



# INDIANA DISPATCH

*A Newsletter for Indiana's  
Transportation Professionals*



Issue 3, 2011

## DOT REVISES ADA REGULATIONS

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In the last issue of the Indiana Dispatch, 'Dear RTAP' addressed a question regarding changes in the Department of Justice's (DOJ's) ADA regulations specific to the DOJ's definitions of a service animal and common wheelchair. These changes **did not** affect the Department of Transportation's (DOT's) ADA regulations. However, in the interim, changes to the DOT's ADA regulations have been published in the Federal Register dated September 19, 2011. These changes **do** impact transit systems.

This newsletter is published by the: Indiana Rural Transit Assistance Program in conjunction with INDOT  
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The following is a summary of the DOT final rule. As always, it is each transit system's responsibility to read and be familiar with the complete ADA regulations, including these revisions. To read the full text of the regulatory changes identified in the Federal Register/Vol. 76, No.181, please visit the Federal Transit Administration's website at [http://www.fta.dot.gov/12874\\_2360.html](http://www.fta.dot.gov/12874_2360.html). For additional questions or clarifications, you may also contact the RTAP staff at (800)709-9981.

*Funding provided by the Federal Transit Administration, through the Indiana Department of Transportation*

**The term "common wheelchair" has been removed.** Transit providers must carry a wheelchair and occupant if the lift and vehicle can physically accommodate them, or unless doing so is inconsistent with legitimate safety requirements. 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. These 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. Also, they 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. It would be inconsistent with this rule to allow transportation providers to deny service to people who use wheelchairs just because particular devices may be problematic from a securement point of view. *This is consistent with the rule before this last revision.*

**EDITOR'S NOTE:** To ensure that this newsletter is relevant to your needs, we would appreciate your input. Please send us article suggestions, agency news, coordination activities, "best practices," etc.

Do you know of someone from another agency who would like a copy of this newsletter? Do you want to be removed from our mail list? Give us a call...

**The definition of "wheelchair" has been refined.** The reference to "three- or four-wheeled devices" has been changed to "three- or more wheeled devices." A wheelchair cannot be excluded now solely on the basis of having a larger number of wheels.

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INDIANA DEPARTMENT OF TRANSPORTATION  
*Driving Indiana's Economic Growth*

The revised Rule adds “direct threat” to the definitions in 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.

**Definitions of missed trips and denials (paratransit).**

When a transit system is unable to provide one leg of a multi-legged trip, and the passenger is, therefore, unable to take any of the requested trips, all of those trips must be recorded as denials. The DOT will issue additional guidance on this issue in the near future.

“**Other Powered Mobility Devices (OPMDs).**” DOT has not adopted DOJ’s regulations concerning the use of

OPMDs, which include devices such as Segways. DOT will place updated guidance on its website concerning the use of Segways in transportation vehicles and facilities.

Not addressed in DOT’s Final Rule are **reasonable modification** and **service animals**. The DOT is continuing to work toward a final rule on reasonable modification and will issue this rule as soon as it is available. There has been no change to the definition of service animals; transit systems are expected to comply with the existing definition, which remains in effect. However, DOT will consider whether, in the future, to propose changes to this definition to parallel the new DOJ definition.

Sources: Federal Register/Vol. 76, No.181, dated September 19, 2011

This article also contains excerpts from the document: “DOT Final Rule on Transportation for Individuals with Disabilities at Intercity, Commuter, and High-Speed Rail Platforms; Miscellaneous Amendments” available at [http://www.fta.dot.gov/documents/ADA\\_Final\\_Rule\\_one\\_page\\_9-28-11.pdf](http://www.fta.dot.gov/documents/ADA_Final_Rule_one_page_9-28-11.pdf).

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## REASONABLE ACCOMMODATIONS UNDER THE MEDICAL QUALIFICATION PROGRAM

*Following the implementation of Indiana’s Medical Qualification Program, several questions have arisen regarding the ADA and reasonable accommodations. Due to the complexity of this topic, RTAP is providing additional guidance. Research of this topic revealed, the U.S. Equal Employment Opportunity Commission website contained valuable guidance. The following are excerpts from this website, which may be accessed at <http://www.eeoc.gov>.*

**Disability-Related Inquiries and Medical Examinations**

The ADA prohibits employers from asking “disability-related” questions--i.e., questions that are likely to elicit whether an individual has a disability--and requiring medical examinations prior to making a job offer. During the pre-offer stage, however, interviewers may ask questions about an applicant’s ability to perform both essential and marginal job functions. Also, an employer may ask job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.

