

AMERICANS WITH DISABILITIES ACT COMPLIANCE REPORT TO CONGRESS – FISCAL YEAR 2012

Pursuant to Senate Report 112-157
Accompanying the Transportation, Housing and Urban Development,
and Related Agencies Appropriations Bill, 2013 (S. 2322)
and to Senate Report 112-83
Accompanying the Transportation, Housing and Urban Development,
and Related Agencies Appropriations Bill, 2012 (S. 1596)
April 2013

Senate Report 112-157 accompanying the Transportation, Housing and Urban Development, and Related Agencies Appropriations Bill, 2013 (S. 2322), and Senate Report 112-83 accompanying the Transportation, Housing and Urban Development, and Related Agencies Appropriations Bill, 2012 (S. 1596), requested the Federal Motor Carrier Safety Administration (FMCSA) to submit a report that includes information on enforcement actions FMCSA has taken, including the number of denials or revocations of operating authority registration due to noncompliance with the Americans with Disabilities Act (ADA) regulations. This report fulfills those requests.

Background

In general, the U.S. Department of Transportation's (DOT) ADA regulations require accessible, timely over-the-road bus (OTRB) service for passengers with disabilities, including wheelchair users. The Over-the-Road Bus Transportation Accessibility Act of 2007 (P.L. 110-291), enacted on July 30, 2008, authorized FMCSA to deny or revoke interstate operating authority of OTRB companies found to be willfully violating the ADA regulations. The U.S. Department of Justice (DOJ), however, has exclusive civil penalty authority for violations of the ADA regulations committed by OTRB companies. The FMCSA's role, as the modal administration responsible for oversight of OTRB companies generally, is to monitor OTRB companies' ADA compliance.

Currently, the OTRB industry is made up of approximately 4,000 companies operating over 35,000 vehicles. Each company is required to comply with regulations specific to the type of operation and the gross transportation revenue generated by the operation. The types of operations are fixed-route, demand-responsive, or mixed (a combination of fixed-route and demand-responsive) service. Pursuant to Title 49 CFR 37.3, an OTRB operator's annual gross transportation revenue is used to determine whether the company is large or small and must comply with the regulations for small operators. The gross transportation revenue amount to determine if a company is a large operator is currently \$9.3 million, adjusted annually for inflation. If an OTRB company's gross transportation revenue is less than \$9.3 million, the company is a small operator. Changes in a company's revenue or operation can directly affect the regulatory requirements applicable to the company.

Since 2008, FMCSA has actively engaged with DOJ and the passenger carrier industry to increase awareness of the requirements, collect information to validate compliance, and to establish processes to address complaints and initiate enforcement actions. The FMCSA is

executing a plan to ensure that the OTRB industry is complying with the ADA regulations. Our approach is threefold: (1) education of OTRB operators, (2) interagency coordination, and (3) enforcement. Below is a description of the FMCSA's actions for each component.

Education

The FMCSA has multiple means of educating passenger carriers and passengers about the requirements for compliance with the ADA. The FMCSA currently uses its website, direct mailings, presentations, and the New Entrant Safety Audit to disseminate information.

Website Enhancements: The FMCSA's website includes ADA regulatory information for use by OTRB companies. This information includes the gross annual transportation revenue threshold, regulatory requirements applicable to OTRB companies based on revenue and scope of operations, and regulatory deadlines for compliance with OTRB regulations. This site is available at <http://www.fmcsa.dot.gov/rules-regulations/bus/company/ada-guidelines.htm>. The FMCSA estimates that this site was accessed by users 3,200 times in Fiscal Year (FY) 2011. In May 2011, FMCSA enhanced its National Consumer Complaint Database (NCCDB) to make it easier for the disabled community to file an ADA complaint and easier for the Agency to track such complaints. From May 2011 to September 2012, FMCSA recorded 22 ADA complaints. Additional enhancements to NCCDB, which are planned for implementation in FY 2103, will make further complaint filing improvements for users and improve complaint tracking. The NCCDB is available at <http://nccdb.fmcsa.dot.gov>.

Direct Mailing: In late 2008, FMCSA sent informational letters to OTRB companies with operating authority registration. In addition, FMCSA sent letters about the Over-the-Road Bus Transportation Accessibility Act to over 100 disability stakeholder organizations. Directly after the mailings there was a significant increase, more than 700 in a single month, in the number of visits to the website. The FMCSA also received many inquiries from the industry.

