

Michigan Department of Transportation

Office of Passenger Transportation

Section 5310 FTA Triennial Compliance Review Preparation Guide

Agency:

Review Date:

Instructions

Transit agencies **must** review this guide prior to the onsite FTA and/or vehicle maintenance review to familiarize themselves with the topics to be addressed, the questions to be asked, and to ensure that copies of requested policies, certificates, forms, or other documents are accessible during the meeting. The compliance checklists will be completed during the review and sent to the agency with the comment letter for approval or to address deficiencies. All follow up documentation or corrective action must be submitted by the due date specified to avoid possible withholding of operations funds or suspension of current and/or future project authorizations.

If you have any questions or concerns about the compliance review process, please contact Kevin Wassom, MDOT OPT compliance analyst, at (517) 230-5949 or WassomK@michigan.gov, or your assigned OPT project manager.

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Introduction

In addition to the information that will be covered by the checklists, agencies should be prepared to discuss and/or answer questions about the following:

- 1. Description of Agency** – information such as organizational structure; days and hours of operation; number of full and/or part-time employees and if they are administrative, maintenance, drivers, or volunteers; description of service area; funding sources other than MDOT such as millage, DHS, contract services, or farebox; fare structure; capital asset planning; overall system condition; etc.
- 2. Description of Services** – types of services offered such as demand response; fixed route; deviated route; line haul; complementary paratransit; mobility management; non-essential medical transportation; etc.
- 3. Description of Revenue Vehicle Fleet** – information such as fleet composition, both current and future plans/changes; age and useful life ratio; overall physical condition; conditional fleet; vehicles disposed, sold or transferred to equipment listing; etc.
- 4. Description of Ridership** – makeup of passengers including regular; persons with disabilities; elderly; elderly persons with disabilities; etc.
- 5. System Information and Updates are Current** – ensuring that all information in PTMS is correct; all requested forms have been submitted such as vehicle or equipment verifications, milestones, capital match plans, annual application, project authorizations and resolutions; cost allocation plans; etc.
- 6. Previous Compliance Reviews** – ensure that all required follow up documentation and/or corrective action plans from previous reviews have been submitted and implemented.
- 7. Updated Policies and Procedures** – a compliance review is an appropriate time to update policies such as service animals and portable oxygen tanks and procedures like the vehicle maintenance or facility maintenance plans. Policies like drug and alcohol, procurement, and Title VI are updated regularly by changes to the federal rules or guidance circulars, but many other policies in place are quite old and should be updated.
- 8. Frequency of Reviews** – reviews were historically conducted on a triennial basis, but FTA now requires MDOT OPT to conduct a risk assessment and analysis after each review to determine the next review date. The risk analysis and assessment measures weighted factors in several areas to determine if an agency is considered high, medium, or low risk. Based upon that score, the next review will be scheduled between one and three years to ensure all agencies receive an adequate amount of monitoring and assistance.

Section 1

Charter Service

FTA rules regarding charter service are found in 49 CFR Part 604.

Agencies are prohibited from using federally funded vehicles, equipment, or facilities to provide charter service if a registered charter provider expresses interest in providing the service. Agencies can operate community-based charter services that are excepted or exempted under the regulations. Any charter service provided must be documented with a charter service log and a clear statement identifying which exemption or exception was applied.

Is the agency providing any charter service under an allowed exemption?

Exemptions

Federal charter service regulation does not apply to the following. **No record-keeping or reporting is required.**

1. A transit agency that is transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within its geographic service area for conducting oversight functions such as inspection, evaluation, or review.
2. Private charter operators that receive, directly or indirectly, federal financial assistance under FTA programs or other specified programs.
3. A transit agency that is transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, for emergency preparedness planning and operations.
4. A transit agency that uses federal financial assistance from FTA, for program purposes only.
5. Actions directly responding to an emergency declared by the President, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration. For the first 45 days, the transit agency is exempt. If the emergency lasts more than 45 days, the transit agency must follow specific procedures in the rules to continue the service.
6. Transit providers in a non-urbanized area that are transporting its employees, other transit system employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

Does the agency provide charter service with locally owned vehicles?

