its response to the complainant in its internal records or database.

Using Contracted Service Providers

FTA notes that establishing complaint policies and procedures is the responsibility of the transit agency, not its contractors, meaning that complaint procedures apply to all transit service provided by the agency, whether directly or by contract. FTA cautions agencies against directing local complaints to their contracted service provider for resolution, since the agency itself is ultimately responsible for ADA compliance.

Combining ADA and Title VI Procedures

Grantees have long been required to have procedures for processing complaints from members of the public alleging discrimination based on race, color, or national origin under Title VI of the Civil Rights Act of 1964. (See FTA's Title VI Circular 4702.1B.) FTA notes that agencies can use the same process for accepting and investigating ADA and Title VI complaints. While agencies may find consolidating the processes more efficient, ADA complaints must be categorized distinctly from Title VI complaints in internal and external communications. For example, it is not appropriate to have a "Title VI Complaint

Form" that includes "disability" as one of the bases for filing a complaint; this incorrectly implies that disability is a covered basis under Title VI. Instead, an agency may elect to have one "Discrimination Complaint Form," or a similarly titled form, that covers both the Title VI and ADA bases and clearly distinguishes the two statutes.

12.7.3 Recordkeeping

Requirement

"*Compliance reports*. Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years. Each recipient shall keep such other records and submit to the responsible Departmental official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Department official may prescribe. In the case in which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report" (§ 27.121(b)).

Discussion

The regulations require transit agencies to keep all complaints of noncompliance on file for one year and a record of all such complaints (which may be in summary form) for five years. With the development of automated complaint-tracking systems, an optional good practice is to maintain an ongoing database of all complaints and to tag ADA-related complaints accordingly. This practice enables agencies to produce historical reports upon request.

It is important for transit agencies to distinguish between complaints that pertain to the DOT ADA requirements versus complaints about services or policies that do not—even if the complainant has a disability. For example, a complaint about wheelchair securements on fixed route buses not functioning properly is an ADA complaint, while a complaint about noisy passengers on a complementary paratransit vehicle is not. In addition, while complementary paratransit service is an ADA requirement, it is important to distinguish between service complaints (e.g., occasional late pickups) and complaints related to regulatory compliance such as a pattern or practice of significantly late pickups. (See Circular Section 8.5.6.)

While there are many potential areas of noncompliance, some of the more common types of ADA complaints include:

- Bus drivers passing by riders using wheelchairs waiting at a bus stop
- Vehicle operators not announcing stops or identifying routes
- Personnel refusing to allow a rider's service animal in a station or on a vehicle
- ADA paratransit vehicles arriving late

The following examples of service-related complaints are not areas of ADA noncompliance:

- Comfort while riding (e.g., driving style)
- Lack of or limited fixed route service (e.g., not serving a particular location or limited evening or weekend service)

Many transit agencies have developed robust methods for resolving complaints. Circular Section 12.7.4 outlines optional good practices for complaint resolution.

12.7.4 Complaint Filing and Resolution

Section 37.17(b)(1) requires transit agencies to publicize their process for filing complaints. An optional good practice is to also publicize policies and procedures pertaining to the complaint-resolution process. This may include the information an agency needs to investigate a complaint, timelines for promptly resolving complaints, and details on how the resolution will be communicated to the complainant.

Collecting Information

To properly investigate complaints, transit agencies typically request the following information:

- Contact information (name, rider ID (if applicable), address, telephone, email, etc.)
- Mobility aid used (if any)
- Date, time, and location of the incident
- Transit mode and line/route
- Vehicle ID number
- Name(s) or ID numbers of agency employee(s) or others
- Description of what transpired
- Other documentation such as photographs

Because of the unique service requirements of complementary paratransit, many agencies also establish specific information requirements related to such topics as:

- Telephones (reservations, cancellations, “where’s my ride,” etc.)
- Lateness and missed trips
- On-board ride times

Transit agencies have flexibility in establishing the best format(s) for receiving ADA complaints. As described above, agencies may decide to have a separate ADA complaint process or combine ADA and Title VI (and any other nondiscrimination requirements) into one process. Some agencies also decide to collect ADA complaints through online comment forms that capture suggestions, compliments, and complaints related to any service issues. A general form can be used to accept ADA complaints; however, any agency using such a form will need to ensure procedures are in place for distinguishing ADA complaints from other service issues, advertising the process, and responding consistently with the complaint requirements in § 37.17. Attachment 12-1 provides a sample comment form that can be used to collect feedback.

