



**Moving Public Transportation  
Into the Future**

# **Federal Compliance 101: CALACT**

**June 19-21**

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# Training Session Content – Day 1



**DBE**



**Title VI**

# Training Session Content – Day 2



**Equal Employment Opportunity (EEO)**



**Americans with Disabilities Act (ADA)**



**Charter and School Bus**



**Drug and Alcohol Testing**

# Training Session Content – Day 3



**Legal**



**Financial Management**



**Satisfactory Continuing Control**



**Use and Maintenance of Equipment & Facilities**



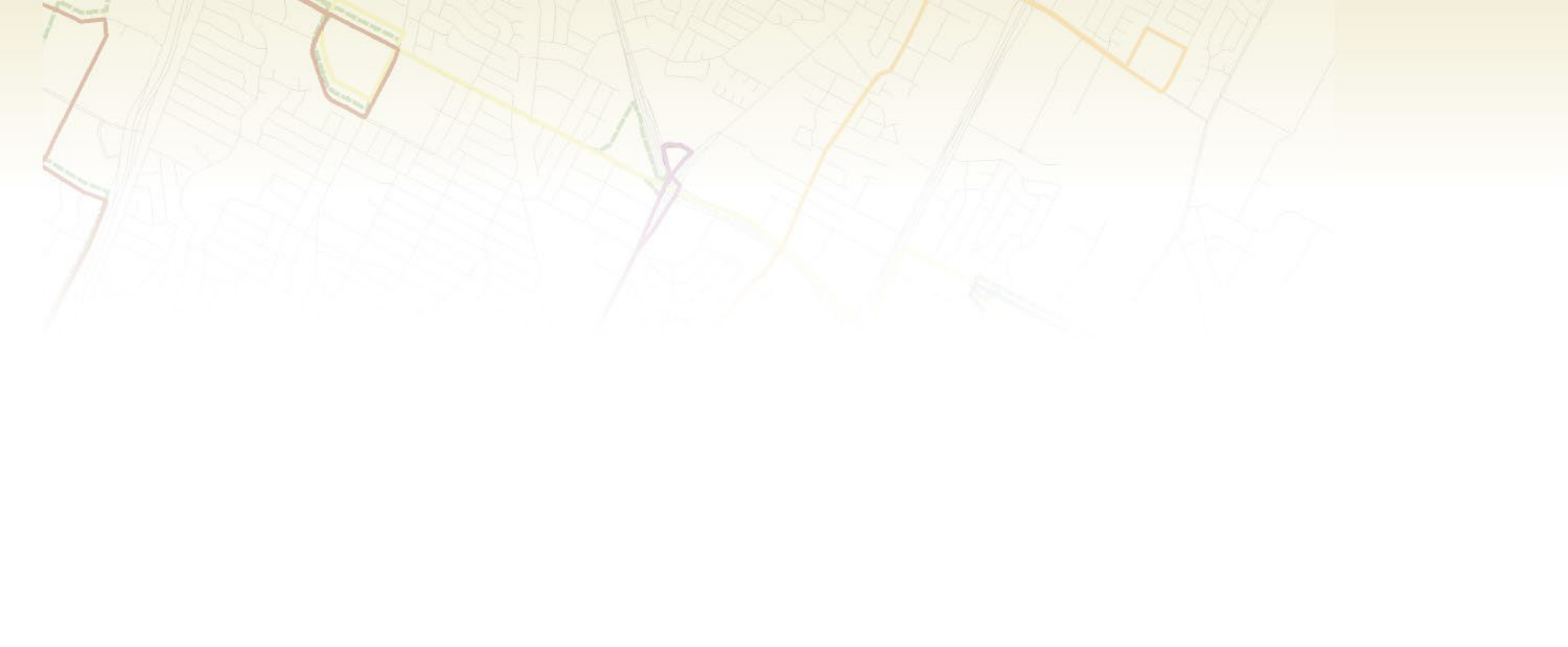
**Procurement**

A background map showing a street grid with several colored overlays: a red outline, a green outline, a yellow line, and a purple line. The map is semi-transparent and serves as a decorative background for the text.

