Title II – Public Transportation FTA – DOT Regulations

About this module

Goal: To provide an overview of the main provisions of the Federal Transit Administration (FTA) - U.S. Department of Transportation (DOT) ADA Regulations, for transportation services covered under Title II of the ADA.

Format: PowerPoint presentation

Time: 30 minutes

Potential audience: people with disabilities, public transportation providers, paratransit service providers, disability advocates, and disability service providers.

Materials needed:
- Hard copies of the ADA and Public Transportation Fact Sheet Handout (found at the end of this Facilitator’s Guide).
- Hard copy of PowerPoint slides, optional.

Offer to send an electronic version to those who need it after the session.

Facilitator’s Tips for this Module

This module has been designed to be of interest to a range of audiences. The content is provides a brief overview of the main provisions of FTA-DOT ADA Regulations, for transportation services covered under Title II of the ADA.

Some parts of the FTA–DOT ADA Regulations can be quite technical. If your audience members have technical questions during the session, refer them to their local ADA Center at 1-800-949-4232 for more information.

Though the ADA Amendments Act (ADAAAA) was passed in 2008 and became effective in 2009, regulations were not issued by DOT until 2011. Hence, we do not yet have significant case law on the ADAAAA and FTA–DOT ADA Regulations. However, the courts have now been directed to defer to FTA-DOT ADAAA regulations in making decisions. FTA - DOT documents around the ADA Regulations are excellent sources of information to find out more about how the ADAAA applies to transportation services.

FTA-DOT documents that you can use as background information to prepare for this module can be found at www.fta.dot.gov/civilrights/12325.html.
Here are a few “do’s” and “don’ts” to consider when facilitating this module:

**Do:**
- Keep the presentation moving forward, in order to finish the module in the time promised.
- Do a little background preparation. Some aspects of the FTA–DOT ADA Regulations can be confusing. Review FTA-DOT documents on issues such as: the definition of wheelchair and other powered mobility devices (OPMD), the incorporation of the “direct threat” and “legitimate safety requirements” provisions, definitions of service animals, and paratransit services.
- Ask participants to hold their questions/comments until the end of the module.
- Remind participants that you cannot provide a decision on specific cases and that you cannot provide legal advice.
- Refer participants with specific cases to the ADA Center TA line (800-949-4232)

**Don’t:**
- Get derailed by questions related to very unusual or unlikely scenarios.
- Try to give answers when you are not sure. Please refer participants to the ADA Center TA call line for more information.
Facilitator’s Notes (Slide 1)
If you have time and feel your audience would benefit from an overview of the ADA Amendments Act (ADAAA), you may want to use the ADAAA Overview Module along with this module on Public Transportation.

This is the title slide for this module. The purpose of this module is to provide a brief overview of how the ADAAA impacts public transportation. Though the ADAAA does have some impact on all Titles of the ADA, we will focus on public transportation.

Remind participants that they may not get all their questions answered about the ADAAA and FTA–DOT ADA Regulations in this module. They can call the ADA Center TA line at 800-949-4232, toll free, if they have more questions.
Disclaimer

Information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

The Northeast ADA Center is authorized by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. The contents of this presentation were developed under a grant from NIDILRR, grant number 90DP0071-01-00. NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this presentation do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government.

Facilitator’s Notes (Slide 2)
Change this slide to reflect your regional information.

Trainers, be sure to advise participants that this training is not intended as legal advice.
The Mission of the ADA

“...to assure equality of opportunity, full participation, independent living, and economic self-sufficiency to persons with disabilities.”

US Congress

ACCESSIBLE TRANSPORTATION IS KEY TO FULLFILLING THIS MISSION!

Facilitator’s Notes (Slide 3)
The quote on this slide shows Congress’s original intent in passing the ADA. Given the emphasis on inclusion and community participation, you can see that accessible transportation would be an important issue to address under the ADA.

For more information on the ADAAA policy history, go to
http://www.law.georgetown.edu/archiveada/
Facilitator’s Notes (Slide 4)
This slide gives milestones of ADAAA legislation and mentions U.S. Department of Justice (DOJ) ADA regulations, (to differentiate it from the DOT regulations in the next slide).

The ADA Amendments Act was signed into law on September 25, 2008. The law became effective on January 1, 2009. The U.S. Department of Justice (DOJ) final regulations for public and private services covered under the Title II and Title III of the ADA respectively were published in the Federal Register on September 15, 2010. The DOJ final regulations became effective on March 15, 2011. Little ADAAA-related case law has accumulated since mid-2011. However, the case law that has accumulated suggests that courts are paying attention to the new ADAAA provisions and guidelines in making their decisions about disability.