Setting Timelines

The regulations do not establish specific timelines for complaint resolution, leaving transit agencies free to establish their own timelines for resolving complaints. However, § 37.17(b) requires agencies to resolve complaints in a manner that is both “prompt” and “equitable” so as not to discriminate against individuals with disabilities.

Regardless of local policies for timelines, an optional good practice is to keep track of dates throughout the complaint resolution process, including:

- Date of receipt
- Date of assignment for investigation
- Date of resolution
- Date of communication to complainant

Thoroughly investigating complaints and openly communicating the investigative process and results can help establish positive relationships with riders and potentially reduce the possibility of legal actions and complaints filed with FTA.

Investigating Complaints

FTA recommends that complaint investigations include communications with all parties involved (i.e., the complainant as well as pertinent operations staff). Many transit agencies extend their complaint investigation beyond in-person communication to include other information sources, such as:

- Video recordings from facility surveillance and on-board cameras
- Telephone call recordings
- Written communications (paper and electronic)
- System data including location tracking, dispatch records, and reservationist notes and input
- Driver manifests (paper or electronic)
- Interviews with transit agency or contractor employees and other riders who may be witnesses to the incident

As discussed above, it is important to distinguish between general service complaints and those that rise to the level of noncompliance and to fully investigate complaints of discrimination.

Following Up Internally After Complaint Investigations

Section 37.173 requires transit agencies to ensure their personnel are trained to proficiency as appropriate to their duties. (See Circular Section 2.9.) Rider complaints that reveal issues with the provision of service can be indicators that employees may not be trained proficiently.

When complaint investigations confirm ADA violations, the following are optional good practices:

- Have established follow-up procedures in place. Transit agencies and their contractors typically employ progressive discipline measures, beginning with re-training and counseling followed by more punitive actions after repeat offenses.
- Use properly investigated complaint findings as case studies in training curricula; these offer real-world examples to trainees.
- Include supervisor monitoring and follow-up to confirm that employees understand and properly carry out their responsibilities.
- For ADA violations arising from issues with vehicles, accessibility equipment, or facilities, review operating procedures, maintenance procedures, and technical specifications to identify any needed changes.

12.8 Transit Agency Monitoring

Transit agencies must sufficiently monitor their service, provided in house or by contractors, in order to confirm internally, and in some cases to FTA during oversight activity, that the service is being delivered consistent with the ADA requirements. State recipients are also responsible for ensuring the compliance of their subrecipients, as covered in Circular Chapter 1. FTA does not dictate the specifics of an agency or state's monitoring efforts. Approaches for monitoring will vary based on the characteristics of the service and local considerations.

When transit agencies contract with other entities (public or private), these other entities "stand in the shoes" of the agency. Section 37.23 requires the agency to ensure that the other entity meets the relevant Part 37 requirements. (See Circular Section 1.3.2.) FTA recommends that agencies enter into clearly

worded and concise contracts with explicit service provision requirements, including minimum performance standards, incentives and penalties, and regular reporting.

Table 12-1 lists the Circular chapters in which monitoring-related activities are discussed.

Table 12-1 – Circular Chapters that Discuss Monitoring Activities

Chapter	Monitoring Topics Discussed
1 – Introduction and Applicability	Services under contract or other arrangement
2 – General Requirements	N/A
3 – Transportation Facilities	Design review Construction oversight
4 – Vehicle Acquisition and Specifications	Pre-delivery vehicle inspections
6 – Fixed Route Service	Stop announcements Route identification announcements
7 – Demand Responsive Service	Determining equivalency for each service requirement
8 – Complementary Paratransit Service	On-time pickup performance Denials and missed trips Trip lengths Telephone system performance
9 – ADA Paratransit Eligibility	Timeliness of ADA paratransit eligibility determinations Accuracy of no-show and missed trip coding
10 – Passenger Vessels	Accommodating passengers who use mobility aids Providing on-board assistance Complaint processing
12 – Oversight, Complaints, and Monitoring	Complaint processing

To ensure compliant service, FTA recommends that transit agencies go beyond reviewing performance reports and data or conducting desk audits and observe actual service. Even when agency policies and procedures may be correct, actual practices may differ. Monitoring how transit employees interact with riders with disabilities is a key element in ensuring compliance. Some of these activities, such as whether vehicle operators announce stops, are relatively easy to monitor (e.g., through the use of secret riders). Other activities, such as properly deploying bus ramps at stops, occur less frequently. Approaches for monitoring compliance may depend on the frequency of activity that occurs in service.

