

## Special Report: Pax Safety Feds to study whether passengers are receiving safety briefings, info

ASHBURN, Va. — Federal regulators plan to start checking to see whether motorcoach operators are providing safety briefings or information to passengers at the start of trips — in compliance with Federal Motor Carrier Safety Administration guidance.

"It's very important for the industry to take this guidance seriously and to implement a passenger safety awareness program in your company," Pete Chandler, team leader with the FMCSA commercial passenger carrier safety division, told attendees at the United Motorcoach Association Safety Management Seminar here.

"What we're doing is we're planning a study right now in which we're trying to determine to what

extent...the motor carrier industry is embracing and implementing this guidance," Chandler said.

FMCSA issued passenger safety information guidance in 2007, offering the industry ideas and options on how to provide pre-trip safety information to passengers. (See Oct. 1, 2007, *Bus & Motorcoach News* and related article below.)

Under the guidance, motorcoach operators may use almost any method to convey safety information to passengers: Video, audio, a presentation by the driver, and printed materials are all acceptable, Chandler said.

Passenger safety-briefing videos are widely available for the

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## A refresher course for operators: 'Passenger Safety Guidance 101'

WASHINGTON — Eight years ago, the motorcoach industry told the Federal Motor Carrier Safety Administration it would be a bad idea to issue formal regulations requiring safety briefings for passengers on private motorcoaches.

Instead, the industry asked the feds to issue guidelines for such safety briefings and leave it up to individual operators to decide what form and format to use to present the information to passengers.

In the fall of 2007, the industry got exactly what it asked for, and it became the responsibility of the nation's 4,000 motorcoach operators to develop their own passenger safety information that fit within the guidelines.

The task of coming up with the appropriate information wasn't seen as being terribly difficult

given the federal guidelines were broadly drawn and made allowances for the diverse nature of bus operations provided across the U.S.

The FMCSA made its guidelines, which it called "a basic plan for motorcoach companies to implement a safety-awareness program for passengers," official when it published them in the *Federal Register*.

However, the idea of requiring coach operators to conduct passenger safety briefings had been an issue long before the guidance was adopted.

Following a 1997 bus crash in Stony Creek, Va., the National Safety Transportation Board asked the FMCSA to begin requiring pretrip safety information for motorcoach passengers.

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## NHTSA develops raft of bus safety rules for new year

ASHBURN, Va. — The National Highway Traffic Safety Administration, which is developing the long-anticipated seatbelt rule for motorcoaches, also is studying a slew of other proposed rules that could significantly impact the industry, reports Matthew Daecher, president of Daecher Consulting of Camp Hill, Pa.

One rule under consideration would create motorcoach rollover structural integrity requirements.

Another would develop test procedures for a standard on stability control systems for motorcoaches and truck tractors. Such systems combat rollover and loss-of-control crashes.

Also on NHTSA's front burner is the issue of motorcoach evacuations, Daecher said. The agency is considering upgrading current motorcoach evacuation standards and may initiate a formal rulemaking proceeding.

Finally, NHTSA has said it will decide in 2012 whether to take any action on motorcoach fire safety.

The agency has completed coach fire research and now it must examine the costs and benefits before deciding whether to proceed with a new regulation, Daecher told attendees at the United Motorcoach Association Safety Management Seminar here.

A stability control rule was originally not a high priority for NHTSA but subsequent research showed the technology had promise, so the agency decided to go forward and develop a regulation, according to Daecher.

Regarding rollover structural integrity requirements for motorcoaches, Daecher said one need to look no further than the European Union's existing regulations for an

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## Special Report: ADA Small Chicago operator gets quick, costly lesson in ADA compliance

CHICAGO — After tearing open the FedEx envelope that arrived at his office in mid-November and glancing over its contents, Ralph Kotwica was dumbfounded.

What he had received was a single-page, five-sentence letter from the U.S. Justice Department, along with a five-page, 30-paragraph "settlement agreement under the Americans with Disabilities Act."

On page three of the settlement agreement, Kotwica came to item No. 20, a demand he and his one-bus company, Ralph's Coach, pay a \$10,000 fine for violating the Americans with Disabilities Act.

