



Getting on Board: Reasonable Modification of Policy and Public Transportation



AIRS 2018

advocacy | action | answers on aging

Introductions

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MAJOR OBJECTIVES:

- Person-centered technical assistance and information & referral
- Training: webinars, online courses/forums
- Communication and outreach
- Coordination and partnership strategy, including stakeholder engagement
- Investment in community solutions



Technical Assistance and Information & Referral

Email us at contact@nadtc.org or call us at 866.983.3222.

Monday-Friday, 9 a.m. to 5 p.m. Eastern time.



www.eldercare.acl.gov

The toll-free phone line offers all callers four options:

- 1** Press 1 for older adults, people with disabilities, and caregivers: Speak to an Eldercare Locator Transportation Specialist to connect to local transportation options and resources.
- 2** Press 2 for professionals seeking information on senior transportation.
- 3** Press 3 for professionals seeking information on the ADA.
- 4** Press 4 for all other calls: Speak to an NADTC Technical Assistance Specialist who will help direct your call to the most appropriate place.



Dallas Area Rapid Transit - DART


Serves 13 cities and 7 counties in 700 Sq. mile area

- Light rail, Trinity Railway Express
- Bus, paratransit
- Ride share services



In FY 2017:

- Bus Ridership (includes Charter): 32.1 million passenger trips
- Light Rail Ridership: 30.1 million passenger trips



Getting on Board: Reasonable Modification of Policy and Public Transportation

Alliance of Information and
Referral Systems (AIRS)
2018 Conference



Department of Transportation(DOT) and Department of Justice (DOJ)

- Department of Transportation
- 28 CFR Part 35
 - Title II, Subtitle B of the ADA
 - Implement the transportation provisions of Title II and Title III of the ADA
 - 49 CFR Parts 27, 37, and 38
 - Vehicles
 - Facilities
 - Complementary Paratransit Services
 - Provisions of Service
- Department of Justice
- 28 CFR Part 35
 - Title II, Subtitle A of the ADA
 - Prohibits discrimination on basis of disability in all services, programs and activities provided to the public by State and local governments, except transportation services
 - Transportation services, programs, and activities of public entities covered by subtitle B of title II are subject to DOT ADA regulations.

Department of Transportation(DOT) and Department of Justice (DOJ)

- Department of Transportation
- Reasonable Modification
 - Nondiscrimination
 - Private entities engaged in business of transporting people and whose operations affect commerce
 - Comply with DOJ's requirements concerning reasonable modifications
- Department of Justice
- Reasonable Modification
 - General prohibitions against discrimination
 - Public entity make reasonable modifications to policies, practices, or procedures when necessary to avoid discrimination on basis of disability
 - Intent of requirement is specific to public accommodations covered by title III of the ADA

Anatomy of a Regulation

- DOT Notice of Proposed Rulemaking (NPRM)
 - Proposed reasonable modification amendments to: Part 37-Transportation Services for Individuals with Disabilities (ADA):
 - New paragraphs-general nondiscrimination section
 - Language requiring public entities to make reasonable modifications in policies, practices or procedures
 - Language requiring priority be given to methods that offer services programs, and activities in most integrated setting that is reasonably achievable to meet nondiscrimination and accessibility requirements

Anatomy of a Regulation

- DOT Final Rule revising the ADA
 - Published date: March 13, 2015
 - Effective date: July 13, 2015
 - Substantive amendments incorporating reasonable modification requirements:
 - Section 37.5 Nondiscrimination
 - (i) Public and private entity distinctions
 - (1) Private entity-private transport
 - primarily engaged in business of transporting people and whose operations affect commerce
 - Nondiscrimination on basis of disability in provision of transportation services
 - Comply with requirements of DOJ rules concerning reasonable modifications

Anatomy of a Regulation

- Section 37.5 Nondiscrimination
 - o (i) Public and private entity distinctions
 - (2) Private entity-public transport
 - Make reasonable modifications in policies, practices, or procedures when modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless it is demonstrated that making modifications would fundamentally alter the nature of goods, services, facilities, privileges, advantages, or accommodations

