AMENDMENT 1

Federal Transit Administration

Americans with Disabilities Act
Circular C 4710.1

Draft Chapters for Public Comment

February 2014

TABLE OF CONTENTS

Chapter 1 – Introduction and Applicability

1.1 Introduction

To help transportation providers meet the requirements of the U.S. Department of Transportation's (DOT) Americans with Disabilities Act (ADA) regulations, the Federal Transit Administration (FTA), an agency within DOT, is publishing proposed guidance in the form of an ADA Circular.

DOT issues regulations implementing the transportation and related provisions of ADA and Section 504 of the Rehabilitation Act of 1973, as amended. The regulations at 49 CFR Parts 27, 37, 38, and 39 set specific requirements transportation providers must follow to ensure their services, vehicles, and facilities are accessible to and useable by individuals with disabilities. These regulations apply broadly to both public and private entities and to almost all types of transportation services, including fixed route bus and rail (e.g., commuter, rapid, and light rail), complementary paratransit, demand responsive service and ferry service. FTA is charged with ensuring that public entities that provide transit service comply with the regulations.

This ADA Circular provides official guidance to FTA grantees—public entities that receive Federal funding through the agency—and others concerning the requirements of the DOT ADA regulations. It is FTA's goal to help transit agencies meet their obligations under the ADA by outlining the regulations, describing good practices, and presenting the information in an easy-to-use format.

This Circular does not alter, amend, supersede or otherwise affect the DOT ADA regulations themselves or replace or reduce the need for detailed information in the regulations. The examples of good practices are presented as local options; FTA recognizes that there are many different ways agencies can implement the regulatory requirements and ensure the delivery of ADA compliant service.

1.1.1 Organization of the Circular

FTA published a draft of Chapter 4, Vehicle Acquisition, on October 2, 2012, as part of the phased development of this new Circular (FTA C 4710.1), which was noticed in the Federal Register.[1] This is the first amendment (Amendment 1) to Circular FTA C 4710 and includes Chapters 1, 2, 5 and 8. When complete, FTA expects the Circular will include approximately 12 chapters. FTA proposes to issue further Circular Amendments that will include additional chapters and appendices. Table 1.1 outlines how these 12 chapters are presently organized.

[1] 77 Federal Register 60170 (October 2, 2012).

Table 1.1 – Organization of ADA Circular

Chapter Title and Publication Status	Description
1 – Introduction and Applicability (Included in this Amendment 1)	Overview of the Circular and discussion of the categories of service, types of vehicles and facilities, and types of transportation providers covered in the Circular
2 – General Requirements (Included in this Amendment 1)	The fundamental nondiscrimination requirements, including examples of permitted and prohibited practices. Also includes crosscutting service provision requirements applicable to all modes of transportation (e.g., maintenance of accessible features, use of lifts and securement systems, provision of accessible information and communications, accommodation of service animals, boarding and disembarking time, and employee training)
3 – Transportation Facilities (Future Amendment)	The requirements that apply to construction activities at rail stations, bus boarding areas, and multimodal facilities that include public transportation, including a summary of the key stations requirements
4 – Vehicle Acquisition (Published in Draft)	The requirements for acquiring new, used, and remanufactured transit buses, light rail vehicles, rapid (heavy) rail vehicles, and commuter rail cars
5 – Equivalent Facilitation (Included in this Amendment 1)	The process for seeking a determination from the FTA Administrator that permits alternative ways—by use of other designs and technologies—to comply with the regulations for vehicles and transportation facilities
6 – Fixed Route Service (Future Amendment)	Service requirements for stop announcements and route identification announcements on fixed route systems covered in § 37.167(b) and for providing alternative transportation when wheelchair lifts are inoperable
7 – Demand Responsive Service (Future Amendment)	The requirements applicable to general public demand responsive service, including how it differs from complementary paratransit service (Chapter 8)
8 – Complementary Paratransit Service (Included in this Amendment 1)	The requirements for complementary paratransit service, including service criteria, subscription service, and types of service
9 – ADA Paratransit Eligibility (Future Amendment)	The requirements pertaining to complementary paratransit eligibility, including eligibility criteria, accommodation of companions and attendants, process requirements, timeliness of determinations, recertification, appeals, no-show suspensions, origin-to-destination and feeder service, and visitor eligibility
10 – Passenger Vessels (Future Amendment)	Guidance applicable to providing public transportation via passenger ferry services and accessibility requirements of landside facilities
11 – Other Modes (Future Amendment)	Applicable requirements for other vehicles and systems such as people movers, high-speed rail cars, monorails and systems, and trams covered in Subpart H of Part 37
12 – Oversight, Complaints and Monitoring Methods (Future Amendment)	FTA enforcement provisions (Subpart C of Part 27) and oversight role, grantee complaint resolution requirements, and guidance on monitoring performance in relation to performance standards (both in-house and contractors)

1.2 Entities and Transportation Services Addressed in this Circular

1.2.1 Types of Entities Addressed

The ADA and the DOT ADA regulations apply broadly to both public and private entities and to almost all types of transportation services. This Circular addresses entities and services that fall under FTA's

jurisdiction; that is, public entities that receive FTA funding (grantees) to provide transportation services to the public.

1.2.2 Types of Transportation Services Addressed

This Circular primarily addresses the following types of transportation services provided by FTA grantees:

- Commuter rail
- Rapid/heavy rail
- Light rail
- Fixed route bus
- Demand responsive
- Complementary paratransit
- Water transportation/passenger ferries

Parts 37 and 38 of the regulations cover all but water transportation/ferries, which are covered in Part 39 and discussed in forthcoming Chapter 10.

1.2.3 Services Under Contract or Other Arrangement – § 37.23

Grantees may contract with private entities to operate fixed route or demand responsive service. In these cases, grantees must "ensure that the private entity meets the requirements of [Part 37] that would apply to the public entity if the public entity itself provided the service" (§ 37.23(a)). In other words, private entities "stand in the shoes" of grantees and must meet the same regulatory requirements that apply to grantees. (See forthcoming Chapter 10 for similar language covering operators of passenger vessels.)

Grantees contracting with private companies to provide fixed route or complementary paratransit service are responsible for ensuring that their contractors meet the same vehicle acquisition and provision-of-service requirements as if they were operating the service directly. For example, consider a transit agency that uses a contractor to operate its commuter bus service. The requirements applicable to publicly operated commuter bus service take precedence over those that apply to over-the-road bus companies and services, even if the contractor also operates private intercity bus service.

Stand-in-the-Shoes Accessible Fleet Requirements

Public entities that enter "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 [must] 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" (§ 37.23(c)). For example, if a public entity's fixed route bus fleet is 99 percent accessible, then at least 99 percent of its contractors' vehicles used for the contract must be accessible.

Section 37.23(b) places a similar requirement on private entities regarding the purchase of vehicles for use, or in contemplation of use, in fixed route or demand responsive service under contract to a public entity. Private entities must "acquire accessible vehicles in all situations in which the public entity itself would be required to do so by [Part 37]." This applies whether the vehicles to be acquired are new, used, or remanufactured. (See Chapter 4.)

As explained more in the Appendix D section on Service Under Contract, the vehicle acquisition requirements may differ depending on the kind of service involved. In the case of demand responsive service, a public entity is not required to buy an accessible vehicle if its demand responsive system, when

viewed in its entirety, provides service to individuals with disabilities equivalent to its service to other individuals. (See Chapter 4 for a discussion of "equivalent service" requirements and forthcoming Chapter 7.)

Other Stand-in-the-Shoes Requirements

This stand-in-the-shoes requirement extends to subcontractors as well. For example, if a transit agency engages a contractor to provide complementary paratransit service, the contractor might subcontract with a private taxi company for some trips. In such instances, the transit agency must ensure that both its contractor and the taxi subcontractor meet the same requirements applicable to the transit agency for providing complementary paratransit service.

As discussed in the Appendix D section on Service Under Contract, this stand-in-the-shoes requirement not only applies to traditional contracts for service, but also applies to other arrangements or relationships as well. For example, a private utility company may have an agreement with a city to receive FTA funding as a subrecipient to the city to operate a fixed route service. As an FTA funding recipient, the city is responsible for ensuring that the private utility company (the subrecipient) meets the DOT requirements for providing fixed route service.

When the Stand-in-the-Shoes Requirements Do Not Apply

The stand-in-the-shoes requirement does not apply if private entities are only regulated by, or receive a franchise or permit to operate from, public entities. For example, private taxi or shared-ride van services do not have to comply with public entity provisions if they are only regulated by, or receive permits to operate from a state, county, or municipal government or authority. They are not at that point operating service on behalf of the public entity.

Similarly, the stand-in-the-shoes requirement does not apply in cases where public entities provide general subsidies to private companies to underwrite private transportation services. For example, a city may start a taxi voucher program for individuals 65 and older using local taxicabs. Accepting these vouchers does not mean that the taxi companies stand-in-the-shoes of the city. In operating such a program, however, the city must ensure that its taxi voucher program does not discriminate against program participants with disabilities. (See Chapter 2.)

Private Entities Receiving § 5311 Funding

Private entities receive § 5311 funding (Formula Grants for Rural Areas) through subgrant agreements with state agencies, or the state agencies may pass through § 5311 funding to subrecipients, who then enter into agreements with private contractors for service. The state agency provides funding through these agreements for public transportation services in rural parts of the state. Because these private contractors are providing services on behalf of the state (or the state's subrecipient), they are standing in the shoes of the state.

The private entities receiving § 5311 funding must meet the requirements applicable to public entities providing fixed route or demand responsive service. For example, state agencies using a private nonprofit provider to deliver demand responsive service must ensure that the provider's services meet the general public demand responsive service requirements applicable to public entities contained in § 37.77. (See forthcoming Chapter 7.) Similarly, for providers delivering fixed route service on their behalf, state-administering agencies must ensure that the service meets the fixed route and complementary paratransit service requirements. (See Chapter 8.)

Private entities may also operate as contractors to a subrecipient or as a contractor to a Tribal Transit direct recipient. In these cases, the same provisions applying to private contractors above would apply.

Private Entities Receiving § 5310 Funding

Conversely, private, nonprofit entities that receive § 5310 funding (Enhanced Mobility for Seniors and Individuals with Disabilities) for "traditional § 5310 projects," as defined by FTA Circular 9070.1G, do not stand in the shoes of state administering agencies or designated recipients. The funding provided by state agencies or designated recipients for these "traditional § 5310 projects" allows § 5310 grant recipients to provide services to seniors and individuals with disabilities as defined by the subrecipient's mission. As a result, these subrecipients are not providing services on behalf of the state or designated recipient.

However, recipients of § 5310 funding for "traditional § 5310" projects must meet the ADA requirements that apply to private entities. For example, when purchasing inaccessible vehicles with § 5310 funds, recipients must be prepared to demonstrate they are providing equivalent levels of service to individuals with disabilities, including those who use mobility devices. If an award includes inaccessible vehicles, state agencies must have a process in place to ensure that service will be equivalent.

In contrast, private entities that receive § 5310 funding for other types of projects as defined by FTA Circular 9070.1G, such as public transportation projects that exceed the requirements of the ADA, or projects that improve access to fixed route service, do stand in the shoes of the state or designated recipient and must meet the requirements applicable to public entities providing fixed route or demand responsive services.

1.2.4 Coordinating With Other Entities

FTA grantees sometimes share transportation facilities with others, including:

- Grantee-constructed intermodal terminals that Amtrak or private transportation providers also use
- Amtrak-owned stations used for commuter rail services
- Amtrak-owned stations upgraded as part of a commuter rail project
- Other FTA grantees
- Other private entities

Amtrak's services are under Federal Railroad Administration's (FRA) jurisdiction, while private transportation providers' services are under the jurisdiction of the Department of Justice (DOJ). When sharing facilities with Amtrak or private transportation providers, a good practice is to work with these entities to ensure that all applicable requirements are met. This is particularly important when constructing new facilities or modifying existing facilities owned by or shared with Amtrak, which require FTA and FRA review and approval. (See forthcoming Chapter 3.)

1.3 Requirements Applicable to FTA Grantees

Part 37 of the DOT ADA regulations contains provisions for rail, fixed route bus and demand responsive services with the following six subparts applicable to public entities:

- General nondiscrimination requirements (Subpart A)
- Applicability, complaint handling, and enforcement requirements (Subpart B)
- Facility requirements (Subpart C and Appendix A)
- Vehicle acquisition requirements (Subpart D)
- Complementary paratransit requirements (Subpart F)
- Service provision requirements (Subpart H)

Appendix D to Part 37 provides supplemental information to help explain DOT's interpretation of the regulatory text.

Part 38 contains accessibility standards for various types of rail, fixed route bus, and demand responsive transportation vehicles.

Part 39 applies to owners or operators of any passenger vessel (PVOs) that provide ferry and other water transportation services. Part 39 has seven subparts that address the following regulatory requirements:

- Applicability requirements (Subpart A)
- General nondiscrimination requirements (Subpart B)
- Provision of service requirements (Subparts C and F)
- Terminal and landside facility requirements (Subpart D)
- Passenger vessel acquisition and standards (Subpart E (Reserved))
- Complaint handing and resolution and enforcement requirements (Subpart G)

Table 1.2 summarizes the parts and subparts applicable to various types of transportation services FTA grantees provide. General nondiscrimination requirements, complaint handling and enforcement provisions, facility requirements, vehicle acquisition requirements, and provision of service requirements apply to all types of transportation services provided by grantees.

Table 1.2 – Applicable DOT ADA Regulations for Transportation Services Provided By FTA Grantees

Type of Transportation Service	Applicable Subparts and Sections of Regulations					
	General Non discrimination	Applicability, Complaints & Enforcement	Facilities	Vehicle Acquisition	ADA Paratransit	Service Provision
Commuter Rail	Part 37 Subpart A	Part 37 Subpart B; Part 27 Subpart C	Part 37 Subpart C, Appendix A	Part 37 Subpart D; Part 38	Not Required	Part 37 Subpart G
Light and Rapid Rail	Part 37 Subpart A	Part 37 Subpart B; Part 27 Subpart C	Part 37 Subpart C, Appendix A	Part 37 Subpart D; Part 38	Part 37 Subpart F	Part 37 Subpart G
Fixed Route Bus	Part 37 Subpart A	Part 37 Subpart B; Part 27 Subpart C	Part 37 Subpart C, Appendix A	Part 37 Subpart D; Part 38	Part 37 Subpart F	Part 37 Subpart G
Commuter Bus	Part 37 Subpart A	Part 37 Subpart B; Part 27 Subpart C	Part 37 Subpart C, Appendix A	Part 37 Subpart D; Part 38	Not Required	Part 37 Subpart G
Demand Responsive	Part 37 Subpart A	Part 37 Subpart B; Part 27 Subpart C	Part 37 Subpart C, Appendix A	Part 37 Subpart D; Part 38	Not Required	Part 37 Subpart G
Ferry Boats and Other Water Transportation	Part 39 Subpart B	Part 39 Subparts A and G	Part 39 Subpart D	Part 39 Subpart E (Reserved)	Not Required	Part 39 Subparts C and F

Complementary paratransit service is required where public entities provide fixed route service (bus and rail). Section 37.121(c) exempts intercity rail, commuter rail and commuter bus services from the requirement for complementary paratransit service.

Subpart B of Part 37 clarifies the applicability of DOT ADA requirements to certain types of transportation services, including university transportation, taxis, vanpools, airport transportation systems, and supplemental services to other modes, such as intercity and commuter rail. The discussion below covers the extent that these modes are relevant to public transportation subject to FTA oversight.

1.3.1 University Transportation Systems – § 37.25

In some cases, public universities receive FTA funding for the operation of fixed route services. While this Circular covers such grantee services, the requirements vary depending on the type of service provided, as follows:

- When the fixed route service provided serves only the university, the service is considered commuter bus service in accordance with § 37.25(b). As such, the nondiscrimination requirements apply as well as those for facilities, vehicle acquisition, and service provision for public entities operating fixed route services. Under § 37.121(c), commuter bus services are not subject to the requirement to provide complementary paratransit service.
- When the fixed route system operated by the public university also provides service to the broader community, it is not a "university transportation system" and as such, complementary paratransit requirements apply

In some cases, transit agencies that receive FTA funding may also operate fixed route systems that serve public or private universities. The requirements in such instances will vary depending on the type of service provided, as follows:

- A route does not become "university service" simply because it serves or passes through a university. Such routes are part of the transit agency's regular fixed route system and are subject to the requirements for complementary paratransit
- If a transit agency operates a route or routes at the behest of, under contract to, funded by, and for the purposes of a university (i.e., closed-door service that provides transportation only for students, faculty and staff), such routes would be regarded as "university service" and the requirements for complementary paratransit would not apply.

1.3.2 Vanpools – § 37.31

A vanpool is defined in § 37.3 as a voluntary commuter ridesharing arrangement using buses or vans with a seating capacity greater than seven persons (including the driver) that provides transportation to a group of individuals traveling directly from their homes to their regular places of work within the same geographical area, and in which the commuter/driver does not receive compensation beyond reimbursement for his or her costs of providing the service.

As covered in § 37.31, vanpool systems operated by public entities (in which public entities own, purchase, or lease the vehicles)[2] are subject to the requirements that apply to general public demand responsive services. This means that vanpool vehicles must be accessible, or that the vanpool service, when viewed in its entirety, must provide service to individuals with disabilities, including those who use wheelchairs, that is equivalent to the service provided to all individuals who use vanpools. A vanpool system can meet this requirement by ensuring that an accessible vehicle is provided to any vanpool in which a person with a disability chooses to participate, within the same amount of time that a person without a disability would expect to be added to the vanpool.