If the vehicle is stored and maintained in a federally funded facility, the service must be reported to MDOT as charter service. (Files will be reviewed to ensure this service is separate from federally funded public transportation service.)

Does the agency operate and report any charter service under the exceptions above, as defined in the regulation (e.g. service provided on an irregular basis or for limited duration, receives subsidies from third parties for service)? If yes, which exception(s)?

Exceptions

Listed below are exceptions (regulated charter) that may be provided, if specific guidelines are met and procedures are followed. **This service must be reported quarterly to the Office of Passenger Transportation and records must be kept by the transit agency for three years. The transit agency must have an MDOT approved cost allocation plan.**

1. Government officials on official government business (no more than 80 hours within the geographic service area and does not generate revenue by law.)
2. Qualified human service organizations for serving persons (a) with mobility limitations related to advanced age; (b) with disabilities; or (c) with low income.
3. When no registered charter provider responds to a notice from a recipient.
4. Agreement with all registered charter providers within the agency's geographic service area.
5. Petitions to the Administrator to provide charter service directly to a customer for (a) events of regional or national significance; (b) hardship (only for nonurbanized areas under 50,000 in population or small urbanized areas under 200,000 in population; or (c) unique and time sensitive events (e.g. funerals of local, regional, or national significance) that are in the public's interest.
6. Leasing FTA funded equipment and drivers to registered service providers under the following conditions:
 - a. The private charter operator is registered on the FTA charter registration website;
 - b. The registered charter provider owns and operates buses or vans in a charter service business;
 - c. The registered charter provider received a request for charter service that exceeds its available capacity either of the number of vehicles operated by the registered charter provider or the number of accessible vehicles operated by the registered charter provider;
 - d. The registered charter provider has exhausted all the available vehicles of all registered charter service providers in the recipient's geographic service area.

Did the agency or state (on agency's behalf) request an advisory opinion for the Office of Chief Counsel?

Did any registered charter provider file a cease and desist against the agency?

Did any registered charter provider file a complaint with the Office of Chief Counsel alleging non-compliance against the agency?

Section 2

Cost Allocation Plans

During the review, the OPT compliance analyst will review all cost allocation plans (CAP) on file or assist in determining if any new CAP are required. The agency must ensure that all current CAP are presented for comparison with all approved CAP on file with OPT.

Activities that may require a CAP include*:

1. Package or meal delivery programs.
2. Charter service.
3. Multiple sources of operating funding.
4. Rent or other income.
5. Sale of maintenance services.
6. Contributed services.
7. Joint costs with other units of local government.

Any CAP on file that are no longer required will be removed from the list and documented on the checklist why it is no longer required.

After the CAP are reviewed, the agency will attest to the accuracy of the list by signing the CAP compliance review checklist.

* This list is illustrative and not all-inclusive.

Section 3

Commercial Driver License (CDL)

Grantees that receive only Section 5310 funds are not subject to FTA drug and alcohol testing rules but must comply with the Federal Motor Carrier Safety Administration (FMCSA) rule for employees who hold a commercial driver license (CDL).

All drivers of vehicles designed to transport 16 or more passengers, including the driver, must have a CDL. Mechanics that drive the vehicles must also have a CDL. Therefore, those transit agencies who receive Section 5310 funds and have vehicles designed to transport 16 or more passengers must be included in a drug and alcohol testing program.

The FMCSA rule for employees who hold a CDL is found in 49 CFR §382.

The FMCSA website for drug and alcohol testing and reporting requirements is <http://www.dot.gov/ost/dapc/mis.html>.

The FMCSA Office of Drug and Alcohol Policy and Compliance can also be reached at (202) 366-2096.

The CDL compliance section consists of two simple questions:

1. Does the agency have any vehicles that require a CDL?
2. If yes, does the agency follow FMCSA regulations?

Section 4

Facilities & Equipment

FTA rules for facilities and equipment are found in 49 CFR 18, §25 and §31.