To find out more about ADAAA case law, go to http://adacaselaw.org.

Other resources about ADAAA and its DOJ regulations can be found at:
www.govtrack.us/congress/bills/110/hr3195/text
www.ada.gov/doi_responsibilities.htm
www.ada.gov/revised_effective_dates-2010.htm

It’s important to note that DOT regulations and ADA-DOJ regulations are not the same. For instance, on April 13, 2011 the DOT published a technical assistance note, to clarify the difference between the definition of service animal under the new DOJ regulations and DOT regulations, clearly stating that DOJ’s definition does not apply to transportation services covered under the ADA.
We will take a look at the elements of service animal’s definition under DOT regulations in a minute.

Resources:
www.adainformation.org/blog/no-change-us-dot-ada-regulations-service-animals-and-mobility-devices

ADA Transportation Regulations

FTA – DOT Proposed Guidance in Additional Chapters

Chapter on Vehicle Acquisition published in the Federal Register on Oct. 2, 2012

Chapters on: Introduction and Applicability, General Requirements, Equivalent Facilitation and Complementary Paratransit Service published on Federal Register on February 19, 2014
www.fta.dot.gov/legislation_law/12349_15846.html

Facilitator’s Notes (Slide 5)
This slide talks about the FTA publication of Proposed Guidance in Additional Chapters, to help transportation providers meet the requirements of DOT’s ADA regulations. On October 2, 2012 the FTA published a proposed chapter on vehicle acquisition; and public comments about it could have been submitted until December 3, 2014. On February 19, 2014 the FTA published four additional proposed chapters: Introduction and Applicability, General Requirements, Equivalent Facilitation and Complementary Paratransit Service; and public comments about it could have been submitted until April 21, 2014. These chapters are part of a series of approximately 12 chapters that will compose a complete FTA – DOT’s ADA Circular. The final official chapters will be published by the FTA – DOT in the future.

Resources:
www.fta.dot.gov/legislation_law/12349_15846.html
Consider these cases...

- A rider has a homemade mobility device from parts obtained from a local hardware store (glued PVC pipe, coasters, etc.), the driver wants to deny the use of the mobility device in the vehicle because securement is not possible.
- Three persons using wheeled scooters at the bus stop was denied transportation services due to being considered a direct threat by the bus driver.
- A paratransit passenger asks for a round trip from point A to point B and back to point A, and the first leg of the trip is denied or missed, the passenger can’t get to point B.

Facilitator’s Notes (Slide 6)
Read aloud the three scenarios described on the slide. These are some of the kinds of situations that were reported before the final FTA-DOT ADA regulations were published. The final regulations take into consideration some emerging issues, such as the increase of different types of mobility devices, including some that do not meet the DOT’s original definition of a wheelchair.

Resources:
www.dot.gov/accessibility
www2.ku.edu/~kutc/pdffiles/KTRFS13-ADAregulations.pdf
ADA
Transportation Regulations

Highlighted Dispositions:

- New definition for “wheelchair” and “other mobility devices” (DMD)
- New language on direct threat and legitimate safety requirements
- Service animals definition
- Origin to destination service
- Trip denials
  www.fta.dot.gov/12874_2360.html

Facilitator’s Notes (Slide 7)
Present this slide by quickly reading aloud this list of the areas which received the most attention in the FTA–DOT’s final regulations, which will be discussed in the following slides.

Resources:
www.fta.dot.gov/civilrights/12325.html
Facilitator’s Notes (Slide 8)

Begin presenting this slide by quickly reading the FTA–DOT ADA regulations’ new definition of “wheelchair and other mobility devices (OMD)”. The definition of “wheelchair” has been changed to “three-or-more wheeled devices”. This change has been made in light of advances in wheelchair design, with many power wheelchairs now having more than four wheels.

FTA-DOT has not adopted DOJ’s regulations concerning the use of “other powered mobility devices” (OPMD), which include devices such as Segways.

Design parameters for vehicles and equipment remain within the jurisdiction of the U.S. Access Board, which has the statutory authority to develop standards for accessibility under the ADA, which by law, the FTA-DOT must adopt as its minimum standards.

