

(c) For new or altered stations serving commuter, intercity, or high-speed rail lines or systems, in which track passing through the station and adjacent to platforms is shared with existing freight rail operations, the railroad operator may comply with the performance standard of paragraph (a) by use of one or more of the following means:

- (1) Level-entry boarding;
- (2) Car-borne lifts;
- (3) Bridge plates, ramps or other appropriate devices;
- (4) Mini-high platforms, with multiple mini-high platforms or multiple train stops, as needed, to permit access to all accessible cars available at that station; or
- (5) Station-based lifts;

(d) Before constructing or altering a platform at a station covered by paragraph (c) of this section, at which a railroad proposes to use a means other than level-entry boarding, the railroad must meet the following requirements:

- (1) If the railroad operator not using level-entry boarding chooses a means of meeting the performance standard other than using car-borne lifts, it must perform a comparison of the costs (capital, operating, and life-cycle costs) of car-borne lifts and the means chosen by the railroad operator, as well as a comparison of the relative ability of each of these alternatives to provide service to individuals with disabilities in an integrated, safe, timely, and reliable manner. The railroad operator must submit a copy of this analysis to FTA or FRA at the time it submits the plan required by paragraph (d)(2) of this section.
- (2) The railroad operator must submit a plan to FRA and/or FTA, describing its proposed means to meet the performance standard of paragraph (a) of this section at that station. The plan must demonstrate how boarding equipment or platforms would be deployed, maintained, and operated; and how personnel would be trained and deployed to ensure that service to individuals with disabilities is provided in an integrated, safe, timely, and reliable manner.
- (3) Before proceeding with constructing or modifying a station platform covered by paragraphs (c) and (d) of this section, the railroad must obtain approval from the FTA (for commuter rail systems) or the FRA (for intercity rail systems). The agencies will evaluate the proposed plan and may approve, disapprove, or modify it. The FTA and the FRA may make this determination jointly in any situation in which both a commuter rail system and an intercity or high-speed rail system use the tracks serving the platform. FTA and FRA will respond to the railroad's plan in a timely manner, in accordance with the timetable set forth in paragraphs (d)(3)(i) through (d)(3)(iii) of this paragraph.

49 CFR 37.93 One car per train rule

(a) The definition of accessible for purposes of meeting the one car per train rule is spelled out in the applicable subpart for each transportation system type in part 38 of this title.

(b) Each person providing intercity rail service and each commuter rail authority shall ensure that, as soon as practicable, but in no event later than July 26, 1995, that each train has one car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Each public entity providing light or rapid rail service shall ensure that each train, consisting of two or more vehicles, includes at least one car that is readily accessible to and usable by individuals with

disabilities, including individuals who use wheelchairs, as soon as practicable but in no case later than July 25, 1995.

49 CFR 38.63 Between-car barriers (rapid rail)

(a) *Requirement.* Suitable devices or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Acceptable solutions include, but are not limited to, pantograph gates, chains, motion detectors or similar devices.

(b) *Exception.* Between-car barriers are not required where platform screens are provided which close off the platform edge and open only when trains are correctly aligned with the doors.

49 CFR 38.85 Between-car barriers (light rail)

Where vehicles operate in a high-platform, level-boarding mode, devices, or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Appropriate devices include, but are not limited to, pantograph gates, chains, motion detectors or other suitable devices.

49 CFR 38.109 Between-car barriers (commuter rail)

Where vehicles operate in a high-platform, level-boarding mode, devices or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Appropriate devices include, but are not limited to, pantograph gates, chains, motion detectors or other suitable devices.

ADA-GEN12. Is ferry service accessible to and usable by persons with disabilities?

BASIC REQUIREMENT

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

APPLICABILITY

Recipients that provide ferry service

DETAILED EXPLANATION FOR REVIEWER

Ferry service is covered by 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels," which became effective November 10, 2010. This rule prohibits owners and operators of passenger vessels, including U.S. and foreign-flag vessels, from discriminating against passengers on the basis of disability; requires vessels and related facilities to be accessible; and requires owners and operators of vessels to take steps to accommodate passengers with disabilities.

Accessibility of landside facilities are addressed by Subpart D. Subpart E, which addresses the accessibility of the vessels themselves, is reserved until the U.S. Architectural and Transportation Barriers Compliance Board issues applicable standards, and such standards are incorporated into the US DOT ADA regulations. Requirements for assistance and services to passengers with disabilities are contained in Subpart F.

