

**PART 27—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

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AUTHORITY: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); 49 U.S.C. 5332.

SOURCE: 44 FR 31468, May 31, 1979, unless otherwise noted.

**Subpart A—General**

**§ 27.1 Purpose.**

The purpose of this part is to carry out the intent of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended, to the end that no otherwise qualified individual with a disability in the United States shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program

or activity receiving Federal financial assistance.

**§ 27.3 Applicability.**

(a) This part applies to each recipient of Federal financial assistance from the Department of Transportation and to each program or activity that receives such assistance.

(b) Design, construction, or alteration of buildings or other fixed facilities by public entities subject to part 37 of this title shall be in conformance with appendix A to part 37 of this title. All other entities subject to section 504 shall design, construct or alter a building, or other fixed facilities shall be in conformance with either appendix A to part 37 of this title or the Uniform Federal Accessibility Standards, 41 CFR part 101–19 subpart 101–19.6, appendix A.

[44 FR 31468, May 31, 1979, as amended at 56 FR 45621, Sept. 6, 1991; 68 FR 51390, Aug. 26, 2003]

EFFECTIVE DATE NOTE: At 80 FR 46513, Aug. 5, 2015, § 27.3(b) was revised, effective Oct. 5, 2015. For the convenience of the user, the revised text is set forth as follows:

**§ 27.3 Applicability.**

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(b) Design, construction, or alteration of buildings or other fixed facilities by public entities subject to part 37 of this title shall be in conformance with appendices B and D of 36 CFR part 1191, as modified by appendix A to part 37 of this title. All other entities subject to section 504 shall design, construct, or alter buildings, or other fixed facilities, in conformance with appendices B and D of 36 CFR part 1191, as modified by appendix A to part 37 of this title.

**§ 27.5 Definitions.**

As used in this part:

*Act* means the Rehabilitation Act of 1973, Public Law 93–112, as amended.

*Applicant* means one who submits an application, request, or plan to be approved by a Departmental official or by a primary recipient as a condition to eligibility for Federal financial assistance, and *application* means such an application, request, or plan.

*Commercial service airport* means an airport that is defined as a commercial service airport for purposes of the Federal Aviation Administration’s Airport

Improvement Program and that enplanes annually 2500 or more passengers and receives scheduled passenger service of aircraft.

*Department* means the Department of Transportation.

*Discrimination* means denying persons with a disability the opportunity to participate in or benefit from any program or activity receiving Federal financial assistance.

*Facility* means all or any portion of buildings, structures, vehicles, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

*Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

- (a) Funds;
- (b) Services of Federal personnel; or
- (c) Real or personal property or any interest in, or use of such property, including:

(1) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

*Person with a disability* means (1) any person who (a) has a physical or mental impairment that substantially limits one or more major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment. (2) As used in this definition, the phrase:

(a) *Physical or mental impairment* means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular, reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental im-*

*pairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; mental retardation; emotional illness; drug addiction; and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) *Has a record of such an impairment* means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in paragraph (1) of this definition, but is treated by a recipient as having such an impairment.

*Head of Operating Administration* means the head of an operating administration within the Department (U.S. Coast Guard, Federal Highway Administration, Federal Aviation Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Federal Transit Administration, and Research and Special Programs Administration) providing Federal financial assistance to the recipient.

*Primary recipient* means any recipient that is authorized or required to extend Federal financial assistance from the Department to another recipient.

*Program or activity* means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

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(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

*Qualified person with a disability* means:

(1) With respect to employment, a person with a disability who, with reasonable accommodation and within normal safety requirements, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such person from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; and

(2) With respect to other services, a person with a disability who meets the

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essential eligibility requirements for the receipt of such services.

*Recipient* means any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, organization, or other entity, or any individual in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance from the Department is extended directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

*Secretary* means the Secretary of Transportation.

*Section 504* means section 504 of the Act.

*Special service system* means a transportation system specifically designed to serve the needs of persons who, by reason of disability, are physically unable to use bus systems designed for use by the general public. Special service is characterized by the use of vehicles smaller than a standard transit bus which are usable by persons with a disability, demand-responsive service, point of origin to point of destination service, and flexible routing and scheduling.