Explain that the previous term “common wheelchair” has been removed. This concept was originally developed to provide a set of parameters for designers and manufacturers to use in the process of designing and building accessible vehicles and equipment. Over time, transit operators began to apply this concept to exclude wheelchairs that did not fit into the “common wheelchair” weight and dimension “envelope” regardless of whether their vehicles and equipment could accommodate them. A Federal court decision said that transit operators could do so, given the wording of the FTA-DOT regulation. After that, with the new final regulations they can’t deny the service in those cases.

Resources:

- www.fta.dot.gov/civilrights/12325.html
To stop the practice of denying service, under the current FTA–DOT ADA regulations, if a transportation provider has a vehicle and equipment that meets or exceeds the Access Board’s guidelines for accommodating wheelchairs, and the vehicle and equipment can, in fact, safely accommodate a given wheelchair or mobility device, the provider cannot refuse to transport the device and its user. The only exceptions are: “legitimate safety requirements” or “direct threat”.

Resources:
www.fta.dot.gov/civilrights/12325.html
www2.ku.edu/~kutc/pdf/files/KTRFS13-ADAregulations.pdf
Facilitator’s Notes (Slide 10)
“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.

Resources:
www.fta.dot.gov/civilrights/12325.html
Facilitator’s Notes (Slide 11)
The term “legitimate safety requirements” does 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. Consistent with this rule, transportation providers cannot deny service to people who use wheelchairs just because particular devices may be difficult to secure.

Resources:
www.fta.dot.gov/civilrights/12325.html
Facilitator’s Notes (Slide 12)
“Legitimate safety requirements” must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities or about the devices they use for mobility purposes.

Resources:
www.fta.dot.gov/civilrights/12325.html
ADA Transportation Regulations

“Direct Threat”

- Significant risk to the health or safety of others
- Cannot be eliminated by a modification of
  polices, practices or procedures
- Cannot be presumed by the provision of
  auxiliary aids or service there must be objective evidence
- It does not include threats to self

C.F.R. Part 37.3
www.fta.dot.gov/12325_4118.html

Facilitator’s Notes (Slide 13)
The FTA–DOT ADA regulations added the “direct threat” concept (49 C.F.R. § 37.3). “Direct threat” is defined as “a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures or by the provision of auxiliary aids or services”. This definition is consistent with the DOJ’s regulations, and focuses solely on whether an individual poses a significant threat to others; it does not include threats to self.

Resources:
www.fta.dot.gov/civilrights/12325.html
Facilitator’s Notes (Slide 14)
The transit provider must carry mobility devices, if there is no information in the record that would support a finding that carrying those non-traditional wheelchairs would constitute a "direct threat” to the safety of others. Documented facts are essential when making claims of direct threat.

Resources:
www.fta.dot.gov/civilrights/12325.html
www2.ku.edu/~kutc/pdffiles/KTRFS13-ADAregulations.pdf
Facilitator’s Notes (Slide 15)
Quickly review the differences between the definition of service animal used by the DOT versus that used by the DOJ, pointing out that the DOJ’s definition is limited to dogs or in some instances, miniature horses. No change has been made to the definition of “service animal” in the DOT’s revised regulations; the same definition continues in effect. Therefore, entities covered by these regulations should not change their policies on the basis of the DOJ ADA final regulations. The DOT will consider whether, in the future, proposing changes to parallel the new DOJ definition.

Resources:
www.adainformation.org/blog/no-change-us-dot-ada-regulations-service-animals-and-mobility-devices
www.fta.dot.gov/civilrights/12325.html
ADA Transportation Regulations

Service Animals

Transit operators may ask if an animal is a service animal or what tasks the animal has been trained to perform, but cannot require special ID cards or harnesses for the animal or ask about a person’s disability.

Other passengers’ allergies and fear of animals are not valid reasons for denying transportation to people with service animals.

Facilitator’s Notes (Slide 16)

Regarding “service animals,” a transit operator (under both the DOJ and the DOT regulations) may only ask two questions: (1) Is the animal a service animal? (2) What tasks has the animal been trained to perform?

The transit operator cannot require special ID cards or harnesses for the animal or ask about a person’s disability.

Another important point is that other passengers’ allergies and fear of animals are not valid reasons for denying access or refusing transportation to people with service animals.

Resources:

www.fta.dot.gov/civilrights/12325.html
Facilitator’s Notes (Slide 17)
The ADA guarantees people with disabilities the same access to public transportation as people without disabilities. For people with disabilities who cannot use regular public transportation services because of their disability, the ADA requires public transportation providers to have a complementary paratransit service.