FTA guidance for facilities and equipment can be found in:

1. FTA C 5010.1E - Chapter I, §5hh and Chapter IV, §2i
2. FTA C 9040.1G – Chapter V, §4
3. FTA C 9070.1G – Chapter VI, §8
4. Davis-Bacon Act

Transit agencies must maintain satisfactory continuing control over federally funded facilities and equipment to ensure that they used properly in transit service. The agency must ensure that FTA funded property and equipment will remain available to be used for its originally intended purpose throughout the useful until disposition.

The facility and equipment compliance section will be completed for any transit agency that has a federally funded facility, facility improvement, or equipment.

The compliance review section for facilities and equipment will encompass the following at a minimum:

1. Verification that facilities and equipment are properly identified in PTMS;
2. Any new facility construction or improvements completed since the last review and verification that they are properly entered in PTMS;
3. For any new construction or improvements over \$2,000, verification that certified payroll records are maintained under the requirements of the Davis-Bacon prevailing wage law and that construction/improvements are ADA compliant;
4. An inspection to ensure satisfactory condition of the property, including identification of any unused space (requiring an excess real property utilization plan) or usage of space by other agencies (requiring a cost allocation plan);
5. Verification of an approved facility maintenance plan and review of inspections/records/checklists as included in the plan to confirm compliance;
6. Any equipment purchases completed since the last review and verification that they are properly entered in PTMS.
7. Verification that a random sample of pre-determined items in PTMS are at the facility;
8. Verification that a random sample of pre-determined items at the facility are properly entered in PTMS;
9. Verification that a physical inventory has been completed within the last two years, including the methodology used to complete it;
10. Verification that the agency has a control system in place to prevent loss, damage, or theft of property and a description of any features of the system;
11. Review of any equipment (not including revenue vehicles) disposed of since the last review and verification that it had met useful life, MDOT disposal permission

was obtained, the method of disposal, and checking to see if item has been removed from PTMS;

12. Review and document any incidental use of transit property or equipment being used for non-transit purposes and, if necessary, complete (or update) the incidental use affidavit form.

Section 5

Procurement

FTA rules for procurements can be found in 49 CFR 18, §36.

FTA guidelines for procurements can be found in Circular 4220.1F (third party contracting guidance) and Circular 5010.1E (grant management requirements).

MDOT OPT procurement guidelines are available online at http://www.michigan.gov/mdot/0,1607,7-151-9625_21607-250388--,00.html

All procurements since the date of the last triennial review will be examined. Each project authorization (and each individual procurement made through it) must be kept in a separate file. All procurement files must include a Written Record of Procurement History.

Does the agency have a written procurement policy? If so, has MDOT approved it? If there is no written procurement policy, MDOT will provide a template for the agency to use to create one.

Depending on the type of procurement administered, a complete file must include:

Micro-Purchase

1. Evidence of availability of funds (signed project authorization)
2. Required internal approvals for award (signed project authorization)
3. Davis Bacon federal contract clause, if applicable*
4. Fair and Reasonable Price Determination, including supporting documentation (copies of ads, quotes, etc.)

Small Purchase

1. Written purchase request or other pre-solicitation documents
2. Evidence of availability of funds (signed project authorization)
3. Required internal approvals for award (signed project authorization)
4. Method of Procurement Decision Matrix
5. Solicitation, including specifications. The solicitation must include a clear and accurate description of the recipient's technical requirements. If applicable, evidence of publication (copy of published ad, website screenshot, etc.)
6. If under \$25,000, Certification of Compliance with Federal Contract Clauses if applicable, including applicable clauses
7. If \$25,000 or greater, third-party contract including applicable Federal contract clauses
8. Independent Cost Estimate, including supporting documentation (copies of ads, price lists, prior purchase orders, etc.)
9. Quotations

10. Fewer Than Three Offers Received Evaluation, if applicable. Include copies of any written communication.
11. Price Analysis or Cost Analysis, including supporting documentation

Invitation for Bid (IFB)