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# **EQUAL EMPLOYMENT OPPORTUNITY ACT**



# Equal Employment Opportunity

## ◆ Basic Requirements

- Ensure Compliance with Law
- Communicating with the Public That the Entity Complies
  - Job Notices, etc.
- Communicating with Prospective Applicants for Employment
  - Standard Language on Job Applications
- Communicating with Existing Employees
  - Workplace Notice (Typically, “7 in 1” Poster)

# Equal Employment Opportunity

- ◆ If the Transit Agency
  - Receives More than \$1 Million in FTA Assistance in Any One Year
    - AND
  - Has 50 or More Mass Transit Employees
    - OR
  - Receives More Than \$250,000 in Planning Assistance
- ◆ An EEO Program Must be Prepared



# Equal Employment Opportunity

- ◆ If the Transit Agency
  - Has Between 50 and 99 Public Transit Employees, an Abbreviated EEO Program is Required
  - Over 100 Public Transit Employees, a Full EEO Program is Required
- ◆ Plan Must be Submitted Every Four (4) Years by March 1 (Full Plans Only)

# Equal Employment Opportunity

## ◆ Program Elements

Transit Systems 50 – 99 Employees	Transit System with 100 or More
Statement of Policy	Statement of Policy
Plans for Dissemination	Plans for Dissemination
Designation of Responsible Personnel	Designation of Responsible Personnel
Assessment of Employment Practices	Utilization Analysis
Plan for Monitoring Compliance	Goals and Timetables
	Assessment of Employment Practices
	Plan for Monitoring Compliance



# **AMERICANS WITH DISABILITIES ACT**



# Reference Documents

- ◆ 49 CFR part 37
- ◆ 49 CFR part 38
- ◆ 39 CFR part 27
- ◆ FTA Circular 4710.1



# Applicability

- ◆ Public and Private Entities that Provide Public Transportation
- ◆ Private Entities that Operate Demand Response or Fixed Route System
- ◆ Services Provided Under Contract or Other Arrangement
- ◆ University Transportation Systems
- ◆ Taxi Services
- ◆ Vanpools Operated by Public Entities



# Applicability

## ◆ Exclusions

- Elementary and Secondary School Transportation
- Transportation for Recreation, Not Primarily for Transport
- Transportation Exclusively for Own Employees
- Transportation Systems Operated by Private Clubs



# ADA Overview

- ◆ The Americans With Disabilities Act (ADA) of 1990
  - Originally Signed Into Law on July 26, 1990
  - Five Titles, Modeled, in Part, After the Civil Rights Act of 1964
  - Substantial Impact on Public Transportation
  - Oversight Split between Multiple Federal Agencies: US DOJ, US DOT, EEOC, FCC



# Title II

- ◆ Subtitle B - Applies To Transportation Services Provided By Public Entities
  - Implementing Agency is the USDOT
  - 49 CFR Parts 27, 37, and 38
    - Part 27 – Section 504 Rule
    - Part 37 – Key ADA Rule for Transit
    - Part 38 – Accessible Vehicle Rule





# USDOT Regulations

- ◆ Nondiscrimination
- ◆ Applicability
- ◆ Accessible Facilities
- ◆ Acquisition of Vehicles
- ◆ Complementary Paratransit
- ◆ Provision of Service
- ◆ Intercity Service



# Definition

## ◆ Disability

- A Physical or Mental Impairment That Substantially Limits One or More Major Life Activities of Such Individual
- A Record of Such an Impairment
- Being Regarded as Having Such an Impairment



# Definition

## ◆ Modes of Transit Service

### ○ Fixed Route Service

- System of Transporting Individuals...On Which a Vehicles Operating Along a Prescribed Route According to a Fixed Schedule"

### ○ Demand Response Service

- System of Transporting Individuals...Which is Not a Fixed Route System



# Definition

## ◆ Modes of Transit Service

### ○ Commuter Bus Service

#### ■ Fixed Route Service Characterized by:

- Service Predominantly in One Direction
- Operation in Peak Periods
- Limited Stops
- Use of Multi-Ride Tickets as the Fare Media
- Routes of Extended Length