[2] "Operated by public entities" includes those situations in which the public entity owns, purchases, or leases the vehicles, or provides financial assistance to purchase or lease the vehicles.

1.3.3 Airport Transportation Systems – § 37.33

Public airport authorities operating transportation systems are subject to the same requirements that apply to fixed route or demand responsive service operated by other public entities. For public entities receiving FTA funding, compliance is a condition of eligibility for Federal funds. Fixed route transportation services between terminals or connecting terminals with parking lots, car rental facilities, or other services, are classified in § 37.33 as commuter bus services. As such, the requirement for complementary paratransit service does not apply.

1.3.4 Supplemental Services for Other Transportation Modes – § 37.35

Some public intercity or commuter rail operators provide fixed route transportation services to supplement their rail services and/or connect rail stations with a limited number of other points. Such services are subject to the same requirements as public-entity-provided fixed route commuter bus services. In these instances, complementary paratransit service is not required.

Some transit agencies provide bus services to commuter rail systems with through-ticketing arrangements that are limited to commuter rail passengers. These services are also governed by the requirements for public-entity-provided commuter bus services and complementary paratransit service is not required.

1.3.5 Ferry Boats and Other Water Transportation – Part 39

FTA grantees operating ferry boats or other water transportation services are subject to the provisions of Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels." (See forthcoming Chapter 10.)

1.4 DOT Section 504 Requirements

Prior to the passage of the ADA in 1990, the Rehabilitation Act of 1973—and Section 504 of that act—was implemented to prohibit discrimination against individuals with disabilities by entities that receive Federal funds. The purpose of the Rehabilitation Act is to ensure that individuals with disabilities are not excluded from, denied the benefits of, or subject to discrimination in any programs or activities receiving Federal financial assistance. The DOT regulations implementing Section 504 are found at 49 CFR Part 27.

These regulations were amended as part of DOT's ADA rulemaking to require ADA compliance as a condition of Section 504 compliance, stating, "Recipients subject to [Part 27]…[must] comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990…including the Department's ADA regulations…" (§ 27.19 (a)). This requirement is cross-referenced in Part 37, stating, "For entities receiving Federal financial assistance from the Department of Transportation, compliance with the applicable requirements of [Part 37] is a condition of compliance with Section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance" (§ 37.21(b)). In order to receive Federal financial assistance, grantees must comply with Section 504; in order to comply with DOT's Section 504 regulations, grantees must comply with the DOT ADA regulations.

1.4.1 Section 504 Administrative Enforcement Provisions

For FTA grantees (and other recipients of Federal funding from DOT), enforcement of the DOT ADA regulations is carried out using the administrative enforcement provisions found in Subpart C of Part 27. These provisions address:

- Maintenance of compliance information by FTA grantees
- The conduct of investigations of compliance by FTA
- Compliance review procedures
- Hearings related to compliance reviews and investigations
- Hearing notices and decisions

See forthcoming Chapter 12 for a discussion of these requirements.

1.5 Other ADA Regulations

FTA grantees are also subject to the Department of Justice (DOJ) ADA regulations. Public entities are subject to 28 CFR Part 35, which addresses state and local government programs.

While the DOT ADA regulations apply to transportation services FTA grantees provide, the DOJ ADA regulations apply to other types of services grantees may provide. For example, county governments may operate public transit systems with DOT funding (subject to the DOT ADA regulations) and may provide housing, nutrition, and other services to seniors (subject to the DOJ ADA regulations). Transportation services may be part of an agency's senior housing and nutrition programs and would thus be subject to both the DOT and DOJ regulations. Transit facilities may be constructed to include offices for other state agencies or programs, or with space for private development.

To address such instances, DOT and DOJ collaborated on the development of their ADA regulations to ensure both consistency of interpretation and efficiency of application. In situations where there are apparent inconsistencies between the two rules regarding the provision of transportation, however, DOT's Part 37 provisions prevail (§ 37.21(c)). For example, DOJ made a number of changes to its ADA regulations that went into effect March 15, 2011, including a narrowing of its definition of service animal. This change to DOJ's regulations does not affect the DOT ADA regulations. Transit agencies must follow the DOT definition of service animal in § 37.3 when assessing whether to accommodate a particular animal.

The DOT § 504 regulations also require FTA grantees to comply with all applicable ADA regulations, as follows:

> Recipients subject to this part…shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990…including the Department's ADA regulations…the regulations of the Department of Justice implementing Titles II and III of the ADA…and the regulations of the Equal Employment Opportunity Commission (EEOC) implementing Title I of the ADA…Compliance with all these regulations is a condition of receiving Federal financial assistance from the Department of Transportation. Any recipient not in compliance with this requirement shall be subject to enforcement action under subpart C of this part (§ 27.19(a)).

1.6 Transportation Services Not Covered by this Circular

While this Circular is addressed exclusively to FTA grantees and applicants, many other transportation services are also subject to the DOT ADA regulations or ADA regulations under the jurisdiction of other Federal agencies. These include:

- Intercity rail services (Amtrak), which falls under the jurisdiction of the Federal Railroad Administration (FRA)
- Fixed route and demand responsive transportation services operated by private entities primarily engaged in the business of transportation (e.g., private bus companies, taxi companies, nonprofit agencies incorporated specifically to provide transportation, etc.) are subject to provisions of the DOT ADA regulations for private entities primarily engaged in the business of transportation. In such cases, enforcement of the DOT ADA regulations would be carried out by DOJ—though DOT administrations with regulatory jurisdiction over a particular mode, such as the Federal Motor Carrier Safety Administration (FMCSA), may exercise their oversight and enforcement authority to seek compliance
- Fixed route and demand responsive transportation services operated by private entities not primarily engaged in the business of transportation (e.g., hotel shuttles, rental car shuttles, transportation provided by human service agencies, etc.). These services are subject to provisions of the DOT ADA regulations for private entities not primarily engaged in the business of transportation and are under DOJ's jurisdiction
- Fixed route and demand responsive services provided by public agencies that are not FTA grantees (e.g., county transportation services operating without FTA funding). These services are subject to the provisions of Part 37 as well as the DOJ Title II regulations (28 CFR Part 35)
- Services provided by aircraft are covered by the Air Carrier Access Act and are subject to regulations implemented by the Aviation Consumer Protection Division of DOT's Office of the Assistant General Counsel
- Transportation services for elementary and secondary education systems are covered by the Individuals with Disabilities Education Act (IDEA) and the regulations implemented by the U.S. Department of Education
- Services in public conveyances used primarily for recreational purposes, such as amusement park rides, ski lifts, or historic rail cars or trolleys operated in museum settings are covered by the DOJ Title III regulations (28 CFR Part 36)
- Services provided by employers exclusively for their employees are covered under the Department of Labor's EEOC Title I regulations (29 CFR Part 1630)

Almost all types of transportation services are obligated to comply with Federal nondiscrimination regulations in one form or another. The only transportation services that fall outside the purview of ADA and other nondiscrimination regulations are transportation services provided by religious organizations or entities controlled by religious organizations and transportation services provided by private clubs or establishments (exempted from coverage under Title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a(e)).

Chapter 2 – General Requirements

2.1 Introduction

This chapter explains the U.S. Department of Transportation (DOT) Americans with Disabilities Act (ADA) regulations related to nondiscrimination and other crosscutting requirements applicable to fixed route (rail and non-rail), complementary paratransit and demand responsive services. Regulations covered in this chapter are from Subparts A (General) and G (Provision of Service) of Part 37 and include:

From Subpart A

- Prohibition against discrimination (§ 37.5(a))
- Right to use general public transportation services (§ 37.5(b))
- Prohibition against requiring use of priority seating (§ 37.5(c))
- Prohibition against imposing special charges (§ 37.5(d))
- Prohibition against requiring attendants (§ 37.5(e))
- Prohibition against refusing service due to insurance issues (§ 37.5(g))
- Rules governing when transit agencies can or cannot refuse service (§ 37.5(h))

From Subpart G

- Maintaining accessible features in operable condition (§ 37.161)
- Using lifts and securements (§ 37.165)
- Traveling with service animals (§ 37.167(d))
- Using accessibility equipment (§ 37.167(e))
- Providing information about transportation services (§ 37.167(f))
- Traveling with a respirator or oxygen supply (§ 37.167(h))
- Allowing adequate time to board and alight a vehicle (§ 37.167(i))
- Training of personnel (§ 37.173)

Additional Subpart G requirements specific to certain modes are included in forthcoming Chapter 6 (Fixed Route Service), forthcoming Chapter 7 (Demand Responsive Service), Chapter 8 (Complementary Paratransit Service) and forthcoming Chapter 10 (Passenger Vessels).

This Circular does not address §§ 37.5(f) and 37.171, both of which apply to private entities.

As with all chapters of this Circular, the information described in this chapter does not alter, amend, supersede or otherwise affect the DOT ADA regulations themselves or replace or reduce the need for detailed information in the regulations. The examples of good practices are presented as local options; FTA recognizes that there are many different ways agencies can implement the regulatory requirements and ensure the delivery of ADA compliant service.

2.2 Nondiscrimination – § 37.5

As a comprehensive civil rights law, the ADA grants the same rights and responsibilities to individuals with disabilities as are available to all individuals. Fundamentally, the overarching requirement of the law

is that entities cannot discriminate against individuals with disabilities. Section 37.5 contains a general prohibition against discrimination as well as several specific requirements related to crosscutting issues.

2.2.1 Prohibition Against Discrimination – § 37.5(a)

Section 37.5(a) simply states, "No entity shall discriminate against an individual with a disability in connection with the provision of transportation service." This means that having a disability should in no way diminish an individual's right to fully participate in and benefit from public or private transportation services. It also means that individuals cannot be excluded from participating in, or be denied the benefits of the provided transportation services solely because of a disability.

This general nondiscrimination requirement represents the foundation upon which the rest of the regulatory requirements rest. In the absence of a specific provision covering a particular policy or operating issue, the general nondiscrimination requirements would apply.

The following are some examples of policies and/or practices that would be discriminatory under § 37.5(a):

- Refusing to provide service on the basis of disability
- Requiring riders who use wheelchairs to wear a special body belt as a condition of using lifts on vehicles or riding on transportation systems
- Requiring individuals with disabilities to use lap and/or shoulder belts when other riders are not also required to do the same
- Requiring riders who wish to use vehicle lifts as standees to first disclose the nature of their disability
- Requiring adults to accompany children under a certain age in order to use complementary paratransit service without having the same age requirement to ride the fixed route system
- Requiring persons with disabilities to board separately and apart from other passengers or from a segregated location
- Prohibiting an individual with a disability from serving as a personal care attendant for another rider with a disability

2.2.2 Right to Use General Public Transportation Services – § 37.5(b)

Persons with disabilities have the same rights to use transit agencies' services as all other individuals. Transit agencies cannot "deny to any individual with a disability the opportunity to use the [transit agency's] transportation service for the general public if the individual is capable of using that service" § 37.5(b).

For example, transit agencies cannot compel individuals with disabilities to use their complementary paratransit service or otherwise prevent them from using fixed route services, based on a belief that they "take too long" to board a bus.

Similarly, transit agencies operating both general public demand responsive services and complementary paratransit cannot exclude ADA paratransit eligible riders from using their general public demand responsive services if the passengers are capable of riding the general public demand responsive services.

Furthermore, transit agencies cannot deny service to persons with disabilities based on what they perceive to be "safe" or "unsafe." All riders take on some level of risk when traveling (e.g., standing while riding a bus, crossing busy streets or walking along roadways with quickly moving traffic). Individuals with disabilities also have the right to decide the level of risk they are willing to take to travel independently.

2.2.3 Prohibition Against Requiring Use of Priority Seating – § 37.5(c)

As discussed in Chapter 4 and forthcoming Chapter 6, transit agencies operating fixed route services must make priority seating available for individuals with disabilities. However, transit agencies cannot "require an individual with a disability to use designated priority seats if the individual does not choose to use the seats" (§ 37.5(c)). Individuals with disabilities have the same rights as all riders to decide where they would like to sit.

2.2.4 Prohibition Against Imposition of Special Charges – § 37.5(d)

With the exception of fares for complementary paratransit service (see Chapter 8), transit agencies cannot impose special charges for providing accessible services to individuals with disabilities. Examples of prohibited charges include:

- Charging more to ride in lift-equipped vehicles than in sedans in demand responsive services that use both types of vehicles
- Charging more to provide assistance beyond the curb when riding complementary paratransit, if such assistance is necessary to meet the origin-to-destination requirements of that service
- Charging riders who use wheelchairs extra to travel in an accessible vanpool vehicle
- Charging riders who can transfer to a seat in a sedan an extra fee for stowing their wheelchairs in the trunks of taxicabs used as part of complementary paratransit systems
- Charging for travel to in-person interviews and/or functional assessments that are required as part of the ADA paratransit eligibility process (see forthcoming Chapter 9)
- Charging ADA paratransit eligible riders for photo IDs or for travel to or from locations to obtain required ID cards (see forthcoming Chapter 9)

2.2.5 Prohibition Against Requiring Use of Attendants – § 37.5(e)

Transit agencies cannot require an individual with disabilities to be accompanied by an attendant (§ 37.5(e)). There is one exception. As discussed in Section 2.2.6, transit agencies may refuse service to individuals with disabilities if they engage in illegal, violent or seriously disruptive conduct, or pose a direct threat to the health or safety of others. If an agency may legitimately refuse service to someone, it may condition service to him or her on actions that would mitigate the problem. The agency could require—as a mitigation step—an attendant as a condition of providing service it otherwise had the right to refuse. (See discussion in the Appendix D section on Nondiscrimination.)

When transit agencies determine that riders must travel with an attendant as a condition of service under the circumstances described above, riders must have the opportunity to demonstrate in the future that the circumstances have changed and they are now able to travel independently (i.e., without an attendant).

Drivers are required to provide assistance with use of lifts, ramps and securement systems. (See Section 2.3, forthcoming Chapter 7 and Chapter 8.) Drivers are not required to provide attendant services, such as assisting with the use of oxygen or other medical equipment, administering medication or helping with personal needs. Riders unable to travel without this level of assistance may need to bring along their own attendant.

2.2.6 Prohibition Against Refusing Service Due to Insurance Issues – § 37.5(g)

Transit agencies cannot "refuse to serve an individual with a disability or require anything contrary to [Part 37] because its insurance company conditions coverage or rates on the absence of individuals with disabilities or requirements contrary to [Part 37]" (§ 37.5(g)). In other words, if insurers will not provide

liability coverage for required services to individuals with disabilities, transit agencies cannot use this as a basis for not providing the required services. This also applies if insurance companies require anything contrary to the regulations. The following examples illustrate possible issues related to insurance:

- Example 1: A transit agency's vehicle liability policy does not provide coverage for a driver to help push a rider using a manual wheelchair up the vehicle ramp
- Example 2: An insurance company refuses to provide coverage if riders travel with portable oxygen supplies, or classifies this as a form of medical transportation and charges higher rates

In both of these instances, transit agencies must provide the required services to riders with disabilities and may not use insurance company stipulations as reasons to deny service. Similarly, transit agencies cannot require individuals with disabilities to sign liability waivers as a condition of receiving service. For example, if a transit agency has a mandatory securement policy, and a vehicle operator is unable to determine how to secure a passenger's wheelchair aboard a bus, the transit agency may not require the passenger to sign a waiver in order to ride.

2.2.7 Refusing Service – § 37.5(h)

To ensure nondiscrimination, a good practice is to have written rules of conduct and policies governing all aspects of service denials for all riders. (See Section 2.2.7.) The policies should apply equally to complementary paratransit and fixed route, as well as to riders with and without disabilities. Such policies are important should it become necessary to refuse service to individual riders, as discussed below.

When Transit Agencies Can Refuse Service

Transit agencies can "refuse to provide service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct" (§ 37.5(h)). Examples of such behavior include riders who physically assault drivers or other passengers. Another example would be a rider who repeatedly unbuckles his or her seat belt in violation of policies requiring the use of seat belts by all passengers. This would be seriously disruptive if a driver had to stop the vehicle repeatedly to re-buckle the seat belt.

DOT's October 2011 amendments to the regulations also clarified that transit agencies can refuse to transport individuals who pose a significant risk to the health or safety of others. The definition of "direct threat" is intended to be interpreted consistently with the parallel definition in Department of Justice regulations. That is, Part 37 does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others. In determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment, that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk, the probability that the potential injury will actually occur, and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. In some cases, "direct threat" overlaps with violent and seriously disruptive behavior such as a rider physically assaulting another passenger.

Determining "Seriously Disruptive" Behavior

It can be challenging to assess whether behavior rises to the level of "seriously disruptive." Given that a service refusal is a denial of a civil right to transportation, the threshold for "seriously disruptive" conduct is an intentionally high standard. Transit agencies cannot refuse service to individuals with disabilities solely because their appearance or involuntary behavior may offend, annoy or inconvenience employees or other riders. As discussed in the Appendix D section on nondiscrimination, "some persons with Tourette's syndrome may make involuntary profane exclamations. These may be very annoying or

offensive to others, but would not be a ground for denial of service." As another example, many transit agencies have asked FTA for guidance on serving riders with unpleasant odors. It would not be appropriate to refuse service if the odors were merely unpleasant to other passengers or drivers. However, if the situation disrupts the provision of service (e.g., requiring the vehicle to be taken out of service), grounds for refusing service may exist.

