

Philip D. Murphy, Governor  
Sheila Y. Oliver, Lieutenant Governor  
Diane Gutierrez-Scaccetti, Commissioner  
Kevin S. Corbett, President & CEO

**NJ TRANSIT**  
One Penn Plaza East  
Newark, NJ 07105-2246  
973-491-7000

**RE: Subrecipient Compliance with the Americans with Disabilities Act**

Dear Subrecipients:

Thank you for your commitment to providing safe, reliable and accessible transportation services to the residents in New Jersey. We appreciate all the hard work and dedication you put into the services you provide daily. NJ TRANSIT's Local Program/ Community Mobility staff will be working with all subrecipients to ensure that all agencies are in compliance with the Americans with Disability Act (ADA). As per federal regulation all agencies must have policies and procedures in place that assist customers in filing ADA Complaints and Reasonable Modification Request. These procedures must be available to the public via your agency website and marketing materials.

To assist you in identifying the kind of information that should be in your policy, website, and marketing materials, we have attached the following documents and samples:

**For informational purpose:**

- ADA compliance Power point (ADA website & marketing materials requirements)
- FTA ADA questions and Guidance

**Samples for your websites and policies:**

- Sample ADA policy and procedure for website
- Sample Reasonable Modification Policy

If you have any questions or concerns or need any additional assistance, please feel free to contact me at (973) 491-8346 or your assigned Regional Program Administrator (see attached Local Program Contact List).

Sincerely,

*Janelle Rivera*

Janelle Rivera  
Acting Director, Local Programs & Community Mobility

### Community Mobility and Local Programs Support Contact List

Contacts	Title	Phone	Email
<b>Janelle Rivera</b>	Acting Director of Local Programs, Community Mobility – SCDRTAP, S5310, S5311 & S5307	(973) 491-8346	<a href="mailto:jrivera1@njtransit.com">jrivera1@njtransit.com</a>
<b>Isabel Rojas</b>	Northern Regional Program Administrator (Bergen, Hudson, Essex, Morris, Passaic, Sussex, Warren)	(973) 491-7456	<a href="mailto:irojas@njtransit.com">irojas@njtransit.com</a>
<b>Lauren Williams</b>	Central Regional Program Administrator (Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, Union)	(973) 491-7374	<a href="mailto:lwilliams@njtransit.com">lwilliams@njtransit.com</a>
<b>Lisa Tulley</b>	Southern Regional Program Administrator (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Salem)	(973) 491-8397	<a href="mailto:ltulley@njtransit.com">ltulley@njtransit.com</a>
<b>Fred Storey</b>	Manager, Community Transportation – NJ-JARC, CMAQ & S5307	(973) 491-8569	<a href="mailto:fstorey@njtransit.com">fstorey@njtransit.com</a>
<b>Brian Joseph Miguel</b>	Community Transportation Grants Administrator (NJ-JARC, CMAQ, TMAs, Vanpools)	(973) 491-8567	<a href="mailto:bmiguel@njtransit.com">bmiguel@njtransit.com</a>
<b>Winsome Lightbody</b>	Community Transportation Grants Administrator (NJ-JARC, CMAQ, TMAs)	(973) 491-8333	<a href="mailto:wlightbody@njtransit.com">wlightbody@njtransit.com</a>

# **SAMPLE ADA Complaint Policy for Website**

## **NJ Transit Subrecipient Compliance**

### **THE AMERICANS WITH DISABILITIES ACT (ADA)**

The Americans with Disabilities Act of 1990 (ADA) is landmark federal legislation that opens up services and employment opportunities to the millions of Americans with disabilities. The ADA affects access to employment; state and local government programs and services; transportation, and access to places of public accommodation such as businesses, non-profit service providers; and telecommunications.

### **“AGENCY NAME” ADA COMMITMENT AND COMPLIANCE**

“AGENCY NAME” is committed to ensuring that no person is excluded from participation in or denied the benefits of its services on the basis on their disability as provided by the Americans with Disabilities Act.

“AGENCY NAME” management, and all supervisors and employees share direct responsibility for carrying out “AGENCY NAME” commitment to the ADA. “AGENCY NAME” “ENTER DEPARTMENTS NAME WHO WILL BE RESPONSIBLE” ensures accountability in this commitment, and supports all parts of the organization in meeting their respective ADA obligations. ” “ENTER DEPARTMENTS NAME WHO WILL BE RESPONSIBLE” coordinates internally with all appropriate offices in the investigation of complaints of discrimination, and takes a lead role in responding to requests for information about “AGENCY NAME” civil rights obligations and operations.