# Modes of Service

## ◆ Modes of Transit Service

### ○ Fixed Route Includes

- Non-Commuter Fixed Route
- Commuter Fixed Route
- Intercity Bus
- Route/Point Deviation When Deviations are Limited

### ○ Demand Response

- ADA Complementary Paratransit
- Route/Point Deviation Open to All
- Traditional DR (Subscription and Casual DR)



# Nondiscrimination

- ◆ Cannot Require an Individual to Use Designated Priority Seats
- ◆ Cannot Impose Special Charges on Individuals Who Use Wheelchairs
- ◆ Cannot Require That an Individual With Disabilities be Accompanied by an Attendant
- ◆ Cannot Refuse Service Due to Insurance Company Requirements



# Nondiscrimination

- ◆ An Entity Shall Not Refuse to Provide Service to an Individual With Disabilities Solely Because the Individual's Disability Results in Appearance or Voluntary Behavior That May Offend, Annoy, or Inconvenience Employees of the Entity or Other Persons



# Nondiscrimination

- ◆ DOT Rulemaking
  - October 19, 2011
    - Expanded Conditions When a Transit System May Exclude an Individual from Service
    - The Individual Constitutes a Direct Threat to Others





# Nondiscrimination

- ◆ Examples of Common Discriminatory Practices
  - Refusing to Provide Service Because of a Person's Disability
  - Requiring Individuals With Disabilities to Use Seat Belts or Shoulder Harnesses When Other Riders on the Same Vehicle are Not Also Required to do the Same



# Nondiscrimination

- ◆ Examples of Common Discriminatory Practices
  - Requiring Wheelchairs Users to Wear a Special Body Belt as a Condition of Using Lifts
  - Requiring Riders Who Board A Vehicle With a Service Animal to First Disclose the Nature of Their Disability to Receive Transportation



# Nondiscrimination

- ◆ Examples of Common Discriminatory Practices
  - 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
  - Prohibiting an Individual With a Disability From Serving as a Personal Care Attendant (PCA) For Another Rider With a Disability



# Nondiscrimination

- ◆ Service Denial Due to Rider Conduct
  - It Is Not Discrimination For an Entity to Refuse to Provide Service to an Individual With Disabilities Because That Individual Engages In:
    - Violent
    - Seriously Disruptive
    - Illegal Conduct
    - Represents a Direct Threat to Health or Safety of Others



# Nondiscrimination

- ◆ Service Denial Due to Rider Conduct
  - It Is Not Discrimination For an Entity to Refuse to Provide Service to an Individual With Disabilities Because That Individual Engages In:
    - Violent
    - Seriously Disruptive
    - Illegal Conduct
    - Conduct That Poses a Direct Threat to Others



# Nondiscrimination

- ◆ Service Denial Due to Rider Conduct
  - Seriously Disruptive, Illegal, Violent Behavior
    - Meant to be a High Standard
      - Appearance or Involuntary Behavior That Offends or Inconveniences Other Passengers Does Not Meet This Threshold
    - Most Common Scenario - Passengers with Hygiene Issues
      - FTA Notes That It Would Not be Appropriate to Deny Service
      - Condition Must Disrupt the Provision of Service
      - Appeal to Family, Friends, Case Workers, etc., to Assist in Remedy



# Nondiscrimination

- ◆ Service Denial Due to Rider Conduct
  - Determining a Direct Threat
    - Individual Assessment, Based on Reasonable Judgment
    - Determine Probability That Potential Injury Will Occur
  - Do Not Presume Certain Conduct Will Occur Based on a Specific Disability
- ◆ Best Practice
  - Provide Written Notice Before Imposing Denials



# Accessible Facilities

- ◆ New Facilities
  - Must be Accessible
- ◆ Alterations to Existing Facilities
  - Must Ensure Accessibility
- ◆ New Bus Stop Pads
  - Must Meet Accessibility Standards
    - If Property is Within the Control of the Transit System