Transit agencies cannot presume certain types of conduct will occur based on specific disabilities and should document an individual's conduct and its likelihood of recurrence. For example, it is inappropriate to presume that all riders with particular psychiatric disabilities will behave in a violent or seriously disruptive manner. However, if during the ADA paratransit eligibility process, transit agencies obtain documentation indicating a pattern of violent behavior that likely will recur, or reports an individual's pattern or practice of violent behavior on their services, this may be ground for refusing service or requiring such an individual to travel with an attendant.

Steps to Take Before Refusing Service

Before refusing service to an individual with a disability, FTA encourages transit agencies to make reasonable attempts to resolve issues with riders (or caregivers or guardians, if appropriate). Often, local disability organizations can be helpful in resolving issues so that individuals do not lose access to vital transportation services. Agencies are advised to document (in writing) the incident or incidents leading to the service denial, substantiating how such incident rises to the level of seriously disruptive or a direct threat for example, and when possible, provide the rider a written warning.

Right to Contest Service Refusals

Access to public transit is a civil right and inherent in any civil right is the opportunity for due process. An individual denied service must have an opportunity to correct the situation and resume service. Whenever transit agencies refuse transportation, they must provide all riders the opportunity to contest such decisions. Service refusals cannot be permanent unless the individual continues to pose a direct threat to the health or safety of others. Riders may subsequently present information to have service reinstated. This assumes that riders can demonstrate that issues have been resolved or can present options to mitigate any problems.

Riders required to travel with an attendant in lieu of an outright refusal (see Section 2.2.5) may appeal such requirements. As with service refusals, riders have the right to subsequently provide information demonstrating they can now travel without an attendant or to propose other solutions that permit them to travel without an attendant.

2.3 Requirements for Accessible Service

This section covers the crosscutting requirements for service provision applicable to all public transit modes, including fixed route and demand responsive service. Forthcoming Chapters 6, 7, and 10 and Chapter 8 present additional requirements specific to fixed route, demand responsive, water transportation and complementary paratransit, respectively.

2.3.1 Maintaining Accessible Features – § 37.161

Transit agencies must "maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible to and usable by individuals with disabilities. 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

impaired vision or hearing" (§ 37.161). It is not enough to simply include these features in facilities and on vehicles; they must be maintained in working condition.

For vehicles, accessibility features include:

- Lifts and ramps
- Kneelers (if required to achieve compliant ramp slope)
- Mobility aid securement areas and systems
- Lap and shoulder belts
- Lighting
- Signage
- Public address and other communications equipment

For facilities, accessibility features include:

- Doors
- Accessible paths to and within facilities
- Lifts and ramps
- Elevators
- Platforms and handrails
- Lighting
- Signage
- Communications equipment
- Fare vending equipment and fare gates

Transit agencies must inspect all access features often enough to ensure that they are operational and free from obstructions, and to undertake repairs or other necessary actions when they are not. This could include removing illegally parked vehicles occupying accessible parking spaces or access aisles in station parking lots, or removing bicycles obstructing ramps and accessible routes. A good practice is to include all types of accessibility equipment on maintenance schedules and checklists and not limit such schedules and checklists to ramps and lifts.

When Accessibility Features Are Damaged or Out of Order – § 37.161(b)

Transit agencies must promptly repair accessibility features "if they are damaged or out of order" (§ 37.161(b)). The regulations do not state a time limit for making particular repairs given the variety of circumstances involved. However, repairing accessible features must be made a high priority. To expedite repairs, common practices include assigning maintenance staff to assist with vehicle pullouts so that minor repairs can be made quickly and having a readily available supply of components (e.g., securement straps and lap belts) to replace equipment found to be missing at vehicle pullouts.

Outages for Maintenance and Repair – § 37.161(c)

Isolated or temporary interruptions in service or access due to maintenance or repairs are not prohibited (§ 37.161(c)). When planning maintenance activities that will result in temporary unavailability of an accessibility feature, a good practice is to schedule the maintenance during non-service hours or the lowest demand times. FTA recommends that transit agencies include provisions in maintenance contracts limiting such activities to non-service or low-demand times. FTA also suggests that agencies consider the effect the maintenance will have on systemwide accessibility. For example, agencies should refrain from taking multiple elevators out of service simultaneously at busy rail station hubs, if possible.

When scheduling maintenance activities that will affect accessibility features such as elevators, a good practice is to notify riders and inform them of alternative travel options. Transit agencies can provide this information on their websites, through proper signage and recorded announcements at facilities in addition to notices on vehicles, press releases to local media, and e-mails to their disability mailing list. Another good practice is to provide extra staffing at affected locations to guide any riders needing assistance and information.

Accommodating Riders Who Rely on Working Accessibility Features – § 37.161(b)

Even with the best preventative maintenance, accessibility features do sometimes break down unexpectedly or need to be taken out of service for repairs. When a feature is not working, even temporarily, transit agencies must "take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature" until it has been repaired (§ 37.161(b)).

Accommodations are often needed when a station elevator is out of service in order to prevent riders from being stranded and to allow them to continue to use the system. While the regulations do not prescribe a particular method for accommodating individuals when an elevator is out of order, the method must be reasonable and effective. The Appendix D section on Maintenance of Accessible Features is instructive:

> The rule also requires that accommodations be made to individuals with disabilities who would otherwise use an inoperative accessibility feature. For example, when a rail system discovers that an elevator is out of order, blocking access to one of its stations, it could accommodate users of the station by announcing the problem at other stations to alert passengers and offer accessible shuttle bus service around the temporarily inaccessible station.

2.3.2 Keeping Lifts in Operative Condition – § 37.163

In addition to the general requirements for maintaining accessible features, § 37.163 establishes specific requirements for maintaining lifts used to board non-rail vehicles. FTA applies these same requirements to maintaining ramps. Transit agencies must establish a program of "regular and frequent maintenance checks of lifts sufficient to determine if they are operative" (§ 37.163(b)).

A good practice is to have drivers cycle lifts (or ramps) as part of pre-trip inspections. Mechanics can repair any problems or, if necessary, assign spare accessible vehicles. Most transit agencies include lift cycling in all levels of vehicle maintenance.

While pre-trip lift cycling is a good practice, it is not a regulatory requirement. Transit agencies may design other procedures for making regular and frequent checks of lifts. This may be necessary if the logistics of pullouts make it difficult for each driver to make checks at that time. Some transit agencies ensure lift reliability by having maintenance staff perform daily checks to verify that lifts are working properly.

Another good practice is to keep thorough records of lift operations checks. When transit agencies perform checks during pre-trip inspections, completed inspection forms serve as such documentation. An additional good practice is for mechanics to document any lift inspections and include this information in each vehicle's maintenance history.

Bus Ramps

Many transit agencies have chosen to purchase low-floor, ramp-equipped fixed route buses. In most cases, kneeling systems are also included on these vehicles to minimize the angle of the ramps. While ramps typically can be easily operated manually should their powered deployment systems fail, the

kneeling system may still be required to achieve a compliant slope and would therefore need to be maintained in operating condition.

Ramps can also present challenges. Even when compliant, ramps can be too steep for some riders to use independently (for example, when deployed to street level). When the ramp angle is too steep, drivers are required to assist manual wheelchair users in boarding or alighting the bus.

Reporting Lift Failures and Removing Vehicles From Service – § 37.163(c)-(e)

Transit agencies must "ensure that vehicle operators report to the entity, by the most immediate means available, any failure of a lift to operate in service" (§ 37.163(c)). This means that when drivers discover that lifts or ramps are not working, they must inform appropriate staff (e.g., dispatchers) as soon as possible. Based on this information, supervisors can decide the best course of action. In demand responsive services (complementary paratransit and general public), drivers using vehicles with inoperable lifts may be able to continue to use such vehicles for the remainder of the shift as long as any trips for riders needing lift-equipped vehicles can be reassigned to another lift-equipped vehicle.

In non-rail fixed route systems, transit agency supervisors may choose to remove vehicles with inoperable lifts from service when runs or drivers' shifts end if it is impractical to take the vehicles off the road earlier (e.g., the vehicles are very far from the garage when a lift failure is discovered).

As covered in §§ 37.163(d)-(e) and discussed in the Appendix D section on Keeping Vehicle Lifts in Operative Condition, transit agencies must remove vehicles (primarily fixed route buses) with inoperable lifts from service at the end of the service day and cannot return vehicles with inoperable lifts to service until the lifts are operable. When transit agencies do not have sufficient accessible spare vehicles available, they may return vehicles with inoperable lifts to service for limited periods as follows:

- Vehicles with inoperable lifts may be returned to service for up to three days if the transit agency's service area has a population of more than 50,000
- Vehicles with inoperable lifts may be returned to service for up to five days if the transit agency's service area has a population of 50,000 or less

A transit agency cannot continue to use vehicles with inoperable lifts after these specified timeframes, even when there are no spares. The agency must remove these vehicles from service until the lifts are repaired (§ 37.163(e)).

In situations where riders are unable to board fixed route vehicles due to lift failures, a good practice is for drivers to inform riders waiting at bus stops that the lift is not working and when the next accessible vehicle is scheduled to arrive. This lets waiting riders know why the arriving bus is passing them by. Drivers should then contact their dispatchers or other selected personnel to inform them that a waiting passenger could not be accommodated so that appropriate action can be taken. (See forthcoming Chapter 6 for a discussion on alternative transportation requirements when lifts are inoperable.)

2.3.3 Using Lifts and Securements – § 37.165

Accommodating Riders Who Use Wheelchairs – § 37.165(b)

Transit agencies must allow riders who use wheelchairs to board and ride accessible vehicles. A wheelchair is defined as "a mobility aid belonging to any class of three- or more-wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered" (§ 37.3).

The definition is consistent with the legislative history and intent to accommodate the wide range of devices individuals with mobility impairments use. The definition does not include devices not intended

for indoor use (e.g., golf carts or all-terrain vehicles (ATVs)), or devices not primarily designed to assist individuals with mobility impairments (e.g., bicycles or tricycles).

It is important to note that the definition of wheelchair does not require specific elements or equipment such as front rigging (footplates or leg rests), wheel locks or brakes, push handles, or positioning belts or harnesses. Transit agencies may not require passengers' wheelchairs to be equipped with specific features such as these as a condition of transportation, and may not deny service on the basis that the condition of a passenger's mobility device be regarded as "good" according to some standard.

If a transit agency has a vehicle and equipment that meets or exceeds the Part 38 design standards, and the vehicle and equipment can in fact safely accommodate a given wheelchair, then it is not appropriate, under disability nondiscrimination law, for the agency to refuse to transport the device and its user. Agencies must carry a wheelchair and its user, as long as the lift can accommodate the size and weight of the wheelchair and its user and there is space for the wheelchair on the vehicle. However, if in fact a lift or vehicle is unable to accommodate the wheelchair and its user, the transportation provider is not required to carry it.

For example, suppose that a bus or paratransit vehicle lift will safely accommodate an 800-pound wheelchair/passenger combination, but not a combination exceeding 800 pounds (i.e., a design load of 800 lbs.). The Part 38 design standard requires lifts to be able to accommodate a 600-pound wheelchair/passenger combination. The transportation provider must accommodate a wheelchair/passenger combination with a weight of 750 pounds since the lift is rated to 800 pounds. Likewise, if a wheelchair or its attachments extend beyond the 30 x 48 inch footprint found in Part 38's design standards but fits onto the lift and into the wheelchair securement area of the vehicle, the transportation provider would have to accommodate the wheelchair. (See discussion in the Appendix D section on Lift and Securement Use.)

Legitimate Safety Requirements

Transit agencies "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" (§ 37.165(b)(1)). DOT's October 19, 2011, Final Rule amending the regulations specifically states that legitimate safety requirements "[include] such circumstances as a wheelchair of such size that it would block an aisle, or would be too large to fully enter a railcar, would block the vestibule, or would interfere with the safe evacuation of passengers in an emergency." Other factors are not legitimate safety requirements under the DOT ADA regulations. For example, legitimate safety requirements do not apply to securement; a transit provider cannot impose a limitation on the transportation of wheelchairs and other mobility aids based on the inability of the securement system to secure the device to the satisfaction of the transportation provider.

Maintaining an Inventory of Lifts, Ramps and Securement Areas

To help comply with the requirements in § 37.165(b)(1), FTA encourages transit agencies to maintain inventories of detailed design specifications and dimensions of lifts, ramps and securement areas for all vehicles. Transit agencies can then use the capacity specifications to determine the maximum sizes and weights of wheelchairs they can accommodate on all vehicles. FTA also encourages transit agencies to provide information about the maximum sizes and weights of occupied wheelchairs their vehicles can safely accommodate so that riders can consider any system limitations when purchasing wheelchairs or deciding to use the service.

The rule does not require transit agencies that operate a mixed fleet to assign a particular vehicle to a route or to dispatch a particular vehicle to a waiting customer. However, it is helpful for customers to understand any risks associated with travel so they can make an informed decision on whether to take a

trip or have a backup plan ready. An agency may decide to install signs at bus stops or on the vehicles themselves indicating the maximum wheelchair size and weight that can be transported.

Accommodating Riders Who Use Other Mobility Devices

In addition to wheelchairs, individuals with mobility impairments use many other types of personal mobility or assistive devices, including canes, crutches and walkers. Transit agencies must accommodate users of these mobility devices on the same basis as wheelchairs.

Transit agencies are not required to accommodate devices not primarily designed for use by individuals with mobility impairments. This includes items such as shopping carts and skateboards. In addition, transit agencies do not have to permit other types of assistive devices to be used in ways that depart from or exceed their intended uses. For example, transit agencies do not have to permit riders who use walkers with built-in seats to ride in securement areas while seated on their walkers. (See the Appendix D definitions section.)

It is important to note that the concept of "other powered mobility devices," or OPMDs, is not a part of the DOT ADA regulations. Introduced by DOJ's regulations in 2010, OPMDs include a wide variety of motorized vehicles that may be used by persons with disabilities as mobility aids in an indoor or outdoor setting. Because DOT's regulations define a wheelchair as being suitable for indoor use, DOT continues to rely on the approach developed to accommodate the use of two-wheeled, gyroscopically stabilized, battery-powered personal transportation device (commonly known by the brand name, Segway). DOT guidance explains that transit agencies should accommodate individuals with disabilities using such devices, though they may establish policies under which they will be accommodated. DOT guidance notes that a transportation provider is not required to permit anyone—including a person with a disability—to bring a device onto a vehicle that is too big or that is determined to pose a direct threat to the safety of others.

Securement Areas and Securement Systems

As covered in Chapter 4, all vehicles acquired after 1991 must meet the Part 38 specifications, which include requirements for the number of designated securement areas for riders using wheelchairs. One or two such areas are required in buses and in over-the-road coaches and vans depending on the length of the vehicle. Wheelchair securement systems and passenger lap and shoulder belt systems are also required in each securement area on buses and vans. (See below for distinctions between lap and shoulder belt systems on fixed route service and on complementary paratransit service.)

Transit agencies acquiring buses and light rail and rapid rail cars must ensure that these vehicles provide adequate space for riders using wheelchairs to enter, ride and exit. Light rail and rapid rail cars must provide at least two areas for users of mobility aids, but designated securement areas are not required. Commuter and intercity rail cars must have areas large enough to accommodate riders who use wheelchairs, but are not required to have designated areas.

Requiring Riders Who Use Wheelchairs to Ride in Designated Securement Areas – § 37.165(b)(2)

Transit agencies operating vehicles with designated securement locations do not have to allow riders who use wheelchairs to ride elsewhere in the vehicle (§ 37.165(b)(2)). Rather, transit agencies can create policies requiring riders who use wheelchairs to ride in designated securement areas.

Use of Securement Systems – § 37.165(c)-(d)

Only securement systems that comply with § 38.23(d) may be used to secure passengers' wheelchairs (§ 37.165(c)(1)). Use of other means, such as cloth-covered elastic cords ("bungee cords") or straps,

chains or nets intended for securing cargo, is prohibited. On buses and vans, where wheelchair securement systems must be installed, transit agencies can also establish policies requiring riders to permit drivers to secure their wheelchairs (§ 37.165(c)(3)). If an agency adopts a mandatory securement policy, it may deny service to an individual who refuses to allow his or her wheelchair to be secured. Transit agencies, however, cannot refuse to serve riders on the ground that their wheelchairs "cannot be secured or restrained satisfactorily by the vehicle's securement system" (§ 37.165(d)). Drivers are to "do the best they can" to secure wheelchairs with the available securement systems (if the transit agency requires securement), as described in Appendix D. When purchasing new vehicles, transit agencies should make sure that the securement systems are both compliant with the Part 38 requirements and are capable of accommodating various types of wheelchairs.

As discussed in Section 2.2, transit agencies can require riders in complementary paratransit vehicles to use lap and shoulder belts. That being said, unless prohibited by state law, a transit agency's securement policy should allow for a rider to present documentation demonstrating that using seatbelts and shoulder belts would pose a health hazard and allow that rider to travel without lap and shoulder belts.

Seatbelts must never be used without first ensuring that the passenger's wheelchair is properly secured. The use of seatbelts and shoulder harnesses in lieu of a device that secures the wheelchair itself is prohibited under § 38.23(d)(7).

Requesting Riders to Transfer to a Seat

Transit agencies "may recommend to a user of a wheelchair that the individual transfer to a vehicle seat" (§ 37.165(e)). However, transit agencies "may not require the individual to transfer" (§ 37.165(e)), and by extension cannot have a policy that requires riders to transfer.

Required Assistance – § 37.165(f)

"Where necessary or upon request, the [transit agency's] personnel [must] 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 [must] do so" (§ 37.165(f)). This includes deploying and stowing lifts and ramps, securing riders' wheelchairs and assisting with lap and shoulder belts. It may also include assisting riders who use manual wheelchairs on and off lift platforms, or up and down ramps. Drivers must provide this assistance even if it is otherwise not customary for them to leave their seats.

