



FEDERAL TRANSIT ADMINISTRATION

Reasonable Modification of Policy: *New Final Rule*

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U.S. Department of Transportation
Federal Transit Administration

Topics Covered

Reasonable modification: What is It?

Reasonable modification: What *isn't* It?

Local process for handling RM requests

FTA's oversight role

Rulemaking

Issued March 13, 2015

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 27 and 37

[Docket OST-2006-23985]

RIN 2105-AE15

**Transportation for Individuals With
Disabilities; Reasonable Modification
of Policies and Practices**

AGENCY: Office of the Secretary (OST),
U.S. Department of Transportation
(DOT).

ACTION: Final rule.

- Effective July 13, 2015
- Basic tenet of disability law
- Already in sec. 504, Air Carrier Access Act, passenger vessel regs, DOJ ADA regs



Rulemaking

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ACTION: Final rule.

- Why do we need this?



Rulemaking

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ACTION: Final rule.

- Courts found flaws in the regulations



Rulemaking

- U.S. DOT Regulations

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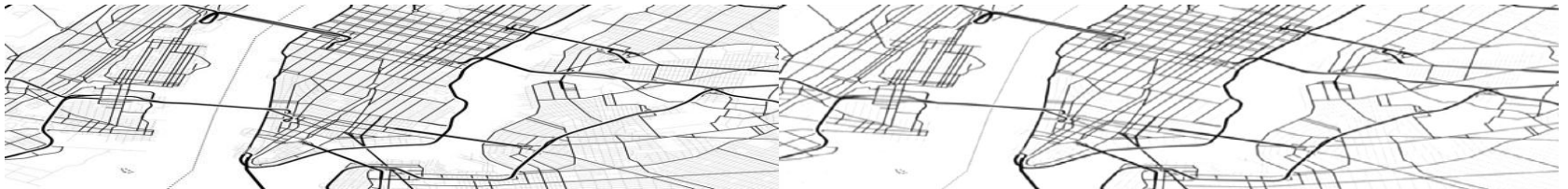
Origin-to-Destination

- No change to the longstanding origin-to-destination requirement under § 37.129(a)
- Base curb-to-curb policy ok, but assistance beyond the curb would be needed on an individual basis, consistent with 2005 DOT law guidance

§ 37.3 Definitions.

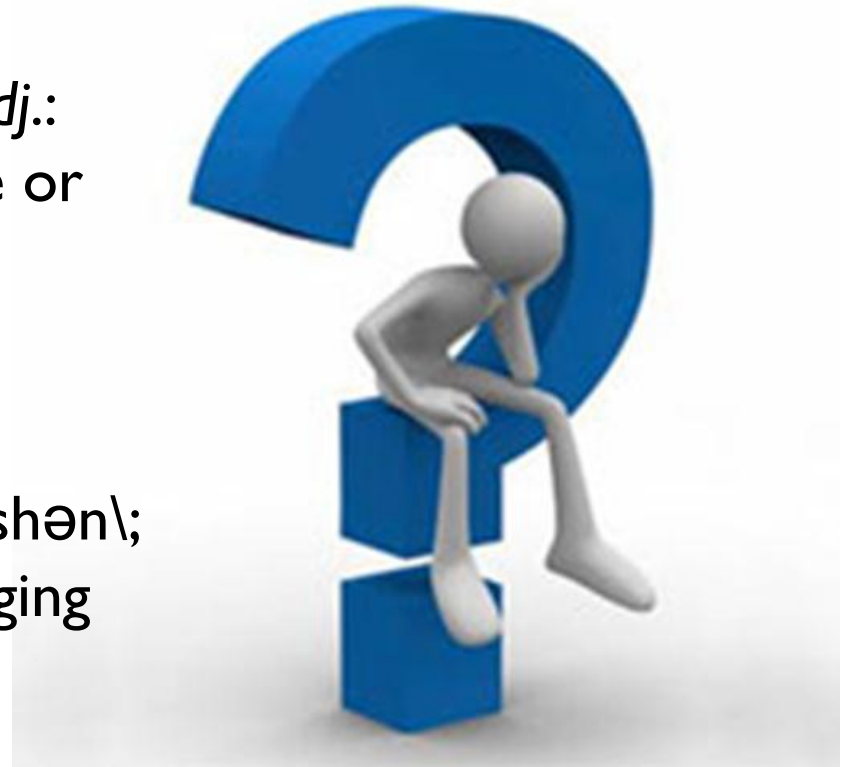
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Origin-to-destination service means providing service from a passenger's origin to the passenger's destination. A provider may provide ADA complementary paratransit in a curb-to-curb or door-to-door mode. When an ADA paratransit operator chooses curb-to-curb 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.