After a job offer, employers may require all selected candidates to answer disability-related questions and/or take a medical examination. While it would be prudent that these questions and/or medical examinations relate to

the essential functions of the job, the ADA does not limit employers in this manner. The statute only requires that the same questions and/or medical examination be given to all applicants entering the same job category. Based on the answers provided to the questions and the results of the examination, an employer may single out specific individuals for medically-relevant follow-up questions and/or examinations. After a job is offered to an applicant, the law allows an employer to condition the job offer on the applicant answering certain medical questions or successfully passing a medical exam, but only if all new employees in the same type of job are required to answer these questions and/or take the exam.

The following EEOC publications may also be of interest and provide additional clarification:

- 1) The ADA regulations and appendix [29 C.F.R. §1630.2(n)];
- 2) The Enforcement Guidance on Pre-employment Disability-Related Inquiries and Medical Examinations; and
- 3) The Fact Sheet on the ADA and Job Applicants.

For additional inquiries or questions, you may also contact the Indiana RTAP staff at (800)709-9981.

Source: U.S. Equal Employment Opportunity Commission website, <http://www.eeoc.gov>.

# DEAR RTAP

As a transit manager, I am having difficulty understanding why the new Indiana Medical Qualification Program is needed and how it will improve rural public transportation in Indiana. Can you help me understand?

Sincerely,  
Confused and Concerned

Dear Confused and Concerned,

While driving is often considered a basic activity of daily living for most Americans, it has become apparent that not everyone drives safely. Certain individuals should not be operating vehicles or other moving equipment because their medical conditions may impair their ability to safely operate their vehicle or equipment. Physical abilities, alertness, and decision-making abilities can all be affected by medical conditions or by the medications used in the treatment of these conditions.

Indiana's rural public transit drivers do not only drive as an activity of daily living; it is their job to operate a motor vehicle to transport people. Ensuring that employees do not place themselves or others at risk of harm due to an inability to safely perform their job duties is a joint responsibility of the employer and the employee. The Indiana Medical Qualification Program provides transit managers with tools to help ensure that only medically qualified drivers are operating Indiana's rural transit vehicles.

What does medically qualified mean? By definition for this Program, it means "the physical and mental health status [of a safety-sensitive employee] that facilitates the performance of essential job duties in an effective manner and protects the health and safety of oneself, others, and property." Perhaps put more simply, it means that safety-sensitive employees must possess the required physical and mental abilities necessary to perform their safety-sensitive job duties required for their position. The Program provides a qualified and licensed medical professional to make medical qualification determinations, thus relieving transit managers of this burden.

The American College of Occupational and Environmental Medicine (ACOEM) urges employers and employees to take the following actions to ensure the medical fitness of all individuals who operate vehicles as part of their work responsibilities.

## **Employers**

Employers must understand their responsibility in ensuring appropriate evaluation of those employees whose medical conditions may present a danger to others while operating a vehicle as part of their employment.

## **Employees**

- ◆ Employees must understand the impact their health has on their ability to safely operate vehicles at work.
- ◆ Employees must inform their treating and examining health care professional that:
  - 1) they operate a vehicle providing passenger transport, and
  - 2) are required to possess a public passenger chauffeur's license or a commercial driver's license.
- ◆ Employees must accurately inform their treating and examining health care professional of pertinent medical history, medical conditions, medications, and symptoms in a timely manner.

The National Transportation Safety Board (NTSB) has attributed several recent highway and rail accidents to medical conditions. Further, insurance companies are reminding their clients that they may be held liable for negligent entrustment if they permit an individual to operate a vehicle when they know or have reason to know that use of that vehicle by that individual may create a risk of harm to others.

The Indiana Department of Transportation has chosen to be proactive in implementing the Medical Qualification Program. This program cannot prevent a tragic accident from happening; however, it can provide a safety net by ensuring Indiana's rural transit drivers have been deemed medically qualified to perform their duties by a qualified, unbiased health care professional.



# RTAP News & Notes

A page has been included on the Indiana RTAP website for links to State and National program websites that are applicable to public and specialized transportation programs as well as local websites for Indiana transit providers. Recently, the RTAP program received a request from a system to update their website address. In light of this recent request, please visit the RTAP website at [www.indianartap.com](http://www.indianartap.com) to verify your website address. Once on the RTAP home page, click on "Links" on the left hand column. From there, click on your county to verify that the correct website address is included for your program. If the address is not correct, please submit the updated website address to [vwarner@indianartap.com](mailto:vwarner@indianartap.com) as soon as possible.

The Indiana Department of Transportation encourages all Indiana transit providers to develop a website. If your agency does not currently have a website, there

are numerous resources and low cost options available to keep the cost down. The RTAP staff will also be happy to assist you with your website development.

Please note that a new link to the National RTAP resource library has been added to the links page. This search engine will allow you access to the National RTAP database of available resources through the National RTAP Program and other State programs. This resource will be valuable in identifying training tools, best practices, and other transit-related resources.

For questions about any of the above information or assistance with developing your own local website, please contact the RTAP staff at (800)709-9981.