Drivers are not required to assume the controls of power wheelchairs to assist riders with boarding or alighting. Providing assistance with a power wheelchair falls under the category of attendant-type services, which are not required under DOT regulations. Moreover, it would be unreasonable to expect a driver to know how to operate each rider's powered mobility device. While placing a power wheelchair in freewheeling mode may not be difficult, controlling it is a different matter. (See FTA response to Complaint 10-0172.)

Boarding and Alighting Direction (Forward or Backward)

Vehicle lifts are required to accommodate passengers boarding while facing either toward or away from the vehicle (§ 38.23(b)). As such, neither the bus driver nor the transit agency may specify that riders must face in one direction or the other when boarding or alighting. Some agencies recommend that passengers back onto the lift because they believe that better weight distribution will result, causing less strain and wear on the lift components. However, the wide variety of wheelchair designs and configurations that are encompassed by the wheelchair definition, particularly among power wheelchairs, makes such generalizations regarding boarding direction and weight distribution impossible. As explained in the Appendix D section on Lift and Securement Use, "Except where the only way of successfully maneuvering a device onto a vehicle or into its securement area or an overriding safety concern (i.e., a

direct threat) requires one way of doing this or another, the transit provider should respect the passenger's preference." Power wheelchairs are usually not equipped with rearview mirrors, and many individuals who use them are unable to rotate their heads sufficiently to see behind them.

Standees on Lifts – § 37.165(g)

Transit agencies must "permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle" (§ 37.165(g)). This includes riders who use canes, crutches, walkers, or other assistive devices. It also includes riders with disabilities who do not use any type of assistive device. The Part 38 vehicle design standards require handrails on lifts to facilitate use of lifts by standees.

If riders ask to use lifts or ramps, drivers must honor such requests may not ask riders to disclose their disabilities before being allowed to board as standees. The Appendix D section on Lift and Securement Use states that these individuals "must also be permitted to use the lift, on request."

2.3.4 Other Service Requirements – § 37.167

Service Animals – § 37.167(d)

Transit agencies must "permit service animals to accompany individuals with disabilities in vehicles and facilities" (§ 37.167(d)). A service animal is "any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items" (§ 37.3).[3]

Service animals must be "individually trained." This training can be by an organization or by an individual, including the individual with a disability. Transit agencies do not need to transport animals that have not been individually trained. If an animal's only function were to provide emotional support or comfort for the rider, that animal would not fall under the regulatory training-based definition of a service animal. Simply providing comfort is something that animal does passively, by its nature or through the perception of the owner. However, the ADA does not prohibit a transit agency from choosing to accommodate pets and comfort animals, which would be a local decision. (See FTA response to Complaint 11-0298.)

Transit agencies cannot require riders to provide documentation for their service animal, but may ask riders whether animals are service animals (or pets) and what task(s) they perform.

The following guidance also applies to service animals:

- On complementary paratransit or demand responsive services, transit agencies may ask riders for notification of their intent to ride with a service animal in order to help ensure adequate space is available for the animal. (A good practice is to keep such information in riders' files.) However, transit agencies must allow service animals to accompany riders without notification
- Transit agencies cannot impose limits on the number of service animals that accompany riders on a single trip. Different service animals may provide different services to riders during trips or at riders' destinations
- Transit agencies can require service animals to remain under riders' control and can require that service animals pose no direct threats to the safety or health of drivers or other riders or create a

[3] DOJ made a number of changes to its ADA regulations that went into effect March 15, 2011, including a narrowing of its definition of service animal. This change to DOJ's regulations does not affect the DOT ADA regulations. Transit agencies must follow the DOT definition of service animal in § 37.3 when assessing whether to accommodate a particular animal.

seriously disruptive atmosphere. For example, a rider with a service dog is responsible for ensuring that the dog does not snap or lunge at the driver or other riders. Conversely, a dog that barks occasionally would not likely pose a direct threat or be seriously disruptive

Using Accessibility Equipment – § 37.167(e)

Transit agencies must "ensure that vehicle operators and other personnel make use of accessibility-related equipment or features required by Part 38 of [the DOT ADA Regulations]" (§ 37.167(e)). It is not enough for transit agencies just to have accessibility-related equipment or features. Transit agency employees must be able to use accessibility features in order to provide accessible services to riders that require them. For example:

- Bus, van, or rail car lifts or ramps must be in working condition (other than the exceptions noted above), and drivers must know how to deploy lifts or ramps when operating accessible vehicles
- For vehicles equipped with public address (PA) systems (i.e., rail cars and buses greater than 22 feet in length), vehicle operators must use PA systems to broadcast information to riders. (See forthcoming Chapter 6.) At fixed route stops served by more than one route, vehicle operators must activate the external speaker and announce that vehicle's route, or operators can choose to open the front door at each stop to make the appropriate announcement. (See forthcoming Chapter 6.)

Section 37.173 outlines training requirements needed to ensure that transit agency personnel can use accessibility equipment and carry out other important ADA-related duties. (See Section 2.3.5.)

Providing Information About Transportation Services – § 37.167(f)

Transit agencies must "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" (§ 37.167(f)). This includes schedules, routes and fares as well as information about service rules and temporary changes. Whenever possible, FTA encourages transit agencies to employ information systems such as those that report the next bus/train arrival and to provide this information in both audio and visual formats.

Transit agencies must make written information available in accessible formats upon request. Accessible formats include large print, Braille, audiotape and electronic files usable by individuals with text-to-speech technology. This information must be in formats that individuals can use, but not necessarily in specific formats an individual may request. For example, if an individual requests schedule information on audiotape but can use electronic files (e.g., text files that can be rendered as speech, Braille or large print) with the same information, a transit agency can provide the information in electronic format. Because transit agencies' websites are commonly a primary source of information for riders, a good practice is to ensure that these websites are compliant with standards set forth in Section 508 of the Rehabilitation Act, which deals with the accessibility of publicly available electronic information.

Transit agencies should ensure that individuals can use the materials they request, such as providing information in large type—16 point text or larger—for individuals with vision disabilities, and that the materials provided are appropriate to the request. Providing a rider with an audio file (or tape) containing the entire set of system routes and timetables may be impractical for riders seeking an efficient means to obtain information about the routes they use. Such riders might prefer to obtain this information for a single route. To meet this requirement, FTA encourages transit agencies to work with individuals who request such information to determine the most appropriate alternative formats.

A good practice is to maintain a mailing list (postal or electronic) of individuals who need information in accessible formats and to communicate changes in schedules or policies via mail.

Alternatives to Voice Telephone Communications

Transit agencies must offer accessible alternatives to voice telephone communications. This could include using (and having appropriate personnel trained to use) the national "711" relay service or other relay services available through states or telecommunications companies. It can also include using dedicated equipment such as telecommunications devices for the deaf (TDDs). Where telephone communications are a critical part of using transit services (e.g., customer service and information services, or on-call demand responsive or complementary paratransit services), FTA encourages transit agencies to obtain equipment that makes direct communication possible in addition to having relay services available.

If using TDDs, personnel who have been assigned responsibility for their use should be properly trained to do so, including having familiarity with the particular jargon and shorthand that such device users typically employ. At least one trained staff person should be available to make and receive TDD calls during the hours in which the telephone lines are open.

Traveling with a Respirator or Portable Oxygen Supply – § 37.167(h)

Transit agencies cannot "prohibit an individual with a disability from traveling with a respirator or portable oxygen supply, consistent with applicable DOT rules on transportation of hazardous materials" (§ 37.167(h)). As discussed in the Appendix D section on Other Service Requirements, under the DOT hazardous materials rules (49 CFR Subtitle B, Chapter 1, Subchapter C), a passenger may bring a portable medical oxygen supply on board a vehicle. Since the hazardous materials rules permit this, transit agencies cannot prohibit it.

The "DOT Guidance for the Safe Transportation of Medical Oxygen for Personal Use on Buses and Trains" recommends measures for bus and rail operators to take when transporting medical oxygen cylinders (i.e., "tanks") in the passenger compartment. The commonly used portable oxygen concentrators, however, are not considered hazardous materials, and do not require the same level of special handling as compressed oxygen cylinders. Transit agencies, therefore, cannot require riders to secure such concentrators in a particular space on the vehicle (e.g., behind forward-facing seats) and must allow riders to use the concentrators as needed on the vehicle. (See FTA response to Complaint 09-0057.)

To avoid confusion or misunderstanding, a good practice is to have written policies concerning the transportation of special equipment or materials and to train drivers and dispatchers on these policies. If transit agencies are aware of complementary paratransit riders who may use a portable oxygen supply, a good practice is to note this information in riders' files.

2.3.5 Training Requirements – § 37.173

Transit agencies must "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" (§ 37.173).

Training to proficiency means that once trained, personnel can consistently and reliably operate accessibility features, provide appropriate assistance to individuals with disabilities, and treat riders in a respectful and courteous way. A good practice is to include testing and demonstrations to gauge employee knowledge and abilities in training programs.

Rider comments and complaints can be the ultimate tests of proficiency; comments that reveal issues with the provision of service are good indicators that employees may not be trained proficiently. FTA encourages transit agencies to monitor their employees and contractors regularly to ensure that individuals with disabilities are receiving appropriate service. (See forthcoming Chapter 12.)

Types of Training

When training all employees in relation to their responsibilities and duties, a good practice is to include training on how to properly communicate and interact with individuals with different types of disabilities. Another good practice is to train all employees in the transit agency's basic accessibility policies and procedures adopted in accordance with the Part 37 requirements.

Following are examples of personnel training appropriate to different transit agency duties and responsibilities:

- Drivers: Proper operation of all accessibility equipment and features, providing appropriate assistance to individuals with various types of disabilities with boarding, alighting and securement, communicating effectively with individuals with different types of disabilities, and positioning the bus so that the lift or ramp can be deployed and used at stops
- Vehicle mechanics: Maintaining all accessibility equipment on vehicles, keeping maintenance and repair records, and ensuring vehicles with inoperable lifts/ramps are not put into service
- Customer service agents and call-takers: Communicating effectively with individuals with different types of disabilities, and providing service information (e.g., routes, schedules, fares) with special attention to the needs of individuals with disabilities
- Vehicle dispatchers: Understanding all operating policies and procedures to effectively and properly assist drivers and riders as needed and communicating effectively with individuals with different types of disabilities. In addition, understand and be able to perform their roles related to removing vehicles with inoperable lifts/ramps from service and for providing alternate service under these circumstances (See Section 2.3.2.)
- Managers and supervisors: Supervising employees to ensure they provide proper and consistent levels of service to individuals with disabilities. In addition, understand and be able to perform their respective roles related to the transit agency's obligations to remove from service vehicles with inoperable lifts/ramps and providing alternate service (see Section 2.3.2) and to maintain the accessibility components of vehicles (See Section 2.3.1.)

Involving Individuals with Disabilities

FTA encourages transit agencies to partner with local disability organizations for assistance with employee training. Involving individuals with disabilities in transit agency training programs helps to demonstrate appropriate types of assistance and provides a forum for discussion of what does and does not work in practice.

Refresher Training

In addition to the initial job training, a good practice is to provide regular refresher training for all employees. Such training typically focuses on any recently raised issues concerning riders and/or employees along with any new transit agency policies and procedures. Drivers and maintenance staff, in particular, benefit from refresher training when new vehicles with different accessibility features are procured (e.g., a switch from lift-equipped to low-floor ramp-equipped buses). Effective refresher-training programs are not presented as punitive (i.e., solely in response to poor performance), but to reinforce the transit agency's mission of serving the travel needs of all riders. When transit agencies' monitoring programs reveal specific issues, a good practice is to offer refresher training to address such issues.

2.4 Written Policies and Procedures

FTA encourages transit agencies to implement and update written policies and procedures for operations in accordance with the various parts of the regulations. This includes written policies and procedures consistent with the Subpart A Nondiscrimination requirements and the Subpart G Provision of Service requirements.

Written policies and procedures help ensure consistency in operations. They also help employees make objective, not arbitrary decisions, which can help avoid unintentional discrimination. As noted above, training employees to proficiency in proper implementation of formal operating policies and procedures is paramount.

FTA also encourages transit agencies to involve individuals with disabilities in developing appropriate policies and procedures for meeting regulatory requirements.

Chapter 3 – Transportation Facilities (Forthcoming)

Chapter 4 – Vehicle Acquisition (Draft Published)

Chapter 5 – Equivalent Facilitation

5.1 Introduction

Equivalent facilitation is the means by which the ADA accommodates innovation in accessible design; it is intended to permit the development of improvements in vehicle, facility, or equipment design that provides for equal or greater accessibility, but would not strictly meet the required design standards. It does not represent a mechanism for obtaining a "waiver" from compliance.[4]

The DOT ADA regulations contain specific requirements governing the process for requesting a determination of equivalent facilitation as well as the conditions that must be met before a determination can be made. Sections 37.7(b) and 37.9(d) describe the procedures and requirements for seeking a determination of equivalent facilitation for vehicles and facilities, respectively. No departures from these specific requirements can be made without a determination of equivalent facilitation from the FTA Administrator. This chapter discusses these requirements and includes FTA's recommendations for supplementary materials that facilitate the review process.

A formal determination of equivalent facilitation from the FTA Administrator permits departures from the specific technical and scoping requirements for specific vehicles and facilities where the alternative designs and technologies used will provide substantially equivalent or greater accessibility and usability.

The request for a determination of equivalent facilitation can be made by a public or private entity that provides public transportation or owns a transportation facility; manufacturers of vehicle components or facility components may also request a determination.

The requirement for an affirmative determination of equivalent facilitation serves two purposes. First, it ensures that the facilitation provision does not become a mechanism for amending the regulations outside of the Federal rulemaking process. Second, and perhaps more important, it provides a degree of assurance that any departure from the required standard fulfills the same function to an equal or greater degree.

As with all chapters of this Circular, the information described in this chapter does not alter, amend, supersede or otherwise affect the DOT ADA regulations themselves or replace or reduce the need for detailed information in the regulations. The examples of good practices are presented as local options; FTA recognizes that there are many different ways agencies can implement the regulatory requirements and ensure the delivery of ADA compliant service.

5.1.1 Important Considerations

There are a number of important considerations to take into account when seeking a determination of equivalent facilitation:

- The DOT ADA regulations for equivalent facilitation apply in all cases to the acquisition of transportation vehicles and the construction or alteration of transportation facilities
- The DOT ADA regulations for equivalent facilitation differ from those of the U.S. Department of Justice (DOJ). Under DOJ ADA regulations, the covered entity may determine equivalent

[4] As originally issued, 49 CFR §§ 37.7(b)(3) and 37.9(d)(3) included "inability to comply" as a basis for seeking a determination of equivalent facilitation. Effective June 20, 1996, the DOT ADA regulations were amended to remove these provisions.

facilitation for itself; however, such an entity would also be responsible for demonstrating equal or greater accessibility and usability in the event of litigation or a DOJ inquiry

Under the DOT ADA regulations:

- Only the Administrator of the concerned DOT operating administration can make a determination of equivalent facilitation, and must obtain concurrence from the Office of the Secretary of Transportation
- A determination of equivalent facilitation pertains only to the specific situation for which the determination is made
- Each entity must document and submit its own request. Determinations are made on a case-by-case basis, and previous determinations are not applicable to subsequent requests, even if the circumstances appear similar
- The Administrator may make a determination of equivalent facilitation for a class of situations concerning facilities. Such determinations will explicitly state where this is the case.
- A determination of equivalent facilitation is not a waiver of a standard. Rather, it is a finding that accessibility and usability are provided to an equal or greater degree in comparison to the required standard
- No departures from a required standard may be made without a determination of equivalent facilitation. No decision or commitment to a vehicle or facility design that departs from the required standards should be made in advance of such a determination.
- A determination of equivalent facilitation is not an endorsement of any product or method by the Federal government and cannot be claimed as such, for example, by a vehicle manufacturer
- Equivalent facilitation should not be confused with the "equivalent service" provisions that govern vehicle acquisitions for demand responsive systems. Equivalent service relates to the way a demand responsive system is operated; equivalent facilitation concerns the physical design of a vehicle or facility. (See forthcoming Chapter 7.)

5.2 Equivalent Facilitation in Transportation Vehicles

A transportation entity (public or private) or the manufacturer of a vehicle or vehicle component or subsystem may request a determination of equivalent facilitation from the FTA Administrator. A request should be made prior to any decision or commitment to acquire a vehicle or component that departs from the Part 38 standards.

Determinations of equivalent facilitation are made only with respect to vehicles or vehicle components used in the provision of transportation services and pertain only to the specific situation for which the determination is made. In other words, a determination of equivalent facilitation for a different transportation entity or a determination for the entity's own system in a different context is not applicable to other situations.

5.2.1 Regulatory Requirements

Part 38 contains the detailed accessibility specifications for transportation vehicles. (See Chapter 4 for a discussion of the regulations and standards for vehicles.) Section 38.2 states that departures from particular technical and scoping requirements of Part 38 by use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the vehicle. Section 37.7(b) contains the procedures for implementing the § 38.2 equivalent facilitation provision for vehicles.