# Acquisition of Accessible Vehicles

Service Type	Vehicle Type	Acquisition	Requirement
<b>Public Entities</b>			
<b>Fixed Route Bus</b>	<b>New Non-Rail Vehicles</b>	<b>Purchase or Lease</b>	<b>Accessible</b>
	<b>Used Non-Rail Vehicles</b>	<b>Purchase or Lease</b>	<b>Accessible, unless unable to acquire accessible after a good faith effort</b>
<b>Demand Response Bus</b>	<b>New Non-Rail Vehicles</b>	<b>Purchase or Lease</b>	<b>Accessible unless service for individuals with disabilities is equivalent</b>
	<b>Used Non-Rail Vehicles</b>	<b>Purchase or Lease</b>	<b>Accessible unless service for individuals with disabilities is equivalent</b>

# Acquisition of Accessible Vehicles

Service Type	Vehicle Type	Acquisition	Requirement
<b>Private Entities Not Primarily Engaged</b>			
<b>Fixed Route Bus</b>	<b>New or Used Non-Rail Vehicles</b>	<b>Purchase or Lease &gt;16 Passenger Capacity</b>	<b>Accessible</b>
	<b>New or Used Non-Rail Vehicles</b>	<b>Purchase or Lease &lt;16 Passenger Capacity</b>	<b>Accessible, Unless Service For Individuals With Disabilities is Equivalent</b>
<b>Demand Response Bus</b>	<b>New Non-Rail Vehicles</b>	<b>Purchase or Lease &gt;16 Passenger Capacity</b>	<b>Accessible Unless Service For Individuals With Disabilities is Equivalent</b>
	<b>Used Non-Rail Vehicles</b>	<b>Purchase or Lease &lt;16 Passenger Capacity</b>	<b>No Requirement, but Must Provide Equivalent Service</b>

# Acquisition of Accessible Vehicles

Service Type	Vehicle Type	Acquisition	Requirement
<b>Private Entities Primarily Engaged</b>			
<b>Fixed Route Bus</b>	<b>New or Used Vehicles</b>	<b>All Vehicles Except:</b> <ul style="list-style-type: none"> <li>• Automobile</li> <li>• Van, &lt;8 Passenger Capacity</li> </ul>	<b>Accessible</b>
<b>Demand Response Bus</b>	<b>New or Used Vehicles</b>	<b>All Vehicles Except:</b> <ul style="list-style-type: none"> <li>• Automobile</li> <li>• Van, &lt;8 Passenger Capacity</li> </ul>	<b>Accessible Unless Service For Individuals With Disabilities is Equivalent</b>
<b>Fixed Route or Demand Response Mode</b>	<b>New or Used Vehicles</b>	<b>Purchase or Lease &lt;8 Passenger Capacity</b>	<b>Accessible Unless Service For Individuals With Disabilities is Equivalent</b>



# Reasonable Modifications

- ◆ Applies to
  - Policies
  - Practices
  - Procedures
- ◆ Applies When a Change in Policy, Practice, or Procedures Would Avoid Discrimination on the Basis of Disability (e.g., Refusal of Service)



# Reasonable Modifications

- ◆ Individuals Making a Request
  - Where a Request for Modification Cannot Practicably be Made and Determined in Advance
    - Operating Personnel of the Entity Shall Make a Determination of Whether the Modification Should Be Provided at the Time of the Request
    - Operating Personnel May Consult With The Entity's Management Before Making a Determination to Grant or Deny the Request



# Commuter Bus

- ◆ Characteristics
  - Service Predominantly in One Direction
  - Limited Stops
  - Routes of Extended Length
- ◆ Commuter Services Can be Hybrid (e.g., Traditional Fixed Route for Some Portions and Commuter Service for Reminder)



# Demand Response Operations

- ◆ Key Distinction
  - A Passenger Must Interact With the Transit System in Order to Use the Service
- ◆ ADA Service Requirement for Demand Response Services
  - Equivalent Service



# Demand Response Operations

## ◆ Equivalent Service

### ○ Seven (7) Criteria

- Response Time
- Fares
- Geographic Area of Service
- Hours And Days of Service
- Restrictions or Priorities Based on Trip Purpose
- Availability of Information and Reservations Capability
- Any Constraints n Capacity or Service Availability