1. Evidence of availability of funds (signed project authorization)
2. Required internal approvals for award (signed project authorization)
3. Method of Procurement Decision Matrix
4. Work scope/specifications. The solicitation must include a clear and accurate description of the recipient's technical requirements
5. Invitation for bid, which includes date and time bid will be publicly opened
6. Independent Cost Estimate, including supporting documentation (copies of ads, price lists, prior purchase orders, etc.)
7. Advertisement and Solicitation, including evidence of publication
8. Notice from MDOT: IFB approved/proceed with Bid
9. Fewer Than Three Offers Received Evaluation, if applicable. Include copies of any written communication
10. Price Analysis or Cost Analysis, including supporting documentation
11. Responsibility Determination, including supporting documentation
12. Bid Opening
13. Third-party contract including applicable Federal clauses
14. Notice of award
15. Notice to unsuccessful bidders and record of any debriefing
16. Record of any protest
17. Bid, Performance, Payment or other bond documents, if applicable
18. Required insurance documents, if applicable
19. Notice to proceed

Request for Proposals (RFP)

1. Evidence of availability of funds (signed project authorization)
2. Required internal approvals for award (signed project authorization)
3. Method of Procurement Decision Matrix
4. Work scope/specifications. The solicitation must include a clear and accurate description of the recipient's technical requirements
5. Request for proposal, including evaluation criteria listed in order of importance
6. Independent Cost Estimate, including supporting documentation (copies of ads, price lists, prior purchase orders, etc.)
7. Advertisement and Solicitation, including evidence of publication
8. Notice from MDOT: RFP approved/proceed with solicitation
9. Fewer Than Three Offers Received Evaluation, if applicable. Include copies of any written communication
10. Price Analysis or Cost Analysis, including supporting documentation
11. Responsibility Determination, including supporting documentation
12. Proposal Tabulation, including supporting documentation
13. Third-party contract including applicable Federal contract clauses*
14. Notice of award

15. Notice to unsuccessful bidders and record of any debriefing
16. Record of any protest
17. Bid, Performance, Payment or other bond documents, if applicable
18. Required insurance documents, if applicable
19. Notice to proceed

State Extended Contracts for Buses (Bid by MDOT)

1. Evidence of availability of funds (signed project authorization)
2. Required internal approvals for award (signed project authorization)
3. Method of Procurement Decision Matrix
4. Verify project authorization Item description is for the correct type of revenue vehicle and chassis length
5. If Local Purchase was specified in annual application, request authorization to change to MiDEAL purchase from your project manager
6. Price Analysis for MiDEAL Purchases
7. Review current Guidelines for MiDEAL Purchasing Program (vehicles) Checklist for Purchase available on MDOT OPT's website
8. Place order and proceed following the Guidelines for MiDEAL Purchasing Program (vehicles)
9. For vehicle purchases, ensure the Vehicle Purchase Specification Certification is completed

Procurement files must also contain all pertinent documents sent to your project manager as part of your request for payment. Payments must be made to vendors within 10 days of receipt of reimbursement from MDOT. You should also retain copies of any other correspondence with MDOT, such as e-mails, sent or received during the procurement.

Section 6

School Bus Transportation

FTA rules for school bus transportation can be found in 49 CFR 605.

The state and its subrecipients are prohibited from providing exclusive school bus service unless the service qualifies and is approved by the FTA Administrator under an allowable exemption.

Federally funded equipment or facilities cannot be used to provide exclusive school bus service. School tripper service that operates and looks like all other regular service is allowed in systems that operate fixed route service.

FTA defines tripper service as regularly scheduled transit service that is open to the public and that is designed or modified to accommodate the needs of school students and personnel, using various fare collection and subsidy systems. School tripper service that does not meet the above requirements must modify the service to comply with FTA requirements or discontinue the service.

EXEMPTIONS

1. The subrecipient operates a school system in the area and operates a separate and exclusive school bus service for that school system.
2. Existing private school bus operators are unable to provide adequate, safe, transportation.
3. The subrecipient, a public entity, operated the service prior to August 12, 1973 or received a grant for facilities before November 26, 1974.

Does the subrecipient operate exclusive school bus service? If yes, under which exemption does it qualify? (Dispatch records/schedules will be reviewed to ensure the service meets an exemption).

Is the service operated with locally owned equipment? If yes, the equipment cannot be housed or maintained in a federally funded facility.

Does the subrecipient provide “tripper service”? If yes, does this service meet the following criteria?

Regularly scheduled public transportation service?

Buses are clearly marked as open to the public?

