

Analysis of DOT's New Reasonable Modification ADA Policy

DOT has amended an important set of rules under the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act of 1973, as amended (section 504), to make explicit what comes to mind when hearing the term ADA – reasonable accommodations. The new DOT rule states the obligation of “transportation entities” to make “reasonable modifications/accommodations to policies, practices, and procedures to avoid discrimination and ensure that their programs are accessible to individuals with disabilities.” DOT issued the policy modification document, *Transportation for Individuals With Disabilities; Reasonable Modification of Policies and Practices* [<http://www.gpo.gov/fdsys/pkg/FR-2015-03-13/pdf/2015-05646.pdf>], because this fundamental tenet of ADA law was previously missing from its regulations and this oversight was beginning to prove problematic in the courts.

Clarity is the order of the day so that transit and other transportation providers know exactly what DOT expects. DOT declares that its modified policy will cause, at most, very minor changes for fixed-route service. One example given is the obligation of a bus driver to stop a short distance from the designated stop where snow or ice prevents safe use of the bus stop.

Demand-response transportation providers will have to reassess certain policies and procedures. Addressing demand-response providers who fear that curb-to-curb service would require door-to-door accommodation, DOT states that many providers already make this accommodation. DOT takes the position that adjusting curb service when needed by going to a rider's door is generally not an undue burden on the transportation provider. The policy does allow exceptions where modification of service would fundamentally alter the service, pose a threat, or “result in an undue financial and administrative burden.” However, showing that the details matter in this document, in the door-to-door modification example, the policy lists only the first two exceptions when directly addressing this situation.

Examples about when the exceptions to the rule apply and when they do not are given in Appendix E. This is the heart of the DOT document.

DOT observes that most accommodations can be arranged via the eligibility determination process. But how a transportation provider sets up the process for requests for reasonable accommodations is a decision left to each provider's discretion. That process must be made public and accessible to people with disabilities. “DOT can, however, review an entity's process as part of normal program oversight, including compliance reviews and complaint investigations.” Another warning to transportation providers is that they bear the burden of explaining why a refused accommodation satisfies one of the policy's exceptions.

There are additional important details in the new policy. It is a document in which the details matter. Someone at every transit agency, transportation provider, and other relevant entity should be reading it from start to finish. Do not skip Appendix E, which includes critical details about what accommodations are expected.