### **ADA Complaints**

If you wish to file an ADA complaint of discrimination with “AGENCY NAME”), please contact “AGENCY NAME” via “PHONE NUMBER” or “ADDRESS BELOW”, or use our online form (if applicable).

### **What Happens to my ADA Complaint of Discrimination to “AGENCY NAME”?**

All ADA complaints of discrimination received by “AGENCY NAME” are routed to local area management for prompt investigation and resolution. All complaints received will be investigated, so long as the complaint is received within 180 days from the date of the alleged discrimination. “AGENCY NAME” will provide appropriate assistance (online and otherwise) to complainants who are limited in their ability to communicate in English or require accommodation. Complainants will be requested to leave contact information for follow-up about their complaints.

“AGENCY NAME” aims to complete investigations into all complaints received, within 90 days of receipt. In instances where additional information is needed to complete an investigation, the investigator will contact the complainant using the contact information provided. Failure of the

complainant to provide contact information or any requested additional information may result in a delay in resolution, or the administrative closure of the complaint. "AGENCY NAME" has a zero tolerance policy on discrimination and will take appropriate corrective measures in all instances where a violation of "AGENCY NAME" non-discrimination policy has been established.

Once a complaint investigation is complete, complainants will receive a notice of finding via their preferred/available mode of contact (phone, E-mail, U.S. post, etc.). If no contact information is provided, a note regarding the outcome of the investigation will be saved on file for a minimum of three years. Complainants can contact "AGENCY NAME" Customer Service at any time to check on the status of their complaint.

### **Filing a Complaint Directly to the Federal Transit Administration:**

A complainant may choose to file an ADA complaint with the Federal Transit Administration by contacting the Administration at:

Federal Transit Administration

Office of Civil Rights

Attention: Complaint Team

East Building, 5th Floor – TCR

1200 New Jersey Avenue, SE

Washington, DC 20590

### **Further questions about "AGENCY NAME" ADA Obligations**

For additional information on "AGENCY NAME" non-discrimination obligations and other responsibilities related to ADA, please call "PHONE NUMBER" or write to:

"AGENCY NAME"

"ADDRESS"

***SEE SAMPLE COMPLAINT FORM ON NEXT PAGE***

# SAMPLE COMPLAINT FORM

Americans with Disabilities Act Complaint Form

“Agency Name” is committed to ensuring that no person is denied access to its services, programs, or activities on the basis of their disabilities, as provided by title II of the Americans with Disabilities Act of 1990 (“ADA”). ADA complaints must be filed within 180 days from the date of the alleged incident.

The following information is necessary to assist us in processing your complaint. If you require any assistance in completing this form, or if you would like to make a verbal complaint, please contact the “enter Contact information”

Complainant:

Phone:

Street Address:

City, State, Zip Code

Alt Phone:

Person Preparing Complaint (if different from Complainant):

Street Address, City, State, Zip Code

Date of Incident: \_\_\_\_\_

Please describe the alleged discriminatory incident, including the location(s), if applicable. Provide the names and titles of “Agency Name” employees involved, if available.

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Description of incident continued:

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Have you filed a complaint with any other federal, state, or local agencies? Yes/No (Circle One).  
If so, list agency/agencies and contact information below:

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Agency Contact Name:

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Street Address, City, State, Zip Code Phone:

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Agency Contact Name:

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I affirm that I have read the above charge and that it is true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Complainant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Name of Complainant

Date Received: \_\_\_\_\_

Received By: \_\_\_\_\_

# SAMPLE REASONABLE MODIFICATION

## NJ Transit Subrecipient ADA Compliance

“**Agency Name**” recognizes that disabilities are as diverse as the individuals they serve and recognizes the need to make reasonable modifications to its policies, regarding assistance offered to passengers who may require additional assistance to use its services.

Under Title II of the ADA, state and local governments are required to make reasonable modifications to policies, practices and procedures where necessary to avoid discrimination.