# Demand Response Operations

- ◆ Equivalent Service
  - Unlike Complementary Paratransit, There Are No Service Standards Associated With These Criteria
  - Obligation is Only to Provide Equivalent Service – Good or Bad
- ◆ While Acquisition of Accessible Vehicles is Recommended, When Service is Equivalent, Non-Accessible Vehicles May Be Purchased
  - Certification Must Be Submitted to the ODOT



# Demand Response Operations

- ◆ Equivalent Service
  - When a Demand Response Fleet is 100 Percent Accessible, FTA States the Equivalent Service Standard Applicable to Demand Response System Do Not Apply
  - Presumptive Equivalency



# Demand Response Operations

- ◆ Types of Demand Response Service
  - Dial-a-Ride Service
  - Taxi Subsidy Service
  - Vanpool Service
  - Route Deviation Service



# Demand Response Operations

## ◆ Route Deviation

- Must Accept Deviation Requests From All Riders to be Considered Demand Response
- Must Advertise the Availability of Route Deviations in Schedules and Other Public Information



# Demand Response Operations

## ◆ Route Deviation

### ○ Restrictive Practices

- No Excessive Fares for Deviations
- Limiting the Areas Where Deviations Can Occur
- Limiting Deviations to Specific Trip Purposes
- Capping the Number of Deviations an Individual Can Request
- Limiting Number of Deviations Per Run

# Demand Response Operations

- ◆ Monitoring for Equivalency
  - Recommended Procedures
    - Periodically Review Trip Denials
      - Calculate the Percentage of Trips Requested by Riders Who Require Accessible Vehicles That Were Denied
        - »  $\frac{\text{Denied Trips Requested by Riders Who Need Accessible Vehicles}}{\text{Total Trips Requested by Riders Who Need Accessible Vehicles}}$
      - Compare This With The Percentage of Trips Requested By Riders Who Do Not Need Accessible Vehicles That Were Denied



# Provision of Service

- ◆ Keeping Accessibility Equipment in Good Working Order
  - Lifts Should be Repaired Promptly
  - Must Take Alternative to Accommodate Individuals with Disabilities In Event of Equipment Failure
  - Requirement Extends Beyond Lifts
    - Any Equipment that Facilitates Use/Access of the Transit Service



# Provision of Service

- ◆ Keeping Accessibility Equipment in Good Working Order
  - Vehicles Must be Removed From Revenue Service Before Next Service Day
    - If No Spare Accessible Vehicle
      - Rural Areas – Up to Five Days in Service, Accommodation Must be Provided
      - Urban Areas – Up to Three Days in Service, Accommodation Must be Provided





# Provision of Service

- ◆ Accommodating Passengers Using Wheelchairs
  - Must Transport All Passengers Using Wheelchairs Within Legitimate Safety Requirements
  - Definition:
    - 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
  - Old Definition of “Common Wheelchair” Revised Several Years Ago



# Provision of Service

- ◆ Legitimate Safety Requirements
  - Combined Weight of Chair and Passenger Does Not Exceed Lift Specifications
  - Inconsistent with Legitimate Safety Requirements
- ◆ Any Transit Agency Policy Requiring Wheelchairs to be
  - Equipped With Specific Features
  - Be in a Specific State of Repair
    - Is Not Permitted



# Provision of Service

- ◆ Legitimate Safety Requirements
  - Legitimate Safety Requirements Do Not Apply to Securement
  - An Agency 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 Transit Agency



# Provision of Service

- ◆ Securement

- Agencies May Not Deny Transportation to a Wheelchair User on The Ground That the Device Cannot be Secured or Restrained Satisfactorily by the Vehicle's Securement System



# Provision of Service

- ◆ Accommodating Other Devices
  - Agencies Are Not Required to Permit Other Types of Assistive Devices to be Used In Ways That Depart From or Exceed Their Intended Uses
    - Agencies Are Not Required To Permit Riders Who Use Walkers With Built-in Seats To Ride In Securement Areas While Seated on Their Walkers
      - You Can Require These Individuals to Transfer to a Vehicle Seat



# Provision of Service

- ◆ Seatbelt and Shoulder Harness
  - A Transit Agency is Not Permitted to Mandate That Individuals Using Wheelchairs Use Seat Belts and Shoulder Harnesses, Unless the Agency Mandates the Use of These Devices by All Passengers



