

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

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

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

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

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

SUGGESTED CORRECTIVE ACTION: The recipient must submit revised procedures for accommodating service animals that remove the provisions discussed in this report.

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

DEFICIENCY CODE ADA-GEN8-3: Priority seating deficiency

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

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

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

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

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

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

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

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

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

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit documentation that it no longer requires wheelchair users to transfer to a vehicle seat.

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

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

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

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

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

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

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

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

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

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

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

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

DEFICIENCY CODE ADA-GEN8-9: Reasonable modification deficiency

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

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

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

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

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

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

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

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

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

**SUGGESTED CORRECTIVE ACTION:** The recipient must submit evidence of implementation of procedures for ensuring that its operations comply with ADA service provisions.

## **GOVERNING DIRECTIVE**

### **49 CFR 37.3 Definitions**

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

*Wheelchair* means a mobility aid belonging to any class of three- or more-wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered.

### **49 CFR 37.5 Nondiscrimination**

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

### **49 CFR 37.165 Lift and securement use**

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

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

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

49 CFR 37.167 Other service requirements

- (a) This section applies to public and private entities.
- (b) On fixed-route systems, the entity shall announce stops as follows:
  - (1) The entity shall announce at least at transfer points with other fixed routes, other major intersections and destination points, and intervals along a route sufficient to permit individuals with visual impairments or other disabilities to be oriented to their location.
  - (2) The entity shall announce any stop on request of an individual with a disability.
- (c) Where vehicles or other conveyances for more than one route serve the same stop, the entity shall provide a means by which an individual with a visual impairment or other disability can identify the proper vehicle to enter or be identified to the vehicle operator as a person seeking a ride on a particular route.
- (d) The entity shall permit service animals to accompany individuals with disabilities in vehicles and facilities.
- (f) The entity shall make available to individuals with disabilities adequate information concerning transportation services. This obligation includes making adequate communications capacity available, through accessible formats and technology, to enable users to obtain information and schedule service.
- (g) The entity shall not refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, the lift will be damaged if it is deployed, or temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers.
- (h) The entity shall not prohibit an individual with a disability from traveling with a respirator or portable oxygen supply, consistent with applicable Department of Transportation rules on the transportation of hazardous materials (49 CFR subtitle B, chapter 1, subchapter C).
- (j)(1) When an individual with a disability enters a vehicle, and because of a disability, the individual needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location:
  - (i) Individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary);
  - (ii) Individuals sitting in or a fold-down or other movable seat in a wheelchair securement location.
- (2) This requirement applies to light rail, rapid rail, and commuter rail systems only to the extent practicable.
- (3) The entity is not required to enforce the request that other passengers move from priority seating areas or wheelchair securement locations.
- (4) In all signage designating priority seating areas for elderly persons and persons with disabilities, or designating wheelchair securement areas, the entity shall include language informing persons sitting in these locations that they should comply with requests by transit provider personnel to vacate their seats to make room for an individual with a disability. This requirement applies to all fixed-route vehicles when they are acquired by the entity or to new or replacement signage in the entity's existing fixed-route vehicles.

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

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

49 CFR 37.173 Training requirements

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

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

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

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

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

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

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

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**ADA-GEN9. Does the recipient ensure that individuals who rely on accessible equipment are accommodated when that equipment is inoperative?**

**BASIC REQUIREMENT**

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

## **APPLICABILITY**

Recipients who provide service

## **DETAILED EXPLANATION FOR REVIEWER**

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

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

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

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

Public entities must ensure that operators report immediately any in-service lift and ramp failures. The vehicle with the inoperable lift or ramp must be removed from service before the beginning of the next service day and the entity must repair the lift or ramp before the vehicle is returned to service. In the event that there is no spare vehicle available and the entity would be required to reduce service to repair the lift or ramp, it may keep the vehicle with the inoperable lift or ramp in service for no more than three days (if the entity serves an area of over 50,000 population) or five days (if the entity serves an area of 50,000 or less population). After these times have elapsed, the vehicle must go into the shop, not to return to service until the lift is repaired. Even during the three- or five-day period, if an accessible spare vehicle becomes available at any time, it must be used in place of the vehicle with the inoperative lift or an inaccessible spare that is being used in its place. In any case in which a vehicle is operating on a fixed route with an inoperative lift (including in-service failures), and the headway to the next accessible vehicle exceeds 30 minutes, the entity must promptly (i.e., within 30 minutes) provide alternative transportation to persons with disabilities who are unable to use the vehicle.

