



POLICY TO IMPLEMENT ADA REASONABLE MODIFICATION (Draft, Updated 7/6/2015)

This document is a resource for MV Transportation Divisions and Client Agencies to assist in implementing recent regulatory amendments from the U.S. Department of Transportation, set forth at:

<http://www.gpo.gov/fdsys/pkg/FR-2015-03-13/pdf/2015-05646.pdf>

Appendix E of the amended regulations gives 27 examples of the kinds of consideration that should be given when various types of modification are requested. DOT will update these Examples as additional information becomes available. The “NOTEs” added to the Appendix provide some additional thought process that may assist in making determinations of “reasonableness” and/or “modification.”

Background

On March 13, 2015, the U.S. Department of Transportation (DOT) updated its regulations to implement the Americans with Disabilities Act (ADA). Oversight, enforcement, and technical assistance are provided through the Federal Transit Administration (FTA).

No later than July 13, 2015, every transit agency must have in place a program to implement the new DOT regulations relating to “Reasonable Modification” of policies, practices, and/or procedures that may be needed to ensure that passengers with disabilities can effectively have access to the transit programs, benefits, and service(s) that are provided.

What's this all about? Why is DOT doing this?

“Reasonable Modification” is often described as “a basic tenet of disability law” and has been included for many years in ADA regulations relating to employment and other public services, or section 504 requirements. This amendment is intended to rectify a previous “flaw” or “gap” that courts have identified in the DOT regulations that have been in effect for more than 20 years.

Reasonable modification does not require doing additional or expanded things that are not required by the regulations already. It does not require exceeding the baseline service criteria such as having ADA paratransit comparable to fixed route service hours or service area. It is a modification within the existing rules. See Appendix E for examples.

Is there a difference between Reasonable Modification and Reasonable Accommodation?

In general, DOT uses the two terms pretty interchangeably. One way to think about the concept is that transit agencies, and providers such as MV, need to “modify” policies, practices or procedures in order to “accommodate” the difficulties that



individual passengers may have in using transit or paratransit due to their disability or disabilities.

How much difference will this make?

FTA staff have suggested that transit agencies look at Reasonable Modification from the perspectives of:

- * What was the transit agency doing before?
- * How was the agency handling such issues previously?
- * Think of it as Customer Service

FTA staff also suggests consideration of standard dictionary definitions:
Reasonable = “fair and sensible; not extreme or excessive; possessing sound judgment”

Modification = “the act or process of changing parts of something”

Further, FTA staff have indicated that they do not expect that any changes that local transit agencies implement under this rule should result in any kind of onerous or significant changes to existing services that are in compliance with previous ADA requirements. Additional costs, if any, are expected to be minimal.

As noted below, if the modification requested will result in “a fundamental alteration” to the transit or paratransit service, it may be denied. This generally applies if the request will have a detrimental effect on, or infringe on the rights of, other passengers.

How can someone request a Reasonable Modification in order to use fixed-route or paratransit?

Subject to the conditions below under which a request can be denied, an individual with disability(ies) who believes that they need modification in order to effectively use the system should generally request the modification in advance so as to not create unexpected circumstances or issues for other passengers, some of whom may well be other persons with disabilities or who are entitled to civil rights protections. Advance requests also allow the transit agency to give more careful thought in crafting a solution that provides “the most integrated setting appropriate” for the individual(s) with disabilities.

Every transit agency should set up a timeline for how it will “process” requests. There is no deadline that is specified in the regulations, but as a starting point, it is suggested that agencies use 10 working days (2 calendar weeks) to give time for careful analysis.

For paratransit services, individuals who are seeking an eligibility determination should be given the opportunity to include their request as part of their initial eligibility application and determination. This allows full disclosure of what the individual thinks they need, in the context of identifying the extent to which they can, or cannot, use the fixed-route transit service. If “prequalification” for a Reasonable Modification is



determined to be necessary, it should be included in their Rider Profile or other general information which goes into their scheduling process for trips.

If the local transit agency process is based on a “paper” application rather than an in-person assessment, the application form should be revised to include the possibility for a Reasonable Modification request.

If a passenger who already uses the paratransit services identifies that they think that they need some kind of modification, such a request should usually be placed in advance so that smooth arrangements can be made.

The most common or likely instances identified in Appendix E for fixed-route modifications are obstructed bus stops or a need for some assistance in paying fares. The transit agency should establish a rule as to whether, or to what extent, the driver has independent discretion to make a determination on their own to allow a Modification of the normal rules, or whether authorization from Dispatch is needed first. In either case, some method of documenting the situation should be made in order to have consistent outcomes. If a bus stop is obstructed, prompt notification to the local city or other jurisdiction should be made to remove the barrier(s) as soon as possible.

When a passenger identifies that they believe that they need some kind of Reasonable Modification on an immediate basis, without advance notice, such a request should generally be granted as a one-time situation, unless it violates the conditions below for denying a request. The request, and the conditions under which it is addressed, should be documented internally as input into the analysis for addressing any future request(s), and the “one-time” condition should be carefully explained to the passenger. Front-line personnel should be careful to avoid creating situations that cannot, or should not, be followed through by their colleagues, even with the best of intentions.

How should a request for modification be made?

It is preferred that the requests be made in advance, and in writing so that the requestor can clearly identify what they believe is needed. However, written requests are not required, and requests can be made verbally, by telephone, email, through the state Relay System, or any other communications methods. The term “Reasonable Modification” does not need to be used as part of a request. If language translation is needed, it must be provided by the transit agency or by MV as the contractor.

