



Kansas RTAP Fact Sheet

A Service of The University of Kansas Transportation Center for Rural Transit Providers

How to Respond to Requests for Reasonable Modification to Your Policies? Use Common Sense

By Anne Lowder

The American with Disability Act's Reasonable Modification Rule, a revision to 49 CFR 27 and 37, became effective July 13, 2015. Now is a good time to take a pause and review your policies, practices and procedures to ensure that your transit programs, benefits and services do not discriminate against persons with disabilities under this new rule. This article will provide examples to clarify what is reasonable modification (and what is not). In most cases, you may only need to tweak some of your policies to allow for reasonable exceptions to provide better accommodation.

The purpose behind the new Reasonable Modification Rule

According to the Federal Register authored by U.S. DOT under Section I, Purpose of the Regulatory Action, courts had identified unintended gaps in policies, practices and procedures under the Americans with Disability Act (ADA) that were limiting program accessibility. Although reasonable modification has been part of the ADA for a long time, the July 2015 ruling helps agencies understand that there are still circumstances that limit people with disabilities from using public transportation. Reasonable modification enables a transit agency to make modifications to its policies to ensure that people with disabilities have access to its transportation services. The Reasonable Modification Final Rule also requires agencies have a designated individual as



a Reasonable Modification Coordinator. The Reasonable Modification Rule can be found in the Department of Transportation Document Citation 80 FR 13253, page 13253-13263, at <https://www.federalregister.gov/a/2015-05646>.

Applying the Rule

The Reasonable Modification Rule applies to fixed-route, demand-response and complementary paratransit. ADA 49 CFR 38.129(a) *Origin-to-Destination Service Guidelines* (2005) can help your transit agency write policy and develop a process for educating your operators and customers. Reasonable modification comes into play when a person with a disability has a request for modification so that they can fully use the services you provide.

What is considered "unreasonable?" If the customer's request for reasonable modification would fundamentally alter the nature of the program, service, or

activity, you would not be required to do make the modification. The question to ask yourself is: "What is our agency's major activity?" The answer is basic public transportation. Reasonable modification does not require anything extravagant, like buying a new vehicle to accommodate someone's needs, but to make adjustments to the services you already provide, when needed. The Reasonable Modification Rule requires transit agencies to document any reason the agency uses to deny a request for reasonable modification. See sidebar at left for the three reasons that may be used to deny a request.

Examples of reasonable modification

Helping with fare. A customer with a visual impairment needs help putting the fare in the fare box. Your agency has a policy that operators will not handle the fare. A reasonable modification to your policy is that your operator will assist this customer.

Allowing food and drink on a vehicle. Your agency is transporting a person who is diabetic. You have a "no food or drink" policy posted on your vehicles. A reasonable modification to that policy is to allow the person with diabetes to eat or drink as needed to address his or her physical needs.

Helping passengers through snow and ice. A person in a mobility device needs help to get to the vehicle due to snow and ice at the pickup location. Your policy is that bus operators do not

American Public Transportation Association's Summary of US DOT's Reasonable Modification Final Rule

Effective Date: July 13, 2015

- Reasonable Modification applies to fixed route and paratransit.
- Reasonable Modification does not require universal door to door transportation. Systems can remain curb to curb by policy as long as they consider and grant (as deemed appropriate) individual requests for door to door service.
- In fixed route, reasonable modifications do not require route deviations, but could include special passenger notifications or the driver positioning the fixed route vehicle to avoid an obstacle in order to obtain accessibility.
- Reasonable Modification does not require the assignment of a particular type or model of vehicle to service as long as the vehicle is ADA compliant.
- Requires development of process (plan) and complaint process prior to implementation date.
- Requires designation of a Reasonable Modification Coordinator.
- Encourages determinations of reasonable modifications during eligibility process.
- Presumes most reasonable modification requests will be made in advance at eligibility or through reservations process.
- Does not require individuals to make reasonable modification requests in writing, in advance of use or use the term "reasonable modification."
- Does require transit agencies to document any reason to deny modification request.
- Requires that real time reasonable modification requests be evaluated and accommodated if deemed appropriate by vehicle operators. Transit agencies can require the operator to contact a supervisor prior to granting or denying a request as long as the operator has two way communication.
- The rule only allows denial of a reasonable modification request for the following three reasons:
 - Modification would be a fundamental alteration of the service provided;
 - Granting the modification would expose the requestor or the operator or other riders to a "Direct Threat;"
 - The modification is not necessary for the individual to actually use the service.
- If a modification is denied, the operator has a responsibility to provide an alternative "work around," if feasible to ensure accessibility.
- Requires public notification of the plan and the contact information for the Reasonable Modification Coordinator.
 - Phone number, email, physical address;
 - Such information must be available in printed materials and on website;
 - Materials should describe process for requesting reasonable modifications and process for filing a complaint;
 - Requires prompt response to requests or complaints.
- USDOT has provided Appendix E to provide illustrative examples of both appropriate and unacceptable "reasonable modifications."