# INDOT News & Notes

Applications for FTA 5310 (Specialized Transit) Vehicles will be posted on the INDOT website in early November. Potential applicants will be notified by email when and where the applications are available; look for an e-mail from Brian Jones in the near future. Applications will be due March 2, 2012.

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## FTA STUDY FOCUSES ON BEFORE AND AFTER COSTS OF NEW PROGRAM

Indiana is the first state in the country to implement a Medical Qualification Program, an Indiana Department of Transportation (INDOT) program to ensure that Indiana's rural transit, safety-sensitive employees are medically qualified, or fit for duty. The Federal Transit Administration (FTA) is supportive of this important INDOT safety initiative and the potential for increasing the safety of transit employees and the travelling public. To this end, FTA has tasked RLS with conducting a study to assess the impacts of the Medical Qualification Program. The first part of the study will entail the collection of baseline information for the year prior to the implementation of the MQ program. The next step will involve the collection of annual data for the first two years of the program, beginning with CY 2012. Finally, an analysis of this "before and after" data will be conducted, and findings will be documented in a final report.

Over the next few weeks RLS will be contacting all Indiana 5311 systems and providing them with a link to complete a brief online survey to collect the baseline data. RLS will then contact selected systems to be involved in the annual study; however, all systems have the option to participate, if they so choose.



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# 15-PASSENGER VAN SAFETY STILL A CONCERN

As the winter driving season rapidly approaches, transportation providers still operating 15-passenger vans are once again reminded to take specific steps to ensure the safety of their employees and the traveling public.

According to the National Highway Traffic Safety Administration (NHTSA), tire maintenance is paramount to preventing tragedies, such as the rollover incidents that have occurred across the country with these vans. There are several rural public and specialized transit operators still utilizing these vans in regular service here in Indiana. This underscores the need for pre-trip inspections, driver awareness, and training mandatory for the safe operation of these vehicles.

According to NHTSA, pre-trip inspections must be conducted to ensure that tires are properly inflated. Tires degrade over time, and many tire manufacturers recommend replacing tires older than 10 years. It is also recommended that spare tires not be used to replace worn tires and it is equally important to use properly-sized tires on the vehicles, whenever tires are replaced. This is of particular concern for those providers that may be keeping older 15-passenger vans in service longer than usual because of tight transportation budgets.



The following are a few safety tips for providers still operating the 15-passenger vans or the modified 15-passenger vans with high tops:

- ◆ A formal preventive maintenance plan must be followed to ensure the vehicle(s) is properly maintained.
- ◆ Drivers must be fully trained and experienced in operating a 15-passenger van.
- ◆ Fifteen passenger vans are very sensitive to loading and should not be overloaded under any circumstances. Agency research shows overloading not only increases rollover risk, but makes the vehicle more unstable in many handling maneuvers.
- ◆ Properly-sized tires must be used.
- ◆ Tires should be checked during pre-trip inspections for proper inflation and to ensure there are no signs of wear. Correct tire size and inflation pressure information can be found in the owner's manual.
- ◆ Occupant restraints should be utilized for every trip.

For additional information, visit the National Highway Traffic Safety Administration website at <http://www.nhtsa.gov>, or contact the Indiana RTAP staff at (800)709-9981.

Resources: National Highway Traffic Safety Administration <http://www.nhtsa.gov> and [www.Safercar.gov](http://www.Safercar.gov).

## FTA STUDY FOCUSES ON BEFORE AND AFTER COSTS OF NEW PROGRAM *continued from page 4*

FTA and RLS recognize and appreciate the value of your time and your busy schedules, therefore, every effort will be made to make the data collection effort as easy as possible, requesting only the essential information needed for the study.

INDOT is very interested in this study and the comprehensive cost benefit analysis that will result, documenting the financial impacts of both the start-up and maintenance costs for the Medical Qualification Program. Information from this study will be used to guide the MQ Program in the future.

Continued updates of this Study will be published regularly in the upcoming issues of the Indiana Dispatch. For questions or to request additional information about this project, please contact Julie Schafer, RLS & Associates, Inc., at (937)299-5007.

## CREATING A NEW TRANSIT REALITY

*(Editor's note: This article was submitted for publication by INCOST. The views and opinions presented in this article are those of the author and do not necessarily represent the Indiana Department of Transportation or the Indiana RTAP Office.)*

### **What can you do to shape the future of transit in Indiana?**

Most agree that our current state and regional bus, rail, and paratransit options fall short of meeting current needs, not to mention latent demand. We rarely attract "choice" riders, those most sensitive to timing and routes. We haven't really accounted for transit in our long range planning processes, nor have we committed to completing much of the groundwork which will allow us to leverage federal funding. How do we create a new "transit reality" for Hoosiers?

