

OFFICE OF PASSENGER TRANSPORTATION  
**COMPLIANCE REVIEW FOR  
SECTION 5310 AND 5311 TRANSIT AGENCIES**

**TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES**

TRANSIT AGENCY	DATE OF COMPLIANCE REVIEW
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**REQUIREMENT**

Titles II and III of the American with Disabilities Act (ADA) of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service. The agency should be able to provide reasonable documentation to demonstrate that staff is trained in these requirements and how the agency enforces their implementation. The regulations do not require that agencies have written policies detailing how they comply with these service provisions; however, if a transit agency’s securement policy requires mobility devices to be secured according to the manufacturer’s recommendation, that policy should be in writing, or else a passenger may refuse to allow the driver to secure the device.

**REFERENCES**

49 CFR 27 - Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance [http://www.fta.dot.gov/civilrights/12325\\_3884.html](http://www.fta.dot.gov/civilrights/12325_3884.html)

49 CFR 37 - Transportation Services for Individuals with Disabilities [http://www.fta.dot.gov/civilrights/12325\\_3884.html](http://www.fta.dot.gov/civilrights/12325_3884.html)

49 CFR 38 – Accessibility Specifications for Transportation Vehicles [http://www.fta.dot.gov/civilrights/12325\\_3884.html](http://www.fta.dot.gov/civilrights/12325_3884.html)

DOT Disability Law Guidance [http://www.fta.dot.gov/12325\\_15055.html](http://www.fta.dot.gov/12325_15055.html)

**REVIEW QUESTIONS**

**1. Lift Availability**

- a. The entity shall establish a system of regular and frequent maintenance checks on lifts to determine if they are operative.
- b. The entity shall ensure that vehicle operators report to the entity, by the most immediate means available, any failure of a lift to operate in service.
- c. Except as provided in paragraph (d) of this section, when a lift is discovered to be inoperative, the entity shall take the vehicle out of service before the beginning of the vehicle’s next service day and ensure that the lift is repaired before the vehicle returns to service.
- d. If there is no spare vehicle available to take the place of a vehicle with an inoperable lift, such that taking the vehicle out of service will reduce the transportation service the entity is able to provide, the public entity may keep the vehicle in service with an inoperable lift for no more than five days (if the entity serves an area of 50,000 or less population) or three days (if the entity serves an area over 50,000 population) from the day on which the lift is discovered to be inoperative.
- e. In any case 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.

Review records for lift failures until a sample is found that equals at least 10 percent of the fleet and note compliance to above requirements.

Examine maintenance records for repair on the lifts, and discuss the process used when lift vehicles are out of service.

Describe any needed improvements.

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## 2. Lift and Securement Use

- a. This section applies to public and private entities.
- b. All wheelchairs and their users shall be transported in the entity's vehicles or other conveyances. The entity is not required to permit wheelchairs to ride in places other than designated securement locations in the vehicle, where such locations exist.
- c.
  1. For vehicles complying with Part 38 of this title, the entity shall use the securement system to secure wheelchairs as provided in that Part.
  2. For other vehicles transporting individuals who use wheelchairs, the entity shall provide and use a securement system to ensure that the wheelchair remains within the securement area.
  3. The entity may require that an individual permit his or her wheelchair to be secured.
- d. The entity may not deny transportation to a wheelchair or its user claiming the device cannot be secured or restrained satisfactorily by the vehicle's securement system.
- e. The entity may *recommend* to a user of a wheelchair that the individual transfer to a vehicle seat. The entity may not *require* the individual to transfer.
- f. Where necessary or upon request, the entity's personnel shall assist individuals with disabilities with the use of securement systems, ramps, and lifts. If it is necessary for the personnel to leave their seats to provide this assistance, they shall do so.
- g. The entity shall permit individual with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle.

Review agency's procedures regarding the use of lifts and securement systems and not compliance to above requirements.

Examine lift and securement incident reports since last review and determine how the problem was resolved.

Randomly ride buses to observe the use of lifts and securement systems.

Describe any needed improvements.

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## 3. Service Animals

The DOT ADA regulations define service animal as any animal 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. It is discriminatory to require a person with a disability to certify or register a service animal. [49 CFR §37.167(d)]

Review service animal policies and procedures for compliance.

Describe any needed improvements.

#### **4. Portable Oxygen Tanks**

The entity shall not prohibit an individual with a disability from traveling with a respirator or portable oxygen supply. [49 CFR §37.167(h)]

Review portable oxygen tank policies and procedures for compliance.

Describe any needed improvements.

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#### **5. Accessibility Training**

The entity shall ensure that vehicle operators and other personnel make use of accessibility related equipment or features required by Part 38 of this title. The ADA requires that each fixed route or demand responsive service operator to ensure that personnel are trained to proficiency, as appropriate for their duties. This training is required so that personnel operate vehicles and equipment safely, properly assist passengers, and treat persons with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among persons with disabilities. The entity must establish appropriate standards for its particular operation. There is no requirement for recurrent or refresher training, but there is an obligation that each employee is proficient at all times. The training must be appropriate to the duties of each employee, and must address both technical requirements and human relations. Note that training is not only required for the vehicle operators and those who maintain and repair vehicles and equipment, but for other personnel who interact with passengers as appropriate.