Anatomy of a Regulation

- Section 37.5 Nondiscrimination
 - o (i) Public and private entity distinctions
 - (3) Public entity-public transport
 - Shall make reasonable modifications in policies, practices, or procedures when modifications are necessary to avoid discrimination on the basis of disability or to provide program access to services
 - (4) Choice among alternatives to meet nondiscrimination and accessibility requirements with respect to new, altered, or existing facilities, or designated or specified transportation services, public and private entities shall give priority to methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate to the needs of individuals with disabilities

Anatomy of a Regulation

- DOT Final Rule revising the ADA
 - Section 37.17 Designation of responsible employee and adoption of complaint procedures
 - Designation of at least one person to comply with section requirement
 - Adoption of complaint procedures
 - Process for filing complaint
 - Designated person contact information
 - Procedures accessible to individuals with disabilities
 - Prompt communication of response to complaint with appropriate documentation

Anatomy of a Regulation

- DOT Final Rule revising the ADA
 - Section 37.169 Process to be used by public entities providing designated public transportation service in considering requests for reasonable modification
 - In meeting reasonable modification, a public entity providing designated public transportation
 - Shall respond to requests for reasonable modification to policies and practices consistent with section 37.169 of regulations
 - Make information about how to contact the Agency to make requests for reasonable modifications readily available to the public through the same means used to inform the public about its policies and practices
 - Begin reasonable modification process no later than July 13, 2015

Anatomy of a Regulation

- DOT Final Rule revising the ADA
 - Section 37.169 Process to be used by public entities providing designated public transportation service in considering requests for reasonable modification
 - Process must provide means, accessible to and usable by individuals with disabilities, to request modification in policies and practices applicable to entity's transportation services
 - Individuals requesting modifications must describe what is needed to use the service
 - Using the term “reasonable modification” is not required when making a request
 - Whenever feasible, requests for modifications must be made and determined in advance, before modified service is expected to be provided (i.e., during paratransit eligibility process, customer service inquiries, or complaint process)

Anatomy of a Regulation

- DOT Final Rule revising the ADA
 - Section 37.169 Process to be used by public entities providing designated public transportation service in considering requests for reasonable modification
 - Operator personnel are required to make a determination of whether a modification to service can be provided at time of request when not practical in advance, due to conditions or barriers at destinations that an individual with a disability is unaware of until arrival. Consultation with management is allowed prior to making a determination to grant or deny a request

Anatomy of a Regulation

- DOT Final Rule revising the ADA
 - Section 37.169 Process to be used by public entities providing designated public transportation service in considering requests for reasonable modification
 - Modification requests can be denied on the grounds of one or more of the following:
 - Request would fundamentally alter the nature of services, programs, or activities
 - Create a direct threat to the health or safety of others
 - Without the requested modification, individual with a disability is able to fully use entity's services, programs, or activities for their intended purpose
 - Cause an undue financial and administrative burden

Anatomy of a Regulation

- DOT Final Rule revising the ADA
 - Section 37.169 Process to be used by public entities providing designated public transportation service in considering requests for reasonable modification
 - Determinations to grant request to modification must be guided by DOT's interpretation and official position concerning meaning and implementation of reasonable modification provisions as outlined in Appendix E of regulations
 - In any case of a denial to a reasonable modification request, actions must be taken to maximum extent possible (*absent a direct threat or fundamental alteration*), to ensure individual with disability receives the service or benefit provided by entity

Anatomy of a Regulation

- DOT Final Rule revising the ADA
 - Section 37.169 Process to be used by public entities providing designated public transportation service in considering requests for reasonable modification
 - (1) Public entities do not need DOT's prior approval for the process required by an entity to determine requests for a reasonable modification
 - (2) DOT agencies will continue to retain authority to review an entity's reasonable modification process as part of its normal oversight

Anatomy of a Regulation

- DOT Final Rule revising the ADA
 - Appendix E to Part 37 – Reasonable Modifications Requests
 - Appendix explains in narrative and example format, the DOT’s interpretation, meaning and implementation of reasonable modification of policies, practices, or procedures by public and private transportation entities
 - Acknowledges limitations to making reasonable modifications that may fall into four classes of situations
 - Fundamental alterations to programs or activities
 - Direct threat
 - Without modification, individual with disability can use services, programs, or activities for its intended use
 - Cause an undue financial and administrative burden
 - Entity may have to make determinations not covered by examples in Appendix E