5.2.2 Submission Materials – § 37.7(b)

The § 37.7(b) requirements for applying for a determination of equivalent facilitation for vehicles, supplemented by recommendations for additional materials to facilitate FTA's review, are as follows:

- Provide the entity name, address, contact person, and telephone number
- Identify the specific provision of the vehicle specifications in Part 38 for which the entity is seeking a determination of equivalent facilitation
- Describe the proposed alternative method of compliance along with a demonstration of how the alternative method meets or exceeds the level of accessibility or usability specified in Part 38. To meet this requirement, FTA recommends that the demonstration of the alternative method contain detailed information such as drawings, data, photographs, videos, etc. (See Section 5.2.3.)
- Document the public participation process. (See Section 5.2.4.)

Submissions should be addressed to the FTA Administrator with a copy to the FTA Office of Civil Rights.

5.2.3 Data Collection

In order to make a determination of equivalent facilitation, the FTA Administrator must be able to conclude that the alternative method of compliance meets or exceeds the level of usability or accessibility of the vehicle or vehicle component specified in Part 38. Supporting documentation that demonstrates the effectiveness of the alternative method must be included in the entity's application. A complete and thorough submission will contain sufficient evidence to support the request with hard data demonstrating the effectiveness of the proposed solution in providing equal or greater accessibility and usability by individuals with disabilities. This generally involves testing and collection of data using, for example, a full-size mockup of a vehicle or component, with the participation of an appropriate cross section of individuals with disabilities from the local community. Reliance on another transit agency's equivalent facilitation data is not acceptable, regardless of any apparent similarities. Rather, as explained below, a transit agency must present data specific to its request for equivalent facilitation.

The request must document the testing of potential problems or failure modes. For example, what are the consequences of an individual using a mobility device deviating from a direct path of travel down a ramp that lacks side barriers? The request should consider the full spectrum of operating conditions (e.g., the full normal range of vehicle loading conditions) and weather when relevant.

When reviewing requests for a determination of equivalent facilitation, FTA has found the use of photographs and videos of the testing process to be particularly valuable forms of documentation.

5.2.4 Public Participation Requirements for Transit Agencies

Section 37.7(b) contains the requirements for public participation applicable to transit agencies. These include:

- Contacting individuals with disabilities and groups representing them in the community
- Consulting with these individuals and groups at all stages of development of the request for equivalent facilitation
- Making all documents and other information concerning the request available, upon request, to members of the public
- Making the proposed request available for public comment before the request is made final or transmitted to DOT
- Making the proposed request available in accessible formats, upon request

- Sponsoring at least one public hearing on the request with adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special-interest circulation, and radio announcements
- Documenting how public participation was used in developing an alternative method of compliance

FTA notes that outreach goes beyond simple notification. Section 37.7(b)(2)(v) specifically requires that the public participation process be used to develop the alternative means of compliance. This is an ongoing activity that must provide an opportunity for obtaining direct input from potential users; it is not sufficient to present a fully formed equivalent facilitation request at a public meeting. FTA expects that the documentation of public participation will include the input received during the public participation process.

Transit agencies are likely familiar with the process of contacting and consulting with individuals with disabilities and groups representing them in the community because they have an existing customer base of riders with disabilities who can provide input. Further, most transit agencies also have committees with which they coordinate on disability issues. Such committees are often the best place to begin the outreach process, supplemented by contacting any organizations that committee members represent.

5.2.5 Public Participation Requirements for Manufacturers

Because vehicles and components may be used by more than one transit agency, the regulations require manufacturers seeking a determination of equivalent facilitation to consult, in person, in writing, or by other appropriate means with representatives of national and local organizations representing individuals with disabilities who would be affected by the request. As with transit agencies, the manufacturer submitting the request must document the steps taken to incorporate the input of those consulted.

Consultation might differ for a manufacturer depending on local conditions. A component may perform differently in locations with snow and ice. Consultation on such a component would need to involve people who experience this kind of weather; operating practices that affect usability might also vary from place to place.

5.3 Equivalent Facilitation in Transportation Facilities

A public or private entity that provides transportation facilities subject to Part 37 Subpart C (Transportation Facilities) may make a request to the appropriate DOT operating administration for a determination of equivalent facilitation. For transit facilities, this is FTA, but a request involving an Amtrak-owned station would be submitted to the Federal Railroad Administration (FRA), and a request involving a pedestrian right-of-way such as an overpass would be submitted to the Federal Highway Administration (FHWA). Recipients of FTA funding who are participating in projects involving Amtrak or public rights-of-way are expected to notify FTA and other appropriate DOT agencies of such requests.

5.3.1 The DOT Standards

Subpart C of Part 37 contains the regulatory requirements for transportation facilities. (See forthcoming Chapter 3.) Section 37.9 states that in order to be "readily accessible to and usable by persons with disabilities," transportation facilities must comply with Part 37 (including the "DOT Standards" referenced in Appendix A) and with Appendices B and D of 36 CFR 1191 (Part 1191). Appendices B and D, respectively, contain the scoping provisions and technical requirements of the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines; these Appendices together with the five DOT modifications in Part 37 Appendix A constitute the enforceable standards (the DOT

Standards). The U.S. Access Board has published a DOT-specific edition of the ADA-Architectural Barriers Act Accessibility Guidelines that incorporates all of the DOT revisions (the DOT Standards).

Section 103 of the DOT Standards states that the standards do not prevent the use of "designs, products, or technologies as alternatives to those prescribed, provided they result in substantially equivalent or greater accessibility and usability."

Section 37.9(d) provides the procedures for implementing the equivalent facilitation provision for facilities in § 103.

The DOT Standards apply to "new" (i.e., post-ADA) transportation facilities and alterations to existing facilities.[5] In the context of this Circular, a transportation facility is one that serves "designated public transportation," (i.e., service to the public by bus, rail, or other conveyance other than aircraft). It also applies to facilities for commuter rail service. However, as discussed below, the facility itself may be owned by public entities, private entities, or a combination of the two.

As in the case of transportation vehicles, a determination of equivalent facilitation for transportation facilities is made on a case-by-case basis. One exception applies only to facilities. With respect to a product or accessibility feature that the Administrator of a DOT operating administration determines can provide equivalent facilitation in a class of situations, § 37.9(d)(6)(i) permits the Administrator to make an equivalent facilitation determination applying to that class of situations. To date, FTA has not received any requests for, or made any determination of, equivalent facilitation under such a condition.

5.3.2 Public and Private Entities that Provide Transportation Facilities

Where a private entity is responsible for construction or alteration of a transportation facility—for example, where a private real estate developer is constructing a light rail station as part of a mixed-use development project—the DOT requirements for seeking equivalent facilitation apply to the transportation facility. While commercial facilities that are part of the same project would be subject to the DOJ requirements for equivalent facilitation, which do not require a formal approval process, any departures from the specific ADA design requirements for the station would require approval in advance under the DOT ADA regulations.

5.3.3 Submission Materials – § 37.9(d)

The detailed process for applying for a determination of equivalent facilitation for facilities is spelled out in § 37.9(d), which covers the information required as well as requirements for public participation. The following list of requirements also includes recommendations for supplementary materials to facilitate FTA's review.

- Provide the entity name, address, contact person, and telephone number
- Identify the specific provision(s) of the DOT Standards for which the entity is seeking a determination of equivalent facilitation
- Describe the proposed alternative method of compliance along with a demonstration of how the alternative method meets or exceeds the level of accessibility or usability specified in Appendices B and D of 36 CFR 1191 or Appendix A to Part 37. FTA expects that the demonstration of the

[5] New construction or alterations of buildings and facilities on which construction has begun, or all approvals for final design have been received, after November 29, 2006, are required to comply with the requirements set forth in Appendices B and D to 36 CFR Part 1191 and Appendix A to 49 CFR Part 37. Buildings and facilities that were altered between February 26, 1992 and November 29, 2006, and that have not been altered since, are compliant if they meet the ADA Accessibility Guidelines (ADAAG) issued on September 6, 1991. Facility alterations begun before February 26, 1992, and that have not been altered since are compliant if they meet Uniform Federal Accessibility Standards (UFAS) in effect at that time.

alternative method will contain detailed information such as drawings, data, photographs, videos, etc. (See Section 5.2.3.)

- Document the public participation process (See Section 5.2.4.)

Submissions should be addressed to the FTA Administrator, with a copy to the FTA Office of Civil Rights.

5.3.4 Data Collection

In order to make a determination of equivalent facilitation, the FTA Administrator must be able to conclude that the alternative method of compliance meets or exceeds the level of usability or accessibility of the facility element specified in the DOT Standards. Supporting documentation that demonstrates the effectiveness of the alternative method must be included in the entity's application. A complete and thorough submission will contain sufficient evidence to support the request with hard data demonstrating the effectiveness of the proposed solution in providing equal or greater accessibility and usability by individuals with disabilities. This generally involves testing and collection of data using, for example, a full-size mockup of a facility element such as a platform edge detectable warning, with the participation of an appropriate cross-section of individuals with disabilities from the local community. Reliance on another transit agency's equivalent facilitation data is not acceptable, no matter how similar it may seem. Rather, as explained below, a transit agency must present data specific to its request for equivalent facilitation.

The request must document the testing of potential problems or failure modes; for example, will an automatic ticket-vending device be usable in exterior locations when there is glare on the display screen? The full spectrum of operating conditions and weather, when relevant, should be considered.

When reviewing requests for a determination of equivalent facilitation, FTA has found the use of photographs and videos of the testing process to be particularly valuable forms of documentation.

5.3.5 Public Participation Requirements for Transit Agencies – § 37.9(d)

Section 37.9(d) contains the requirements for public participation applicable to transit agencies. These include:

- Contacting individuals with disabilities and groups representing them in the community
- Consulting with these individuals and groups at all stages of development of the request for equivalent facilitation
- Making all documents and other information concerning the request available, upon request, to members of the public
- Making the proposed request available for public comment before the request is made final or transmitted to DOT
- Making the proposed request available in accessible formats, upon request
- Sponsoring at least one public hearing on the request with adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special-interest circulation, and radio announcements
- Documenting how public participation was used in developing an alternative method of compliance

FTA notes that outreach goes beyond simple notification. Section 37.7(b)(2)(v) specifically requires that the public participation process be used to develop the alternative means of compliance. This is an ongoing activity that must provide an opportunity for obtaining direct input from potential users; it is not sufficient to present a fully formed equivalent facilitation request at a public meeting. FTA expects that

the documentation of public participation will include the input received during the public participation process.

Most transit agencies are familiar with the process of contacting and consulting with individuals with disabilities and groups representing them in the community because they have an existing customer base of riders with disabilities who can provide input. Further, most transportation providers also have committees with which they coordinate on disability issues. Such committees are often the best place to begin the outreach process, supplemented by contacting any organizations that committee members represent.

5.3.6 Public Participation Requirements for Manufacturers

Because a facility element (e.g., automated ticket vending machine) may be used in more than one transit agency, the regulations require manufacturers seeking a determination of equivalent facilitation to consult, in person, in writing, or by other appropriate means with representatives of national and local organizations representing individuals with those disabilities who would be affected by the request. As with public entities, the manufacturer submitting the request must document the steps taken to incorporate the views of those consulted.

An example of how a consultation might differ for a manufacturer is for a component that would perform differently in locations with snow and ice. Consultation on such a component would need to involve people who experience this kind of weather; operating practices that affect usability also may vary from place to place.

This process must include at least one public hearing with adequate public notice and an effort to encourage attendance by the disability community.

5.4 Dos and Don'ts for Equivalent Facilitation Requests

Based on FTA's experience with previous requests for determinations of equivalent facilitation, some of which were successful and others unsuccessful, FTA offers the following suggestions to those considering a request:

- Don't rely on an explanation of why it is difficult to comply with the regulatory standard; inability to comply is not a basis for a determination of equivalent facilitation[6]
- Don't present only evidence from another system or from your own system in the past; do provide your actual test results to support the assertion of equal or greater accessibility and usability
- Do use appropriate assumptions; for example, while the vertical platform-to-railcar gap (which determines the slope of a boarding ramp) is measured at 50 percent passenger load, the required edge barriers that prevent wheelchair wheels from slipping over the edge are present under all conditions
- Do perform the testing with a realistic mockup and with a cross-section of potential passengers with varying types of disabilities and mobility aids
- Do perform statistical analysis on a large enough sample of tests to demonstrate the reliability of the proposed solution

[6] Effective June 20, 1996, DOT amended 49 CFR 37.7(b) and 37.9(d) to remove "inability to comply" as a basis for seeking a determination of equivalent facilitation. See 61 FR 25409.

- Do consider all potential failure points and use testing of a realistic mockup to demonstrate why these are not potential problems with the proposed solution
- Do provide complete documentation of the public participation process used to develop the proposed departure, beginning early in the development of proposed alternatives, and include all input received
- Don't combine requests for determination of equivalent facilitation for separate issues (e.g., vehicle ramp design and platform design); do submit separate requests for these determinations, with cross-references in each submission to present the overall situation clearly
- Don't forget to include all information needed to make the request complete; do follow the requirements of the regulation and include:
    a. The transportation entity name, address, and contact person
    b. The specific provision of the standard for which you are proposing equivalent facilitation
    c. A complete and detailed description of the alternative method of compliance, other alternatives considered, and technical analysis to support a determination of equal or greater accessibility and usability
    d. A complete description of the public participation process, addressing all points listed in the regulation

Chapter 6 – Fixed Route Service (Forthcoming)

Chapter 7 – Demand Responsive Service (Forthcoming)

Chapter 8 – Complementary Paratransit Service

8.1 Introduction

In crafting the Americans with Disabilities Act (ADA), Congress recognized that once full compliance is achieved there are still individuals whose disabilities prevent them from using a fully accessible fixed route transit system. Congress therefore created a "safety net" to ensure that these individuals have transportation available to them on the same basis as individuals using fixed route systems.

This chapter explains how the U.S. Department of Transportation (DOT) ADA regulations (the regulations) apply to complementary paratransit service. Subpart F of Part 37 contains these regulations, which are listed in the order that they appear in this chapter, including:

- Complementary paratransit plans (§§ 37.135–155))
- Requirement for comparable paratransit service (§ 37.121)
- Service criteria (§ 37.131)
- Subscription service (§ 37.133)
- Types of service (§ 37.129)

Sections 37.123–127, which cover ADA paratransit eligibility and complementary paratransit service for visitors, are separately discussed in forthcoming Chapter 9.

As with all chapters of this Circular, the information described in this chapter does not alter, amend, supersede or otherwise affect the DOT ADA regulations themselves or replace or reduce the need for detailed information in the regulations. The examples of good practices are presented as local options; FTA recognizes that there are many different ways agencies can implement the regulatory requirements and ensure the delivery of ADA compliant service.

8.1.1 Complementary Paratransit Plans

Most of the Subpart F requirements for complementary paratransit plans and related updates (§§ 37.135–155) pertain to transit agencies' transitions to compliance with the regulations, from issuance of the requirements in 1991 to full compliance by 1997. The DOT ADA regulations were amended on May 26, 1996, to eliminate the requirement for annual updates to complementary paratransit plans. While some transit agencies may continue to update their plans for their own internal planning purposes, the annual updates are no longer required under the regulations. At this time, the need to develop a complementary paratransit plan is rare; therefore, this Circular does not discuss plan requirements in depth. There are three circumstances, however, in which a transit agency may be required to prepare a complementary paratransit plan:

- The agency is starting up a new fixed route service that will require complementary paratransit service
- A previously compliant transit agency has identified that it is falling short of compliance and reported the change in circumstances to FTA, as required
- FTA determines or believes a transit agency may not be fully complying with all service criteria.

8.1.2 Public Participation

The regulations identify when transit agencies must follow specific public participation requirements when developing (or updating) the aforementioned complementary paratransit plans (§ 37.137(b)), and when proposing changes to reservations systems (§ 37.131(b)(4)).

Transit agencies are required to "create an ongoing mechanism" for the participation of individuals with disabilities in the continued development and assessment of services to individuals with disabilities (§ 37.137(c)). Examples of ongoing participation include citizen or rider committees and/or holding periodic meetings/workshops. Such input is very important when transit agencies are considering modifications of complementary paratransit service policies, particularly when such policies result in any reductions in service.

In addition, when considering fare increases or major reductions in service, the requirements for public comment on fare and service changes in 49 USC 5307(c)(1)(i) apply. This law requires transit agencies receiving § 5307 urbanized area formula grants to certify that they have "a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation service" (49 USC 5307(c)(1)(i)).

8.2 Requirement for Complementary Paratransit Service – § 37.121

The ADA requires public entities (transit agencies) operating fixed route transit to provide paratransit service that "complements" their fixed route services, known as complementary paratransit service. Transit agencies may operate the service directly or they may use contractors. This requirement applies to all fixed route bus and rail transit service except for commuter bus, commuter rail, and intercity rail (Amtrak) services, which are specifically exempt (§ 37.121(c)). These exempt modes (commuter bus, commuter rail, and intercity rail) do not factor into development or modification of policies for fares, service area, or service hours.

Commuter bus has a specific definition in the regulations, as follows:

> Commuter bus service means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation (§ 37.3).

At the request of FTA, during a complaint investigation or other oversight activity, transit agencies must be able to substantiate how a particular service meets the definition of commuter bus.

8.3 Complementary Paratransit Service Criteria – § 37.131

Transit agencies providing complementary paratransit service must provide service "comparable to the level of service provided to individuals without disabilities who use the fixed route system" (§ 37.121(a)). Comparability is defined and measured by the following characteristics outlined in § 37.131:

- Service area
- Response time (trip reservations)

- Fares
- Operating without regard to trip purpose
- Hours and days of service
- Absence of capacity constraints

The regulations establish minimum levels of service. Transit agencies may set policies and performance standards that exceed these minimum service levels. (See Section 8.6.)

