

## **INDICATOR OF COMPLIANCE**

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

## **INSTRUCTIONS FOR REVIEWER**

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

In addition to the normal assessment procedures, review the recipient's website or discuss with the FTA regional office to determine if the recipient transitioned from providing fixed-route to demand-responsive service in response to the COVID-19 public health emergency.

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

## **POTENTIAL DEFICIENCY DETERMINATION**

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

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

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

## **GOVERNING DIRECTIVE**

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

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

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

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

- (1) Response time;
  - (2) Fares;
  - (3) Geographic area of service;
  - (4) Hours and days of service;
  - (5) Restrictions or priorities based on trip purpose;
  - (6) Availability of information and reservations capability; and
  - (7) Any constraints on capacity or service availability.
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**ADA-GEN5.** **If the recipient has engaged the services of a taxi company, transportation network company, or other private entity to operate demand-response service, 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)?**

#### **BASIC REQUIREMENT**

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

#### **APPLICABILITY**

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

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

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

#### **INDICATOR OF COMPLIANCE**

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

## **INSTRUCTIONS FOR REVIEWER**

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

## **POTENTIAL DEFICIENCY DETERMINATION**

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

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

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

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

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

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit documentation that the service has been discontinued.

## **GOVERNING DIRECTIVE**

### **49 CFR 37.5 Nondiscrimination**

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

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

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

(b) A private entity which purchases or leases new, used, or remanufactured vehicles, or manufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive

service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.

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

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

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

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

- (1) Response time;
  - (2) Fares;
  - (3) Geographic area of service;
  - (4) Hours and days of service;
  - (5) Restrictions or priorities based on trip purpose;
  - (6) Availability of information and reservations capability; and
  - (7) Any constraints on capacity or service availability
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**ADA-GEN6. 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?**

#### **BASIC REQUIREMENT**

Newly constructed facilities must meet US DOT accessibility requirements.

#### **APPLICABILITY**

Recipients who provide service

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

Any new facility to be used in providing public transportation services must be accessible according to the standards referenced in 49 CFR 37.9, as required by 49 CFR 37.41. "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real

or personal property, including the site where the building, property, structure, or equipment is located.” Under 49 CFR 37.41(b), full compliance with these standards is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. “Structurally impracticable” is defined in 49 CFR 37.41(b)(1) as “those rare circumstances where the unique characteristics of terrain prevent the incorporation of accessibility features.”

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

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

#### **INDICATOR OF COMPLIANCE**

- a. *Can the recipient demonstrate that the newly constructed facilities meet accessibility requirements? If not, can the recipient demonstrate that meeting the accessibility requirements was structurally impracticable?*

#### **INSTRUCTIONS FOR REVIEWER**

Review awards to determine whether new facilities were constructed since the last Comprehensive Review. Obtain a list of facilities that were constructed since the last Comprehensive Review. Discuss the list with the regional office to determine if they are aware of any accessibility issues. Work with the regional office and the RCRO to determine which facility(ies) to tour during the site visit. Onsite, review procurement files to determine if procurements refer to US DOT ADA requirements. Discuss with the recipient how it ensures that plans, drawings, and construction comply with US DOT ADA requirements. Review documentation of structural impracticality that is the unique characteristics of terrain preventing the incorporation of accessibility features. Tour newly constructed facility(ies) to determine if the building is generally accessible, that is, includes basic accessibility elements such as accessible parking, accessible routes, ramps, and elevators.

#### **POTENTIAL DEFICIENCY DETERMINATION**

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

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

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

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit documentation of structural impracticability.

#### **GOVERNING DIRECTIVE**

##### 49 CFR 37.9 Standards for accessible transportation facilities

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

##### 49 CFR 37.41 Construction of transportation facilities by public entities

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

- (1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.
  - (2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.
  - (3) If providing accessibility in conformance with this section to individuals with certain disabilities (*e.g.*, those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (*e.g.*, those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.
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**ADA-GEN7. 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?**

**BASIC REQUIREMENT**

Altered facilities must meet US DOT accessibility requirements.

**APPLICABILITY**

Recipients who provide service

**DETAILED EXPLANATION FOR REVIEWER**

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

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

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

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

#### **INDICATORS OF COMPLIANCE**

- a. *Can the recipient demonstrate that the recently altered facilities meet accessibility requirements?*
- b. *Can the recipient provide documentation that the facility was made accessible to the maximum extent feasible?*
- c. *If the alteration to the facility(ies) involving an area containing a primary function did not result in making the path of travel to and from the altered area accessible, can the recipient demonstrate that the cost of alterations required to make the path of travel accessible were disproportionate to the overall alterations in terms of cost and scope?*

#### **INSTRUCTIONS FOR REVIEWER**

Review awards in TrAMS to determine whether facilities were altered since the last Comprehensive Review. Discuss with the regional office any correspondence regarding altered facilities and ADA accessibility. Obtain a list of newly altered facilities.

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

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

Discuss with the recipient whether the alteration involved an area containing a primary function and if the path of travel to and from the altered area was not made accessible. Obtain and review documentation

that the cost of the alterations required to make the path of travel accessible were disproportionate to the overall cost and scope of the alterations.