Passenger vessel operators are required to make a designated complaints resolution official (CRO) available for contact on each vessel and at each terminal. The CRO may be available in-person or via telephone. If a telephone link is used, text telephone (TTY) or telecommunications relay service (TRS)

must be available so that persons with hearing impairments are able to communicate readily with the CRO.

The CRO must have the authority to make dispositive resolution of complaints on the entity's behalf, including the power to overrule the decisions of any other personnel (but cannot countermand a decision of the master of the vessel with respect to safety matters). In any situation in which any person complains or raises concern with the entity's personnel about discrimination, policies, or services with respect to passengers with a disability, and personnel do not immediately resolve the issue to the passenger's satisfaction or do not provide a requested accommodation, the entity's personnel must immediately inform the passenger of the right to contact a CRO and the location and/or phone number of the available CRO.

Public operators of passenger vessels are required to make reasonable modifications in policies, practices, or procedures when necessary to accommodate individuals with disabilities, unless they can demonstrate that making such modifications would fundamentally alter the nature of the service.

Passenger vessel operators may not limit the number of persons with disabilities on a vessel, require medical documentation, or require advance notice, and may not require a passenger with a disability to travel with another person, subject passengers with disabilities to restrictions that do not apply to other passengers, or impose higher fares, surcharges or other fees.

If a passenger vessel operator provides, contracts for, or otherwise arranges for transportation to and from a passenger vessel, the entity must ensure that the transfer service is accessible to and usable by persons with disabilities.

The entity must provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance or other vehicle drop-off point and the location where passengers board and disembark from the vessel. This includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim areas.

Passenger vessel operators are required to promptly provide assistance to passengers with disabilities who are not able to get on or off a vessel without assistance and may use any means to which the passenger consents (such as lifts, ramps, boarding chairs, or assistance by vessel personnel). However, the entity cannot require a passenger with a disability to accept assistance if he or she is readily able to get on or off of the vessel independently.

Passenger vessel operators must permit individuals with mobility disabilities to use power and manual wheelchairs and other mobility aids such as walkers, crutches, canes, braces, or similar devices in any areas that are open to pedestrian use. In addition, the entity must also make reasonable modifications to its policies, practices, or procedures to permit the use of other powered mobility devices used by persons with mobility impairments (e.g., Segways), unless it can be demonstrated that a specific device cannot be operated on board the vessel consistent with legitimate safety requirements.

Briefings or other safety-related information must be provided through means that effectively communicate their content to persons with vision or hearing impairments, using auxiliary aids and services where necessary. This includes providing written materials in alternative formats that persons with vision impairments can use. Entities must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, unless it is required of all passengers. Passengers with disabilities must be provided with whatever assistance is necessary to enable their full participation in safety or emergency evacuation drills that are provided to all passengers, and maintain evacuation programs, information, and equipment in locations that passengers with disabilities can readily access and use.

INDICATORS OF COMPLIANCE

- a. *Is a CRO made available on each vessel and at each terminal? Does the CRO have power to overrule the decisions of any other personnel except for the master of the vessel with respect to safety matters?*
- b. *Are requests for reasonable modifications in policies, practices, or procedures made unless such modifications would fundamentally alter the nature of the service?*
- c. *Is the number of persons with disabilities on a vessel limited?*
- d. *Is medical documentation or advance notice from a passenger with a disability required?*
- e. *Is a passenger with a disability required to travel with another person?*
- f. *If transportation service is provided to and from the ferry, is the transfer accessible?*
- g. *Is assistance provided as requested to passengers with disabilities in moving between the terminal entrance or drop-off point and the ferry boarding location, including assistance with ticket counters and baggage checking/claim areas?*
- h. *Is assistance provided promptly to passengers with disabilities who are not able to board or disembark without assistance?*
- i. *Are passengers with wheelchairs and mobility aids such as walkers, crutches, canes, braces, or similar devices restricted from using any areas that are open to pedestrians?*
- j. *Are briefings and other safety-related information provided to passengers with hearing or vision impairments? Is written material provided in alternative formats upon request?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on accessibility. Review copies of public information on riding ferry service, such as a rider guide or customer information. Review ADA policies and procedures, if written. From the review of these documents, ascertain the recipient's policies and procedures on use of the CRO; making reasonable modifications; the number of persons with

disabilities allowed on the vessel; advanced notification of travel by persons with disabilities; personal assistants accompanying persons with disabilities; transfer service provided to persons with disabilities; assistance provided to persons with disabilities; alternative formats used for briefing and safety-related information; and, restrictions on accessing areas by persons with disabilities. Onsite, discuss these policies and procedures and how they are implemented.