Reasonable Modification: What is It?

- Reasonable \ 'rē-z^ən-ə-bəl\; *adj.*: fair and sensible; not extreme or excessive; possessing sound judgment
- Modification \ ,mä-də-fə-'kā-shən\; *n.*: the act or process of changing parts of something



Reasonable Modification: What is It?

- *Agencies are required to make reasonable modifications to policies, practices, and procedures to avoid discrimination and ensure that their programs are accessible to individuals with disabilities*
- Appendix E provides a framework with examples



Reasonable Modification: Examples

General

- Have operator pull up a reasonable distance from obstructed bus stop
- Help rider with fare media
- Allow passenger with medical condition to eat/drink to avoid adverse health consequences

Paratransit

- Pick up at hard to maneuver spots
- Pick up at specific entrances
- Assist in extreme weather



Reasonable Modification: What is It Not?

- Applies to an agency's policies/practices, not the regulations themselves
- e.g., Not a need to exceed minimum service criteria

Appendix E



“Importantly, reasonable modification applies to an entities’ own policies and practices, and not regulatory requirements contained in 49 CFR parts 27, 37, 38, and 39, such as complementary paratransit service going beyond 3/4 mile of the fixed route, providing same day complementary paratransit service, etc.”

Reasonable Modification: What is It Not?

1. **Fundamental alteration** of service
2. **Direct threat** to the health or safety *of others*
3. **Not needed** by the requester to use the service
4. Undue financial / administrative burden



1. Fundamental Alteration

- A change so significant that it alters the nature of the service
- Examples (Appendix E):
 - Specific vehicle requests (“I like the new buses!”)
 - Exclusive rides
 - PCA functions like carrying packages, staying with unattended passengers
 - Operating outside service area or hours
- Basic concepts:
 - The service is shared-ride public transportation to get people from point A to point B
 - The bus driver is not a personal care attendant

2. Direct Threat

- A significant risk to the health or safety ***of others***
 - Clear and present danger to someone else



Examples (Appendix E):

- Exposing the vehicles to hazards (reversing down a narrow alley, striking overhead objects, etc.)
- Leaving a vehicle unattended for a lengthy period

3. Not Needed

- 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

Example (Appendix E):