[44 FR 31468, May 31, 1979, as amended by Amdt. 1, 46 FR 37492, July 20, 1981; Amdt. 27–3, 51 FR 19017, May 23, 1986; 56 FR 45621, Sept. 6, 1991; 61 FR 32354, June 24, 1996; 61 FR 56424, Nov. 1, 1996; 68 FR 51390, Aug. 26, 2003; 79 FR 21405, Apr. 16, 2014]

### § 27.7 Discrimination prohibited.

(a) *General.* No qualified person with a disability shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance administered by the Department of Transportation.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

(i) Deny a qualified person with a disability the opportunity to participate

in or benefit from the aid, benefit, or service;

(ii) Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not substantially equal to that afforded persons who are not disabled;

(iii) Provide a qualified person with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as persons who are not disabled;

(iv) Provide different or separate aid, benefits, or services to persons with a disability or to any class of persons with a disability unless such action is necessary to provide qualified persons with a disability with aid, benefits or services that are as effective as those provided to persons who are not disabled;

(v) Aid or perpetuate discrimination against a qualified person with a disability by providing financial or other assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;

(vi) Deny a qualified person with a disability the opportunity to participate in conferences, in planning or advising recipients, applicants or would-be applicants, or

(vii) Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for persons with and without a disability, but must afford persons with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting that is reasonably achievable.

(3) Even if separate or different aid, benefits, or services are available to persons with a disability, a recipient may not deny a qualified person with a disability the opportunity to partici-

pate in the programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified persons with a disability to discrimination on the basis of disability,

(ii) That have the purpose or effect of defeating or substantially reducing the likelihood that persons with a disability can benefit by the objectives of the recipient's program or activity, or

(iii) That yield or perpetuate discrimination against another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant or a recipient may not make selections:

(i) That have the effect of excluding persons with a disability from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance, or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to persons with a disability.

(6) As used in this section, the aid benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Communications.* Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(d) *Aid, benefits, or services limited by Federal law.* For aid, benefits, or services authorized by Federal statute or executive order that are designed especially for persons with a disability, or for a particular class of persons with a disability, the exclusion of persons without a disability or other classes of

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persons with a disability is not prohibited by this part.

(e) *Reasonable accommodations.* A recipient shall make reasonable accommodations in policies, practices, or procedures when such accommodations are necessary to avoid discrimination on the basis of disability unless the recipient can demonstrate that making the accommodations would fundamentally alter the nature of the service, program, or activity or result in an undue financial and administrative burden. 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.

[44 FR 31468, May 31, 1979, as amended at 68 FR 51390, Aug. 26, 2003; 79 FR 21405, Apr. 16, 2014; 80 FR 13260, Mar. 13, 2015]

### § 27.9 Assurance required.

(a) *General.* Each application for Federal financial assistance to which this part applies, and each application to provide a facility, shall, as a condition to approval or extension of any Federal financial assistance pursuant to the application, contain, or be accompanied by, written assurance that the program or activity will be conducted or the facility operated in compliance with all the requirements imposed by or pursuant to this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Future effect of assurances.* Recipients of Federal financial assistance, and transferees of property obtained by a recipient with the participation of Federal financial assistance, are bound by the recipient’s assurance under the following circumstances:

(1) When Federal financial assistance is provided in the form of a conveyance of real property or an interest in real property from the Department of Transportation to a recipient, the instrument of conveyance shall include a

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covenant running with the land binding the recipient and subsequent transferees to comply with the requirements of this part for so long as the property is used for the purpose for which the Federal financial assistance was provided or for a similar purpose.

(2) When Federal financial assistance is used by a recipient to purchase or improve real property, the assurance provided by the recipient shall obligate the recipient to comply with the requirements of this part and require any subsequent transferee of the property, who is using the property for the purpose for which the Federal financial assistance was provided, to agree in writing to comply with the requirements of this part. The obligations of the recipient and transferees under this part shall continue in effect for as long as the property is used for the purpose for which Federal financial assistance was provided or for a similar purpose.

(3) When Federal financial assistance is provided to the recipient in the form of, or is used by the recipient to obtain, personal property, the assurance provided by the recipient shall obligate the recipient to comply with the requirements of this part for the period it retains ownership or possession of the property or the property is used by a transferee for purposes directly related to the operations of the recipient.

(4) When Federal financial assistance is used by a recipient for purposes other than to obtain property, the assurance provided shall obligate the recipient to comply with the requirements of this part for the period during which the Federal financial assistance is extended to the program or activity.