Obtain and review an organization chart and job description for responsibilities of the CRO. Obtain and review ferry operations ADA training materials to ascertain if ferry personnel are made aware of the CRO and their role. Onsite, during complaint file review, note any ADA-related ferry complaints and how they are resolved. Determine if decisions made by the CRO are resolved by personnel other than the master of the vessel with respect to safety matters. When touring the facility and vessel, review posted information to determine if the recipient publicizes how the CRO can be contacted.

For transfers offered to persons with disabilities, when onsite, tour the passenger ferry terminal and walk the route designated for such transfers noting the transit connections and whether the route is accessible.

For information offered in accessible formats, when onsite, discuss audio and visual provision of service information during travel. During the facility tour, review postings in the terminal and on a vessel to confirm implementation of the recipient's policies. If time permits, ride the service.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has not appropriately designated a CRO or the CRO does not have the authority to overrule the decisions of other personnel except for the master of the vessel with respect to safety matters.

DEFICIENCY CODE ADA-GEN12-1: CRO missing or lacking authority

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence, such as an organization chart, job description, or Board or management directive, that it has designated a CRO. Submit a policy stating that the CRO has the authority to overrule personnel except for the master of the vessel with respect to safety matters.

The recipient is deficient if it does not accept requests for reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination on the basis of disability unless the modifications would fundamentally alter the nature of the service.

DEFICIENCY CODE ADA-GEN12-2: Reasonable modification not provided for ferry service

SUGGESTED CORRECTIVE ACTION: The recipient must submit a procedure for making reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination on the basis of disability unless the modifications would fundamentally alter the nature of the service.

The recipient is deficient if it inappropriately limits the number of passengers with disabilities on a vessel for other than weight or stability issues related to legitimate safety issues as determined by the captain.

DEFICIENCY CODE ADA-GEN12-3: Limits on passengers with disabilities on ferry service

SUGGESTED CORRECTIVE ACTION: The recipient must submit revised policies and procedures that prohibit limiting the number of passengers with a disability on a passenger vessel except for weight or stability issues for legitimate safety reasons as determined by the captain.

The recipient is deficient if medical documentation or advance notice is required from a passenger with a disability or if it requires a passenger with a disability to travel with another person.

DEFICIENCY CODE ADA-GEN12-4: Excessive requirements placed on passenger with disabilities on ferry service

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence that it has ceased requiring medical documentation, advance notice from a passenger with a disability or requiring passengers with disabilities from traveling with another passenger.

The recipient is deficient if non-accessible transportation is provided to and from the vessel.

DEFICIENCY CODE ADA-GEN12-5: Non-accessible transportation to/from vessel

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence that it provides accessible transportation to and from the vessel.

The recipient is deficient if it does not 1) provide assistance as requested to ferry passengers with disabilities in moving between the terminal entrance or drop-off point and the ferry boarding location, including assistance with ticket counters and baggage checking/claim areas, or 2) provide prompt assistance to passengers with disabilities who are not able to board or disembark without assistance.

DEFICIENCY CODE ADA-GEN12-6: Assistance not provided to passengers with disabilities

SUGGESTED CORRECTIVE ACTION: The recipient must submit procedures to provide assistance as requested to ferry passengers with disabilities in moving between the terminal entrance or drop-off point and the ferry boarding location, including assistance with ticket counters and baggage checking/claim areas, and/or provide assistance promptly to passengers with disabilities who are not able to board or disembark without assistance, along with evidence of implementation.

The recipient is deficient if it does not provide briefings and other safety-related information provided to passengers with hearing or vision impairments or if written material is not provided in alternative formats upon request.

DEFICIENCY CODE ADA-GEN12-7: Ferry service safety information provision deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence that briefings and safety-related information is provided to passengers with hearing or vision impairments, or written material provided in alternative formats upon request.

The recipient is deficient if it restricts passengers with wheelchairs and mobility aids such as walkers, crutches, canes, braces or similar devices from using any areas that are open to pedestrians.

DEFICIENCY CODE ADA-GEN12-8: Restrictions on passengers with wheelchairs or mobility aids

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence that it has ceased restricting passengers with wheelchairs and mobility aids such as walkers, crutches, canes, braces, or similar devices from using any areas that are open to pedestrians.

GOVERNING DIRECTIVE

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

(b)(2) As a PVO that is a public entity, you must make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless you can demonstrate that making the modifications would fundamentally alter the nature of the services, programs, or activities you offer.

