

## **12. AMERICANS WITH DISABILITIES ACT (ADA) - GENERAL**

### **PURPOSE OF THIS REVIEW AREA**

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

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

(1) Federal laws, including:

- (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
- (ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
  - (A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
  - (B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer."

### **QUESTIONS TO BE EXAMINED**

1. Does the recipient track, resolve, and respond to ADA-related complaints, and publicize the complaint process?
2. Do all bus and rail vehicles acquired for use in fixed-route service by public entities since the last Comprehensive Review meet the accessibility requirements of 49 CFR Part 38?
3. Do all vehicles used in fixed-route service provided under contract or other arrangement or relationship, including microtransit and commuter bus service, meet the requirements under 49 CFR Part 38?
4. Since the last Comprehensive Review, if vehicles were acquired for demand-response service, other than for ADA complementary paratransit service, do they meet the accessibility requirements of 49 CFR Part 38, or can equivalent service be demonstrated per 49 CFR §37.77(c)(1)-(7)?
5. If the recipient has engaged the services of a taxi company, transportation network company, or other private entity to operate demand-response service, including microtransit, on its behalf or in conjunction with its services, are all vehicles accessible, or can equivalent service be demonstrated per 49 CFR §37.77(c)(1)-(7)?
6. Are facilities for providing public transportation that were constructed since the last Comprehensive Review readily accessible to and usable by individuals with disabilities, according to the DOT standards for transportation facilities?
7. Are facilities that were altered since the last Comprehensive Review readily accessible to and usable by individuals with disabilities, according to the DOT standards for transportation facilities?

8. Does the recipient follow ADA provision of service requirements?
9. Does the recipient ensure that individuals who rely on accessible equipment are accommodated when that equipment is inoperative?
10. Is route-deviation service open to the general public?
11. Is rail service accessible to and usable by persons with disabilities?
12. Is ferry service accessible to and usable by persons with disabilities?
13. Does the recipient monitor service provided under contract or other arrangement or relationship, or service provided by another public entity on the recipient's behalf, for compliance with the U.S. Department of Transportation (US DOT) ADA regulations?
14. Does the recipient monitor service provided by subrecipients for compliance with the US DOT ADA regulations?

## **INFORMATION NEEDED FROM RECIPIENT**

### **Recipient Information Request**

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

### **Recipient Follow-up**

- Sample vehicle specifications/information on annunciators
- Documentation of structural impracticality

- Documentation of disproportionality regarding alterations to the path of travel to a facility if alterations were made to a primary function area
  - Internal bulletins
  - Lift/ramp specifications for the fleet
  - Sample requests for reasonable modification of policies and procedures
  - Sample ADA-related complaint records
  - Sample contract or other agreement, or terms of other relationships (including, but not limited to, awards, subawards, or cooperative agreements) with private entity to be visited that operates fixed-route or demand-response service, including microtransit and commuter bus
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**ADA-GEN1. Does the recipient track, resolve, and respond to ADA-related complaints, and publicize the complaint process?**

**BASIC REQUIREMENT**

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

**APPLICABILITY**

All recipients

**DETAILED EXPLANATION FOR REVIEWER**

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

**INDICATORS OF COMPLIANCE**

- a. *Is there a process for addressing ADA complaints?*
- b. *How does the recipient identify ADA complaints?*
- c. *Is the process for filing a disability-related complaint advertised to the public, such as on the recipient's website?*
- d. *Are the complaint procedures accessible to and usable by individuals with disabilities?*

- e. *Do the procedures provide for the prompt and equitable resolution of complaints, including a procedure for responding to complaints and tracking the responses?*
  
- f. *Does the recipient retain ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years?*

### **INSTRUCTIONS FOR REVIEWER**

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

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

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

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

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

### **POTENTIAL DEFICIENCY DETERMINATIONS**

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

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

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit an ADA complaint process.