- Request for a specific driver

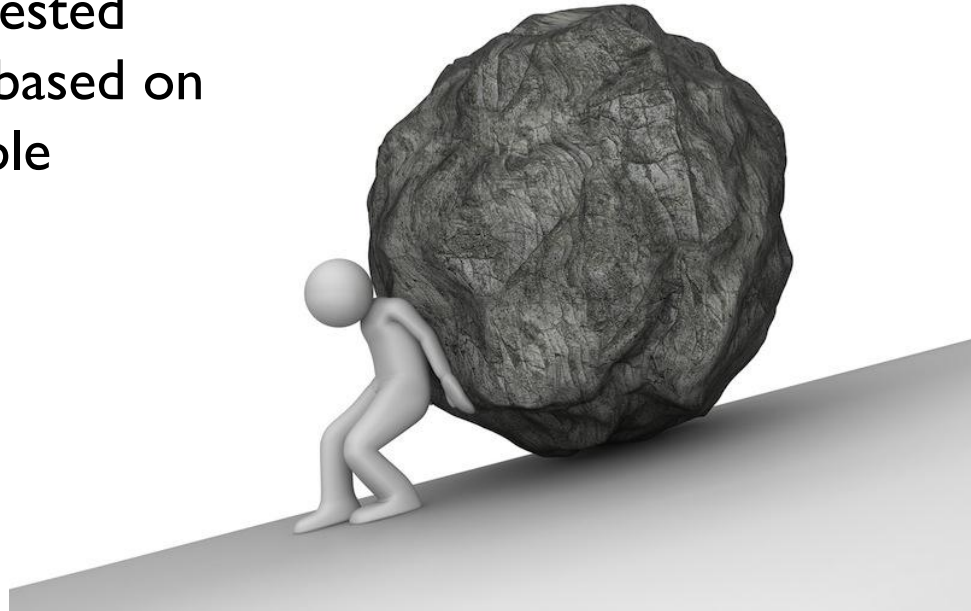


4. Undue Burden

- Depends on facts and circumstances of each individual case
- Burden of proof on agency
- Accommodation requested may be unreasonable based on more than one principle

Example:

- Asking to **not** ride with a particular passenger



Local Process Requirement

- Transit providers must implement their own process for making decisions and providing reasonable modifications (§ 37.169)
 - The rule does not prescribe the exact process to adopt or require DOT approval
- Existing local processes may suffice – no separate process for RM
 - Complaint process
 - Paratransit eligibility process
 - Customer service
 - Operating personnel (when advance notice is impracticable)

Basic Process Requirements

- Information on RM process is **readily available** to the public
- Process is **accessible**
- Require **advance notice**; but when feasible, **flexibility** needed in handling requests only practicable on the spot

- **Requesters** must describe what they need to use the service
- **Requesters** do not need to use the phrase, “reasonable modification”

Basic Process Requirements

- Flexibility!
 - Appendix E is not exhaustive
 - Scenarios may evolve over time and initially require case-by-case assessment
- Some situations will always be on-the-spot
 - Obstructed bus stops
 - Eating/drinking
- How have you handled before?

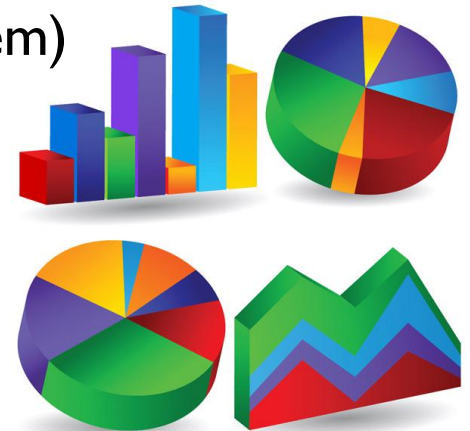


Federal Oversight

- Oversight focus is on local process
 - “DOT agencies retain the authority to review an entity’s process as part of normal program oversight” § 37.169
- RM requests to be handled locally
 - “[T]he Department intends decisions on individual requests for modification to be addressed at the local level”

Federal Oversight

- Tracking
 - No requirement for separate tracking of reasonable modification requests
 - Rule assumes existing processes will be used
- Identify where requests are handled outside of these processes
- Process must be operated in good faith
 - Can't routinely reject all requests regardless of merit
- Document responses (or know where to find them)
 - Paratransit eligibility
 - Complaint process
 - Other
- Not intended to be onerous process



Local Complaint Procedures: Change

- Existing complaint requirement in § 27.13 revised.
 - Previously said agencies must “promptly resolve” complaints
- Now, must also:
 - “Promptly communicate” the response to the complainant, including the reasons for the response, and “document” the response
 - Advertise the complaint process
 - Ensure procedures are accessible
- Mirrored in new § 37.17



Conclusion

- Effective date: July 13
- Sign up for updates to FTA's ADA website to receive an e-mail blast on new information and upcoming events
- Questions? FTA's "Contact Us" tool





Federal Transit Administration

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Contact Us Tool on FTA Website

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