8.3.1 Service Area § 37.131(a)

Fixed Route Bus Service

For fixed route bus service, the minimum required service area for complementary paratransit service includes all locations within a 3/4-mile corridor on each side of every route. It must also include the area within a 3/4-mile radius of the ends of a route (§ 37.131(a)(1)(i)). The regulations also require transit agencies to provide service throughout a "core service area." This refers to the portion of transit agencies' service areas where many bus routes intersect and/or overlap so that their respective 3/4-mile corridors cover virtually all destinations. For smaller transit agencies, the core service areas are usually downtown districts served by multiple bus routes. For larger transit agencies, the core service areas may encompass entire downtowns or suburban activity centers. Inside the fixed route bus core service areas, the complementary paratransit service areas must also include any "small areas not inside any of the corridors but which are surrounded by corridors" (§ 37.131(a)(1)(ii)). Figure 8-1 illustrates a delineated service area with a core service area included.

For purposes of determining the complementary paratransit service area for bus rapid transit (BRT) service, BRT is considered as a fixed route bus service and the above requirements apply.

Rail Service

The minimum rail service area—excluding commuter and intercity rail, which are exempt—is defined as circles of 3/4-mile radius from the center of each station, as shown in Figure 8-2. Transit agencies must provide complementary paratransit trips from any point within one station circle to any point within the station circle of another station (e.g., from point 1 to point 2 in Figure 8-2), but not between two points within the same station circle (e.g., from point 3 to point 4 or from point 5 to point 6 in Figure 8-2).

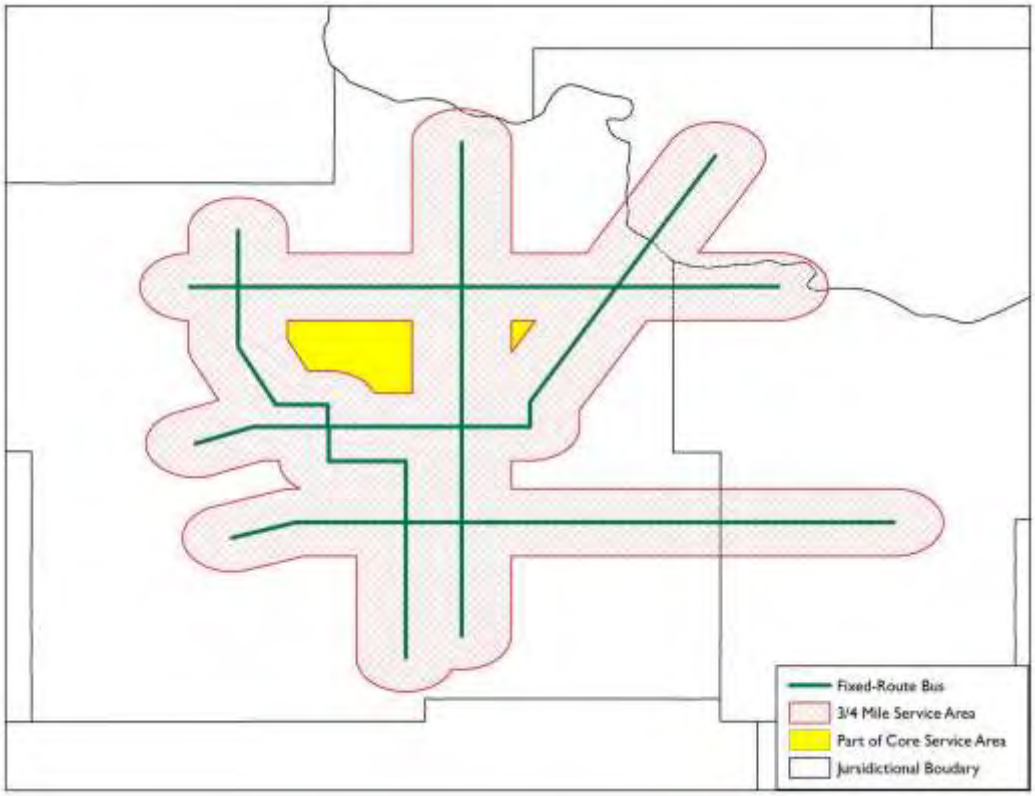

Figure 8-1 Bus Route Service Area

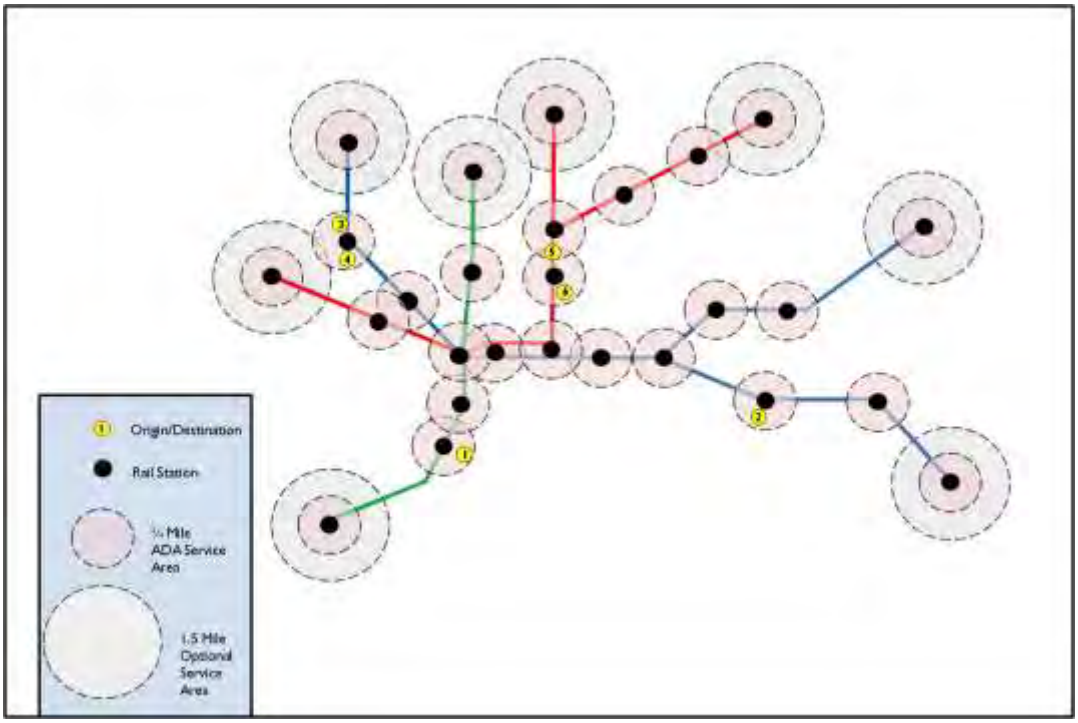

Figure 8-2 Rail Station Service Area

Service Area Considerations

The service areas encompass all points within the 3/4-mile range; where service areas extend beyond political boundaries of transit agencies' jurisdictions, transit agencies must provide service to and from such points, except when legal prohibitions prevent service, as discussed below. FTA notes that the 3/4-mile requirement is a straight-line distance (a radius). It does not refer to walking or driving distance.

Transit agencies' service areas may vary by day of week or time of day. Commonly, agencies operate bus routes and rail services that have different start and end times on different days. Some routes and services may start early in the morning and operate well past midnight while other routes may operate only during the morning and afternoon peak periods. As a result, the required service areas for complementary paratransit may vary in size accordingly, depending on the time of day and day of week. Section 8.3.5 discusses service hours and days in more detail.

When Boundaries or Barriers Limit Access

Transit agencies must provide service to all points within the 3/4-mile range unless there are legal prohibitions against providing service across such boundaries. For example, "Transit Agency X" provides bus and rail service within 3/4 mile of the border with another state or county, but its vehicles do not have the legal authority to operate across the border. Therefore, the agency does not have to provide complementary paratransit service in the neighboring state or county, even to locations within 3/4 mile of one of its services operating near the border. As discussed in the Appendix D section on Service Criteria for Complementary Paratransit Service Area, the rule requires in this situation, that the agency take all practicable steps to get around the problem so that it can provide service throughout its service area. The agency should work with the neighboring agencies involved, via coordination plans, reciprocity agreements, memoranda of understanding or other means to prevent political boundaries from becoming barriers to the travel of individuals with disabilities.

Transit agencies must generally provide service between any two points within the service area as long as conditions permit safe passage of the vehicle. This includes private properties, gated communities, etc., unless expressly prohibited by the property owner. Transit agencies cannot adopt a blanket policy that excludes entry into private properties or gated communities. However, policies can require riders to arrange for access within such locations if necessary.

8.3.2 Trip Reservations (Response Time) – § 37.131(b)

Transit agencies providing complementary paratransit service must follow the response time requirements in § 37.131(b), which cover when and how transit agencies must accept and respond to trip requests, how reservationists may negotiate trip reservations with callers, and how far in advance callers may request trips. This section describes how transit agencies must apply these response time requirements and discusses good practices in trip scheduling such as the use of pickup windows.

Next-day Trip Requests

Transit agencies must "schedule and provide paratransit service to any ADA paratransit eligible individual at any requested time on a particular day in response to a request for service made the previous day" (§ 37.131(b)). The times when transit agencies must accept such requests are "during at least all normal business hours of the [transit agency's] administrative offices, as well as during times, comparable to normal business hours, on a day when the [transit agency's] offices are not open before a service day" (§ 37.131(b)(1)).

In other words, for any day that transit agencies operate complementary paratransit, callers must always be able to reserve trips one day ahead. For example, for a Wednesday trip, callers must be able to request the trip during normal business hours on Tuesday. As discussed in the Appendix D section on Response

Time, "on days prior to a service day on which the administrative offices are not open at all (e.g., a Sunday prior to a Monday service day or a holiday), the reservation service would also be open 9 to 5." Transit agencies that provide fixed route service on the day after Christmas Day must permit callers to request a complementary paratransit trip on Christmas Day. As noted below, reservations may be accepted via voicemail on days when service is not provided (e.g., holidays).

Normal Business Hours

If a transit agency's normal business hours for its administrative offices are 8 a.m. to 5 p.m. from Monday to Friday, on any day during which a transit agency must accept the trip requests, it must accept them from 8 a.m. to 5 p.m. Further, callers who make trip requests during these hours must be able to reserve trips for any time during the next service day. As discussed in the Appendix D section on Response Time, this requirement for "next-day scheduling" is distinct from having a "24-hour" reservation requirement, meaning that riders who want to reserve a 6 a.m. trip Tuesday can request that trip any time during normal business hours Monday.

If transit agencies operate service past midnight—or operate service 24 hours a day—callers must be allowed to call during normal business hours the day before the trip to request a trip at any time the next day, including a trip that would begin just after midnight.

Use of Voicemail for Trip Reservations

Sufficient staff should be available to accept trip requests. Transit agencies are permitted to use "mechanical means" (e.g., voicemail) to accept trip requests (§ 37.131(b)), but doing so may affect the agency's ability to negotiate trip times as permitted under § 37.131(b)(2). In larger systems that have high call volume on all days (even holidays), a good practice is to always have staff available to accept trip requests. In smaller systems, a good practice is to limit voicemail use for trip requests to times when the complementary paratransit office is closed and few calls are made (e.g., Sundays and holidays). When using voicemail to accept trip requests, transit agencies must honor such requests so that callers have full confidence that they will receive the requested service just as if they had spoken to a reservationist. For example, a caller who reaches a transit agency's voicemail on a Monday holiday and requests a trip for Tuesday at 9 a.m. should expect the transit agency to provide the requested trip on Tuesday at 9 a.m. in a manner consistent with the transit agency's operating policies (i.e., on-time or pickup window). The transit agency may call the rider within a reasonable period of time later in the day on that Monday holiday to negotiate the specific pickup time and window (see below) or simply provide the 9 a.m. trip on Tuesday.

Scheduling Trip Requests

When riders call to reserve a trip, they may request a departure time (e.g., "please pick me up tomorrow at 4 p.m.") or an arrival (appointment) time ("I need to be there by 10 a.m."). When riders request an arrival time, reservationists typically provide a pickup time associated with that trip, allowing for expected travel time. Transit agencies are not obligated to allow riders to request both departure and arrival times.

Pickup Windows

For practical purposes, FTA permits transit agencies to establish a reasonable "window" around the negotiated pickup time during which the vehicle may arrive and still be regarded as "on time," to account for variables in the scheduling and operation of complementary paratransit services, typically 20–30 minutes in length. While establishing pickup windows is a good practice, it is not a requirement. A good practice is to limit the size of pickup windows to no more than 30 minutes. FTA considers pickup windows of more than 30 minutes as establishing an unreasonably long wait time for service.

There are many variations of pickup windows in use. Pickup windows are often placed (or "bracketed") around the negotiated pickup time (e.g., 15 minutes before and 15 minutes after the negotiated pickup

time). Other windows begin at the negotiated pickup time and proceed forward (e.g., negotiated time plus 30 minutes). A good practice when using pickup windows is to communicate them clearly and apply them consistently.

Negotiating and Confirming Trips

When negotiating with callers, transit agencies "may negotiate pickup times with the individual, but the [transit agency may] not require an ADA paratransit eligible individual to schedule a trip to begin more than one hour before or after the individual's desired departure time" (§ 37.131(b)(2)). Negotiations should take into account riders' practical constraints. For a pickup request, riders may not be able to leave before the requested time. For the example, "please pick me up tomorrow at 4 p.m.," the rider may not be able to leave until 4 p.m. (if leaving work). An acceptable negotiation is to offer a pickup between 4 p.m. and 5 p.m. but not before 4 p.m.

When scheduling to an appointment time, riders will have specific arrival requirements that reservationists must take into consideration. For the example, "I need to be there by 10 a.m.," an acceptable negotiation is to offer a pickup that ensures that the rider arrives at the destination by 10 a.m. An offer of a pickup time that results in a rider arriving at 10:30 a.m. would not be an acceptable negotiation.

Changing Negotiated Trip Times

It should not be necessary to make changes to a rider's agreed-upon trip time after the fact; any changes required for purposes of scheduling resources should be limited to within the pickup window surrounding the originally negotiated time. However, should it become necessary to consider such changes, a new pickup time must be negotiated with the rider no later than the day before the trip is scheduled. If the rider cannot be contacted, the trip time cannot be renegotiated and the original trip time must be honored.

Will-call Trip Requests

As a service to riders who may not be able to predict their desired pickup time for return trips—often due to medical appointments—some transit agencies permit complementary paratransit riders to leave their exact pickup time for their return trips open (i.e., "will-call"). This is an example of real-time scheduling, and is expressly permitted under § 37.131(b)(3).

In addition, a good practice is to have a "no strand" policy, which means that if riders have scheduled a trip returning home, transit agencies should make sure to provide a return trip, even if later than the original scheduled time.

8.3.3 Fares – § 37.131(c)

Transit agencies may charge up to twice the full, non-discounted fare for a comparable ride on the fixed route system (§ 37.131(c)). The applicable fixed route fare is the non-discounted adult fare for a single one-way trip. To calculate the proper complementary paratransit fare, the entity would determine the route(s) that an individual would take to get from his or her origin to his or her destination on the fixed route system and ask, "At the time of day the person is traveling, what is the fare for that trip on those routes?" Applicable charges like transfer fees or premium service charges may be added to the amount, but discounts (e.g., the half-fare discount for off-peak fixed route travel by seniors and individuals with disabilities) would not be subtracted. The transit provider may charge up to twice the resulting amount for the complementary paratransit trip.

Peak Fares and Off-peak Fares

For transit agencies that charge different fixed route fares based on distance or time of day, the complementary paratransit fares can vary accordingly.

Comparing Alternative Routes

In cases where fixed route riders can make trips between two points using different routes, the complementary paratransit fares are set in relation to fixed route trips taken by "a typical fixed route user...based on schedule, length, convenience, avoidance of transfer, etc." (See discussion in the Appendix D section on complementary paratransit fares.) When making the comparison, transit agencies should compare the complementary paratransit service with their own fixed route system(s). Services provided by commuter bus or rail systems, which are not subject to complementary paratransit requirements, and services provided by other entities, are not part of the basis for calculating comparable paratransit fares.

This situation is most common for transit agencies that operate both rail and bus service or operate routes with limited stops (not commuter bus) and local bus service, when there may be origin-destination pairs served by a combination of bus-only, bus-rail, and rail-only itineraries. For example, in a hypothetical large metropolitan system, fixed route riders might have alternative routing options via bus or via rapid rail that connect two points. During peak periods, the bus option is less costly (approximately $2) and requires a transfer. Because the bus is operating in traffic and the trip requires a transfer, it takes 50 minutes to complete. The rail trip, which requires no transfer, costs approximately $4.50, but takes one-half the time. In setting the fare for the complementary paratransit trip, transit agencies should consider which trip typical riders would make. A good practice is to document the methodology used for determining the fare for these types of trips.

Maximum Fares

Transit agencies can establish single or tiered complementary paratransit fares lower than the allowed maximum, but no higher than double the fare for a trip between the same two points on the fixed route system at the same time of day. Transit agencies can also discount complementary paratransit fares by offering multi-ride discounts or unlimited passes, just as they would for any fixed route services.