DOT Examples of Reasonable Modifications

Requests for reasonable modifications that must be granted (*unless one of four situations that can be legitimately denied*):

- Request for a paratransit driver to walk over a pathway that has not been fully cleared of snow and ice
- Request for a driver to position the vehicle to avoid obstruction to the passenger's ability to enter or leave the vehicle at a designated stop location, such as cars, snow banks, and construction
- A wheelchair user's request to board a fixed route or paratransit vehicle separately from device when occupied weight of device exceeds the design load of the vehicle lift

Legitimate reasonable modification denials:

- Request for fixed route or paratransit service outside of service area
- Request for driver to take charge of a service animal
- Request for operator to remain with passenger with disability who cannot be left alone without an attendant upon reaching his or her destination
- Request for driver to provide transit service when the passenger with a disability cannot or refuses to pay fare

Transportation Provider Role and Responsibilities

- Make information on how to contact Agency to make request readily available through same means used to inform public about policies and practices



Dallas Area Rapid Transit

REASONABLE MODIFICATIONS

It is DART's goal to operate a safe, efficient, and effective transportation system that provides mobility and accessibility to persons with disabilities, including individuals who use adaptive devices or mobility aids.

DART is committed to making reasonable modifications/accommodations to policies, practices, and procedures to avoid discrimination on the basis of disability, and ensure access to programs, benefits, and services.

Whenever feasible, requests for modifications/accommodations should be made in advance of when the modified service is being requested to be provided by DART. The request should be as specific as possible and include information on why the requested modification is needed in order to allow the individual to use DART's services. DART will make every effort to communicate determinations on requests for modifications in advance of when the service will be needed verbally or in writing.

To request a modification/accommodation pursuant to the Americans with Disabilities Act, or to obtain information about procedures to file a complaint, contact DART's Diversity Department by one of the methods listed below:

U.S. Mail or Email
Attn: ADA Compliance Officer
Dallas Area Rapid Transit
Diversity Department
P. O. Box 660163
Dallas, Texas 75266-7217

Email address: ADA@DART.org

Telephone

DART Diversity Department (214) 749-3366
For deaf or hearing impaired, please call through Relay Texas at 711 (<http://www.relaytexas.com>)

A screenshot of the DART website's "Reasonable Modifications" page. The page features a navigation menu at the top with options like "HOW TO RIDE", "TRAVEL Tools", "SCHEDULES & Maps", "FARES & Passes", "NEWS & Meetings", and "ABOUT DART". The main content area is titled "Reasonable Modifications" and includes a "GOOGLE TRANSIT" search form with fields for "START", "END", "DATE", and "TIME", and a "PLAN IT" button. Below the search form is a "RIDER ALERTS" section with a list of alerts. The page also contains a sidebar with "HOW TO RIDE" links and a "Reasonable Modifications" section with a printer-friendly PDF link. The footer includes contact information for the Diversity Department.

Transportation Provider Role and Responsibilities

- Operators permitted to make determinations in advance when there are conditions or barriers at the destination an individual with a disability was unaware until arrival
 - Operators provided training on reasonable modification requirements and responsibilities
 - General ADA Provision of Service requirements
 - Example:
 - Securement of wheelchair devices
 - Leaving operator seat to provide assistance to a passenger with a disability
 - Allowing individuals who do not use wheelchairs, including standees to use the vehicle's lift or ramp to enter or exist the vehicle

Transportation Provider Role and Responsibilities

- DOT examples of reasonable modifications requests covered by existing operating procedures

ADA Reasonable Modifications

DOT Examples of Reasonable Modification	DART Operating Procedures
Request to position vehicle to avoid obstructions to passenger's ability to enter or leave the vehicle at designated stop location such as parked cars or construction location	Operators shall board or deboard passengers using mobility devices at the closes location to the designated bus stop that is safe and provides access to sidewalks or curb ramps
Request for a passenger with diabetes or another medical condition to eat or drink aboard a vehicle or in a transit facility in order to avoid adverse health consequences	Eating is prohibited inside DART vehicles unless medically necessary

Requests for Reasonable Modifications to DART Services, Practices, Procedures

Requests for reasonable modifications that were granted:

- **Request from paratransit services passenger to visually display paratransit identification card for operator personnel inspection, validation, and manual recording of fare payment due to limitations in finger dexterity and grasping that impacts the ability to pay fare by generally established means**

Agency's abbreviated response

Generally established means of payment requires the customer to swipe the fare media at the time of boarding. However, there are mechanisms within the fare payment device that will allow DART to accommodate your request for operator assistance in the fare payment process.