“Feeder service” is a trip that is made partly by paratransit and partly by fixed-route bus or other public transportation such as a subway.

The ADA classifies complementary paratransit service as origin to destination service. The only exceptions are certain situations in which on-call bus service or feeder paratransit service is appropriate. The ADA allows transit agencies to establish whether, or in what circumstances, they will provide door-to-door service or curb-to-curb service.

Origin to destination paratransit is a shared ride service. Passengers usually ride with others who are traveling in the same general direction, and drivers may stop to pick up or drop off passengers on route. In door-to-door service, the driver offers assistance from the rider’s door to the vehicle, and comparable assistance at the destination. In curb-to-curb service, assistance is not provided until the rider reaches the curb. In either case, the driver is required to assist riders to enter and exit the vehicle.

Resources:
www.fta.dot.gov/civilrights/12325.html
Facilitator’s Notes (Slide 18)
The ADA does not allow transit agencies to base a suspension of service on any trips missed by a rider for reasons beyond his or her control, including trips missed due to transit agency error or lateness. Suspension of service may be imposed only for a "pattern or practice" of missed trips. This is a pattern or practice involving intentional, repeated or regular actions, not isolated, accidental, or singular incidents. Moreover, only actions within the control of the individual count as part of a pattern or practice. Missed trips due to operator error are not attributable to the individual passenger for this purpose.

FTA–DOT is expected to issue guidance about how best to code trips that do not occur as a result of performance deficits of the transportation provider, in the near future.

Resources:
www.fta.dot.gov/civilrights/12325.html
http://dredf.org/ADAtg/noshow.shtml#patern
Facilitator’s Notes (Slide 19)
The slide summarizes some information transportation providers need to be aware of about transportation regulations related to serving customers with disabilities.

Remember, this module is only intended to be a basic overview of the ADA FTA – DOT regulations and not an in-depth discussion of the implications for the ADA - ADAAA for public transit providers and people with disabilities. Many participants will want the opportunity to think through the implications of the ADA FTA – DOT regulations for their community. The points on this slide have been written broadly in order to make sense for different audiences. Refer participants to the ADA National Network TA Line (800 949 4232) if they have additional questions or wish to discuss a specific situation.

The ADA and Public Transportation Fact Sheet, found at the end of this Facilitator’s Guide, provides additional information for your audience. You will want to hand this out near the end of the session to review with the group (if time allows) and as a resource participants can keep for future reference.

Resources:
www.dot.gov/accessibility
http://dredf.org/public-policy/transportation/
http://dredf.org/ADAtg/
DOT ADA Regulations...

To File a Complaint

Certified Mail:
Director, FTA Office of Civil Rights
East Building – 5th Floor, TCR
1200 New Jersey Ave., SE
Washington, DC 20590

Email: FTA.ADAAssistance@dot.gov
ADA TA Line: 1-888-446-4511
www.dot.gov/accessibility

Facilitator’s Notes (Slide 20)
Despite the regulations, sometimes public transportation providers are unaware of or do not honor the law. If you encounter a problem and believe that your rights as a person with a disability have been violated, there are some steps you can take. If you are a transportation provider, there are many resources where you can get accurate information about your rights and responsibilities under the law. The ADA Centers are a good place to find out more. You may contact your local ADA Center’s free, confidential Technical Assistance Line at 1.800.949.4232. The ADA Centers do not enforce the law. They educate individuals, businesses, and municipalities to help them to understand how the ADA applies to them.

Resources:
FTA–DOT ADA Title II Rider Complaint Form:
Additional Resources

- Easter Seals Project ACTION
  http://www.projectaction.org/TransportationtheADA.aspx

- Rider’s Guide to Public Transit

- Your regional ADA Center 1.800.949.4232

Facilitator’s Notes (Slide 21)
Here are some places where you can find more information about accessible transportation. Project ACTION focuses on accessible transportation; there are several resources on their website. The Rider’s Guide to Public Transportation is specifically for riders with disabilities, and the ADA Center in your region is also a good resource if you would like to know more about transportation related rights and responsibilities of individuals with disabilities.
Facilitator’s Notes (Slide 22)
National Network: Please replace this slide with your center’s contact information.

Conclude by reminding participants that the training materials were produced by the Northeast ADA Center in collaboration with the ADA National Network. Remind them of the free and confidential technical assistance and other services available from their local ADA Center and from the ADA Centers throughout the country. Mention the ADA TA line: 800-949-4232.