[44 FR 31468, May 31, 1979, as amended at 68 FR 51390, Aug. 26, 2003]

### § 27.11 Remedial action, voluntary action and compliance planning.

(a) *Remedial action.* (1) If the responsible Departmental official finds that a qualified person with a disability has been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under, any program or activity in violation of this part, the recipient shall take such remedial action as the responsible Departmental official deems necessary to overcome the effects of the violation.

(2) Where a recipient is found to have violated this part, and where another recipient exercises control over the recipient that has violated this part, the responsible Departmental official, where appropriate, may require either or both recipients to take remedial action.

(3) The responsible Departmental official may, where necessary to overcome the effects of a violation of this part, require a recipient to take remedial action:

(i) With respect to persons with a disability who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred, and

(ii) With respect to persons with a disability who would have been participants in the program or activity had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to assure the full participation in the recipient's program or activity by qualified persons with a disability.

(c) *Compliance planning.* (1) A recipient shall, within 90 days from the effective date of this part, designate and forward to the head of any operating administration providing financial assistance, with a copy to the responsible Departmental official the names, addresses, and telephone numbers of the persons responsible for evaluating the recipient's compliance with this part.

(2) A recipient shall, within 180 days from the effective date of this part, after consultation at each step in paragraphs (c)(2) (i)–(iii) of this section with interested persons, including persons with a disability and organizations representing persons with a disability:

(i) Evaluate its current policies and practices for implementing these regulations, and notify the head of the operating administration of the completion of this evaluation;

(ii) Identify shortcomings in compliance and describe the methods used to remedy them;

(iii) Begin to modify, with official approval of recipient's management, any policies or practices that do not meet the requirements of this part according

to a schedule or sequence that includes milestones or measures of achievement. These modifications shall be completed within one year from the effective date of this part;

(iv) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from previous policies and practices; and

(v) Establish a system for periodically reviewing and updating the evaluation.

(3) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(2) of this section, maintain on file, make available for public inspection, and furnish upon request to the head of the operating administration:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems indentified; and

(iii) A description of any modifications made and of any remedial steps taken.

[44 FR 31468, May 31, 1979, as amended at 68 FR 51390, Aug. 26, 2003; 79 FR 21405, Apr. 16, 2014]

#### **§ 27.13 Designation of responsible employee and adoption of complaint procedures.**

(a) *Designation of responsible employee.* Each recipient shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of complaint procedures.* A recipient shall adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part and 49 CFR parts 37, 38, and 39. The procedures shall meet the following requirements:

(1) The process for filing a complaint, including the name, address, telephone number, and email address of the employee designated under paragraph (a) of this section, must be sufficiently advertised to the public, such as on the recipient's Web site;

(2) The procedures must be accessible to and usable by individuals with disabilities;

(3) The recipient must promptly communicate its response to the complaint allegations, including its reasons for

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the response, to the complainant by a means that will result in documentation of the response.

[80 FR 13260, Mar. 13, 2015]

### § 27.15 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of disability. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated pursuant to § 27.13(a). A recipient shall make the initial notification required by this section within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications. In either case, the addition or revision must be specially noted.

### § 27.17 Effect of State or local law.

The obligation to comply with this part is not obviated or affected by any State or local law.

### § 27.19 Compliance with Americans with Disabilities Act requirements and FTA policy.

(a) Recipients subject to this part (whether public or private entities as

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defined in 49 CFR part 37) shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101–12213) including the Department's ADA regulations (49 CFR parts 37 and 38), the regulations of the Department of Justice implementing titles II and III of the ADA (28 CFR parts 35 and 36), and the regulations of the Equal Employment Opportunity Commission (EEOC) implementing title I of the ADA (29 CFR part 1630). Compliance with the EEOC title I regulations is required as a condition of compliance with section 504 for DOT recipients even for organizations which, because they have fewer than 25 or 15 employees, would not be subject to the EEOC regulation in its own right. Compliance with all these regulations is a condition of receiving Federal financial assistance from the Department of Transportation. Any recipient not in compliance with this requirement shall be subject to enforcement action under subpart C of this part.

(b) Consistent with FTA policy, any recipient of Federal financial assistance from the Federal Transit Administration whose solicitation was made before August 26, 1990, and is for one or more inaccessible vehicles, shall provide written notice to the Secretary (e.g., in the case of a solicitation made in the past under which the recipient can order additional new buses after the effective date of this section). The Secretary shall review each case individually, and determine whether the Department will continue to participate in the Federal grant, consistent with the provisions in the grant agreement between the Department and the recipient.