For those riders who require additional assistance, the “**Agency Name**” will endeavor to accommodate all reasonable modification requests for such assistance by following procedures outlined below:

1. Riders must inform the “**Agency or Department Name**” of the need and specific type of additional assistance requested at the time ride reservation is made.
2. Reservationist will advise Dispatcher of the specific rider need/request. Dispatcher will log the information within the client information system and determine the resources required to accommodate rider.
3. The Dispatcher will evaluate the request and report to the **Director of Transportation** whether the request is reasonable to perform.
4. If the **Director of Transportation** deems the service requested to be unreasonable to perform or to repeat on a regular basis, he/she must cite specific reasoning to support the finding and inform the “**Enter Name or title**”.
5. If the “**agency**” concurs with the finding of the “**Enter Name or title**”, the rider must be so informed via phone call at least 48 hours before the requested/scheduled trip. The finding must also be communicated to the rider expeditiously by written correspondence.
6. Riders may appeal any such decisions by following established ADA grievance procedures. Complaints that a County program, service or activity is not accessible to persons with disabilities should be directed to ““**Enter Name or title**” “**contact information**”.

A Complainant may also file a complaint with the US Department of Transportation by contacting the Department at: US Department of Transportation, Office of Civil Rights,

Federal Transit Administration  
Office of Civil Rights  
Attention: Complaint Team  
East Building, 5th Floor – TCR  
1200 New Jersey Avenue, SE  
Washington, DC 20590

# AMERICANS WITH DISABILITIES ACT (ADA) - GENERAL

## PURPOSE OF THIS REVIEW

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

## QUESTIONS TO BE EXAMINED

1. Does the subrecipient track, resolve, and respond to ADA-related complaints? Is it advertised to the public?
2. If vehicles were purchased for demand-response service, were the requirements of 49 CFR Part 37 met?
3. Does the subrecipient follow provision of service requirements?
4. Does the subrecipient accommodate individuals who rely on accessible equipment when that equipment is inoperative?
5. Is general route-deviation service open to the general public? Is it Advertised to the public?
6. Does the subrecipient monitor service provided by subsubrecipients for compliance with the US DOT ADA regulations?

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1. **Does the subrecipient track, resolve, and respond to ADA-related complaints?  
Is it advertised to the public?**

## BASIC REQUIREMENT

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

## APPLICABILITY

All subrecipients

## EXPLANATION

Subrecipients are required to have procedures for addressing ADA complaints that incorporate appropriate due process standards and provide for prompt and equitable resolution. The US DOT ADA Final Rule, effective July 13, 2015, revised the local complaint process requirements in 49 CFR Parts 27 and 37 to require that subrecipients sufficiently advertise the process for filing an ADA-related complaint and communicate a response promptly to any individual filing a complaint. The subrecipient is not required to respond to all complaints in writing, but rather must ensure the response can be documented internally. Subrecipients must retain copies of ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years. If the subrecipient does not operate service directly or is a pass-through entity, it must ensure that those entities operating service directly have a procedure for addressing ADA complaints.

Subrecipients must advertise their ADA-related complaint process through means such as websites and include the contact information (name, address, telephone number, and email address) for the

employee designated to coordinate compliance. In lieu of providing the name of an individual, the Federal Transit Administration (FTA) has found it acceptable to provide a title (e.g., “ADA Coordinator” or “Customer Complaint Representative”) so long as any communications to the job title are directed to the designated employee who can then promptly respond. This can be accomplished by forwarding telephone calls, retrieving recorded messages, forwarding emails, or other means.

A subrecipient can use the same process for accepting and investigating ADA and Title VI complaints; however, ADA complaints must be categorized distinctly in internal and external communications. An agency may elect to have one “Discrimination Complaint Form,” for example, that covers both the Title VI and ADA bases and clearly distinguishes the two statutes.

#### **INDICATORS OF COMPLIANCE**

- a. *Is the process for filing a complaint advertised to the public, such as on the subrecipient’s website and marketing materials?*
- b. *Does public information about the complaint process include the appropriate contact information?*
- c. *Are the complaint procedures accessible to and usable by individuals with disabilities?*
- d. *Do the procedures provide for the prompt and equitable resolution of complaints, including a procedure for responding to complaints and tracking the responses?*
- e. *Does the subrecipient retain ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years?*

#### **GOVERNING DIRECTIVES**

##### 49 CFR 27.121(b) Compliance information

“(b) Compliance reports. Each subrecipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years.”

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

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

- (1) The process for filing a complaint...must be sufficiently advertised to the public, such as on the entity’s Web site.”
- (2) The procedures must be accessible to and usable by individuals with disabilities.” Must be easy to find on the agency website and made accessible in alternative format.
- (3) The entity must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant and must ensure that it has documented its response.”

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**2. If vehicles were purchased for demand-response service, were the requirements of 49 CFR Part 37 met?**

**BASIC REQUIREMENT**

Vehicles used in demand-response service must be accessible unless equivalent service is provided.