New Entrant Audit: All new motor carriers, including OTRB companies subject to the ADA, are required to undergo a New Entrant Safety Audit. The FMCSA implemented changes to its New Entrant Safety Audit in December 2009 for reviews of OTRB companies to include questions about compliance with the ADA regulations. During the safety audit, OTRB companies are also provided with educational information about how to comply with the ADA regulations. In the spring of 2011, FMCSA conducted ADA reviews on two bus companies that were identified during a safety audit as operating in violation of the ADA regulations. During the follow-up ADA reviews, both bus companies were in compliance with the ADA regulations. Based upon recent safety audit findings, FMCSA will schedule an additional seven OTRB companies for a review specifically focused on ADA compliance.

Presentations: The FMCSA includes ADA regulatory information in presentations to the industry. During FY 2012, FMCSA presented ADA regulatory and enforcement program information to approximately 500 industry representatives during meetings of the American Bus Association and the United Motorcoach Association, the two major associations representing OTRB companies. Additionally, similar presentations were made to smaller industry

associations such as the Virginia Motorcoach Association, the National Association of Motorcoach Operators, and the Southeastern Regional Motorcoach Operators Coalition throughout the year.

Meeting: On August 9, 2012, the Office of the Secretary (OST) and FMCSA hosted a stakeholders meeting at DOT headquarters to discuss the October 29, 2012, regulatory deadline for large operators to have 100 percent of their fixed-route fleet lift-equipped. Approximately 25 representatives from the OTRB industry, disability groups, OST, DOJ, and FMCSA attended.

Interagency Coordination

On February 23, 2009, as a coordinated effort to administer the Over-the-Road Bus Transportation Accessibility Act, DOJ and FMCSA executed a Memorandum of Understanding. The FMCSA and DOJ continue to work together to ensure ADA compliance. Primarily, FMCSA and DOJ coordinate enforcement through shared information collected from ADA reviews, reports submitted by OTRB companies, and consumer complaints. The FMCSA and DOJ also coordinate enforcement proceedings to ensure that the most appropriate penalties are assessed against OTRB companies that violate the ADA regulations. The first interagency coordination meeting with FMCSA and DOJ occurred on May 27, 2009. These meetings continue to be held twice a year.

OTRB companies submit three reports annually to FMCSA, including the Summary of Individual Accessible/Equivalent Service Requests and Responses/Service Provided, the Fixed-Route Over-the-Road Bus Company's Lift Use Summary, and the Over-the-Road Bus Purchased/Leased and Overall Fleet Data. The FMCSA processes these reports and then provides the data to DOJ. The FMCSA and DOJ also coordinate their responses to ADA complaints received by each agency. For FMCSA, the action taken is based on the severity of the complaint and may include the following: contacting the carrier to mitigate the situation; conducting an ADA review; sharing the information with FMCSA's Office of Civil Rights, if appropriate; sharing the complaint with DOJ; and sharing the information with another transportation agency such as the Federal Transit Administration (FTA). Through the end of FY 2012, FMCSA has referred 37 cases of discovered ADA noncompliance, which do not warrant the initiation of operating authority revocation, to DOJ for handling. In these cases, FMCSA provides a copy of the ADA review report, notes taken by the investigator, and any relevant documents that were copied and acquired during the investigation.

Again, FMCSA does not have authority to assess civil penalties or any other intermediate sanctions for violations of the ADA regulations. The FMCSA's sole enforcement option is revocation of operating authority, which results in a complete shutdown of the bus company. The DOJ, however, does have the authority to issue civil penalties when ADA violations are discovered. Both enforcement authorities can stand independently, but by coordinating enforcement actions with DOJ, FMCSA is able to more effectively bring OTRB companies into regulatory compliance to ensure the companies meet the needs of the disabled community.

The FTA administers a competitive grant program that makes funds available to OTRB companies to help finance the incremental capital and training costs of complying with DOT's

ADA regulations. In October 2011 and August 2012, FMCSA provided safety performance and regulatory compliance information about OTRB companies to the FTA for consideration in making grant selections. FY 2012 was the last year of FTA's OTRB accessibility grant program unless additional funding is appropriated.