[55 FR 40763, Oct. 4, 1990, as amended at 56 FR 45621, Sept. 6, 1991; 61 FR 32354, June 24, 1996; 79 FR 21405, Apr. 16, 2014]

## Subpart B—Accessibility Requirements in Specific Operating Administration Programs: Airports, Railroads, and Highways

### § 27.71 Airport facilities.

(a) This section applies to all terminal facilities and services owned,

leased, or operated on any basis by a recipient of DOT financial assistance at a commercial service airport, including parking and ground transportation facilities.

(b) Airport operators shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Airport operators shall be deemed to comply with this section 504 obligation if they meet requirements applying to state and local government programs or activities and facilities under Department of Justice (DOJ) regulations implementing Title II of the Americans with Disabilities Act (ADA).

(c) The airport shall ensure that there is an accessible path between the gate and the area from which aircraft are boarded.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rules.

(e) The Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including section 10.4 concerning airport facilities, shall be the standard for accessibility under this section.

(f) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part and applicable ADA rules of the Department of Transportation and Department of Justice for airport operators and applicable Air Carrier Access Act rules (49 CFR part 382) for carriers.

(g) If an airport operator who receives Federal financial assistance for an existing airport facility has not already done so, the recipient shall submit a transition plan meeting the requirements of § 27.65(d) of this part to the FAA no later than March 3, 1997.

(h) [Reserved]

(i) [Reserved]

(j) Shared-use automated airport kiosks. This paragraph applies to U.S.

airports with 10,000 or more annual enplanements.

(1) Airport operators that jointly own, lease, or control automated airport kiosks with carriers at U.S. airports must ensure that all shared-use automated kiosks installed on or after December 12, 2016 meet the design specifications set forth in paragraph (k) of this section until at least 25 percent of kiosks provided in each location at the airport (i.e., each cluster of kiosks and all stand-alone kiosks at the airport) meet this specification.

(2) Airport operators must ensure that at least 25 percent of shared-use automated airport kiosks they jointly own, lease, or control with carriers in each location at the airport meet the design specifications in paragraph (k) of this section by December 12, 2022.

(3) When shared-use kiosks provided in a location at the airport perform more than one function (e.g., print boarding passes/bag tags, accept payment for flight amenities such as seating upgrades/meals/WiFi access, rebook tickets, etc.), the accessible kiosks must provide all the same functions as the inaccessible kiosks in that location.

(4) Each shared-use automated kiosk that meets the design specifications in paragraph (k) of this section must be visually and tactilely identifiable to users as accessible (e.g., an international symbol of accessibility affixed to the front of the device) and maintained in proper working condition.

(5) Airport operators are jointly and severally liable with carriers for ensuring that shared-use automated airport kiosks are compliant with the requirements of paragraphs (j) and (k) of this section.

(k) Shared-use automated airport kiosks provided in accordance with paragraph (j) of this section must conform to the following technical accessibility standards with respect to their physical design and the functions they perform:

(1) *Self contained.* Except for personal headsets and audio loops, automated kiosks must be operable without requiring the user to attach assistive technology.

(2) *Clear floor or ground space.* A clear floor or ground space complying with

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section 305 of the U.S. Department of Justice's 2010 ADA Standards for Accessible Design, 28 CFR 35.104 (defining the "2010 Standards" for title II as the requirements set forth in appendices B and D to 36 CFR part 1191 and the requirements contained in 28 CFR 35.151) (hereinafter 2010 ADA Standards) must be provided.

(3) *Operable parts.* Operable parts must comply with section 309 of the 2010 ADA Standards, and the following requirements:

(i) *Identification.* Operable parts must be tactilely discernible without activation;

(ii) *Timing.* Where a timed response is required, the user must be alerted visually and by touch or sound and must be given the opportunity to indicate that more time is required;

(iii) *Status indicators.* Status indicators, including all locking or toggle controls or keys (e.g., Caps Lock and Num Lock keys), must be discernible visually and by touch or sound; and

(iv) *Color.* Color coding must not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(4) *Privacy.* Automated airport kiosks must provide the opportunity for the same degree of privacy of input and output available to all individuals. However, if an option is provided to blank the screen in the speech output mode, the screen must blank when activated by the user, not automatically.

(5) *Output.* Automated airport kiosks must comply with paragraphs (k)(5)(i) through (iv) of this section.