49 CFR 39.29 May PVOs limit the number of passengers with a disability on a passenger vessel?

As a PVO, you must not limit the number of passengers with a disability other than individuals with a mobility disability on your vessel. However, if in the captain's judgment, weight or stability issues are presented by the presence of mobility devices and would conflict with legitimate safety requirements pertaining to the vessel and its passengers, then the number of passengers with mobility aids may be limited, but only to the extent reasonable to prevent or avoid such a conflict.

49 CFR 39.33 May PVOs require a passenger with a disability to provide a medical certificate?

Except as provided in §39.31, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation on your vessel.

49 CFR 39.35 May PVOs require a passenger with a disability to provide advance notice that he or she is traveling on or using a passenger vessel when no particular services are sought?

As a PVO, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on or using a passenger vessel when the passenger is not seeking particular auxiliary aids or services, or special privileges or services, that in order to be provided need to be arranged before the passenger arrives to board the vessel.

49 CFR 39.41 May a passenger with a disability be required to travel with another person?

- (a) You must not require that a passenger with a disability travel with another person as a condition of being provided transportation on or use of a passenger vessel.
- (b) Your personnel are not required to perform personal tasks (e.g., assisting with eating, dressing, toileting) for a passenger.

49 CFR 39.45 May PVOs impose other restrictions on passengers with a disability that they do not impose on other passengers?

- (a) As a PVO, you must not subject passengers with a disability to restrictions that do not apply to other passengers, except as otherwise explicitly permitted in this part.
- (b) Restrictions you must not impose on passengers with a disability include, but are not limited to, the following:
 - (1) Restricting passengers' movement within the vessel or a terminal;
 - (2) Requiring passengers to remain in a holding area or other location in order to receive transportation or services;
 - (4) Requiring passengers to wear badges or other special identification; or
 - (5) Requiring ambulatory passengers, including but not limited to blind or visually impaired passengers, to use a wheelchair or other mobility device in order to receive assistance required by this Part or otherwise offered to the passenger.

- (c) Special muster stations for disabled individuals are permissible for emergency evacuations in order to centrally locate available resources.

49 CFR 39.81 What assistance must PVOs provide to passengers with a disability in getting to and from a passenger vessel?

- (a) As a PVO, if you provide, contract for, or otherwise arrange for transportation to and from a passenger vessel in the U.S. (e.g., a bus transfer from an airport to a vessel terminal), you must ensure that the transfer service is accessible to and usable by individuals with disabilities, as required by this Part.
- (b) You must also provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance (or a vehicle drop-off point adjacent to the entrance) of a terminal in the U.S. and the place where people get on or off the passenger vessel. This requirement includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim. It also includes a brief stop upon request at an accessible toilet room.

49 CFR 39.83 What are PVOs' obligations for assisting passengers with a disability in getting on and off a passenger vessel?

- (a) If a passenger with a disability can readily get on or off a passenger vessel without assistance, you are not required to provide such assistance to the passenger. You must not require such a passenger with a disability to accept assistance from you in getting on or off the vessel unless it is provided to all passengers as a matter of course.
- (b) With respect to a passenger with a disability who is not able to get on or off a passenger vessel without assistance, you must promptly provide assistance that ensures that the passenger can get on or off the vessel.
- (c) When you have to provide assistance to a passenger with a disability in getting on or off a passenger vessel, you may use any available means to which the passenger consents (e.g., lifts, ramps, boarding chairs, assistance by vessel personnel).

49 CFR 39.89 What requirements apply to on-board safety briefings, information, and drills?

As a PVO, you must comply with the following requirements with respect to safety briefings, information, or drills provided to passengers:

- (a) You must provide the briefings or other safety-related information through means that effectively communicate their content to persons with vision or hearing impairments, using auxiliary aids and services where necessary for effective communication. This includes providing written materials in alternative formats that persons with vision impairments can use.
- (b) You must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that you impose such a requirement on all passengers. You must not take any action adverse to a qualified individual with a disability on the basis that the person has not "accepted" the briefing.
- (c) As a PVO, if you present on-board safety briefings to passengers on video screens, you must ensure that the safety-video presentation is accessible to passengers with impaired hearing (e.g., through use of captioning or placement of a sign language interpreter in the video).
- (d) You must provide whatever assistance is necessary to enable passengers with disabilities to participate fully in safety or emergency evacuation drills provided to all passengers.