**APPLICABILITY**

Entities who provide demand-response service

**EXPLANATION**

Public entities operating demand-response service for the general public must purchase or lease accessible vehicles unless they can demonstrate that the system, when viewed in its entirety, provides a level of service to persons with disabilities, including persons who use wheelchairs, that is equivalent to the level of service it provides to persons without disabilities. The service for the general public for people with and without disabilities must be provided in the most integrated setting feasible and must be equivalent with respect to response time, fares, geographic service area, hours and days of service, any restrictions or priorities based on trip purpose, availability of information and reservation capability, and any constraints on capacity or service availability. Subrecipients must ensure that contractors using non-accessible vehicles in contracted demand-response service provide equivalent service.

Before procuring any inaccessible vehicle for demand-response service, the entity must file a certification of equivalent service with NJ Transit. Subrecipients must file a certification of equivalent service for each procurement of inaccessible vehicles. Appendix C to 49 CFR Part 37 of the US DOT ADA regulations includes a copy of the certification of equivalent service. The subrecipient must monitor its service to ensure that equivalent service exists; that is, there is an equal opportunity for each individual with a disability to use the transportation service and that the service provided to individuals with disabilities and those without disabilities meet the equivalent service characteristics described above. The subrecipient must document its analysis.

**INDICATORS OF COMPLIANCE**

- a. *If the subrecipient purchased non-accessible equipment for demand-response service other than ADA complementary paratransit service, is equivalent service provided?*
- b. *If non-accessible vehicles were purchased for demand-response service was the certification of equivalent service filed?*

**GOVERNING DIRECTIVE**

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

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

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

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

the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

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

(d) .... Public entities operating demand responsive service receiving funds under any other section of the FTA shall file the certificate with the appropriate FTA regional office...All certificates under this paragraph may be made and filed in connection with a particular procurement or in advance of a procurement; however, no certificate shall be valid for more than one year. A copy of the required certificate is found in appendix C to this part."

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### **3. Does the subrecipient follow provision of service requirements?**

#### **BASIC REQUIREMENT**

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

#### **APPLICABILITY**

Subrecipients who provide service

#### **EXPLANATION**

The US DOT ADA regulations (49 CFR 37.161-169) detail specific requirements for bus and rail service. The regulations do not require written policies detailing how an entity will comply with these service provisions, but the entity should be able to demonstrate that it has policies and procedures in place to enable it to meet these requirements. The entity should be able to provide reasonable documentation to demonstrate that operators are trained in these requirements and explains how the entity enforces their implementation.

- a) When an individual with a disability needs to sit in a seat or occupy a wheelchair securement location, the public or private entity must ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location: (i) individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and persons with disabilities (or other seat as necessary); and (ii) individuals sitting in a fold-down or other movable seat in a wheelchair securement location. Drivers are not required to compel the person to move; however, the entity is permitted to adopt a policy requiring individuals to move in response to such requests.
- b) US DOT's Final Rule amending 49 CFR part 37, which went into effect October 19, 2011, prohibits public and private entities from setting weight or size limitations on wheelchairs it will transport that understate the weight capacity that the vehicle fleet can actually accommodate

(e.g., a policy of not transporting wheelchair users whose combined weight is more than 600 pounds, when the design load of their vehicle lifts is 800 pounds). The Final Rule deletes the sentence containing “common wheelchair” from part 37, recognizing that some vehicles used in public transit can accommodate wheelchairs that do not meet the definition of “common wheelchair.” Wheelchairs that exceed the weight or dimensional requirements of a “common wheelchair” can be transported on and be used on such vehicles. In such cases, the subrecipient must change its operating policies so as not to limit service accessibility by the term “common wheelchair.”

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

- c) Public and private entities must not refuse to permit a passenger who uses a lift or ramp to board or disembark from a vehicle at any designated stop, unless the lift or ramp cannot be deployed, the lift or ramp will be damaged if it is deployed, or temporary conditions preclude the safe use of the stop by all passengers. The entity must deploy lifts or ramps for persons who do not use wheelchairs, including standees.
- d) Public and private entities may not deny service to individuals using respirators, concentrators, or portable oxygen.
- e) Public and private entities must ensure adequate time for individuals with disabilities to board or disembark a vehicle.
- f) Public information and communications must be made available in accessible formats, upon request. The alternate accessible format must be provided in a format that the requesting individual can actually use. Public and private entities must make available to individuals with disabilities adequate and accessible information concerning transportation services.
- g) Effective July 13, 2015, public entities are required under 49 CFR 37.5(i)(3) to make **Reasonable Modifications** in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services. The process to be used in considering requests for reasonable modifications is described in 49 CFR 37.169.