(i) *Speech output enabled.* Automated airport kiosks must provide an option for speech output. Operating instructions and orientation, visible transaction prompts, user input verification, error messages, and all other visual information for full use must be accessible to and independently usable by individuals with vision impairments. Speech output must be delivered through a mechanism that is readily available to all users, including but not limited to, an industry standard connector or a telephone handset. Speech output must be recorded or digitized human, or synthesized. Speech output must be coordinated with information

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displayed on the screen. Speech output must comply with paragraphs (k)(5)(i)(A) through (D) of this section.

(A) When asterisks or other masking characters are used to represent personal identification numbers or other visual output that is not displayed for security purposes, the masking characters must be spoken ("\*" spoken as "asterisk") rather than presented as beep tones or speech representing the concealed information.

(B) Advertisements and other similar information are not required to be audible unless they convey information that can be used in the transaction being conducted.

(C) Speech for any single function must be automatically interrupted when a transaction is selected or navigation controls are used. Speech must be capable of being repeated and paused by the user.

(D) Where receipts, tickets, or other outputs are provided as a result of a transaction, speech output must include all information necessary to complete or verify the transaction, except that -

(1) Automated airport kiosk location, date and time of transaction, customer account numbers, and the kiosk identifier are not required to be audible;

(2) Information that duplicates information available on-screen and already presented audibly is not required to be repeated; and

(3) Printed copies of a carrier's contract of carriage, applicable fare rules, itineraries and other similar supplemental information that may be included with a boarding pass are not required to be audible.

(ii) *Volume control.* Automated kiosks must provide volume control complying with paragraphs (k)(5)(ii)(A) and (B) of this section.

(A) *Private listening.* Where speech required by paragraph (k)(5)(i) is delivered through a mechanism for private listening, the automated kiosk must provide a means for the user to control the volume. A function must be provided to automatically reset the volume to the default level after every use.

(B) *Speaker volume.* Where sound is delivered through speakers on the automated kiosk, incremental volume

control must be provided with output amplification up to a level of at least 65 dB SPL. Where the ambient noise level of the environment is above 45 dB SPL, a volume gain of at least 20 dB above the ambient level must be user selectable. A function must be provided to automatically reset the volume to the default level after every use.

(iii) *Captioning.* Multimedia content that contains speech or other audio information necessary for the comprehension of the content must be open or closed captioned.

Advertisements and other similar information are not required to be captioned unless they convey information that can be used in the transaction being conducted.

(iv) *Tickets and boarding passes.* Where tickets or boarding passes are provided, tickets and boarding passes must have an orientation that is tactilely discernible if orientation is important to further use of the ticket or boarding pass.

(6) *Input.* Input devices must comply with paragraphs (k)(6)(i) through (iv) of this section.

(i) *Input controls.* At least one input control that is tactilely discernible without activation must be provided for each function. Where provided, key surfaces not on active areas of display screens, must be raised above surrounding surfaces. Where touch or membrane keys are the only method of input, each must be tactilely discernible from surrounding surfaces and adjacent keys.

(ii) *Alphabetic keys.* Alphabetic keys must be arranged in a QWERTY keyboard layout. The “F” and “J” keys must be tactilely distinct from the other keys.

(iii) *Numeric keys.* Numeric keys must be arranged in a 12-key ascending or descending keypad layout or must be arranged in a row above the alphabetic keys on a QWERTY keyboard. The “5” key must be tactilely distinct from the other keys.

(iv) *Function keys.* Function keys must comply with paragraphs (k)(6)(iv)(A) and (B) of this section.

(A) *Contrast.* Function keys must contrast visually from background surfaces. Characters and symbols on key surfaces must contrast visually from key surfaces. Visual contrast must be

either light-on-dark or dark-on-light. However, tactile symbols required by (k)(6)(iv)(B) are not required to comply with paragraph (k)(6)(iv)(A) of this section.

(B) *Tactile symbols.* Function key surfaces must have tactile symbols as follows: Enter or Proceed key: raised circle; Clear or Correct key: raised left arrow; Cancel key: raised letter ex; Add Value key: raised plus sign; Decrease Value key: raised minus sign.

(7) *Display screen.* The display screen must comply with paragraphs (k)(7)(i) and (ii) of this section.

(i) *Visibility.* The display screen must be visible from a point located 40 inches (1015 mm) above the center of the clear floor space in front of the automated kiosk.