Determine how the agency ensures compliance to above requirements by reviewing training procedures, materials, and bulletins provided to personnel.

Describe any needed improvements.

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#### **6. Lift Deployment at any Designated Stop**

The entity shall not refuse to permit a passenger who uses a lift to disembark from a vehicle 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.

Randomly ride buses to observe lift deployment. Discuss procedures regarding lift deployment.

Describe any needed improvements.

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#### **7. Adequate Time for Vehicle Boarding and Disembarking**

The entity shall ensure that adequate time is provided to allow individuals with disabilities to complete boarding or disembarking from the vehicle.

Randomly ride buses to observe the use of lifts and securement systems.

Describe any needed improvements.

## 8. ADA Complaints

Under the ADA requirement, agencies must provide a response to complaints in 30 days, address and resolve the issues, retain all detailed documentation for 1 year, and save a summary of all ADA complaints for 5 years. The ADA requirement does not specify that a written procedure be in place. However, for the sake of consistency and to prevent complaints from being overlooked, MDOT requires each agency to establish a written policy regarding responding to and resolving ADA complaints, and to evaluate periodically if the requirement is being met.

Examples of ADA include but are not limited to:

- a. Unreasonable administrative burdens in applying for ADA paratransit eligibility.
- b. Bus drivers passing by riders using wheelchairs who are waiting at a bus stop.
- c. Vehicle operators not announcing stops or identifying routes.
- d. Personnel refusing to allow a rider's service animal in a station or on a vehicle.

The following types of service related complaints are not areas of ADA noncompliance:

- a. Comfort while riding (e.g. operator's driving style).
- b. Having to ride in a complementary paratransit vehicle with another rider.
- c. Lack of or limited service (e.g. not serving a particular community or limited evening or weekend service).

Have any ADA complaints been filed since the last review?

YES      NO      N/A

If yes: Has the issue been resolved?

Has the agency retained copies for at least one year?

Provided a summary of complaints from the last 5 years?

Is there a pattern of discrimination?

Describe any needed improvements.

Date ADA Complaint Policy was approved by MDOT: \_\_\_\_\_

Date ADA Complaint Policy was approved by governing board: \_\_\_\_\_

## **THIS SECTION APPLICABLE FOR OPERATORS OF FIXED ROUTE SERVICE**

### **9. ADA Paratransit Eligibility**

An entity providing ADA complementary paratransit service is required to establish a process for determining ADA paratransit eligibility. Eligibility is to be strictly limited to certain categories of individuals.

- a. Any person with a disability who is unable to board, ride, or disembark from an accessible vehicle without the assistance of another person (except for the operator of a lift or other boarding device).
- b. Any person with a disability who could ride an accessible vehicle but the route is not accessible or the lift does not meet ADA standards.
- c. Any person with a disability who has a specific impairment-related condition that prevents the person from traveling to or from a boarding/disembarking location.

A determination of whether, as a practical matter, the individual can use a fixed route transit under given circumstances is needed. The goal of the process is to ensure that only persons who meet the regulatory criteria are regarded as ADA eligible. The process may include functional evaluation or testing of applicants. Evaluation by a physician or health professional may be a part of the process, but a diagnosis of a disability does not establish eligibility. The agency is not prohibited from providing service to other persons; however, the eligibility process must distinguish whether someone is ADA eligible or is provided service on some other basis. The agency must process a completed application within 21 days of submittal. If after 21 days, the agency has not made an eligibility determination, the applicant is presumed eligible and must be provided service unless the grantee later denies the application.

The agency is required to establish an appeals process for persons denied eligibility or granted conditional eligibility. The applicant must be given written reason for the determination and notice of the right to an appeal. Applicants should be required only to state their intent to appeal, and not be required to give a full justification in writing prior to an opportunity to be heard. The agency may require that an appeal be filed within 60 days of the denial of a person's application. The process must include an opportunity to be heard and to present information. The person hearing the appeal must be separate from the person who made the original decision to deny eligibility. The agency is not required to provide ADA complementary paratransit service pending the determination of the appeal, but if the decision takes longer than 30 days, paratransit must be provided from that time until a decision to deny the appeal is issued. A written notification of an appeal determination, with the reason for it, is also required.

### **10. ADA Paratransit Service**

**Provision of Service:** ADA complementary paratransit must be provided to an ADA eligible individual, including those with temporary eligibility, the personal care attendant (PCA), if a PCA is necessary, and one other individual accompanying the ADA eligible individual, if requested. Additional companions may be provided service if space is available. Service must also be provided to visitors. Any visitor who presents ADA eligibility documentation from another jurisdiction must be provided service. If a visitor does not have ADA eligibility determination, the agency may request proof of residency, and if the disability is not apparent, proof of disability. The agency must accept a certification by the visitor that he or she is unable to use fixed route transit. The agency is not required to provide more than 21 days of service within a 365 day period. It may request that the visitor apply for eligibility in order to receive additional service beyond this number of days.