Service was modified to meet needs of students/school personnel

Service uses various fare collection systems or subsidies

Buses have no special designations (e.g., “school bus”)

Buses use regular bus stops (fixed route only)

Service is noted on published schedules (fixed route only)

Section 7

Title VI

Federal law for Title VI can be found in 49 CFR 21.

FTA guidance can be found in Circular 4702.1B.

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

All 5311 transit agencies must have a written policy approved by both MDOT and the agency's board. The last required program update was due August 30, 2020. **Any plan approved before then is non-compliant.**

A Title VI Notice to the Public must be displayed to inform a recipient's customers of their rights under Title VI. At a minimum, recipients must post the notice on the agency's website, in public areas of the agency's office(s), including the reception desk and meeting rooms, transit shelters and stations, and on transit vehicles (e.g., buses, rail cars, etc.).

The Title VI Notice is a vital document. If any of the Limited English Proficient (LEP) populations in your service area meet the Safe Harbor threshold (five percent (5%) or 1,000 persons, whichever is less, of the total population of persons eligible to be served or likely to be affected or encountered), then the Notice should be provided in English and in any other language(s) spoken by LEP populations that meet the Safe Harbor Threshold. At a minimum, this statement in the Notice—"If information is needed in another language, then contact [phone number]"—should be stated in English and in any other language(s) spoken by LEP populations that meet the Safe Harbor threshold.

Does the agency's service area have any LEP language group that exceeds 5 percent of the service area or 1,000 persons (whichever is less)? If yes, does the agency provide written translations of vital documents in that/those languages(s)? If so, the agency must complete the four factor analysis and develop a Language Assistance Plan.

Four Factor Analysis

To ensure meaningful access to programs and activities, recipients shall use the information obtained in the Four Factor Analysis to determine the specific language services that are appropriate to provide. A careful analysis can help a recipient determine if it communicates effectively with LEP persons and will inform language

access planning. The Four Factor Analysis is an individualized assessment that balances the following four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or recipient. This population will be program specific. In addition to the number or proportion of LEP persons served, the recipient's analysis should, at a minimum, identify: (a) How LEP persons interact with the recipient's agency; (b) Identification of LEP communities, and assessing the number or proportion of LEP persons from each language group to determine the appropriate language services for each language group; (c) The literacy skills of LEP populations in their native languages, in order to determine whether translation of documents will be an effective practice; and (d) Whether LEP persons are underserved by the recipient due to language barriers.
2. The frequency with which LEP persons use the program. Recipients should survey key program areas and assess major points of contact with the public, such as: (a) Use of bus and rail service; (b) Purchase of passes and tickets through vending machines, outlets, websites, and over the phone; (c) Participation in public meetings; (d) Customer service interactions; (e) Ridership surveys; (f) Operator surveys.
3. The nature and importance of the program, activity, or service provided by the program to people's lives. The more important the program, the more frequent the contact and the likelihood that language services will be needed. The provision of public transportation is a vital service, especially for people without access to personal vehicles. An MPO's regional planning activities will impact every person in a region. Development of a coordinated plan to meet the specific Chap. III-8 FTA C 4702.1B transportation needs of seniors and people with disabilities will often also meet the needs of LEP persons. A person who is LEP may have a disability that prevents the person from using fixed route service, thus making the person eligible for ADA complementary paratransit. Transit providers, states, and MPO must assess their programs, activities and services to ensure they are providing meaningful access to LEP persons. Facilitated meetings with LEP persons are one method to inform the recipient on what the local LEP population considers to be an essential service, as well as the most effective means to provide language assistance.
4. The resources available to the recipient for LEP outreach, as well as the costs associated with that outreach. Resource and cost issues can often be reduced by technological advances, reasonable business practices, and the sharing of language assistance materials and services among and between recipients, advocacy groups, LEP populations and Federal agencies. Large entities and those entities serving a considerable number of LEP persons should ensure that their resource limitations are well substantiated before using this factor as a reason to limit language assistance.

