

## **Reasonable Modification Policy**

The purpose of the reasonable modification policy is to ensure that SMART offers equal and effective opportunities and access to public transportation services for persons with disabilities and full compliance with the provisions of the Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973.

This policy applies to all safety-sensitive transportation vehicle operators including full, part time, casual/substitutes/seasonal, and those staff that may be required to operate the vehicle. For the purposes of this section, the term reasonable accommodation shall be interpreted in a manner consistent with the term “reasonable modifications” as set forth in the Americans with Disabilities Act Title II regulations at 28 CFR 35.130(b)(7), and not as it is defined or interpreted for the purposes of employment discrimination under Title I of the ADA (42 U.S.C. 12111–12112) and its implementing regulations at 29 CFR part 1630.

SMART is committed to providing equal access and opportunity to individuals with disabilities in all programs, services and activities. SMART recognizes that in order to have equally effective opportunities and benefits, individuals with disabilities may need reasonable modifications to policies and procedures. SMART will adhere to all applicable federal and state laws, regulations and guidelines with respect to providing reasonable modifications, as necessary, to afford equal access to programs for persons with disabilities. SMART does not discriminate on the basis of disability in admission to, participation in, or receipt of services and benefits under any transit program or activity. SMART will take appropriate steps to ensure that persons with disabilities have an equal opportunity to participate.

No individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of SMART, or be subject to discrimination by SMART.

A reasonable modification is a change or exception to a policy, practice, or procedure that allows persons with disabilities to have equal access to programs, services, and activities. SMART will make reasonable modifications to policies, practices, and procedures when necessary to ensure access to transit services for individuals with disabilities, unless:

- ◆ Making the accommodation would fundamentally alter the nature of the public transportation service.
- ◆ Making the accommodation would create a direct threat to the health or safety of other passengers.
- ◆ The individual with a disability is able to fully use SMART’s service without the accommodation being made.

- ◆ Making the accommodation creates an undue financial burden on the transit system.

#### ELIGIBILITY CRITERIA

SMART provides Curb to Curb Service, an individual is eligible to be considered to receive a reasonable modification if that individual has:

- ◆ A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- ◆ A record of such impairment; or
- ◆ Has been regarded as having such impairment.

#### REQUESTS FOR REASONABLE MODIFICATION

SMART shall make information about how to contact SMART to make requests for reasonable modifications readily available to the public through its website, brochures, and other rider policy guidelines. SMART shall follow these procedures in taking requests:

- a. Individuals requesting modifications shall describe the modification to service needed in order to use the service. Door through Door services and/or the carrying or delivering of package(s) will not be considered a reasonable modification.
- b. Individuals requesting modifications are not required to use the term “reasonable modification” when making a request. Personnel at SMART will determine if the request represents a reasonable modification and proceed in accommodating the request accordingly.
- c. Whenever feasible, SMART requests that individuals make such requests for modifications before SMART is expected to provide the modified service.
- d. Where a request for modification cannot practicably be made and determined in advance (e.g., because of a condition or barrier at the destination of a, route deviation, demand response, paratransit, or fixed route trip of which the individual with a disability was unaware until arriving), operating personnel shall make a determination of whether the modification should be provided at the time of the request. Operating personnel may consult with SMART’s management before making a determination to grant or deny the request.

Requests for accommodation may be made either orally or in writing. The reasonable accommodation process begins as soon as the request for accommodation is made. The request can be submitted in any written format. Alternative means of filing a request, such as personal interviews, phone calls, or taped requests, will be made available for persons with disabilities if unable to communicate their request in writing or upon request.

### INTERACTIVE PROCESS

When a request for accommodation is made, SMART and the individual requesting an accommodation must engage in a good faith interactive process to determine what, if any accommodation shall be provided. The individual and the SMART must communicate with each other about the request, the process for determining whether an accommodation will be provided, and the potential accommodations. Communication is a priority throughout the entire process.

### TIME FRAME FOR PROCESSING REQUESTS TO PROVIDE REASONABLE MODIFICATION

SMART will process requests for reasonable accommodation and then provide accommodations, where appropriate, in as short a time frame as reasonably possible. SMART recognizes, however, that the time necessary to process a request will depend on the nature of the accommodation(s) requested and whether it is necessary to obtain supporting information.

### GRANTING A REASONABLE MODIFICATION REQUEST

As soon as SMART determines that a reasonable accommodation will be provided, that decision shall be immediately communicated to the individual. When adequate time is provided, this notice must be in writing in order to maintain the required information for reporting purposes. When granting a request is communicated orally SMART will follow up in writing. Upon request, alternative means of response will be provided.