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

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

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

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

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

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

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

## **GOVERNING DIRECTIVE**

### 49 CFR 27.121(b) Compliance information

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

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

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

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

- (1) The process for filing a complaint, must be sufficiently advertised to the public, such as on the entity's Web site;
- (2) The procedures must be accessible to and usable by individuals with disabilities;
- (3) The entity must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant and must ensure that it has documented its response.

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

#### **BASIC REQUIREMENT**

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

#### **APPLICABILITY**

Recipients that provide fixed-route service

#### **DETAILED EXPLANATION FOR REVIEWER**

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

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

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

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

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

#### **INDICATOR OF COMPLIANCE**

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

Bus Accessibility Checklist	Yes, No, or Not Applicable
Priority seating designated	-
Wheelchair location signage	-

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

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

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

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

## **INSTRUCTIONS FOR REVIEWER**

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

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

## **POTENTIAL DEFICIENCY DETERMINATIONS**

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

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

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

**SUGGESTED CORRECTIVE ACTION 2:** The recipient must submit documentation that it has canceled the lease for inaccessible vehicles.

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

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

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

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

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

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

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

**GOVERNING DIRECTIVE**

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

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

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

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

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

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

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

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

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

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

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

- (1) An initial solicitation for used vehicles specifying that all used vehicles are to be lift-equipped and otherwise accessible to and usable by individuals with disabilities, or, if an initial solicitation is not used, a documented communication so stating;
- (2) A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and
- (3) Advertising in trade publications and contacting trade associations.

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

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

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

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

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

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

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

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

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

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

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

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

- (b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.
- (c) For purposes of this section, it shall be considered feasible to remanufacture a rapid or light rail vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that doing so would have a significant adverse effect on the structural integrity of the vehicle.
- (d) If a public entity operates a rapid or light rail system any segment of which is included on the National Register of Historic Places and if making a rapid or light rail vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity need only make (or purchase or lease a remanufactured vehicle with) those modifications that do not alter the historic character of such vehicle.
- (e) A public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the FTA Administrator for a determination of the historic character of the vehicle. The FTA Administrator shall refer such requests to the National Register of Historic Places and shall rely on its advice in making a determination of the historic character of the vehicle.

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

- (a) This section applies to Amtrak or a commuter authority which takes one of the following actions:
- (1) Remanufactures an intercity or commuter rail car so as to extend its useful life for ten years or more;
  - (2) Purchases or leases an intercity or commuter rail car which has been remanufactured so as to extend its useful life for ten years or more.
- (b) Intercity and commuter rail cars listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.
- (c) For purposes of this section, it shall be considered feasible to remanufacture an intercity or commuter rail car so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that remanufacturing the car to be accessible would have a significant adverse effect on the structural integrity of the car.

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

*Subpart B—Buses, Vans and Systems*

*§38.27 Priority seating signs*

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

**Subpart C—Rapid Rail Vehicles and Systems**

**§38.55 Priority seating signs**

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

**Subpart D—Light Rail Vehicles and Systems**

**§38.75 Priority seating signs**

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

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

**Subpart E—Commuter Rail Cars and Systems**

**§38.105 Priority seating signs**

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

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

**BASIC REQUIREMENT**

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

**APPLICABILITY**

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

**DETAILED EXPLANATION FOR REVIEWER**

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

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

## **INDICATOR OF COMPLIANCE**

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

## **INSTRUCTIONS FOR REVIEWER**

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

## **POTENTIAL DEFICIENCY DETERMINATION**

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

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

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

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

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit evidence that services found to be noncompliant have been discontinued.

## **GOVERNING DIRECTIVE**

### **49 CFR 37.7 Standards for accessible vehicles**

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

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

### **49 CFR 37.23 Service under contract**

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

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**ADA-GEN4. Since the last Comprehensive Review, if vehicles were acquired for demand-response service, other than for ADA complementary paratransit service, were the requirements of 49 CFR Part 37.77 met?**

#### **BASIC REQUIREMENT**

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

#### **APPLICABILITY**

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

#### **DETAILED EXPLANATION FOR REVIEWER**

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

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

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

#### **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

##### **Modification of Fixed-Route Service**

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