Developing a Language Assistance Plan

After completing the Four Factor Analysis, the recipient shall use the results of the analyses to determine which language assistance services are appropriate. Additionally,

the recipient shall develop an assistance plan to address the identified needs of the LEP population(s) it serves. An LEP Plan shall, at a minimum:

1. Include the results of the Four Factor Analysis, including a description of the LEP population(s) served;
2. Describe how the recipient provides language assistance services by language;
3. Describe how the recipient provides notice to LEP persons about the availability of language assistance;
4. Describe how the recipient monitors, evaluates and updates the language access plan; and
5. Describe how the recipient trains employees to provide timely and reasonable language assistance to LEP populations.

After completing the Four Factor Analysis, a recipient may determine that an effective LEP plan for its community includes the translation of vital documents into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's programs and services. Vital written documents include, but are not limited to, consent and complaint forms; intake and application forms with the potential for important consequences; written notices of rights; notices of denials, losses, or decreases in benefits or services; and notices advising LEP individuals of free language assistance services. Examples of vital documents include an ADA complementary paratransit eligibility application, a Title VI complaint form, notice of a person's rights under Title VI, and other documents that provide access to essential services. Failure to translate these vital documents could result in a recipient denying an eligible LEP person access to services and discrimination based on national origin.

Does the agency's Title VI Notice to the Public include the following information?

1. **Agency Name;**
2. **Statement that the Agency operates its programs and services without regard to race, color, and national origin;**
3. **A description of the procedures (including agency's contact information) that members of the public should follow to request additional information on the agency's Title VI obligation; and**
4. **A description of the procedures (including agency's contact information) that members of the public should follow to file a Title VI discrimination complaint against the agency.**

If applicable, is this information provided in another language spoken by the LEP population that meets the Safe Harbor Threshold?

Safe Harbor Provision

The Safe Harbor Provision stipulates that, if a recipient provides written translation of vital documents for each eligible LEP language group that constitutes five percent (5%) or 1,000 persons, whichever is less, of the total population of persons eligible to be served or likely to be affected or encountered, then such action will be considered strong evidence of compliance with the recipient's written translation obligations. Translation of non-vital documents, if needed, can be provided orally. If there are fewer

than 50 persons in a language group that reaches the five percent (5%) trigger, the recipient is not required to translate vital written materials but should provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost. These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. A recipient may determine, based on the Four Factor Analysis, that even though a language group meets the threshold specified by the Safe Harbor Provision, written translation may not be an effective means to provide language assistance measures. For example, a recipient may determine that many persons in that language group have low literacy skills in their native language and therefore require oral interpretation. In such cases, background documentation regarding the determination shall be provided to FTA in the Title VI Program.

Where is the Title VI information displayed? (* denotes required areas)

1. **Brochures;**
2. ***Facility/headquarters (public areas such as reception area, meeting rooms, etc.);**
3. **Transit vehicles;**
4. **Transit shelters and stations;**
5. ***Website.**

How does the agency ensure its subrecipients are complying with Title VI?

Since the last review, have any of the four-factors changed that might result in an updated analysis and Language Assistance Plan (LAP)? If yes, have the updated analysis and LAP been done?

Since the last review, what outreach and involvement activities has the agency performed to seek out and consider the viewpoints of minority and LEP populations?

Do the agency's non-elected boards and committees include minority representation?

Since the last review, what has the agency done to encourage minority representation?

Has the agency performed or is performing a facility construction using federal funds since the last review? If yes, has the agency performed a Title VI equity analysis as described in Chap. III §13 (Determination of Site or Location of Facilities) of Circular 4702.1B? If available, please provide a copy of the Title VI equity analysis document.

Does the agency provide fixed route service? If yes, do they have system-wide service standards and policies, and how do they monitor them? When did the agency last conduct a passenger survey to collect the required demographic ridership and travel patterns? (Required at least every 5 years)

The compliance analyst will ensure that the annual employee acknowledgement is signed and placed in their personnel files.

Section 8

Transportation Services for Individuals with Disabilities

Federal law for transportation services can be found in 49 CFR 27, 49 CFR 37, and 49 CFR 38.

Federal guidance can be found in Circular 4710.1.

Titles II and III of the American 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. The regulations do not require that agencies have written policies detailing how they comply with these service provisions, but 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.