- (e) You must maintain evacuation programs, information, and equipment in locations that passengers can readily access and use.

49 CFR 39.101 What are the requirements for providing Complaints Resolution Officials?

- (a) As a PVO, you must designate one or more Complaints Resolution Officials (CROs).
- (b) You must make a CRO available for contact on each vessel and at each terminal that you serve. The CRO may be made available in person or via telephone, if at no cost to the passenger. If a telephone link to the CRO is used, TTY or TRS service must be available so that persons with hearing impairments may readily communicate with the CRO. You must make CRO service available in the language(s) in which you make your other services available to the general public.
- (e) You must ensure that each of your CROs has the authority to make dispositive resolution of complaints on behalf of the PVO. This means that the CRO must have the power to overrule the decision of any other personnel, except that the CRO may not be given authority to countermand a decision of the master of a vessel with respect to safety matters.

ADA-GEN13. Does the recipient monitor service provided under contract or other arrangement or relationship with a private entity, 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?

BASIC REQUIREMENT

Service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement) must meet the US DOT ADA requirements that apply to the recipient.

APPLICABILITY

Recipients who enter into contracts or other arrangements or relationships with other entities, lease vehicles or otherwise rely on another entity to provide service. Note that the DOT ADA regulations apply equally to "pilot" programs or demonstration projects.

DETAILED EXPLANATION FOR REVIEWER

Recipients are required to ensure that service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward, or cooperative agreement) adheres to the same ADA requirements that apply to the recipient. This includes written contracts or informal arrangement that reflects an ongoing relationship between the parties. See ADA-GEN5 for a more detailed explanation of each requirement.

INDICATOR OF COMPLIANCE

- a. *How does the recipient monitor service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward, or cooperative agreement) with a private entity, service provided by lessees, or service provided by another public entity on the recipient's behalf under contract or other arrangement or relationship for:*
 - 1. *Complaint procedures?*
 - 2. *Vehicle acquisition?*

3. *Facility construction and alterations?*
4. *Service provision, including reasonable modification, training to proficiency in the performance of duties (including use of wheelchair securement systems and treating individuals with disabilities with dignity and respect), accommodation of service animals and portable oxygen, etc.? (See ADA-GEN8)*
5. *Maintenance of accessible features?*
6. *Route-deviation service?*
7. *Rail service?*
8. *Ferry service?*

INSTRUCTIONS FOR REVIEWER

Review sample transportation service contracts and other arrangements or relationships, agreements to provide supplemental transportation, and leases for ADA requirements, including training and service related requirements. Review contract management procedures, including tracking and monitoring service quality. Review reports, questionnaires, and checklists used for ensuring compliance with ADA requirements, including those governing training to proficiency in the conduct of duties. Onsite, discuss ADA policies and procedures with the recipient and review recipient's oversight files for the contractor(s) and lessee(s) to be visited during the site visit. Discuss ADA policies and procedures with the contractors/lessees visited.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not ensure that contractors, entities with which the recipient has other arrangements or relationships, and lessees comply with ADA provisions of service requirements.

DEFICIENCY CODE ADA-GEN13-1: Insufficient oversight of contracted service for ADA requirements

SUGGESTED CORRECTIVE ACTION: The recipient must submit procedures for ensuring that contractors, entities with which the recipient has other arrangements or relationships, and lessees comply with the ADA service provisions.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit evidence of implementation of procedures for ensuring that contractors, entities with which the recipient has other arrangements or relationships, and lessees comply with the relevant US DOT ADA requirements.

GOVERNING DIRECTIVE

49 CFR 39.23 Service under contract

- (a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.
- (b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.
- (c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed-route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.
- (d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.

49 CFR 39.23 What are the requirements concerning contractors to owners and operators of passenger vessels?

- (a) If, as a PVO, you enter into a contractual or other arrangement or relationship with any other party to provide services to or affecting passengers, you must ensure that the other party meets the requirements of this Part that would apply to you if you provided the service yourself.

ADA-GEN14. Does the recipient monitor service provided by subrecipients for compliance with the US DOT ADA regulations?

BASIC REQUIREMENT

The recipient must ensure that subrecipients comply with the US DOT ADA regulations.