Attachment 12-1
Sample Comment Form

[Transit Agency] is committed to providing you with safe and reliable transportation services and we want your feedback. Please use this form for suggestions, compliments, and complaints. You may also call us at [number], visit our Customer Service Center at [address], or contact us by email or U.S. postal mail at the addresses below. Please make sure to provide us with your contact information in order to receive a response. [Include Agency Name, Responsible Employee Name or Title, Address, Telephone, and Email link]

SECTION I: TYPE OF COMMENT (Choose One)*				
Compliment___	Suggestion___	Complaint___	Other:_____	ADA Related? Y / N
SECTION II: CONTACT INFORMATION				
Salutation [Mr./Mrs./Ms., etc.]:				
Name:				
Rider ID (if applicable):				
Street Address:				
City, State, Zip code:				
Phone:		Email:		
Accessible Format Requirements:	Large Print__	TDD/Relay__	Audio Recording__	Other_____
SECTION III: COMMENT DETAILS				
Transit Service (Choose One) [as applicable] [Bus/Subway/Paratransit]*				
Date of Occurrence:		Time of Occurrence:		
Name/ID of Employee(s) or Others Involved:				
Vehicle ID/Route Name or Number:				
Direction of Travel:				
Location of Incident:				
Mobility Aid Used (if any):				
If above information is unknown, please provide other descriptive information to help identify the employee:				
Description of Incident or Message [Text box on web form for narrative]:				
SECTION IV: FOLLOW-UP				
May we contact you if we need more details or information?			Yes	No
What is the best way to reach you? (Choose One)*	Phone	Email	Mail	
If a phone call is preferred, what is the best day and time to reach you?				
SECTION V: DESIRED RESPONSE (Choose One)*				
- Email response - Telephone response - Response by U.S. Postal Mail				

* Drop-down menu on web forms

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Abbreviations and Acronyms

ABA – Architectural Barriers Act of 1968

Access Board – U.S. Architectural and Transportation Barriers Compliance Board

ACD – Automatic Call Distribution

ADA – Americans with Disabilities Act

ADA-ABA AG – ADA-ABA Accessibility Guidelines of 2004

ADAAG – ADA Accessibility Guidelines

AGT – Automated Guideway Transit

ANSI – American National Standards Institute

BRT – Bus Rapid Transit

CFR – Code of Federal Regulations

CIL – Center for Independent Living

CR – Curb ramps

CRO – Complaints Resolution Official

DOJ – Department of Justice

DOT – Department of Transportation

DOT Standards – ADA Standards for Transportation Facilities (2006) incorporating ADA-ABA AG with additional modifications

FACTS – Functional Assessment of Cognitive Transit Skills

FHWA – Federal Highway Administration

FRA – Federal Railroad Administration

FTA – Federal Transit Administration

GVWR – Gross Vehicle Weight Rating

HIPAA – Health Insurance Portability and Accountability Act

IBC – International Building Code

ISA – International Symbol of Accessibility

LEP – Limited English Proficiency

MAP-21 – Moving Ahead for Progress in the 21st Century

MOU – Memorandum of Understanding

MPH – Miles per hour

PCA – Personal Care Assistant

PII – Personally Identifiable Information

PVO – Passenger Vehicle Operator

RED – Regional Eligibility Database

Section 504 – part of the Rehabilitation Act of 1973 pertaining to prohibition of discrimination

TCRP – Transit Cooperative Research Program

TDD – Telecommunications Device for the Deaf

Title VI – of the Civil Rights Act of 1964, protecting persons from discrimination

TRS – TTY (see below) Relay Service

TTY – Text Telephone

U.S.C. – United States Code

UFAS – Uniform Federal Accessibility Standards