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

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

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

- h) The key to ensuring compliance with these policies is ensuring that all employees are aware of them. For employees, this might be done through initial and refresher trainings.
- i) Having policies is not sufficient; the subrecipient must also monitor compliance with the policies.

## **INDICATORS OF COMPLIANCE**

- a. *Does the subrecipient make priority seating available to individuals with disabilities?*
- b. *Does the subrecipient transport all wheelchairs that do not exceed the capacities of the vehicle and its equipment (lifts/ramps)?*
- c. *Does the subrecipient deploy the lift or ramp at any stop upon request?*
- d. *Does the subrecipient provide service to persons using respirators, concentrators, and portable oxygen?*
- e. *Does the subrecipient provide adequate time for individuals with disabilities to board/disembark a vehicle?*
- f. *Does the subrecipient provide information in accessible formats upon request?*
- g. *Does the subrecipient make information about how to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices? Does it provide a means, accessible to and usable by individuals with disabilities, to request a modification to the subrecipient's policies and practices?*
- h. *Does the subrecipient's training program address how to operate vehicles and equipment safely, and properly assist and treat individuals with disabilities who use the service with respect, courtesy, and sensitivity?*
- i. *Does the subrecipient monitor employees for compliance with the service provisions?*

## **GOVERNING DIRECTIVES**

### 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.

(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).

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

(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.”

2 CFR 200.303 Internal controls

“The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.”

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**4. Does the subrecipient accommodate individuals who rely on accessible equipment when that equipment is inoperative?**

**APPLICABILITY**

All subrecipients

**BASIC REQUIREMENT**

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

**EXPLANATION**

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. 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 an accessibility feature is out of order, the entity must take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

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.

Public entities and private entities operating service under contract to a public entity 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.

The subrecipient 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 is out of service, does the subrecipient accommodate individuals who rely on the elevator?*
- b. *Does the subrecipient ensure that vehicles with inoperative lifts or ramps are not placed into service when alternative accessible vehicles are available?*
- c. *Does the subrecipient require vehicle operators to report lift and ramp failures immediately?*
- d. *Is alternative accessible service provided to persons with disabilities?*

#### **GOVERNING DIRECTIVES**

##### 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.

(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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## **ADA9. Is general route-deviation service open to the general public?**

### **BASIC REQUIREMENT**

Route-deviation service must be open to the general public and accessible to and usable by persons with disabilities.

### **APPLICABILITY**

All subrecipients providing route-deviation service to the general public

### **EXPLANATION**

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.

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.

### **INDICATORS OF COMPLIANCE**

- a. *Is the 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 provided to individuals who require an accessible vehicle?*

### **GOVERNING DIRECTIVES**

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.”

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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**ADA5. Does the subrecipient monitor contracted service, or service provided by another public entity on the subrecipient’s behalf for compliance with the US DOT ADA regulations?**

**BASIC REQUIREMENT**

Contracted service must meet the US DOT ADA requirements that apply to the subrecipient.

**APPLICABILITY**

Subrecipients who contract out Service

## **EXPLANATION**

Subrecipients are required to ensure that contracted service adheres to the same ADA requirements that apply to the subrecipient. See preceding questions for a more detailed explanation of each requirement.

## **INDICATOR OF COMPLIANCE**

- a. *How does the subrecipient monitor contracted service/service provided by another entity on the subrecipient's behalf?*
1. *Complaint procedures?*
  2. *Vehicle acquisition?*
  3. *Facility construction and alterations?*
  4. *Service provision, including training?*
  5. *Maintenance of accessible features?*
  6. *Route-deviation service?*

## **GOVERNING DIRECTIVES**

### 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.”

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## **ADA REFERENCES**

1. 2 CFR Part 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"
3. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"
4. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"
5. 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels"
6. FTA Circular 4710.1, "Americans with Disabilities Act (ADA) Guidance"

### **USEFUL WEBLINKS**

1. [FTA ADA Website](#)
2. [U.S. Department of Transportation \(US DOT\) Disability Law Guidance](#)
3. [ADA Standards for Transportation Facilities](#)
4. [Federal Highway Administration Guidance on Pedestrian Access for Persons with Disabilities](#)
5. [Project ACTION](#)
6. [Disability Rights Education & Defense Fund - Topic Guides on ADA Transportation](#)
7. [U.S. Department of Justice ADA Homepage](#)