Enforcement

In March 2009, FMCSA began conducting ADA reviews to ensure OTRB companies' compliance. During these reviews FMCSA evaluates an OTRB company's compliance with regulations related to the purchase and leasing of buses, providing accessible service when requested, training employees, lift maintenance, and other aspects of the ADA regulations. The reviews occur during planned ADA strike force events and during individual safety investigations. Initially, FMCSA targeted large fixed-route bus companies for ADA reviews because this industry sector transports the largest number of passengers. The FMCSA then expanded enforcement efforts to include small fixed-route companies, demand-responsive companies, and mixed-use companies.

From March 2009 to September 2012, FMCSA completed 186 ADA reviews on the various types of OTRB operations. There were five major strike force operations focusing on ADA compliance conducted by the FMCSA's Passenger Carrier Technical Advisory Group in the New York/New Jersey metropolitan area (November 2009), Dallas/Fort Worth metropolitan area (May 2010), Chicago metropolitan area (August 2010), Los Angeles metropolitan area (March 2011), and Orlando metropolitan area (April 2012). Strike force operations will continue to be an important part of the FMCSA's enforcement program.

Out of the 186 ADA reviews, only two large fixed-route bus companies, Tornado Bus Company, Inc. and Autobuses Ejecutivos, LLC, had serious violations that warranted the initiation of an operating authority revocation proceeding. Both companies were operating in violation of the requirement that 50 percent of the fixed-route bus fleet be lift-equipped by October 30, 2006. The FMCSA issued an Order to Show Cause to each company, which is the first step in revoking operating authority. The FMCSA and DOJ negotiated favorable settlements in both cases to bring the companies into regulatory compliance and provide service to disabled passengers. The bus companies entered into consent agreements and each paid a \$55,000 civil penalty to DOJ. During the 3-month settlement period, both companies complied with the 50 percent bus fleet accessibility requirement, making it unnecessary for FMCSA to revoke the companies' operating authority. The FMCSA took this settlement approach, in part, out of recognition that had FMCSA revoked the bus companies' operating authority, it would have been illegal for the companies to continue transporting passengers, thus depriving the whole community, including persons with disabilities, of the service.

When a new OTRB company applies for interstate operating authority, the company is required to certify it is fit, willing, and able to comply with the applicable ADA regulations. In addition, the company is not authorized to transport passengers in interstate commerce until the operating authority is granted. As of September 30, 2012, FMCSA had not denied any applications for interstate operating authority based solely on violation of the ADA regulations.

Next Steps

The FMCSA is developing ADA review training and developing software for all field investigators. This will allow FMCSA to broadly implement its ADA compliance program and

make the ADA review a routine component of an onsite investigation of OTRB companies. The FMCSA anticipates launching these initiatives in 2013.

As of October 29, 2012, 100 percent of the buses used by a large fixed-route OTRB operator to provide fixed-route service must be accessible, and they may no longer require passengers with a disability to provide 48-hour notice of a need for accessible service. There are approximately 42 bus companies directly affected by this regulation. In 2009, FMCSA conducted ADA reviews on most large fixed-route carriers to ensure compliance with ADA regulations. The FMCSA anticipates conducting follow-up ADA reviews in 2013 and 2014 to ensure that large OTRB operators have complied with the October 2012 fixed-route fleet requirements.

Although this report covers activities from FY 2009 to FY 2012, one development from FY 2013 should be mentioned. As permitted in the ADA regulations, OST received requests during FY 2012 from 22 OTRB operators requesting additional time to comply with the 100 percent fixed-route fleet accessibility requirement. After careful review by OST and FMCSA of each submission and the materials of record, all of the requests were denied except for a single requestor that was not required to comply due to being a small OTRB operator. The Departmental decisions were issued to the requestors on November 29, 2012.

The FMCSA will continue outreach efforts to the public and the industry by providing ADA-specific information on its website and participating in meetings with disability groups, industry associations, and Federal agencies. This includes continued participation in the Disability Law Coordinating Council (DLCC) within DOT. The DLCC consists of representatives from the Federal Highway Administration, Federal Aviation Administration, National Highway Traffic Safety Administration, Federal Railroad Administration, OST, FTA, and FMCSA.