As part of this accommodation, you will be required to display the entire face or front of the paratransit identification card to allow for inspection by the operator. No parts of the card shall be covered by the cardholder or other container housing the identification card. Operator personnel are not permitted to reach into the container housing the card, or pockets or backpacks or other containers closely associated to your body to retrieve the identification card/fare media.

Requests for Reasonable Modifications to DART Services, Practices, and Procedures

Requests for reasonable modifications that were granted:

- Request from paratransit services customer for alleyway pick-up

On-site assessment conducted:





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Remote Control
The accessible functions are controlled by the OEM remote and several interior switches placed for your convenience.



Door Opening Usable Width (Slide Door)	A	31-1/2"
Door Opening Usable Height (Slide Door)	B	32-1/2"
Interior Height at Center of Van*	C	57-1/4"
Interior Height at Driver & Passenger Position**	D	36-1/4"
Ramp Length	E	52"
Ramp Width (Usable Clear Opening)	F	29-1/4"
Ramp Angle (Vehicle Kneaded)	G	6.2°
Interior Floor Length (Behind Front Seats)	H	57"
Overall Interior Floor Length (Flat Area)	I	87-1/2"
Interior Width at B Pillars	J	42"
Interior Width at Optional One-Pass. Flip & Fold	K	46"

* Excludes 2nd row with overhead TV's & all seats.
** Excludes 1st row with driver foot.
† Data manufacturing tolerances built with the 2008 vehicle and accessories components of dimensions may vary slightly from those shown.

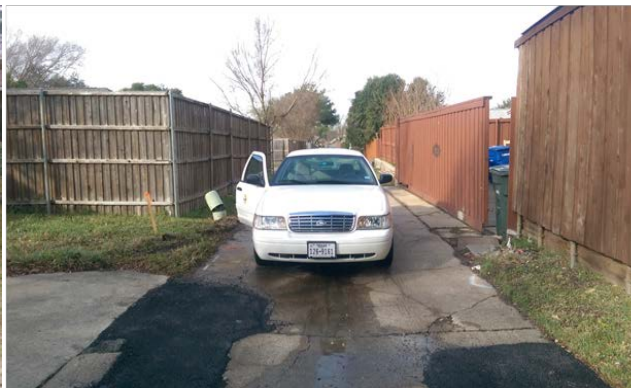
- Dimensions and clearance of alleyway sufficient for accessible minivan taxis*
- Short travel distance in alleyway to and from point of service*
- Formal response of decision to grant request provided to customer*
- Recommended alterations to permit curb-to-curb service from threshold of front door*
- Provided customer with agencies in area that could assist with accessibility alterations*

Requests for Reasonable Modifications to DART Services, Practices, and Procedures

Requests for reasonable modifications that were granted:

- Request from paratransit services customer for alleyway pick-up

On-site assessment conducted:



Requests for Reasonable Modifications to DART Services, Practices, Procedures

Requests for reasonable modifications that were granted:

- **Passenger request for identification on ground at rail stations to let passengers using wheelchairs know where to board the accessible car of the train**



Requests for Reasonable Modifications to DART Services, Practices, Procedures

Requests for reasonable modifications that were not granted:

- **Request from individual with disability for fixed route operator to secure wheelchair with rear securement restraints and leave wheelchair unsecured with front restraints so service animal can position itself in front of the wheelchair**

Agency's Position

Request denied due to direct threat to the safety of requesting passenger, service animal and other passengers

Requests for Reasonable Modifications to DART Services, Practices, and Procedures

Requests for reasonable modifications that were not granted:

- Request from paratransit services customer for alleyway pick-up

On-site assessment conducted:



- *Dimensions and clearance of alleyway sufficient for accessible minivan taxis*
- *More than 1/4 mile travel distance in alleyway by vehicle before any exit point*
- *Formal response of decision to deny request provided to customer*
- *Recommended alterations to permit curb-to-curb service from threshold of front door*
- *Provided customer with agencies in area that could assist with accessibility alterations*

Reasonable Modification

- Applies to fixed-route, demand responsive and complementary paratransit
- Requires process to be set by the transportation provider
- Follows 2005 origin to destination guidance
- Is most likely something transit is providing already

Reasonable Modification

- Would fundamentally alter the nature of the program, service, or activity
- Would result in a direct threat to the health or safety of others

Or ...