In choosing among alternatives for meeting nondiscrimination and accessibility requirements with respect to new, altered, or existing facilities, or designated or specified transportation services, SMART shall give priority to those 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.

### DENIAL OF REASONABLE MODIFICATION REQUEST

As soon as SMART determines that a request for reasonable accommodation will be denied, SMART will communicate the basis for the decision immediately. When adequate time is provided, this notice will be in writing to the individual requesting the modification. Any denial communicated orally will be followed up in writing. The explanation for the denial will clearly state:

- ◆ The specific reasons for the denial;
- ◆ Any alternative accommodation that may create the same access to transit services as requested by the individual; and
- ◆ The opportunity to file a complaint relative to the SMART's decision on the request.

### COMPLAINT PROCESS

SMART has a process for investigating and tracking complaints from qualified individuals. These procedures shall be posted on the SMART's website and will be provided to any individual where the SMART has denied a request for accommodation. The process and any forms necessary to file a complaint are readily available from the web. Alternative means of filing complaints, such as personal interviews, phone calls, or taped requests, will be made available for persons with disabilities if unable to communicate their request in writing or upon request.

Any person who believes she or he has been discriminated against in obtaining a reasonable modification may file a complaint by completing and submitting a SMART's Reasonable Modification Complaint Form. SMART investigates complaints received no more than 30 days after receipt. SMART will process complaints that are complete. SMART will work with MnDOT OTAT to determine resolution in the process. Once the complaint is received, the complainant will receive an acknowledgement of receipt. If more information is needed to resolve the complaint, SMART may contact the complainant. The complainant has 30 business days from the date of the letter to send requested information to SMART.

If SMART is not contacted by the complainant or does not receive the additional information within 30 business days, the SMART may administratively close the complaint. In addition, a complaint may be administratively closed if the complainant no longer wishes to pursue their case.

After SMART investigates the complaint and has consulted and received direction from MnDOT OTAT, a decision will be rendered in writing to the complainant. SMART will issue either a Letter of Closure or Letter of Finding.

- ◆ **Letter of Finding** – This letter will summarize the complaint, any interviews conducted regarding the complaint, and explains what actions will be taken by SMART to address the complaint.
- ◆ **Letter of Closure** – This letter will explain why SMART has determined that the complaint does not merit accommodation under the Americans with Disabilities Act and that the complaint will be closed.

If the complainant disagrees with the decision of SMART, an opportunity to appeal the decision may be pursued provided the complaint files notice of appeal within 21 days of the initial decision of SMART. At any time, the complainant has the right to file a complaint directly with MnDOT, through their website complaint section, through the Motor Carrier website, or through the Ombudsman website.

In the event of appeal, the complainant will be granted all due process, including the ability to present additional evidence, present the case in person during an appeal hearing, and to be represented by counsel.

# Reasonable Modification Complaint Process

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# Reasonable Modification Complaint Form

## Part I

Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email Address: \_\_\_\_\_

Preferred contact method: ☐ Phone ☐ Email

Best time to contact you: \_\_\_\_\_

Additional Formats Needed:

☐ None ☐ TDD ☐ Other  
☐ Large Print ☐ Audio Tape

## Part II

Are you filing this complaint on your own behalf?

☐ Yes – Proceed to Part III

☐ No – Please provide the name of and your relationship with this person:

Name of Individual: \_\_\_\_\_

Your Relationship: \_\_\_\_\_

Please explain why you have filed for a third party:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Confirm:

☐ I have obtained permission of the aggrieved party to file this form on his or her behalf.

☐ I have not confirmed permission to file this form on behalf of the aggrieved party.

## Part III.

If you believe you were not heard in your reasonable modification request or did not receive the services you requested, please provide as much detail concerning the incident. SMART investigates complaints received no more than 30 days after receipt.

Date of incident (Month, Day, Year): \_\_\_\_\_ Time: \_\_\_\_\_

Name(s) \_\_\_\_\_ of \_\_\_\_\_ Employee(s) \_\_\_\_\_ involved:

\_\_\_\_\_

☐ Through dispatching services

☐ Through operator request

Explain as clearly as possible what happened and why your reasonable modification request was not granted or did not receive the services you requested. If more space is needed, please use the back of this form.

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Signature and date required below.

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Signature of Person Filing Complaint

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Date

If you need assistance completing this form, contact SMART at 507-433-2379.

**Once completed, return a signed and dated copy to:**

**Kirk Kuchera, Transit Manager  
SMART  
2111 4th St. NW, Austin, MN, 55912**