**Service Area:** The regulations specify "origin-to-destination" service. In certain instances, this might require service beyond strict curb to curb. (See DOT Disability Law Coordinating Council Guidance on "origin-to-destination" service, [http://www.fta.dot.gov/12325\\_3891.html](http://www.fta.dot.gov/12325_3891.html).) The ADA service area at a minimum includes all origins and destinations within corridors with a width of 3/4-mile of each fixed route. Within the core service area, any small areas not inside a corridor but surrounded by corridors also must be served. Outside the core service area, the grantee may designate corridors with widths of up to 1 and 1/2 miles on each side of the fixed route, based on local circumstances.

**Response Time:** Requests for reservations must be accepted during normal business hours on a "next day" basis (not 24 hours in advance) on all days prior to days of service (e.g. weekends, holidays) and trips must be scheduled within one hour of the requested pickup time. Advance reservations may be permitted up to 14 days before a desired a trip.

**Fares:** The ADA complementary paratransit fare cannot exceed twice the fare for a trip of similar length, at a similar time of day, on the fixed route system. No fare may be charged for a PCA. Any companions must pay the same fare as the ADA eligible individual. Agencies that provide free fare zones and/or operate free shuttle routes in downtown areas or in other parts of their service area must extend the free fares to all comparable complementary paratransit trips. Discounted

fares or free fares offered on a promotional basis on fixed route services (e.g. ozone alert days) do not require a corresponding reduction of the ADA complementary paratransit fare.

Days and Hours of Service: The days and hours of service for fixed route service and ADA complementary paratransit service must be the same.

Trip Purpose: No restrictions or priorities may be based on trip purpose.

Subscription Service: Unless there is non-subscription capacity, subscription service may not absorb more than 50% of the number of trips available at a given time. If there are no capacity constraints within the agency's system, subscription service is free to absorb as much as the agency chooses.

Service Capacity: The DOT ADA regulations specify that an entity may not limit the availability of complementary paratransit to eligible individuals by placing restrictions on the number of trips an individual will be provided, implementing wait lists for access to non-subscription service, and using various capacity constraints to limit service. Any operational pattern or practice that has the effect of limiting availability, such as limited phone reservation capacity, is also prohibited.

Grantees should have a mechanism in place for monitoring, tracking, and verifying these indicators of capacity constraints. While there is no regulatory requirement for record-keeping or monitoring in any particular way, the entity must be able to demonstrate that the trip denials it does have, as well as the missed trips, late pickups, trips of excessive length, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. Grantees should track service for ADA trips separately from non-ADA trips.

No-Show Policy: The policy must be narrowly tailored to ensure that suspension is only imposed for a true pattern or practice of missing scheduled trips. For example, three no-shows in 30 days would not be a pattern or practice for a frequent or daily rider. Such a policy would take into account frequency of rides and no-shows, and not use a simple number threshold, such as 15% of scheduled rides are no-shows in 30 days. Only no-shows that are under the rider's control may be counted against the rider. No-shows caused by reasons beyond the rider's control (e.g. scheduling problems, late pickups, and operational problems on the part of the transit provider or a family emergency or sudden turn for the worse in a variable medical condition) or operator error must not be counted against the rider.

FTA has permitted transit providers to include late cancellations in their suspension policy, but only to the extent that late cancellations have the same effect on the system as a no-show, and only for late cancellations within the rider's control. In most cases, a provider should be able to absorb the capacity of a trip cancelled two hours or less before the scheduled pickup.

Systems may not impose a mandatory financial penalty as part of a no-show policy, including charging for the fare for the no-show trip. 49 CFR §37.125(h) permits only the establishment of an administrative process to suspend, for a reasonable amount of time, the provision of complementary paratransit service to eligible individuals who establish a pattern or practice of missing scheduled trips. In very limited cases, however, transit operators and riders facing suspension have mutually agreed to make and accept payment for the missed trips in lieu of suspension. Where such arrangements are made voluntarily, FTA has elected not to intervene.

**Review procedures and paratransit plan for compliance. Are the following requirements being met?**

<b>Eligibility determinations</b>	<b>YES</b>	<b>NO</b>
<b>Service criteria</b>	<b>YES</b>	<b>NO</b>
<b>Service capacity</b>	<b>YES</b>	<b>NO</b>
<b>Origin-to-destination service</b>	<b>YES</b>	<b>NO</b>
<b>Visitor's service</b>	<b>YES</b>	<b>NO</b>
<b>No-show policy</b>	<b>YES</b>	<b>NO</b>

**Describe any needed improvements.**

11. Announcements on Vehicles: The entity shall announce stops as follows:

- a. 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.
- b. The entity shall announce any stop on request of an individual with a disability.

**Randomly ride fixed route buses to observe the announcements on vehicles.**

**Describe any needed improvements.**

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12. Vehicle Identification Mechanisms: Where vehicles or other conveyances for more than one route serves the same route, 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.

**Discuss whether there is more than one vehicle using the same stop and the means for identifying the proper vehicle. Observe when riding fixed routes.**

**Describe any needed improvements.**

COMPLIANCE ANALYST	DATE
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