### **POTENTIAL DEFICIENCY DETERMINATION**

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

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

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

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

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

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

### **GOVERNING DIRECTIVE**

49 CFR 37.9 Standards for accessible transportation facilities

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

49 CFR 37.43 Alteration of transportation facilities by public entities

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

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

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

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

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

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

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

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

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

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

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

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

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

##### **BASIC REQUIREMENT**

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

## **APPLICABILITY**

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

## **DETAILED EXPLANATION FOR REVIEWER**

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

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

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

Note that the US DOT definition of a service animal includes any guide dog, signal dog or other animal individually trained to work or perform tasks for an individual with a disability; it is not limited to dogs as in the US Department of Justice definition and excludes no breeds of dog or other animal. Emotional support animals or "comfort animals" are not service animals within the context of the US DOT ADA regulations. Entities may refuse to transport service animals that are deemed to pose a direct threat to the health or safety of drivers or other riders, create a seriously disruptive atmosphere, or are otherwise not under the rider's control.

- (d) Signage designating wheelchair locations is required on buses. Signage designating priority seating is required on buses and rail vehicles. When an individual with a disability needs to sit in a seat or occupy a wheelchair securement location, the public or private entity must ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location: (i) individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and persons with disabilities (or other seat as necessary); and (ii) individuals (including other persons with disabilities) sitting in a fold-down or other movable seat in a wheelchair securement location. Drivers are not required to compel the person to move; however, the entity is permitted to adopt a policy requiring individuals to move in response to such requests.

- (e) Public and private entities are prohibited from setting weight or size limitations on wheelchairs it will transport that understate the weight capacity that the vehicle fleet can actually accommodate (e.g., a policy of not transporting wheelchair users whose combined weight is more than 600 pounds, when the design load of their vehicle lifts is 800 pounds). The term “common wheelchair,” was deleted from 49 CFR Part 37 effective October 19, 2011. While the dimensions and capacities required for lifts, ramps, and securement areas have not changed, many vehicles are capable of accommodating larger and heavier wheelchairs. Where this is the case, it is inappropriate to limit the size and/or weight of the wheelchairs an entity will accommodate to the minimum standards. Entities must accommodate wheelchairs according to the true capacities of their vehicles.

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

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

- (f) Public and private entities must not refuse to permit a passenger who uses a lift or ramp to board or disembark from a vehicle at any designated stop, unless the lift or ramp cannot be deployed, the lift or ramp will be damaged if it is deployed, or temporary conditions preclude the safe use of the stop by all passengers. The entity must deploy lifts or ramps for persons who do not use wheelchairs, including standees. The entity may not seek waivers from standees who require the use of the lift.
- (g) Public and private entities may not deny service to individuals using respirators, concentrators, or portable oxygen.
- (h) Public information and communications must be made available in accessible formats, upon request. The alternate accessible format must be provided in a format that the requesting individual can actually use; which format (Braille, audio, large-type, etc.) is not specified. Public and private entities must make available to individuals with disabilities adequate and accessible information concerning transportation services.
- (i) Public entities are required under 49 CFR 37.5(i)(3) to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services. The process to be used in considering requests for reasonable modifications is described in 49 CFR 37.169.

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

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

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

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

#### **INDICATORS OF COMPLIANCE**

- a. *Are stops announced on fixed-route vehicles? When automated stop annunciators are inoperative or malfunction, do drivers announce stops?*
- b. *Has the recipient implemented a means of route identification at stops served by more than one route? When automated annunciators are inoperative or malfunction, does the recipient offer an alternative means of route identification?*
- c. *Does the recipient permit service animals meeting the definition in 49 CFR 37.3 to accompany passengers with disabilities aboard all vehicles and in all facilities? Does the recipient require “paperwork” or specific identification in order to accommodate service animals? Does the recipient impose species or breed restrictions on service animals?*
- d. *Does the recipient make priority seating available to individuals with disabilities? Is the required signage provided on all vehicles? Does the recipient make securement location(s) available to wheelchair users? Are securement locations designated? Does the recipient request that all persons occupying movable seating in securement locations, including other persons with disabilities, vacate the seating in order to accommodate wheelchair users? Does the recipient require wheelchair users to sign waivers as a condition of service?*
- e. *Does the recipient underestimate the size and weight of wheelchairs that it will transport?*

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

#### **INSTRUCTIONS FOR REVIEWER**

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

During the site visit, discuss ADA service provision implementation.

1. If automated stop annunciators are used, discuss with trainers and transportation managers whether stops are announced and connecting routes identified when stop annunciators are inoperative or malfunction, and how stops are announced upon request. Check if inoperative announcement systems are addressed during pre-trip inspections.
2. Ask managers and trainers how they accommodate service animals, and whether there are requirements for identification or restrictions on species or breed.
3. Ask managers and trainers how they accommodate needs for priority seating in revenue service.

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

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

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

During pre-site visit or site visit discussions, discuss if/how the recipient has suspended, deviated from, or significantly updated or altered the implementation of its procedures during the COVID-19 public health emergency relating to availability of alternative accessible formats, requests for reasonable accommodations, and accommodating individuals who rely on accessible equipment when that equipment is inoperative.

#### **POTENTIAL DEFICIENCY DETERMINATIONS**

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

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