(ii) *Characters.* Characters displayed on the screen must be in a sans serif font. Characters must be 3/16 inch (4.8 mm) high minimum based on the uppercase letter “I.” Characters must contrast with their background with a minimum luminosity contrast ratio of 3:1.

(8) *Braille instructions.* Braille instructions for initiating the speech mode must be provided. Braille must comply with section 703.3 of the 2010 ADA Standards.

(9) *Biometrics.* Biometrics must not be the only means for user identification or control, unless at least two biometric options that use different biological characteristics are provided.

[61 FR 56424, Nov. 1, 1996, as amended at 68 FR 51391, Aug. 26, 2003; 78 FR 67917, Nov. 12, 2013]

EFFECTIVE DATE NOTE: At 80 FR 46513, Aug. 5, 2015, §27.71 was amended by adding paragraphs (h) and (i), effective Oct. 5, 2015. For the convenience of the user, the added text is set forth as follows:

#### § 27.71 Airport facilities.

\* \* \* \* \*

(h) *Service animal relief areas.* Each airport with 10,000 or more annual enplanements shall cooperate with airlines that own, lease, or control terminal facilities at that airport to provide wheelchair accessible animal relief areas for service animals that accompany passengers departing, connecting, or arriving at the airport subject to the following requirements:

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(1) Airports must consult with one or more service animal training organizations regarding the design, dimensions, materials and maintenance of service animal relief areas;

(2) Airports must establish at least one relief area in each airport terminal;

(3) Airports must establish the relief area required by paragraph (h)(2) of this section in the sterile area of each airport terminal unless:

(i) The Transportation Security Administration prohibits the airport from locating a relief area in the sterile area, or

(ii) A service animal training organization, the airport, and the carriers in the terminal in which the relief area will be located agree that a relief area would be better placed outside the terminal's sterile area. In that event, the airport must retain documentation evidencing the recommendation that the relief area be located outside of the sterile area; and

(4) To the extent airports have established service animal relief areas prior to the effective date of this paragraph:

(i) Airports that have not consulted with a service animal training organization shall consult with one or more such organizations regarding the sufficiency of all existing service animal relief areas.

(ii) Airports shall meet the requirements of this section August 4, 2016.

(i) *High-contrast captioning (captioning that is at least as easy to read as white letters on a consistent black background) on television and audio-visual displays.* This paragraph applies to airports with 10,000 or more annual enplanements.

(1) Airport operators must enable or ensure high-contrast captioning at all times on all televisions and other audio-visual displays that are capable of displaying captions and that are located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal to which any passengers have access and that are owned, leased, or controlled by the airport.

(2) With respect to any televisions and other audio-visual displays located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal to which any passengers have access that provide passengers with safety briefings, information, or entertainment that do not have high-contrast captioning capability, an airport operator must replace or ensure the replacement of these devices with equipment that does have such capability whenever such equipment is replaced in the normal course of operations and/or whenever areas of the terminal in which such equipment is located undergo substantial renovation or expansion.

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(3) If an airport installs new televisions and other audio-visual displays for passenger safety briefings, information, or entertainment on or after October 5, 2015, such equipment must have high-contrast captioning capability.

\* \* \* \* \*

**§ 27.72 Boarding assistance for aircraft.**

(a) Paragraphs (b)–(e) of this section apply to airports with 10,000 or more annual enplanements.

(b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. Paragraph (c) of this section applies to aircraft with a seating capacity of 19 through 30 passengers. Paragraph (d) of this section applies to aircraft with a seating capacity of 31 or more passengers.

(c)(1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 19 through 30 passengers. The airport operator and the carrier(s) shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998, at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999, for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 2, 2000, for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements). All air carriers and airport operators involved are jointly responsible for the timely

and complete implementation of the agreement.

(3) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp or other suitable device on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(4) When boarding assistance is not required to be provided under paragraph (c)(3) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d)(1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 31 or more passengers where level entry boarding is not otherwise available. The airport operator and the carrier(s) shall, by no later than March 4, 2002 sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 4, 2002. All air carriers and airport opera-

tors involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Level-entry boarding assistance under the agreement is not required with respect to float planes or with respect to any widebody aircraft determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp, or other device on the basis that no existing boarding assistance device on the market will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees.