One way is to join forces with ICAT – have you heard of it yet? ICAT – the Indiana Citizens' Alliance for Transit – educates on the benefits of transit and advocates for the immediate development and ongoing support of comprehensive transit options in communities across Indiana. It is an initiative that grew out of discussion and action by a number of Health by Design partners who recognized the need to build a grassroots network to support more transit options and better transit funding. The 2011 legislative session promises to be crucial in addressing the long term funding needs of transit agencies around the state.

Given our chronic under-investment in transit (at both the state and local level) and the continued use of the "transit doesn't pay for itself" argument (implying that roads somehow do), the time is NOW to transform the discussion about transit in Indiana. The benefits that will accrue to our communities and our residents' quality of life are far-reaching and well-documented. As a safe, affordable, and convenient transportation choice, transit leads to jobs and workforce mobility; access to retail and services for those who can't or choose not to drive; reduced energy consumption; and improved air quality. Transit is a wise fiscal investment in our collective prosperity.

Please help us share the benefits of transit, build our base of supporters, and mobilize advocates. **We need your help spreading the word and encouraging others in your personal and professional networks to join and get involved!**

- ◆ Visit the ICAT website ([www.indianacat.org](http://www.indianacat.org)) and "Join" to show your support
- ◆ "Like" us on Facebook and invite others to "like" us, too- [www.facebook.com/icat4transit](http://www.facebook.com/icat4transit)
- ◆ Follow us on Twitter- [www.twitter.com/ICATransit](http://www.twitter.com/ICATransit)
- ◆ Volunteer to work with ICAT at an event
- ◆ Tell others about ICAT and put up information in your neighborhood or community (at coffee shops, grocery stores, libraries, etc.)
- ◆ Join the ICAT leadership team
- ◆ Contact your elected officials to ask for more and better transit



Working together, across disciplines and across sectors, we must embrace and advance transit as a key component of a balanced transportation system that will improve quality of life for all Hoosiers.

Kim Irwin, MPH  
Health by Design  
Executive Director, Alliance for Health Promotion

# Safety in Transit

*(Editor's Note: This is the first article in a series of articles on transit safety.)*

According to the Merriam Webster dictionary, the definition of *SAFETY* is “the condition of being safe from undergoing or causing hurt, injury, or loss.” While numerous regulations exist within the transit industry that serve to address safety, the ultimate responsibility for safety rests with the organization providing services. Just because a transit provider has not recorded any accidents, accidents with injury, or incidents does not mean that the system is “safe.”

There are numerous transit providers that have been in operation for years without incident, but compliance reviews have identified that safety was seriously lacking within policies, procedures, and training programs. In addition, the mindset of “that hasn't happened here” combined with “that won't happen here” is a recipe for disaster. Too often transit providers have to learn the importance of safety the hard way and the impact often results in an uncontrollable chain reaction. A single accident could result in a law suit, The financial and public image ramifications of the lawsuit may be an obstacle that the transit system can't overcome. There are a number of elements involved in this chain reaction, but prevention is the key and should be the focus.



Transportation providers should place the safety of their employees and the traveling public as their first priority. Having a “safety mind set” is the first step to implementing and operating a safe service. System policies and procedures should be written to meet the highest industry standards for conducting business. Employees for the system should not only receive a copy of all policies and procedures but they must also be adequately trained on these policies and procedures to ensure they understand. Training programs should emphasize the importance of safety and should include periodic updates or refreshers on system policies and procedures.

Examples of policies and procedures that all systems should have in place include, but are not limited to:

- ◆ Bloodborne pathogens policy
- ◆ Emergency evacuation procedures
- ◆ Pre-trip inspection policy/procedure
- ◆ Accident/Incident policy/procedure
- ◆ Policy/procedure for lift operations and securement of passengers utilizing mobility aids
- ◆ Policy/procedure for providing passenger assistance (including service design, i.e. curb-to-curb, door-to-door or door through door)
- ◆ Cell phone use policy

**SAFETY: the condition of being safe from undergoing or causing hurt, injury, or loss**

Again, these are just a few examples of the policies and procedures that should be in place, not an all inclusive list.

For sample policies or assistance with the development of a specific policy, contact the RTAP staff at (800)709-9981.

*(Future articles will address the need for comprehensive job descriptions for safety-sensitive employees and vehicle maintenance.)*

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Who else in your agency could benefit from the Indiana Dispatch?

Route to: \_\_\_\_\_

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For additional resources please visit: [www.rlsandassoc.com](http://www.rlsandassoc.com)

## CALENDAR

### November:

11/5/2011 Frankfort: Pre-Trip/DD  
11/12/2011 Bluffton: PAT (closed)  
11/24/2011 Thanksgiving



### December:

12/2/2011 INCOST Annual Meeting & Elections  
Boone County (Lunch Provided)  
Contact Becky Guthrie with nominations

12/25/2011 Christmas