Free-fare Zones

Some transit agencies offer free trips on their fixed route system within a specific geographic area or on a specific route or set of routes. In cases where complementary paratransit riders are traveling between origins and destinations that are both within 3/4-mile of the zero-fare routes, and the typical fixed route user would make use of these zero-fare routes to make a comparable trip, the complementary paratransit fares for such trips are also zero. For transit agencies with free-fare zones, a good practice is to conduct an analysis of the other fixed route services they provide within 3/4-mile of the zone to determine which trips typical fixed route users would take via the free service and which trips they would take via services with a fare. This analysis would include the following elements:

- Regular fixed route fare (outside of free-fare zone)
- Frequency of the free services versus alternative services
- Need for transfers on the free versus alternative services
- Walking distances to and from the free service versus the alternatives

Such an analysis would demonstrate that fixed route riders might walk to the nearest boarding point in the free-fare zone instead of boarding the nearest fixed route vehicle and transferring to the free-fare service. It might also demonstrate that individuals crossing the free-fare zone will typically use the regular fixed route system, while individuals traveling between points along the free-fare zone are more likely to use the free-fare service. This analysis would enable transit agencies to determine whether they may charge a fare for a given complementary paratransit trip from origins to destinations that are both within 3/4 mile of the free-fare zone.

Fares Subsidized by Others

In some cities, other entities such as downtown business districts or convention authorities assume the responsibility for paying the fixed route bus fare on a specific route or in a designated zone. It is important for transit agencies to include complementary paratransit in any such arrangements, as the complementary paratransit fare must likewise be free to riders for origins and destinations along that route or in that zone.

Fares for Attendants and Companions

When personal care attendants (PCAs) accompany complementary paratransit riders, PCAs may not be charged a fare (§ 37.131(c)(3)). Transit agencies can charge companion riders the same fare they charge complementary paratransit riders (§ 37.131(c)(2)). (See forthcoming Chapter 9 for a discussion of other requirements for attendants and companions.)

Negotiated Fares for Agency Trips

Social service agencies and other organizations often have responsibilities for client transportation, and some of their clients may be ADA paratransit eligible. FTA encourages transit agencies and social service agencies to enter into coordinated service arrangements for these trips. Such arrangements often include social service agencies paying transit agencies for providing agency clients with guaranteed rides to agency programs. The negotiated reimbursement is not subject to the maximum complementary paratransit fare of twice the fixed route fare.

Agency trips are distinguished from other complementary paratransit trips by two characteristics. First, social service agencies pay the fares directly to transit agencies or arrange for reimbursement. Second, the arrangements between social service agencies and transit agencies include a guarantee of service. They may also include services that exceed the complementary paratransit requirements, including guaranteed pickup times, direct travel from origins to destinations with no intervening pickups or drop-offs, service to and from points outside of the complementary paratransit service area, or service to individuals who are not ADA paratransit eligible.

When providing agency trips, transit agencies "may charge a fare higher than otherwise permitted by [§ 37.131(c)] to a social service agency or other organization for agency trips" (§ 37.131(c)(4)). FTA notes that when complementary paratransit riders travel to or from a social service agency or a program, such trips are not automatically agency trips unless these trips are prearranged and funded as agency trips. Further, when social service agencies or other individuals place complementary paratransit trip requests on behalf of complementary paratransit riders as a form of assistance, such trips are not automatically agency trips.

8.3.4 Operating Without Regard to Trip Purpose – § 37.131(d)

Another element of comparability is to operate complementary paratransit service without regard to trip purpose. Just as individuals may ride a fixed route service for any purpose, complementary paratransit riders can also ride the complementary paratransit system for any purpose. The prioritization of one trip (e.g., work trips) over another (e.g., shopping trips) in the final scheduling and dispatching processes is also prohibited. When reservationists accept trip requests, they may not ask riders to disclose the purpose of their trips.

8.3.5 Hours and Days of Service – § 37.131(e)

Transit agencies must provide complementary paratransit service, at a minimum, at all times during which they provide fixed route service. For example, transit agencies operating a fixed route bus service from

5 a.m. to 11 p.m. must operate complementary paratransit service along that route during the same hours. The service hours for complementary paratransit must also mirror the service hours for fixed route for each day of the week. For example, if a transit agency's fixed route service runs later on Friday nights (and into early Saturday morning), then the complementary paratransit service must be available during those additional hours. However, when transit agencies do not operate service on Sundays and certain holidays, they do not have to offer complementary paratransit service on Sundays and holidays.

Hours of Operation

The minimum hours of operation for complementary paratransit service must be based on the fixed route hours of operation. If the first riders are able to board a bus on a given route at 5 a.m., then the first pickups from points within 3/4 mile of that route should also be 5 a.m. It would not be appropriate to wait until 5 a.m. to dispatch the first complementary paratransit vehicle. Neither would it be appropriate to restrict pickup times to no earlier than 5:30 a.m.

Similarly, the last complementary paratransit rider drop-offs should coincide with the last opportunity to disembark from a fixed route bus on associated routes. First pickup and last drop-off times may vary by fixed route corridor.

End of Service Day Considerations

To ensure that complementary paratransit drivers can complete their drop-offs no later than the latest fixed route drop-off, transit agencies may establish latest-available return-trip pickup times that reflect the likely travel times for requested trips. For example, to ensure that the last drop-offs for complementary paratransit coincide with a last fixed route drop-off time of 10 p.m., transit agencies might limit the latest complementary paratransit return-trip pickup times to 9:30 p.m. This would provide sufficient travel time (assuming the estimated trip time is approximately 30 minutes) to complete last drop-off by 10 p.m.

Providing Flexibility in Setting Hours and Days of Service

As noted briefly in Section 8.3.1, the geographic coverage of transit agencies' complementary paratransit service may change by time of day and day of week. That means that the required complementary paratransit service area may expand and contract as individual bus routes (or rail lines) begin and end operation each day.

In order to avoid having a complex policy for its complementary paratransit system, transit agencies may choose to not be overly precise in setting complementary paratransit service hours and days. Instead of having dynamically changing service areas—portions of the service area starting up or dropping off as individual bus routes start or end their service day—transit agencies might have several generalized complementary paratransit service areas, such as:

- Service areas for weekday daytime
- Service areas for weekday nighttime
- Service areas for Saturday
- Service areas for Sunday

In this example, weekday daytime service areas would likely be the largest and Sunday service areas would likely be the smallest. As long as each of the service areas encompass all locations within 3/4 mile of all bus routes and rail stations that are in service during that time of day or day of week, and transit agencies provide service throughout such service areas from the time the earliest routes begin service until the last routes end, such arrangements are acceptable. For example, if a weekday nighttime service area were generalized as between 7 p.m. and 11 p.m., then no fixed routes would operate past 11 p.m. on weekday evenings.

8.4 Avoiding Capacity Constraints – § 37.131(f)

The regulations prohibit transit agencies from operating complementary paratransit service in a manner that limits the capacity of the service. Examples of capacity constraints include restrictions on the number of trips riders can request and wait lists for trips. In addition to these specific examples, capacity constraints also include "any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons" (§ 37.131(f)).

In general, transit agencies' policies and practices may not:

- Explicitly or implicitly prevent or deter eligible individuals from receiving the complementary paratransit service to which they are entitled
- Make it difficult or create obstacles to receiving complementary paratransit service
- Yield poor service quality that discourages use of the complementary paratransit service
- "Steer" eligible individuals to other services
- Omit the availability of complementary paratransit service from public information

8.4.1 Prohibition Against Limiting the Number of Trips – § 37.131(f)(1)

Transit agencies may not limit the number of trips that complementary paratransit riders take. Policies that limit the number of trips, such as "no more than four trips per day" would constitute a prohibited capacity constraint. However, transit agencies may take into account the in-vehicle times and pickup windows of two closely spaced trips by the same riders so they do not overlap.

8.4.2 Prohibition Against Waiting Lists – § 37.131(f)(2)

In the context of complementary paratransit operations, a waiting list would constitute a set of trip requests that transit agencies cannot accept during the reservations call. This prohibited practice includes asking callers to call back later in case space becomes available. It might also involve reservationists placing names on a list and stating that someone will call if space becomes available. Not confirming trip requests during a call constitutes a trip denial that explicitly prevents riders from receiving complementary paratransit service to which they are entitled.

8.4.3 Operational Patterns or Practices that Limit Complementary Paratransit Service Availability – § 37.131(f)(3)

The capacity constraints provision within the complementary paratransit service criteria states:

> Transit agencies cannot limit the availability of complementary paratransit service to ADA paratransit eligible individuals by…any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons. Such patterns or practices include, but are not limited to, the following:
>
> - Substantial numbers of significantly untimely pickups for initial or return trips
> - Substantial numbers of trip denials or missed trips
> - Substantial numbers of trips with excessive trip lengths (§ 37.131(f)(3))

This section explains each of these limits on the availability of service. Section 8.4.4 explains additional examples of patterns or practices that limit the availability of service, including:

- Substantial numbers of significantly untimely drop-offs
- Substantial numbers of telephone calls with busy signals or excessive hold times

Untimely Service – § 37.131(f)(3)(i)(a)

Timely pickups and arrivals are fundamental elements of any transportation service. Poor on-time complementary paratransit performance, whether for pickups or drop-offs, may discourage riders from using complementary paratransit services and/or may discourage other individuals with disabilities from applying to become eligible riders.

Pickup Windows and Timely Service

As noted in Section 8.3.2, to provide reliable pickup times, transit agencies typically establish (with appropriate public input) on-time "windows" for pickups, typically 20–30 minutes in length. While the regulations do not expressly address pickup windows, FTA permits transit agencies to establish a reasonable window (i.e., 30 minutes or less) around the negotiated pickup time during which the vehicle may arrive and still be regarded as "on time," to account for variables in the scheduling and operation of complementary paratransit services. Some transit agencies place the full window after negotiated times while others "bracket" windows around negotiated times (e.g., -15/+15 window). A good practice is to assign pickup times consistently for all trips and to clearly explain pickup windows to riders. Another good practice is to establish drop-off windows, particularly to avoid dropping riders off too early in cases when they might arrive at buildings before they open for the day and not have a place to wait. An example of an appropriate on-time drop-off window would be from 30 minutes before an appointment or a desired drop-off time (a -30/0 window).

Pickups are considered on time as long as drivers arrive at pickup locations within windows, rather than at precise times. For example, for pickup windows of 9–9:30 a.m., pickups at 9:01, 9:10, or 9:30 a.m. are all considered on time.

FTA notes that many transit agencies have established a policy under which drivers must wait at least five minutes for riders to board the vehicle. In such cases, it is important that such policies require drivers to wait until the start of the pickup window to begin a five-minute countdown and to wait until the full five minutes have elapsed before departing without the rider. For example, when the pickup window begins at 11 a.m. and the vehicle arrives at 10:55 a.m., the driver would wait for the passenger until 11:05 a.m. before departing; leaving any time prior to 11:05 a.m. without picking up the rider is not permitted. (See discussion of missed trips below).

A good practice is to emphasize pickup windows (and an applicable five-minute wait-time policy) rather than specific times when confirming pickup times with riders. For transit agencies that place negotiated times in the midpoint of 30-minute windows, confirming trips scheduled for 9 a.m. pickups (with pickup windows of 8:45–9:15 a.m.), reservationists might say, "Your pickup will be between 8:45 and 9:15 a.m.," rather than say, "Your pickup is at 9 a.m." This reinforces the concept that vehicles may arrive at any time during the window.

On-time, Early, and Late Pickups

It is important to distinguish among on-time, early, and late pickups, as follows:

- On time: Pickups are considered on time when a driver arrives at the pickup location within the established pickup window and the rider boards the vehicle
- Early: Pickups are considered early if a driver arrives and departs with the rider before the established pickup window begins
- Late: Pickups are considered late if a driver arrives after the end of the established pickup window and the rider boards the vehicle

In addition, it is equally important to distinguish between missed trips (caused by transit agencies) and rider no-shows. Missed trips result from requested trips that are confirmed and scheduled, but the vehicle either does not arrive, or arrives and departs without the rider before or after the established pickup

window (discussed further below). No-shows occur when drivers arrive on time and riders do not board, typically after an established waiting time (e.g., five minutes) has elapsed. (See forthcoming Chapter 9 for a more detailed discussion on recording and communicating no-shows with riders as well as potential mitigating circumstances.)

On-time Performance Monitoring

A transit agency has an obligation to accurately record arrival and departure times in relation to scheduled pickup times and to compile this information for analysis in order to measure whether there are "substantial numbers of significantly untimely pickups for initial or return trips" (§ 37.131(f)(3)(i)(a)), an indicator of capacity constraints. Such analyses do not include missed trips.

Analyzing on-time performance enables transit agencies to make appropriate operational changes when performance falls below the established standard. If using a contractor to operate complementary paratransit service, transit agencies are responsible for monitoring the performance of the contractor. (See forthcoming Chapter 12 for a discussion of monitoring methods.)

Many transit agencies combine early pickups together with on-time pickups when documenting on-time performance. This is acceptable only if passengers are not pressured or expected to board and depart earlier than the established pickup window. A good practice is to report this as "early arrivals plus on-time arrivals" and to track the number and rate of early pickups as well as late pickups separately from on-time pickups. Another good practice is to record how early these early pickups take place. A high number and rate of early pickups (e.g., the vehicle consistently arrives before the start of a rider's pickup window) may be an indicator of a potential capacity constraint and could leave some riders feeling pressured to board vehicles before they are ready.

When calculating on-time performance, when drivers arrive on time, follow transit agency policies (e.g., wait the full five minutes) and riders are no-shows, these attempted pickups are considered on time for the purposes of calculating on-time performance.

When drivers arrive and leave early or do not wait the required time within the on-time window before departing without picking up the passenger, a missed trip has occurred (see below).

Similarly, when drivers arrive late and riders decline to board the vehicle, a missed trip has occurred and should be documented as such.

Operational problems attributable to causes beyond a transit agency's control, such as weather or traffic conditions that affect all traffic and could not be anticipated at the time the trip was scheduled, are not a basis for determining that capacity constraints exist. However, scheduling practices that fail to take into account regularly occurring traffic conditions (i.e., known peak-period traffic delays) could result in prohibited capacity constraints. To maintain good service quality, a good practice is to establish a standard for on-time pickups, such as "X percent of pickups will be on-time (i.e. within the 30-minute window) or early." Another good practice is to have a standard related to very early pickups, such as "no more than X percent of pickups will be more than X minutes before the start of the on-time window."

Trip Denials – § 37.131(f)(3)(i)(b)

Transit agencies cannot have a "substantial numbers of trip denials," which result from transit agencies not accepting trip requests. To avoid denials, transit agencies must properly plan service, allocate resources, and manage operations in order to meet 100 percent of expected demand.

While the prior discussion of wait lists covered some practices that would also constitute trip denials, the following are additional examples of trip denials:

- The rider requests a trip the day before that is within the service area during the hours of operation and the transit agency responds that it cannot provide that trip

- The rider requests a trip the day before and the transit agency can only offer a trip that is outside of the one-hour negotiating window. This represents a denial regardless of whether the rider accepts such an offer

When counting the number of denials, a transit agency must account for all trips that the rider is unable to take because of a denial. For example, if a transit agency denies a rider a "going" trip and only offers a return trip, if the rider elects not to travel at all, this represents two denials. DOT's October 2011 amendments to the regulations offered the following statement with respect to counting trip denials and missed trips:

> The Department believes that when a denied or missed trip makes a subsequent requested trip impossible, two opportunities to travel have been lost from the point of view of the passenger. In the context of a statute and regulation intended to protect the opportunities of passengers with disabilities to use transportation systems in a nondiscriminatory way, that is the point of view that most matters. To count denials otherwise would understate the performance deficit of the operator. The complementary paratransit operator obviously would not need to count as a denial a trip that was actually made (e.g., trip from Point A to Point B missed, passenger gets to Point B in a taxi, and complementary paratransit operator carries him from Point B back to Point A).

In order to ensure that substantial numbers of trip denials are not occurring, a good practice is to document each trip denial, noting the rider, date of request, date and time of requested trip(s), origin and destination, and reason for denial. Reviewing the characteristics of these denials can help determine their underlying causes in order to take steps necessary to prevent future denials.

Missed Trips – § 37.131(f)(3)(i)(b)

Transit agencies cannot have "substantial numbers of…missed trips." When transit agencies miss trips, complementary paratransit riders can become discouraged from using the service. Missed trips, which are caused by transit agencies and not by riders, result from trips that are requested, confirmed, and scheduled, but do not take place because:

- The vehicle arrives and leaves before the beginning of the pickup window without picking up the rider, who is not obligated to board until the beginning of the pickup window or—for transit agencies that have a five-minute wait-time policy—from the start of the pickup window until five minutes have elapsed
- The vehicle arrives after the end of the pickup window and departs without picking up the rider
- The vehicle does not arrive at the pickup location

FTA notes that transit agencies experiencing a high rate of missed trips may not be able to arrive on time, possibly indicating the need to add capacity.

As discussed above, riders are not obligated to board the vehicle before the start of pickup windows. Nor are riders required to be ready to board the vehicle the moment it arrives. In addition, in cases when vehicles arrive after the end of pickup windows, riders can choose to board vehicles, but if they refuse trips because they are late, these are considered missed trips and not no-shows or "late cancellations" on the part of riders. (See forthcoming Chapter 9.)

A good practice is to have drivers contact dispatchers when riders do not board as scheduled. While communicating with drivers in these situations, a good practice is for dispatchers to verify the pickup location, the vehicle arrival time, and the negotiated pickup time and associated on-time window. After confirming the information, dispatchers can then be confident in directing drivers and in documenting such events in their records. A good practice is for dispatchers (and supervisors) to instruct drivers who arrive early to wait and ensure that drivers have waited the full wait time (established by each transit

agency) within the on-time window. Finally, it is important to ensure that dispatchers differentiate between no-shows and missed trips and appropriately code trips in their records.