Welcome to the new world of motorcoach industry ADA compliance.

Three years after the U.S. Justice Department and the Federal

Motor Carrier Safety Administration became subject to the requirements of a law pushed through Congress by the American Bus Association and Greyhound Lines, and signed by President George W. Bush, the two federal agencies are teaming up to aggressively push for ADA compliance by motorcoach companies, especially small operators.

Operators in California, Texas and Illinois appear to be particularly vulnerable to the crackdown.

According to the federal government's ADA website, 14 small operators in those three states signed "letters of resolution" or "settlement agreements" with the Justice Department during a one-week period last month.

Those companies had received letters and settlement agreements

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## Understanding what is expected is key to compliance with ADA

Motorcoach operators who don't think it's necessary to comply with federal regulations for serving people with disabilities need to think again.

Not only are operators required to meet provisions of the Americans with Disability Act, but they can be severely penalized if they don't.

The Federal Motor Carrier Safety Administration appears to be stepping up enforcement of the regulations under a three-year-old measure that made ADA regulations part of its regular compliance reviews of motorcoach carriers.

In one recent period, more

than a dozen small carriers that otherwise passed their compliance reviews were cited by the U.S. Department of Justice for failing to meet ADA requirements.

Some were fined as much as \$10,000, while others settled their violations by agreeing to come under full compliance of the law within 60 days or face fines and other penalties.

FMCSA inspectors are referring violations they find during compliance reviews to Justice Department attorneys who are responsible for enforcing the ADA.

"They are being brutal right

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## Operator lesson

similar to that sent to Kotwica.

When Congress adopted the Over-the-Road Bus Transportation Accessibility Act of 2007, the United Motorcoach Association predicted it would increase record-keeping requirements; make compliance reviews more onerous and risky, and open up private operators — especially small operators — to the increased possibility of fines and enforcement action by

Justice Department lawyers working hand in glove with the FMCSA inspectors.

The UMA Legislative and Regulatory Committee reviewed the proposed law carefully and ended up opposing it because of the perceived potential for increased recordkeeping and unnecessary scrutiny of small operators.

At the time, the ABA downplayed the concern, opting to push the legislation on behalf of Greyhound and other large line-run car-

riers that were facing aggressive competition from new curbside operators that were treating passengers with disabilities like second-class citizens and ignoring requests for service by customers needing assistance with wheelchairs.

In the years immediately following passage of the legislation by Congress in the summer of 2008, the FMCSA and Justice Department focused most of their attention on compliance by curbside operators and large operators. That took a while.

Now, with the general, stepped-up safety enforcement of the entire motorcoach industry, many smaller operators are being checked for adherence to ADA requirements. And many are being found wanting.

The triggering mechanism for an ADA audit typically is a compliance review.

As part of a compliance probe, FMCSA inspectors are now required not only to check a company's records for adherence to safety regulations but also compliance with ADA mandates.

And many small operators, like Kotwica, are either ignorant of ADA requirements or have incorrectly assumed the requirements don't apply to them because they are (1) small or (2) they don't have a wheelchair lift-equipped bus.

Once an FMCSA inspector conducting a compliance review finds shortcomings in a company's ADA compliance, word is sent to the Justice Department, which will send investigators, who are most likely attorneys, to the operator's office to check records and interview company executives.

For Kotwica that meant three Justice Department officials showed on his doorstep and went through his records and met with him.

While the folks from the Justice Department were cordial with Kotwica and discussed a range of ADA-related issues, they were conducting an investigation and, it appears, like policemen everywhere, were not immune from obfuscation.

The message Kotwica took away from the meeting was that since he didn't have annual revenues of \$6 million and there was no requirement that he have a wheelchair lift-equipped bus, everything was cool. He really understood the talk about training and paperwork, but since he had no bus with a lift he didn't dwell on it. "I thought it was all over," he recalls.

He could not have been more wrong.

Within five days of the meeting, Kotwica received the FedEx envelope and letter signed by a senior trial attorney for the Justice Department's disability rights section, and the settlement agreement with a signature block containing the

names of no less than five Justice Department lawyers, including an assistant U.S. attorney general.