# Provision of Service

- ◆ Transfer to Bus Seat
  - A Transit Agency May Request, But Cannot Require, a Wheelchair User to Transfer to a Regular Seat
- ◆ Standees on Lifts
  - A Transit Agency Must Permit Individuals With Disabilities Who Do Not Use Wheelchairs, Including Standees, to Use a Vehicle's Lift or Ramp to Enter the Vehicle



# Provision of Service

- ◆ Other Passenger Assistance
  - Boarding/Disembarkment
  - Fare Payment Assistance – Yes (But Not Required to Reach Into Purses, Pockets, etc.)
  - Personnel Care Attendants
    - While Only Noted in Sections on Complementary Paratransit, All Modes Should Permit PCAs to Ride for Free
  - Luggage and Packages – Not an ADA Requirements
    - Use Sound Local Policies





# Provision of Service

## ◆ Service Animals

### ○ Difference in USDOT Regulation from USDOJ

#### ▪ Service Animals Are Animals That Are Individually Trained to Work or Perform Tasks

- Service Animals Are Not Pets
- May Ask If an Animal Is a Service Animal
- May Ask What Tasks the Animal Has Been Trained to Perform
- Cannot Require Special ID Cards or Harnesses For the Animal
- Cannot Ask About The Person's Disability
- Allergies and Fear of Animals Are Not Valid Reasons For Refusing Service
- Animal Must Be Under Control of Passenger



# Provision of Service

- ◆ Portable Oxygen
  - Must Allow Travel With a Respirator or Personal Oxygen Supply, Consistent With Applicable USDOT Rules Regarding Transport of Hazardous Materials



# Provision of Service

- ◆ Accessible Information
  - All Materials Necessary for a Customer to Use the Service (e.g., Schedules, Route Brochures, User Guides) Must be Available in Alternative Format
  - Information on How to Access Such Material Should be Clearly Printed on All Such Documents
  - No Single Format Prescribed – Use a Format the Individual with Disabilities Can Use



# Provision of Service

- ◆ Accessible Information
  - Although USDOT Rules Do Not Specifically Mention Accessibility of Websites, FTA Urges Transit Systems to Refer to DOJ guidance, “Accessibility of State and Local Government Websites to People with Disabilities”

<https://www.ada.gov/websites2.htm>



# Provision of Service

- ◆ Alternative Telecommunications
  - System Must Have Means of Providing Telecommunication Access to Persons with Speech and Hearing Disabilities
  - Providing Accessible Information Includes Offering Alternatives to Voice Telephone Communications, Such as Using (and Having Appropriate Personnel Trained to Use) the National “711” Relay Service



# Provision of Service

- ◆ Training Personnel to Proficiency
  - Training To Proficiency Means That, Once Trained, Personnel Can Consistently and Reliably Operate Accessibility Features, Provide Appropriate Assistance to Individuals With Disabilities
  - Treat Riders in a Respectful and Courteous Way



# Provision of Service

- ◆ No-Shows/Suspensions
  - Transit Agencies May Suspend Riders Who Establish a Pattern or Practice of Missing Scheduled Trips After Providing a Rider Due Process
  - Only Actions Within the Control of the Individual May Count as Part of a Pattern or Practice
  - Late Cancellations (<2 Hours) Can be Counted as No-Shows



# Provision of Service

- ◆ No-Shows/Suspensions
  - In Implementing a Suspension Policy, It is Recommended that the Frequency of Use be Taken Into Account
  - Example
    - A Pattern or Practice Might Be Established if the User Had Three or More No-Shows in a Given Month That Exceeded 10 Percent of Scheduled Trips





# Provision of Service

- ◆ No-Shows/Suspensions
  - Due Process
    - Notify User in Writing of Suspension
    - Provide Opportunity for Appeal
    - Provide Opportunity to Present Evidence, be Represented by Counsel, etc.
    - Appeal Should be Heard by a Party Other Than the Individual Who Evaluated/Granted Suspension



# Provision of Service

## ◆ No-Shows/Suspensions

### ○ Duration of Suspension

- Suspensions Should be for a “Reasonable” Period
- Example
  - One Week on First Suspension
- Subsequent Suspensions Can be Progressively Longer (14, 21, and 30 Days)
- FTA Considers Suspensions Longer Than 30 Days Excessive
- You Cannot Permanently Revoke an Individual’s Civil Right