Given the prohibition against substantial numbers of missed trips, a good practice is to first document, then analyze missed trips, noting riders' names and pickup locations. Such analyses can identify potential geocoding errors or errors in the underlying maps used for scheduling trips. Analysis of actual vehicle arrival and departure times—as well as dispatcher notes—will also help to ensure that the documentation of events is accurate.

When missed trips arise from noncompliant actions by drivers and dispatchers (e.g., dispatchers of a transit agency with a five-minute wait time policy advise, "wait three minutes, then you can leave," or drivers leave early without first contacting dispatchers), a good practice is to provide proper training and re-training (see Chapter 2) and monitor subsequent performance. (See forthcoming Chapter 12.)

Excessive Trip Lengths – § 37.131(f)(3)(i)(c)

The length of complementary paratransit trips (also called trip duration, on-board time, or in-vehicle time) is another important measure of service quality. The regulations consider "substantial numbers of trips with excessive trip lengths" as a form of capacity constraint because excessively long trips may discourage riders from using complementary paratransit services. It is important to understand that "excessive" is in relation to the time required to make a similar trip using the fixed route system; while a travel time of one hour to take a five-mile trip may seem excessive in the abstract, if the same trip takes an hour using the fixed route system, it is not.

A good practice to help minimize the number of excessively long trips is to establish a trip-length performance standard, defined in relation to the length of comparable fixed route trips (e.g., complementary paratransit trips should not exceed the length of a similar fixed route trips). As with other policies, public input is valuable to inform such a standard.

When establishing trip-length standards, a transit agency may account for all elements of fixed route trips between origins and destinations, including:

- Walking time to the stop/station from the origin address
- Waiting time
- In-vehicle time (for all trip segments)
- Transfer times (if any)
- Walking time from the final stop/station to the destination address

Complementary paratransit service is by nature a shared-ride service. The standard of service is not intended to reflect that of a taxi service, which typically transports passengers directly to their destination.

Inappropriate Trip-length Standards

Some transit agencies have adopted policies based on absolute maximum trip lengths. Such standards do not properly reflect comparability. For example, having a standard that no complementary paratransit trip can exceed 90 minutes is not appropriate for comparing short trips taken on the fixed route system. Allowing complementary paratransit ride times of two hours for trips that took one hour by fixed route also would not be appropriate. FTA encourages standards that are variable and consider trip distances and associated travel times on fixed route. It is also a good practice to set scheduling system parameters to address trips of varying length (rather than just set single, global settings).

Because in-vehicle time and transfer times may vary by day of week and time of day, a good practice is to use performance standards that account for such variations. Many transit agencies now have online trip

planners that estimate the varying travel times for specific trips. However, the calculation of trip lengths for comparable fixed route trips can be time consuming, even when aided by an online trip planner. A good practice is for transit agencies to analyze trip lengths periodically (weekly or monthly) for a sample of their complementary paratransit trips, focusing on trips longer than a certain duration (e.g., more than 45 or 60 minutes). Transit agencies using contractors to operate their complementary paratransit service are required to monitor contractors to ensure compliance with § 37.131(f)(3)(i)(c). (See forthcoming Chapter 12.)

As with on-time performance, operational problems that are attributable to causes beyond the control of the transit agency are not a basis for determining that a pattern or practice of excessive trip length exists. However, complementary paratransit operations must account for recurring factors such as known peak-period traffic conditions. Therefore, a good practice is to establish travel time performance standards, such as "at least 95 percent of complementary paratransit trips shall have travel times equal to or less than comparable fixed route travel times," and to monitor performance. By monitoring and analyzing trip lengths, transit agencies can ensure good service or, if necessary, make operational adjustments to improve performance.

8.4.4 Other Potential Limits to Paratransit Service Availability

Substantial numbers of untimely drop-offs and poor telephone performance are additional examples of poor service quality that can lead to capacity constraints.

Untimely Drop-offs

A pattern of late drop-offs at riders' destinations is an indicator of poor service quality. A good practice is to both monitor drop-off times and to utilize drop-off windows based on riders' desired drop-off times. As with other practices, appropriate public input will help to determine the size of drop-off windows. As noted above, a common standard is to schedule drop-offs to be no earlier from 30 minutes before appointment times and no later than the appointment times. Some transit agencies schedule drop-offs no later than five minutes before appointment times to allow riders time to get from vehicles to appointments.

When considering drop-off times, it can be important to ensure that drop-offs do not occur before a facility opens. For example, if a medical office building does not open its doors until 8 a.m., a policy might restrict drop-offs at this location to "no earlier than" 8 a.m.

A good practice is to establish an on-time performance standard for drop-offs, such as "at least X percent of drop-offs shall occur within the on-time drop-off window." As in pickup performance, a good practice is to monitor and analyze on-time performance for trips with requested drop-offs. If the analysis indicates a pattern of late drop-offs, transit agencies can then make appropriate operational changes. If using contractors to operate complementary paratransit service, transit agencies are responsible for monitoring the contractors' on-time performance. (See forthcoming Chapter 12 for a discussion of monitoring methods.)

Poor Telephone Performance

Despite the increasing use of technology, the telephone remains the primary means for complementary paratransit riders to request trips and to check on the status of a ride. A poorly operating telephone system can limit service availability and lead to other issues that affect complementary paratransit operations.

Transit agencies should design and operate their telephone systems to not have busy signals or excessively long hold times. Having a robust telephone system with enough capacity to handle calls from riders—along with the appropriate staffing to answer calls in a timely manner—is crucial to avoid capacity constraints. For trip reservations, interactive voice response (IVR) systems or online transactions

offer alternatives to personal communications, but telephone calls with transit agency employees often remain the best communication method for many riders. Telephone conversations are especially helpful when riders have a complicated request or are checking on the status of a trip. Telephone communication with riders who are deaf is well established using 711 relay or TDD/TTY systems, while newer technologies may introduce new and unanticipated barriers.

Promptly responding to trip-status calls for late pickups—commonly known as "where's my ride?" calls—is especially important. Riders may not be in a suitable position to remain on hold while waiting for a response from transit agency representatives.

Besides making reservations and checking on trip status, complementary paratransit riders may call transit agencies to:

- Cancel or revise previous reservations
- Confirm times for future trips
- Obtain information on eligibility and other service issues

While these calls may be less time sensitive than trip-status calls, a good practice is to also have the capacity to answer and respond to such requests in a timely manner.

Setting Telephone Hold-time Standards

A good practice is to establish performance standards for telephone hold times. A useful practice is to define a minimum percentage of calls that should have hold times shorter than X minutes and a second (higher) percentage of calls that should have hold times shorter than Y (higher than X) minutes. For example: D percent of calls with hold times shorter than X minutes, and F percent of calls with hold times shorter than Y minutes.

A less preferable performance standard is to use average hold times over a defined period. A standard based on average hold times is not preferred since it can mask poor performance at certain times. However, if using average hold times, it is important to narrow the period within which the averages are calculated. Measuring averages over an entire day, week, or month can obscure any issues. A good practice would be to measure averages over hourly periods of a sample day. The standard using average hold times would then be set as a minimum percentage of hours for which the average hold times are shorter than P minutes, and a second (higher) percentage of hours for which the average hold time are shorter than Q (higher than P) minutes. For example: 95 percent of hourly call periods should have average hold times shorter than one minute and 99 percent of hourly call periods should have average hold times shorter than two minutes.

When transit agencies direct calls to different lines depending on the purpose of the call (e.g., reservations lines and dispatch lines), a good practice is to apply these standards to all public lines. Another good practice is to track telephone line performance separately.

Automatic Call Distribution Systems

To measure the number of calls placed on hold and the length of these hold times, a good practice is to have an automatic call distribution (ACD) system. Besides assigning incoming calls to reservationists, such systems can measure hold times and the length of calls by time of day. These measurements enable transit agencies to analyze call patterns to determine the percentage of calls that exceeded the standard and identify when these calls took place. Based on this analysis, transit agencies can make suitable adjustments to reduce hold times.

Smaller transit agencies—or the contractors who accept calls on their behalf—may not have ACD technology. Instead, they may have telephone systems that forward incoming calls to available open lines. When using this approach, transit agencies may use other methods to determine if calls are placed on

hold. A simple way to test telephone capacity is to place calls from outside locations during the busiest times to see if there are busy signals or if the calls are placed on hold. Transit agencies can also make first-hand observations in the reservations office and manually record hold times. Telephone service providers may also be able to determine the number of calls that receive a busy signal.

If hold times are excessive at particular periods during the week, a good practice is to first determine if sufficient telephone capacity and workstations exist to handle peak volumes. If the technology is sufficient, transit agencies might then add reservationists or reassign reservationists' hours to better match peak demand.

Taking Calls in Languages Other than English

Transit agencies also have obligations under Title VI for ensuring individuals with limited English proficiency (LEP) can access their services. These obligations are described in FTA Circular 4702.1B. Because of these requirements, and in response to customer needs, some transit agencies employ reservationists who speak other languages. An insufficient number of reservationists available to respond to calls in the caller's language can lead to longer-than-average hold times for these callers and constitute a capacity constraint affecting this group.

Busy Signals

Complementary paratransit riders should almost never encounter busy signals, particularly when calling to reserve a trip. A good practice is to operate telephone systems without busy signals by having telephone systems with sufficient capacity to handle all incoming calls. If all assigned reservationists are handling other telephone calls, a good practice is to design telephone systems to place subsequent incoming calls in queues with an informative message. Alternatively, incoming calls may roll to other transit agency personnel who are trained to respond to overflow calls. Excessive time spent waiting in queue, however, could constitute a prohibited capacity constraint

Limiting the Number of Trip Requests per Call

Some transit agencies have adopted the policy of limiting the number of trip reservations per call to reduce the amount of time that reservationists spend with each caller. However, if riders want to make more trip reservations than are allowed for a single call, they will simply make multiple calls. This places an unnecessary burden on riders and leads to higher call volumes, which can defeat the purpose of the policy.

8.4.5 Identifying and Addressing Patterns and Practices in Capacity Constraints

For any of the capacity constraints discussed earlier in this chapter, either due to policies or resulting from operational practices, a good practice is to consider performance not only in terms of systemwide percentages and frequency, but to also look for potential patterns. Transit agencies can search for instances of performance bias in the following areas:

- Certain portion(s) of the service area
- Certain destinations
- Certain day(s) of week or time(s) of day
- Ambulatory versus non-ambulatory riders (particularly when using a mix of accessible and non-accessible vehicles)
- Certain individuals

Less Apparent Examples of Poor Service Quality

Below are several examples of patterns of poor service quality that are not necessarily apparent at the system level.

- A transit agency's on-time pickup performance might be very high on a systemwide basis. However, a more detailed analysis of performance may indicate that on-time performance on weekday mornings is significantly lower, or that trips for riders who need accessible vehicles have much lower rates of on-time performance. A reallocation of existing resources might remedy this problem, but some cases might require additional resources
- A transit agency's overall telephone hold time might be very good. However, particular hours during the week may have significantly longer average hold times. This may result from higher call volume and/or lower staffing levels during these hours
- A transit agency may have very few trips with an excessive length relative to the comparable fixed route trips. However, a particular rider may be part of a grouped subscription run and be the first one picked up or the last one dropped off. Because of these schedules—which may be very efficient for the overall service—this particular rider may always have excessively long trips, even if other riders have acceptable trip lengths

In summary, a good practice is to review these and other components of the complementary paratransit service for subsets of riders to identify potential patterns of poor service quality that could deny or limit service for subsets of riders, and potentially discourage riders from using the service.

Circumstances Beyond Transit Agencies' Control

Certain causes of poor complementary paratransit service are beyond transit agencies' control. This includes inclement weather, unpredicted traffic delays, and/or occasional vehicle breakdowns. Poor service that arises from such occurrences is not a basis for determining if "pattern or practice" exists (§ 37.131(f)(3)(ii)). However, transit agencies should design their service to anticipate and prepare for such conditions, including:

- Rain or snow may cause vehicles to fall behind schedule. However, if there is snow on the roads from a previous storm, a good practice is to adjust schedules to allow for slower vehicle speeds
- Some traffic conditions cannot be anticipated. However, a good practice is to base run schedules on the assumption that vehicles travel slower during peak periods—just as fixed route schedules assume longer travel times during the morning and afternoon peaks—or to determine where and when traffic is predictable each day and to incorporate such delays into scheduling
- While vehicle breakdowns cannot be anticipated, a good practice is to have readily available backup capacity that allows for rapid response when breakdowns occur, such as "floater" vehicles, backup drivers, or supervisors who can respond with spare vehicles, or through service provided by a backup operator

An excessive number of breakdowns may be due to poor maintenance practices or running vehicles past their useful lives. Such instances are within transit agencies' control and are not justifications for poor performance.

Knowledge that transit agencies gather about their operating environment and the demand patterns of their riders is helpful in determining the necessary resources and proper allocation of resources to meet complementary paratransit demand.

8.5 Subscription Service – § 37.133

Transit agencies have the option of implementing subscription service as a method of efficient reservations and scheduling for trips with a repeated pattern—same origin and destination, same pickup or drop-off time, and same day(s). Riders subscribe to the service once and then transit agencies provide the repeated service. Some transit agencies require that trips be made at least once per week to qualify for subscription service. Other transit agencies require that trips repeat two or three times per week to qualify for subscription service. Typical uses for subscription service include:

- Traveling to work or school each weekday
- Traveling to dialysis or other medical appointments several times per week
- Traveling to religious services once per week

After riders and transit agencies set up the subscription service, there is no need to make further arrangements until a rider's travel needs change.

Subscription service is helpful both to transit agencies and the riders who receive it. For transit agencies, such service provides predictability for a portion of their service, so they can assign these trips to vehicle runs in advance. Transit agencies often assign the same driver to subscription trips with regular days of travel, which familiarizes drivers with the trip and creates familiarity between drivers and riders. Finally, because riders only have to call once, subscription trips make traveling easier for riders and can lower call volumes for transit agencies.

Subscription service has benefits for both transit agencies and riders, but needs to be limited to be implemented effectively. Transit agencies may establish subscription service policies (§ 37.133(a)). Further, setting certain limits on subscription service is acceptable as is limiting subscription service to certain trip purposes, or to having waiting lists for subscription service (§ 37.133(c)).

FTA notes that subscription trips are still considered complementary paratransit trips. Even if transit agencies choose to reserve and schedule certain trips in this way, trips reserved and scheduled on a subscription basis remain subject to the regulatory requirements (e.g., agencies must ensure trip lengths are comparable to the fixed route and pickups are timely).

8.5.1 Limits on Subscription Trips Under Certain Circumstances

There is no limit to subscription service as a proportion of the total complementary paratransit service as long as transit agencies have capacity for demand trips (i.e., non-subscription trips). However, when transit agencies experience capacity constraints on particular days or times, then subscription service cannot "absorb more than fifty percent of the number of trips available at a given time of day" (§ 37.133(b)). For example, if a transit agency only has the capacity to provide 50 complementary paratransit trips between 8 and 9 a.m. Mondays, and the demand for non-subscription trips is 25, then the number of subscription trips during that period is limited to 25.

Some transit agencies have chosen to limit subscription service to 50 percent of available capacity even if they never experience capacity constraints. While such policies are acceptable, a good practice is to introduce flexibility with respect to subscription service. If transit agencies have the ability to increase capacity during any given hour of service (such as via private on-call contractors), then they may choose to have no limit on subscription trips, knowing they can call on additional capacity when needed.

8.6 Exceeding Minimum Requirements – § 37.131(g)

Transit agencies may choose to provide service to ADA paratransit eligible riders beyond the minimum requirements. Taken as a whole, these services can be viewed as a form of premium service. Examples of such services include:

- Same-day trips (not "will call" trips)
- Trips beyond the defined service area
- Trips before or after the established service hours
- Service to individuals who do not meet the eligibility criteria

Because premium services are optional and otherwise do not fall under the complementary paratransit requirements, transit agencies may charge higher fares for premium service trips. For example, transit agencies may charge higher fares for trips requested on the same day of service. The exact fare for this extra service is a local decision.

In addition, transit agencies have the option to limit premium service to certain types of trips, where such a distinction would not be allowed for standard complementary paratransit service. For example:

- A transit agency provides out-of-area service, but only for trips associated with medical appointments to regional medical centers
- A transit agency's regular service hours on weekdays begin at 5 a.m., but its complementary paratransit service makes earlier pickups for riders going to dialysis treatment

It is important to ensure that providing premium service does not lead to lower service quality for riders using complementary paratransit service. For example, providing trips beyond the minimum service area is inadvisable if doing so might limit the service quality for trips within the 3/4-mile service area.

FTA recommends that transit agencies obtain public input when developing premium services, particularly when imposing premium fares. Furthermore, it is not appropriate to encourage or steer ADA paratransit eligible riders into premium services.

8.7 Vehicle Dispatch

For complementary paratransit systems, FTA has permitted the use of inaccessible vehicles such as sedans to supplement transit agencies' accessible paratransit fleets. However, transit agencies that choose to do so are then required to dispatch accessible vehicles—defined as one meeting the vehicle standards specified in Part 38—for riders who require them on the same basis that they dispatch inaccessible vehicles for those who do not require them. While riders cannot expect to specify the vehicle of their choice, transit agencies operating a mixed fleet of accessible and inaccessible vehicles have an obligation to dispatch accessible vehicles to those riders who require them and cannot provide a lower level of service to such individuals.

Chapter 9 – ADA Paratransit Eligibility (Forthcoming)

Chapter 10 – Passenger Vessels (Forthcoming)

Chapter 11 – Other Modes (Forthcoming)

Chapter 12 – Oversight, Complaints and Monitoring Methods (Forthcoming)