Not only did the letter demand he pay a \$10,000 fine for ADA violations but it contained a long list of findings and actions he must take to become compliant with the law. Here's some of the list:

- Within 60 days of the effective date of the settlement agreement, Ralph's Coach will write and adopt policies and procedures that specify the practices to be used by Ralph's Coach to "ensure that persons with disabilities receive accessible transportation on the day and at the time and place requested." Oh, by the way, the policies and procedures adopted by Ralph's Coach will have to be submitted to the Justice Department for approval.

- The policies and procedures adopted by Ralph's Coach "shall provide that the company will accommodate all requests for accessible service made with advance notice of 48 hours or more and that Ralph's Coach will attempt to accommodate any such requests on shorter notice.

- The policies and procedures "shall identify the Ralph's Coach employees (with their job titles) responsible for implementing those procedures and specify the procedures for documenting and handling accessibility-related complaints."

- Within 60 days of the date of the agreement, Ralph's Coach "shall provide the United States with a copy of its written agreement with an alternative carrier specifying the arrangement for accessible service to be provided with advance notice of 48 hours or more."

- Within 60 days of the date of the agreement, Ralph's Coach "shall draft a Service Request Form that is modeled on the provisions of 49 C.F.R. pt. 37, Subpart H, Appendix A, and distribute those forms to all employees and contractors who are responsible for handling requests for accessible transportation.

- Ralph's Coach, its employees, and its contractors shall use the Service Request Form to record all requests for accessible transportation service. Ralph's Coach "shall ensure that a copy of every Service Request Form is maintained for review by the FMCSA and counsel for the United States."

- Within 90 days of the effective date of the agreement, Ralph's Coach "shall train all employees and contractors about the requirements of the ADA and how they apply to Ralph's Coach, including the policies, practices and procedures to be adopted as the result of the agreement, and shall provide

the same training to employees and contractors within 30 days of hiring."

- Ralph's Coach shall maintain records relating to all the training conducted pursuant to the settlement, including the date and time the training occurred, the name of the individuals who attended the training, and the topics covered. "Such documents shall be furnished to counsel for the United States upon request."

- Within 60 days of the effective date of the agreement, Ralph's Coach "shall post a notice on any website it operates, at any stations and pick-up locations it controls, and in any promotional materials and brochures it provides to the public, indicating its obligation to provide accessible transportation to persons with disabilities, how to reserve accessible transportation, and that it does not discriminate on the basis of disability in the provision of its transportation services. The notices shall be reviewed in advance by the United States and posted for the duration of the agreement."

- Ralph's Coach "agrees that all training manuals or written materials dealing with policies and practices related to accessibility used, revised, or created after the effective date of the agreement shall be consistent with the provisions of the agreement."

- Ralph's Coach shall report to the United States on its progress in implementing the Agreement 90 days from the effective date of the agreement, and will notify the United States as soon as it has completed the actions described in the agreement.

Initially, Kotwica was overwhelmed by it all. But he found an attorney who not only could provide him guidance but gave him hope he could avoid the \$10,000 fine by adopting the requirements of the settlement agreement and complying with the law.

While he still doesn't think the regulations make sense, Kotwica has learned that forms are available for recording requests for accessible bus service. He has learned the deadlines when compliance paperwork must be sent to the feds. He's still working, however, on other requirements of the settlement agreement.

Operators wanting to learn more about ADA requirements can go to [www.ada.gov](http://www.ada.gov). To see the latest settlement agreements and letters of resolution signed by motorcoach companies, go to [www.ada.gov/new.htm](http://www.ada.gov/new.htm).

Operators that are members of industry trade groups can check with their associations for compliance information.

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**ADA compliance**

now with ADA enforcement,” observed Ken Presley, vice president of industry relations and chief operating officer of the United Motorcoach Association.

He said operators — both large and small — need to make sure they understand the regulations and closely follow them if they want to avoid trouble.

“If they’ve done nothing to comply with the law, then they could be giving federal inspectors the impression they don’t care about the regulations,” he noted.