If someone has been using the system all along, are changes needed?

Very possibly not. If, without the requested modification, the individual with a disability is able to fully use the services, programs or activities for their intended purposes, then no modification is “needed.”

If, however, an individual’s situation or condition changes, they may be entitled to some modification. The transit agency should work with such passengers to identify what the new needs are, and how they can be served.

When and how can a request for Reasonable Modification be denied?



There are four classes of situations in which a request may legitimately be denied:

- 1) Where granting the request would fundamentally alter the entity's services, programs, or activities.
- 2) Where granting the request would create a direct threat to the health or safety of others. This includes the transit agency's and/or contractor personnel.
- 3) Where without the requested modification, the individual with a disability is able to fully use the entity's services, programs, or activities for their intended purpose.
- 4) Where granting the request would cause an undue financial and administrative burden. This situation applies only to recipients of Federal financial assistance.

What if the transit agency thinks it would work better to do something else other than what the requestor wants? Can alternatives be suggested?

If a request is denied for reasons other than the lack of "need" by the requestor, the transit agency must take, "to the maximum extent possible," any other actions that would ensure that the requestor receives the services or benefits of the transit system, without resulting in a fundamental alteration or direct threat.

What if someone else wants "special treatment" also?

Reasonable Modification is available only to individuals with a disability or disabilities, in order to ensure that they can receive the benefits or services of the transit program. Reasonable Modification is not considered to be "special treatment."

What if the requestor complains?

Every transit agency should already have in place a complaint process to deal with a passenger who expresses dissatisfaction with service that they have, or have not, been provided. At a minimum, revised Section 27.13 (for recipients of federal funding) and new Section 37.17 (general) require a process that is prompt, equitable, and accessible in resolving complaints. It is likely that the provisions of Section 37.125(g) for dealing with paratransit appeals can be a useful template if a new process is desired.

What if a passenger requests something that is unsafe?

A request for Reasonable Modification can be denied if it would result in a direct threat to the health or safety of other persons, including other passengers or the transit system staff, including drivers. A request that might be unsafe only for the requesting passenger should probably be granted, although the staff can caution about the safety concerns.

The DOT regulations define "Direct Threat" to specifically mean a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, procedures, or by the provision of auxiliary aids or services.



What if a request affects other passengers?

Due to the transit system's obligations to all of its passengers, a request that will adversely affect others can be determined to be a fundamental alteration or direct threat, and therefore denied. However such a determination must be based on case-by-case facts, and not be merely speculative. If a driver or other staff is concerned that a request "might" affect others, the request must be analyzed in light of known facts, not assumptions.

How should a transit agency handle requests from visitors to the local area, or if a local passenger will be visiting another transit system?

When a transit agency is contacted to "register" a paratransit-eligible individual who will be visiting from another agency, information regarding any current Reasonable Modification(s) that have been granted to the individual should be requested and entered into the visitor's data. If it is determined that the Modification from elsewhere will meet criteria resulting in a denial in the locale being visited, every reasonable effort should be made to promptly notify both the visitor and their "home" agency.

Similarly, when a transit agency is requested to provide paratransit eligibility information regarding an individual who will be visiting to another locale, any relevant Reasonable Modification information should be transmitted as part of the qualifying data.

Recognizing that fixed-route passengers do not usually have, or request, documentation for Reasonable Modification

What is "Origin-to-Destination" service?

DOT has revised the definitions section of the ADA regulations based on its "Guidance" from 2005:

Origin-to-destination service means providing service from a passenger's origin to the passenger's destination. A provider may provide ADA complementary paratransit in a curb-to-curb or door-to-door mode. When an ADA paratransit operator chooses curb-to-curb as its primary means of providing service, it must provide assistance to those passengers who need assistance beyond the curb in order to use the service unless such assistance would result in a fundamental alteration or direct threat.

What kind of recordkeeping is required for Reasonable Modifications?

FTA staff has indicated that the new provisions are not intended to be onerous, and there are no specific recordkeeping or documentation requirements. However, local systems should keep track of what kinds of requests are received, and how they are decided, if nothing else other than to ensure that requests are treated in a consistent and nondiscriminatory manner. If any employee has any questions regarding needed documentation, the employee's Supervisor should be contacted.

FTA will be updating their Triennial Review and other oversight procedures and materials, and it is likely that Reasonable Modification is a topic that will receive careful

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scrutiny in the next few years. They may also contact a transit agency in the event of compliance reviews and/or complaint investigations.

What kind of staffing will be needed for the new requirements?

Every transit agency must have at least one “designated responsible employee” to coordinate modification issues, and whom interested people can contact to make a request. Information about how to contact this person should include:

Name, address, telephone number, and email address

Although the regulations do not really say so, it appears that a “generic” designation, by function rather than individual name, will satisfy this requirement. Examples might include job titles such as “Reasonable Modification Coordinator,” “Accessibility Manager,” “Disability Services Administrator,” etc. so long as someone is actually performing the responsibilities. In many cases, no changes to existing personnel will be required.

SUMMARY

In general, the major new responsibilities of transit agencies and of MV Transportation as their contractor are expected to have minimal changes to existing services and staffing responsibilities. Passengers who believe they need adjustments to the existing services should communicate their information so that staff can identify how to best meet such needs without creating a fundamental alteration, a direct threat to others, or an undue burden. In many instances, good customer service, and consideration for other passengers and transit/paratransit colleagues, will enable a smooth transition into the new requirements.

When in doubt -- call Dispatch.