Source: APTA Summary of USDOT Reasonable Modification Final Rule. 2015. <https://www.apta.com/gap/fedreg/Documents/Summary%20of%20USDOT%20Reasonable%20Modification%20Final%20Rule.pdf>. Accessed November 12, 2015.

leave their vehicles to assist passengers. A deviation from your policy to allow helping the person in the mobility device maneuver through the snow and ice to board would be a reasonable modification.

Adjusting stops near construction projects. When scheduling a trip, a passenger with a mobility device may request that the bus operator slightly adjust the designated boarding location to allow boarding in an accessible location due to construction. Is this a reasonable modification? The answer is yes.

Helping passengers carry packages. Let's say your agency has a policy that limits the number of bags on the bus to five bags. Operators are not required to help passengers carry their packages, but a person with five bags but is having trouble making it up the ramp. A reasonable modification would be for the operator to provide assistance to board, helping to get the packages on the vehicle.

Example of a not-so-reasonable request for modification

You have a passenger with chronic pain, and riding your paratransit buses aggravates the pain. She requests, under reasonable modification, that you provide a luxury vehicle with a much more comfortable and smooth ride. Do you need to provide this service? No. Your agency only has the paratransit vehicles in service. She is not asking for a common-sense, minor modification to policy.

Policy and process requirements for reasonable modification

A sample policy statement to communicate your agency's position on providing reasonable modification was provided at the 2015 National RTAP conference by Donna Smith, Easter Seals Project Action Director of Training:

"We provide reasonable modification of policy and practice upon request to ensure that our transportation services are accessible to people with disabilities."

Along with a policy, it is important for your agency to have a process in place for employees and customers to request and handle modifications. The Reasonable

Modification Rule requires that 1) the process be written and made available to the public, 2) the modification request process be accessible (for instance if it is on your website only in .pdf format, it is not accessible to individuals using readers), and 3) the process provide for situations when making an advance request is not feasible. In the latter case, operators need to be allowed to make a determination about what is reasonable, at the time.

Your policy might say that a request for reasonable modification must be made in advance via email, phone, website or in writing. If so, it's a good idea to state your agency will contact the requestor for further information, because some people who request modifications are not clear enough in their phone messages or emails and need to be contacted for further clarification. In the process of obtaining clarification, avoid asking directly about a person's disability, but do ask about the functional ability to take the trip without modification, said Smith.

Your agency policy should state that you will respond to a request in a certain number of days. The federal regulation does not specify a time frame for that, so Smith suggested using other time frames found in federal transit regulations (such as 21 days for paratransit approvals) as a guide to determine your agency's response to a reasonable modification request. The final step in your policy is to say that a written decision will be sent by your agency to the requestor.

Judgement calls

What about your operators making decisions en route? Example: a person with a visual impairment asks for a special stop to be called out. Should your

driver do it? The answer is yes, call out the stop.

Will you have inconsistency among operators? Sure—there will always be discrepancies when operators are making decisions on the fly. Ongoing dialogue with your operators will help determine best practices for different types of situations.

Training is key

Operator training is critical. Operators should be trained be able to answer questions such as: 1) Did you get any reasonable modification requests today? 2) What was requested and how did you respond? You can use this information in assessing whether your operators are tweaking your policies appropriately or doing more than you anticipated. Operators should be trained about where to go for help if they are not sure if a request for modification is "reasonable." They should start with your agency's Reasonable Modification Coordinator; if further clarification is needed, Kevin Osborn, Region 7 civil rights officer, can assist; phone (720) 964-3300.

In sum

ADA's Reasonable Modification Rule helps persons with disabilities have full access to transportation from origin to destination. Providing reasonable modification is usually a



National RTAP photo gallery

An example of reasonable modification would be helping a customer who needs assistance walk to the vehicle over uneven ground.

matter of tweaking polices, practices and procedures, not buying new equipment or fundamentally changing your services. Reasonable modification is mostly just common sense!

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Sources

- Smith, Donna. Easter Seals Project Action Consulting: Reasonable Modification: Common Sense and the Will to Help. National RTAP Conference, Denver, CO, 2015.
- American Public Transportation Association Summary of USDOT Reasonable Modification Final Rule. 2015. <https://www.apta.com/gap/fedreg/Documents/Summary%20of%20USDOT%20Reasonable%20Modification%20Final%20Rule.pdf> Accessed November 12, 2015.
- Federal Register: Transportation for Individuals with Disabilities; Reasonable Modification of Policies and Practices. March 13, 2015. <https://federalregister.gov/a/2015-05646> Accessed November 12, 2015.