As part of the review, the compliance analyst will ride on an agency's vehicle during the transportation of a passenger that requires use of the lift and observe the following criteria:

Lift Availability

1. The entity shall establish a system of regular and frequent maintenance checks on lifts sufficient to determine if they are operative.
2. 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.
3. Except as provided in paragraph 4 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.
4. 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.
5. 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.

Lift and Securement Use

1. This section applies to public and private entities.
2. All common 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.
3. (a) For vehicles complying with part 38 of this title, the entity shall use the securement system to secure wheelchairs as provided in that Part. (b) 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. (c) The entity may require that an individual permit his or her wheelchair to be secured.
4. 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.
5. 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.
6. 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.
7. The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle.

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.

Portable Oxygen:

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

Lift Deployment at any Designated Stop

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.

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.

The review also requires the agency to demonstrate proper training for operators of lift-equipped vehicles by reviewing the following:

Accessibility Training

The agency 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 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 agency must establish appropriate standards for its operation. There is no requirement for recurrent or refresher training, but there is an obligation to ensure that each employee is always proficient . The training must be appropriate to the duties of each employee and must address both technical requirements and human relations. Note that training is required not only for vehicle operators and those who maintain and repair vehicles and equipment, but for other personnel who interact with passengers as appropriate.

Reasonable Modifications

The agency is required to make reasonable modifications to policies, practices, and procedures to avoid discrimination and ensure that their programs are accessible to individuals with disabilities. The agency is not required to provide a fundamental alteration (a change so significant that it alters the nature of the service such as exclusive rides, performing the functions of a personal care attendant, or operating outside of normal service hours), a change that creates a direct threat to the health or safety of others, service that is unnecessary by the requestor, or any modification that creates an undue financial and/or administrative burden. The basic concept of shared-ride public transportation may be preserved, and the bus driver is not required to be a personal care attendant.

The agency must implement their own process for making decisions and providing reasonable modifications. The regulations do not prescribe the exact process to adopt or a policy that requires OPT approval. Existing local practices may suffice, but information on the agency's process must be readily available to the public. Although OPT retains the authority to review an agency's process as part of normal program oversight, it is intended that individual requests for modifications to be addressed at the local level. There is no requirement for separate tracking of reasonable modification requests; the regulation assumes existing processes will be used. The general rule is that the agency is to make a good faith effort to accommodate a reasonable modification, and local policies are generally enough to do so.

ADA Complaints

Grantees are required to have an internal complaint review system and to retain copies of complaint for at least one year and a summary of all complaints for at least five years.

Examples of ADA complaints are, but not limited to:

1. Unreasonable administrative burdens in applying for ADA paratransit eligibility
2. Bus drivers passing by riders using wheelchairs waiting at a bus stop
3. Vehicle operators not announcing stops or identifying routes
4. 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 noncompliance:

1. Comfort while riding (e.g., driving style)
2. Having to ride in a complementary paratransit vehicle with another rider
3. Lack of or limited service (e.g., not serving a community or limited evening or weekend service)

The agency must have a written, MDOT approved, and board adopted ADA policy on file.

Additional requirements must be met for providers of fixed route service.

FIXED ROUTE SERVICE ONLY

ADA Paratransit Eligibility

An agency 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:

1. 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);
2. 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; or
3. 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 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 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, 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.

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 also must 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 documentation, 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 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. 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. Reservations may be permitted up to 14 days before a desired 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 PCAs. 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 percent of the number of trips available at a given time. If there are no capacity constraints within the agencies 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 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: 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 consider 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.

The compliance analyst will ensure that the following requirements are being met:

1. Eligibility determinations;
2. Service criteria;
3. Service capacity;
4. Origin-to-destination service;
5. Visitor's service; and
6. No-show policies.

Announcements on Vehicles

The agency shall announce stops as follows:

1. The agency 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; and
2. The agency shall announce any stop on request of an individual with a disability.

Vehicle Identification Mechanisms

Where vehicles or other conveyances for more than one route at the same stop, the agency shall provide a means by which an individual with a visual impairment or other disability can identify the proper vehicle or be identified to the vehicle operator as a person seeking a ride on a particular route.