- Without the requested modification, the individual with a disability is unable to fully use the entity's services, programs or activities for their intended purpose.

Policies that may Require Modification

- Snow and Ice
- Handling Fare
- Eating and Drinking
- Dedicated Vehicles or Special Equipment
- Luggage or Packages
- And others...

Example Policy

A general statement representing your position on providing reasonable modification:

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

Example Process

- Requests for reasonable modification may be made in advance via e-mail, phone, web site, in writing, etc.
- Someone will contact you via ... for additional information.
- A decision will be made in 'X' business days.
- A written decision will be sent to you via ...

Question

If a person is requesting a reasonable modification to policy, are we allowed to ask if that person has a disability?



Best Advice

- Avoid asking directly about a person's disability
- Ask about functional ability to take the trip without modification
- Determine if the modification is reasonable
- Does it fundamentally alter your service
- Is it a direct threat to the health or safety of others
- Is it needed for the person to take the trip

Additional Requirements

1. Information about the process and how to use it must be made available to the public.
2. The request process must be accessible.
3. The process must provide for situations in which making an advance request is not feasible –
 - Allowing operators to make a determination.
 - Contacting supervisors for assistance.

Complaints

- Can use existing transit provider complaint process
- No need to create a separate one
- Does not have to be approved in advance by the Federal Transit Administration
- Is subject to review during audits or DOT complaint process

QUESTIONS



Question – True or False?

Operators should generally provide assistance to and from the vehicle when requested in snow and icy conditions.

Answer: True!

- For fixed-route service, operators are expected to offer assistance from the curb to the bus and from the bus to the curb.
- For paratransit service, the final rule clearly states that bus operators are expected to provide assistance from the person's origin to their destination. Specific text about origin to destination has now been added to the regs and explained in the final rule.

Question – True or False?

Customers with diabetes or other medical conditions should generally be allowed to eat or drink on vehicles or at stops and stations to avoid adverse consequences even when there is a strict no drinking or eating policy.

Answer: True!

- While a transit agency may establish a general no eating or drinking on the vehicle or at the stop or station policy, allowing a person who needs to eat or drink while traveling for medical reasons or because of a disability would not rise to the level of a fundamental alteration.
- This is also a modification that is needed to make it possible for the passenger to take the trip.

Question – True or False?

Requests for special equipment, such as a front seat or handrails, or for dedicated vehicles to avoid nausea or back pain should generally be granted under the new reasonable modification final rule.

Answer: False!

Requests for special equipment, such as a front seat or handrails, to avoid nausea or back pain may be denied if the equipment or specific vehicle is...

- not already required by the ADA.
- considered a fundamental alteration of service.
- to avoid residual chemicals or odors.

Question – True or False?

A request for operators to assist with packages or luggage should generally be granted if the weight of the luggage and/or number of packages is considered reasonable.

Answer: False!

A request for operators to assist with packages or luggage may be denied if...

- no policy exists for operators to do so.
- it is a fundamental alteration of service.
- it is considered to be a service provided by a PCA.

Question – True or False?

A bus operator is required to leave his/her seat to assist a passenger with disabilities by pushing a mobility device into the bus or van.



Answer: True!

§ 37.165 3f, “where necessary or upon request, the entity’s personnel shall assist individuals with disabilities with the use of securement systems, ramps and lifts. If it is necessary for the personnel to leave their seats to provide this assistance, they shall do so.”

Question – True or False?

When requested, an operator should wait with a passenger whose disabilities make it unsafe for him or her to remain alone and unattended.

Answer: False!

- An operator is not required to provide personal care services.
- A transit agency is not required to provide a personal care attendant.
- This type of service could rise to the level of a fundamental alteration.

Thank-you!





www.nadtc.org

Twitter: [@nadtcmobility](https://twitter.com/nadtcmobility)

Join us on Facebook, LinkedIn and YouTube!

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866-983-3222 (option 3)



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