Module 10

# **CHARTER AND SCHOOL BUS REGULATIONS**



# Reference Documents

- ◆ 49 CFR part 604
- ◆ 49 CFR part 605



# Definition

- ◆ Transportation Provided By a Recipient To The Public for Events or Functions That Occur on An Irregular Basis or For a Limited Duration and:
  - A Premium Fare Is Charged That Is Greater Than The Usual or Customary Fixed Route Fare; or
  - The Service Is Paid For In Whole Or In Part By A Third Party



# Key Characteristics

- ◆ A Third Party Pays the Transit Provider a Negotiated Price For the Group
- ◆ Any Fares Charged To Individual Members of the Group Are Collected By a Third Party
- ◆ The Service Is Not Part of the Transit Provider's Regularly Scheduled Service, or Is Offered For a Limited Period Of Time
- ◆ A Third Party Determines the Origin and Destination and Trip Schedule



# Demand Response Exclusion

- ◆ Service Provided to Individuals in Demand Response Mode is Not Charter Service Under the New Regulation



# Applicability

- ◆ Rule Applies to Recipients of FTA Financial Assistance
  - Also Applies to Subrecipients and Third Party Contractors That Utilize FTA Funded Equipment
  - Charter Certification Still Required
- ◆ If a Private Charter Operator Receives FTA Funding, Directly or Indirectly, Is Not Subject to the Rules on Its Non-FTA Funded Activities





# Exemptions

## ◆ Exemptions

- Transportation of Employees
- Non-Federal Components of Private Charter Operators
- Emergency Preparedness Planning and Operations
- Transportation for Program Purposes
- Emergency Declared By the President, a Governor, or a Mayor
- Nonurbanized Area System Transportation of Employees



# Exceptions

## ◆ Exceptions

- Government Officials for Official Governmental Business
- Qualified Human Service Organizations (QHSEO)
- Leasing FTA Funded Equipment and Drivers
- No Registered Charter Provider Responds to Notice From a Recipient
- Agreement with Registered Charter Providers
- Petitions to the Administrator



# Recordkeeping

- ◆ If Any Charter Service Was Provided in the Quarter, a Clear Statement Identifying Which Exception the System Relied Upon When It Provided the Charter Service Must be Submitted to FTA



# Key Compliance Elements

- ◆ Read and Understand the Definition of “Program Purpose”
  - Engage Human Service Agency Directors to Ensure Trip Meets a Program Purpose
- ◆ Read and Understand the Definition of Charter
- ◆ Read and Understand Exemptions and Exemptions



# Key Compliance Elements

- ◆ Understand Your Reporting Responsibilities
  - Types of Trips that Must be Reported
  - Date Elements that Must be Recorded/Reported to ODOT/FTA
- ◆ Records Maintenance



# School Bus

- ◆ FTA Recipients Prohibited from Performing Exclusive Transportation To/From School
- ◆ May Transport on Regularly Scheduled Public Transportation
- ◆ Tripper Service Expressly Permitted



Module 11

# **DRUG AND ALCOHOL TESTING PROGRAM**



# Basic Requirement

- ◆ All Recipients/Subrecipients of Section 5307 Section 5309, Section 5311, and Section 5339 That Have Employees Who Perform a Safety Sensitive Function Must Have a Drug and Alcohol Testing Program and Policy





# Safety Sensitive Function

- ◆ Safety Sensitive Function
  - Operation of a Revenue Service Vehicle, Regardless of Whether the Vehicle is in Revenue Service
  - Operation of a Non-Revenue Vehicle When Required to be Operated by the Holder of a Commercial Driver's License
  - Controlling Movement or Dispatch of a Revenue Service Vehicle (Based on Employer Assessment Of Safety-sensitive Functions)