Presley said operators that seem to be most prone to be in violation of the rules are those having only a few buses, and who routinely refer customers seeking transportation services for the disabled to carriers that are equipped to meet their needs.

“They seem to think that because they don’t have any accessible coaches, and they don’t provide any service for the disabled, then they aren’t subject to the ADA regulations,” he said. “But, that just isn’t right.”

According to ADA rules applicable to the industry, large and small motorcoach operators are put into different categories and both have different responsibilities under provisions of the law.

Large carriers — that provide scheduled service and have gross annual revenue exceeding \$8.7 million — are required to have all of the coaches in their fleets fully accessible to the disabled by Oct. 29, 2012.

Small carriers — those that offer scheduled service but have yearly revenue of less than \$8.7 million — must ensure that each new motorcoach they purchase is fully accessible.

Although there is no deadline for small carriers to replace their fleets with accessible coaches, they must, in the meantime, be able to provide service to the disabled. They can meet the requirement by having an agreement with another carrier that allows them to obtain an accessible bus from them on a 48-hour notice.

Small carriers that only offer demand-response service — generally charter-and-tour companies — may also get around the requirement to have accessible coaches as part of their fleets by having the same agreement with another company that has accessible coaches.

In addition, small carriers that provide mixed service of both charter-and-fixed routes also can comply with the ADA regulations by having the agreement with another carrier.

“This could be a problem for operators in small communities that don’t have another company nearby that has accessible coaches,” cautioned Presley.

The ADA regulations also contain several reporting requirements that all operators need to follow — whether they have accessible buses or not, or whether they provide accessible service or not.

These annual reports, which must be submitted to the FMCSA, must summarize all individual requests they received for accessible service, how the service was provided or if it was referred to another company, the number of passengers with disabilities who used lift-equipped buses, and details on their acquisition and leasing of accessible buses. Reporting periods run from each Oct. 1 to the following Sept. 30.

Operators also are required to maintain — for at least five years — records listing all individual re-

quests for accessible service they receive, and they must provide individual customers with a copy of a completed service request form.

Finally, those operators not having accessible buses must retain copies of agreements they maintain with the companies having lift-equipped buses.

Detailed information about the ADA regulations can be found by searching for “ADA guidelines” on the FMCSA web site at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

Presley, who has produced a detailed PowerPoint presentation on ADA compliance he has presented at state motorcoach associations around the country, offers these tips on how an operator can best pass the ADA portion of an FMCSA audit:

1. Have an ADA-accessible bus or buses, lease one or have a written agreement with another carrier to gain access to an accessible vehicle when needed. Not providing the service or referring a prospective customer to another carrier because you may not be required to have lift-equipped vehicles is not an option.

2. Maintain a service log showing that lifts have been inspected on a regular basis. This should be part of a larger ADA maintenance program that includes a list of items on the lift that are checked

regularly.

3. Have a training program in place on how to handle calls from and deal with passengers with disabilities; it should include sensitivity training. The training should be given to all employees: management, sales, shop, drivers, tour guides and others. Remember, there are more disabilities covered under the ADA than individuals in wheelchairs. For example, those who use a service animal.

4. Have an active current list of all ADA-related requests, one form for each request. Remember to mail a copy to the party requesting the service. Maintain a file for such requests for at least five years.

5. Someone in the organization should be designated as being responsible for compliance and knowledge of the ADA regulations.

6. Keep all of the above information, including the training program, in a binder that can readily be given to the FMCSA inspector.

Presley said operators should keep in mind that the goal of the FMCSA is to make certain that all passengers, including those with disabilities, are able to enjoy the same experience on motorcoach trips.

“Ignorance is no longer an excuse,” he noted.

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**Calendar**

**JANUARY 2012**

**6-10 ABA Marketplace**, Gaylord Texas Resort, Grapevine, Texas. Info: [www.buses.org](http://www.buses.org).

**8-9 Bus Industry Safety Council**, Gaylord Texas Resort, Grapevine, Texas. Info: [www.buses.org](http://www.buses.org).

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