APPLICABILITY

Recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER

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

States must obtain certifications of equivalent service from Sections 5307, 5311, and 5339 subrecipients before the subrecipient acquires non-accessible vehicles for demand-response service, not including ADA complementary paratransit service. Note: Even though the US DOT ADA regulations do not list Section 5339 subrecipients as having to file certifications of equivalent service with a state administering agency for purchases of non-accessible vehicles for demand-response service, Section 5339 funds take on the requirements of the Section 5307 or 5311 program, depending on the program the funds support. Therefore, a certification of equivalent service is required from Section 5339 subrecipients. The requirement does not apply to Section 5310 subrecipients that are providing closed door service to their own clientele. The ADA regulations do not require non-state recipients to obtain certifications of

equivalent service. Many recipients obtain the annual certification and assurances from subrecipients. The certification of equivalent service is included in the FTA annual certifications and assurances. The recipient must look behind the certification, that is, determine if the subrecipient provides equivalent service before the subrecipient acquires non-accessible vehicles for demand-response service.

All Section 5311 subrecipients, including private nonprofit entities, are to follow the rules for public entities.

INDICATORS OF COMPLIANCE

a. How does the recipient monitor subrecipients for?

- 1. Complaint procedures?*
- 2. Vehicle acquisition?*
- 3. Facility construction and alterations?*
- 4. Service provision, such as reasonable modification, training, etc.?*
- 5. Maintenance of accessible features?*
- 6. Route-deviation service?*
- 7. Rail service?*
- 8. Ferry service?*

b. Does the state have on file certifications of equivalent service from Section 5307, 5311, and 5339 subrecipients that acquire non-accessible vehicles for general public demand-response service?

INSTRUCTIONS FOR REVIEWER

Review subrecipient agreements for ADA requirements, including training requirements. Request and review contract management procedures. Review reports, questionnaires, and checklists used for ensuring compliance with ADA requirements. Onsite, discuss ADA policies and procedures with the recipient and review the oversight files for the subrecipient(s) to be visited during the site visit. Note: FTA is looking for a Comprehensive Review of service provision requirements. Recipients are not required to

ensure that subrecipients monitor for each service provision. Discuss ADA policies and procedures with the subrecipient(s) visited.

Review the state or program management plan to determine whether the recipient allows subrecipients to purchase non-accessible equipment for demand-response service. If so, review how the recipient determines whether the subrecipient provides equivalent service. Determine how the state obtains certifications of equivalent service from Sections 5307, 5311, and 5339 subrecipients before the subrecipient acquires non-accessible vehicles for demand-response service, not including ADA complementary paratransit service.; if annual certifications are used, determine how the state reviews the subrecipients' supporting documentation to ensure compliance.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not monitor and ensure that its subrecipients comply with relevant US DOT ADA requirements.

DEFICIENCY CODE ADA-GEN14-1: Insufficient oversight of subrecipients for ADA requirements

SUGGESTED CORRECTIVE ACTION: The recipient must submit procedures for ensuring that subrecipients comply with the relevant US DOT ADA requirements.

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

The state is deficient if it does not obtain a certification of equivalent service from Section 5307, 5311, or 5339 subrecipients that acquire non-accessible vehicles for general public demand-response service.

DEFICIENCY CODE ADA-GEN14-2: Insufficient oversight of ADA vehicle accessibility requirements

SUGGESTED CORRECTIVE ACTION: The state must submit procedures for obtaining certifications of equivalent service from Section 5307, 5311, and 5339 subrecipients before the subrecipients acquire non-accessible equipment for demand-response service.

GOVERNING DIRECTIVE

Chapter 53 of title 49, United States Code, as amended by Fixing America's Surface Transportation Act Related FAST and MAP-21 provisions, Section 5339. Grants for buses and bus facilities

(a)(3) Grant requirements--The requirements of--

(A) section 5307 shall apply to recipient of grants made in urbanized areas under this subsection; and

(B) section 5311 shall apply to recipients of grants made in rural areas under this subsection.

49 CFR 200.332 Requirements for pass-through entities

A pass-through entity must:

(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

- (2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.
- (3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521.

49 CFR 37.23 Service under contract

- (a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.
- (b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.
- (c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed-route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.
- (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 Part 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public

- (d) A public entity receiving FTA funds under 49 U.S.C. 5311 or a public entity in a small urbanized area which receives FTA funds under 49 U.S.C. 5307 from a state administering agency rather than directly from FTA, which determines that its service to individuals with disabilities is equivalent to that provided other persons shall, before any procurement of an inaccessible vehicle, file with the appropriate state program office a certificate that it provides equivalent service meeting the standards of paragraph (c) of this section.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

During the review were any issues/areas of concerns identified during the review:

- Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including ADA reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of ADA.
- Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year.