# Safety Sensitive Function

## ◆ Safety Sensitive Function

- Employees Who Perform Any of The Following Safety-Sensitive Functions:
  - Maintaining (Including Repairs, Overhaul and Rebuilding) a Revenue Service Vehicle or Equipment Used in Revenue Service
  - Security Personnel That Carry Firearms
  - Volunteers Who Perform Safety-sensitive Functions If:
    - Required to Have CDL to Operate Vehicle
    - Receive Payment in Excess of Actual Expenses



# Safety Sensitive Function

## ◆ Exemption

- Maintenance Contractors Performing Services:
  - For 5311 Recipients
  - For 5307 / 5309 Recipients Serving Population Less Than 200,000



# D&A Policy

- ◆ Unlike Other FTA Regulations, the Requirement for a D&A Policy is Employer-Based
  - A Transit System's Subrecipients or Contractors, If The Entity Has Employees Who Perform a Safety Sensitive Function, Must Have Their Own Policy
- ◆ The D&A Policy Must Keep Up With Changing Regulatory Requirements
  - If Your Policy is pre-2018, Likely Out-of-Date



# D&A Policy

## ◆ Elements

- Designated Contact Person
- Categories of Employees Covered
- FTA Provisions vs. Employer Provisions
- Prohibited Behaviors & Substance
- Testing Circumstances & Procedures
- Requirements for Testing
- Test Refusals
- Consequences (Positive, Negative, Non-negative)
- Zero Tolerance Or Second Chance?
- Negative Dilute?

## ◆ Governing Board Approval Required



# Training

## ◆ All Covered Employees

- Sixty (60) Minutes on Effects and Consequences of Drug Use on Personal Health, Safety, and Workplace
- No Requirement for Alcohol
- Must Be Documented for Each Employee

## ◆ Resources

- National RTAP eLearning Module
- FTA's "YouTube" video
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DrugAwarenessVideo/>



# Training

## ◆ Supervisors

- Supervisors or Company Officials That Will Be Making Reasonable Suspicion Determinations
  - MINIMUM 60 Minutes on Physical, Behavioral, and Performance Indicators of Probable Drug Use
  - MINIMUM 60 Minutes on Physical, Behavioral, and Performance Indicators of Probable Alcohol Misuse
- This Represents Minimum Requirements
  - Quality Reasonable Suspicion Training Is Longer Than 2 Hours



# Prohibited Substances

- ◆ Marijuana
- ◆ Cocaine
- ◆ Opioids
  - Codeine, Morphine, Heroine, Oxycodone, Oxymorphone, Hydrocodone, Hydromorphone
- ◆ Phencyclidine (PCP)
- ◆ Amphetamines
  - Meth
  - Ecstasy
- ◆ Drug testing can be performed anytime employee is on duty





# Alcohol

- ◆ Random/Reasonable Suspicion/Follow-Up Alcohol Testing Only Permitted:
  - Just Before, During, or Just After The **Actual** Performance of Safety-Sensitive Duties
- ◆ Four (4) Hours Prior To Safety Sensitive Duties
- ◆ While On Call To Perform Safety Sensitive Duties
- ◆ Within 8 Hours Following An Accident, or Until The Test Has Been Conducted



# Testing Categories

- ◆ Pre-Employment
  - If Applicant Come from Another DOT employer, the Prospective Employer Must Request in Writing, D&A Information from Prior Employer for a 2-Year Period
- ◆ Reasonable Suspension
- ◆ Post-Accident
- ◆ Random
  - 50% Drugs
  - 10% Alcohol
    - Rate Still Applicable, Despite COVID-19
- ◆ Return-to-Duty and Follow-Up Testing



# DAMIS Reporting

- ◆ Due March 15 Every Year To FTA
  - DOT Likely Issues Earlier Deadline
- ◆ Accuracy is #1 Priority!!
  - Don't "Double Report" Employees Who Perform More Than One Safety-Sensitive Function
  - When Calculating "Total # of Employees" ... Use An Average Based On Your Random Selection Period
- ◆ This is an **EMPLOYER** Based Report
  - Never Include Contractors In Your Report.



# Top D&A Compliance Findings

- ◆ D&A Policy Revisions
- ◆ Random Testing Spread
  - Must Be Unpredictable & Across All Days/Hours
- ◆ Insufficient D&A Compliance Oversight of Vendors and Subcontractors



# Presenter

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