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

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

#### **INDICATORS OF COMPLIANCE**

- a. *When an elevator or other accessibility feature is out of service or otherwise unusable, does the recipient ensure that individuals who rely on the elevator or feature are accommodated?*
- b. *Does the recipient ensure that vehicles with inoperative lifts or ramps are not placed into service unless no alternative accessible vehicles are available?*
- c. *Does the recipient require vehicle operators to report lift and ramp failures immediately?*
- d. *When lifts or ramps fail in service and cannot be deployed, is alternative accessible service provided to persons with disabilities?*
- e. *Does the recipient ensure that the usability of accessible paths of travel is maintained and provide alternative service or other means of compliance when necessary?*

#### **INSTRUCTIONS FOR REVIEWER**

Prior to the site visit, review the recipient's website and other public materials for information on service during elevator failures, including public notification procedures. Onsite, review complaints regarding failure to provide alternative arrangements when elevators are out of service. If there are complaints, determine if the complaints indicate that the recipient does not have or did not follow its procedure for providing alternative arrangements. During the site visit, discuss the alternative service arrangements and how the public is notified promptly about outages and alternative service. Review recipient's outage records. Determine the time requirements, if any, govern in-house elevator repair. Review contract provisions governing timely contractor response to and repair of elevator outages.

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

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

## POTENTIAL DEFICIENCY DETERMINATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

## **GOVERNING DIRECTIVE**

### **49 CFR 37.161 Maintenance of accessible features: General**

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

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

### **49 CFR 37.163 Keeping lifts in operative condition: Public entities**

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

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

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

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

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

(f) In any case in which a vehicle is operating on a fixed route with an inoperative lift, and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity shall promptly provide alternative transportation to individuals with disabilities who are unable to use the vehicle because its lift does not work.

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

### **BASIC REQUIREMENT**

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

### **APPLICABILITY**

Recipients that provide route-deviation service

### **DETAILED EXPLANATION FOR REVIEWER**

The US DOT ADA regulations regard a system that permits user-initiated deviations from routes or schedules as demand response, for which ADA complementary paratransit is not required. One key factor to consider in determining whether a transit system is fixed-route or demand-response is if an

individual must request the service in some way, typically by making a phone call in advance. With fixed-route service, no action is needed to access the service--if a person is at the bus stop at the time the bus is scheduled to appear, then the person can use that service. In contrast, with demand-response service, the individual typically must make a phone call in order to ride the bus. A system that permits user-initiated deviations from routes generally fits the definition of demand-response service.

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

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

The requirements for use of accessible vehicles in demand-responsive service apply to route-deviation service. (See question ADA-GEN4.)

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

#### **INDICATORS OF COMPLIANCE**

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

#### **INSTRUCTIONS FOR REVIEWER**

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

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

## POTENTIAL DEFICIENCY DETERMINATIONS

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

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

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

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

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

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

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

## GOVERNING DIRECTIVE

### 49 CFR 37.121 Requirement for comparable complementary paratransit service

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

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

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

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

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

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

- (1) Response time;
- (2) Fares;

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

### **BASIC REQUIREMENT**

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

### **APPLICABILITY**

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

### **DETAILED EXPLANATION FOR REVIEWER**

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

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

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

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

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

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

#### **INDICATORS OF COMPLIANCE**

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

#### **INSTRUCTIONS FOR REVIEWER**

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

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

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

Review rail operations training materials regarding accessible boarding/alighting procedures, including use of bridge plates. If accessible boarding is provided at a single point, i.e., as with a mini-high platform or wayside lift, to be considered accessible, trains must stop at every accessible station such that an accessible car aligns with this point. If all the wheelchair positions in the car aligning with the accessible boarding point are occupied, at subsequent stations the train must realign so as to permit boarding other accessible cars. If time permits, observe or ride the service. Determine how accessible cars are identified for customers.

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

public information on riding rail service, such as a rider guide or customer information for discussion on accessible boarding.

#### **POTENTIAL DEFICIENCY DETERMINATIONS**

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

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

SUGGESTED CORRECTIVE ACTION: The recipient must submit procedures for ensuring that at least one car per train is accessible.

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

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

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

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

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

SUGGESTED CORRECTIVE ACTION: The recipient must submit a plan for retrofitting cars with between-car barriers.

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

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

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

#### **GOVERNING DIRECTIVE**

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

(a) In addition to meeting the requirements of sections 37.9 and 37.41, an operator of a commuter, intercity, or high-speed rail system must ensure, at stations that are approved for entry into final design or that begin construction or alteration of platforms on or after February 1, 2012, that the following performance standard is met: individuals with disabilities, including individuals who use wheelchairs, must have access to all accessible cars available to passengers without disabilities in each train using the station.

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