(4) When level-entry boarding assistance is not required to be provided under paragraph (d)(3) of this section, or cannot be provided as required by paragraphs (b) and (d) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(e) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

[66 FR 22115, May 3, 2001]

EFFECTIVE DATE NOTE: At 80 FR 46514, Aug. 5, 2015, § 27.72 was revised, effective Oct. 5, 2015. For the convenience of the user, the revised text is set forth as follows:

**§ 27.72 Boarding assistance for aircraft.**

(a) This section applies to airports with 10,000 or more annual enplanements.

(b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. This section applies to all aircraft with a passenger capacity of 19 or more passenger seats, except as provided in paragraph (e) of this section. Paragraph (c) of this section applies to U.S. carriers and paragraph (d) of this section applies to foreign carriers.

## § 27.75

(c) Each airport operator shall negotiate in good faith with each U.S. carrier serving the airport concerning the acquisition and use of boarding assistance devices to ensure the provision of mechanical lifts, ramps, or other devices for boarding and deplaning where level-entry loading bridges are not available. The airport operator must have a written, signed agreement with each U.S. carrier allocating responsibility for meeting the boarding and deplaning assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(1) All airport operators and U.S. carriers involved are jointly and severally responsible for the timely and complete implementation of the agreement.

(2) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d) Each airport operator shall negotiate in good faith with each foreign carrier serving the airport concerning the acquisition and use of boarding assistance devices to ensure the provision of mechanical lifts, ramps, or other devices for boarding and deplaning where level-entry loading bridges are not available. The airport operator shall, by no later than November 3, 2015, sign a written agreement with the foreign carrier allocating responsibility for meeting the boarding and deplaning assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(1) The agreement shall provide that all actions necessary to ensure accessible boarding and deplaning for passengers with disabilities are completed as soon as practicable, but no later than December 3, 2015.

(2) All airport operators and foreign carriers involved are jointly and severally responsible for the timely and complete implementation of the agreement.

(3) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(e) Boarding assistance agreements required in paragraphs (c) and (d) of this section are not required to apply to the following situations:

(1) Access to float planes;

(2) Access to the following 19-seat capacity aircraft models: The Fairchild Metro, the Jetstream 31 and 32, the Beech 1900 (C and D models), and the Embraer EMB-120;

(3) Access to any other aircraft model determined by the Department of Transportation to be unsuitable for boarding and deplaning assistance by lift, ramp, or other suitable device. The Department will make such a determination if it concludes that—

(i) No existing boarding and deplaning assistance device on the market will accommo-

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date the aircraft without significant risk of serious damage to the aircraft or injury to passengers or employees, or

(ii) Internal barriers are present in the aircraft that would preclude passengers who use a boarding or aisle chair from reaching a non-exit row seat.

(f) When level-entry boarding and deplaning assistance is not required to be provided under paragraph (e) of this section, or cannot be provided as required by paragraphs (b), (c), and (d) of this section (*e.g.*, because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents. However, hand-carrying (*i.e.*, directly picking up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft) must never be used, even if the passenger consents, unless this is the only way of evacuating the individual in the event of an emergency.

(g) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

## § 27.75 Federal Highway Administration—highways.

(a) *New facilities*—(1) *Highway rest area facilities*. All such facilities that will be constructed with Federal financial assistance shall be designed and constructed in accordance with the accessibility standards referenced in § 27.3(b) of this part.

(2) *Curb cuts*. All pedestrian crosswalks constructed with Federal financial assistance shall have curb cuts or ramps to accommodate persons in wheelchairs, pursuant to section 228 of the Federal-Aid Highway Act of 1973 (23 U.S.C. 402(b)(1)(F)).

(3) *Pedestrian over-passes, under-passes and ramps*. Pedestrian over-passes, under-passes and ramps, constructed with Federal financial assistance, shall be accessible to persons with a disability, including having gradients no steeper than 10 percent, unless:

(i) Alternate safe means are provided to enable mobility-limited persons to cross the roadway at that location; or

(ii) It would be infeasible for mobility-limited persons to reach the over-passes, under-passes or ramps because

of unusual topographical or architectural obstacles unrelated to the federally assisted facility.

(b) *Existing facilities—Rest area facilities.* Rest area facilities on Interstate highways shall be made accessible to persons with a disability, including wheelchair users, within a three-year period after the effective date of this part. Other rest area facilities shall be made accessible when Federal financial assistance is used to improve the rest area, or when the roadway adjacent to or in the near vicinity of the rest area is constructed, reconstructed or otherwise altered with Federal financial assistance.

[44 FR 31468, May 31, 1979, as amended by Amdt. 27-3, 51 FR 19017, May 23, 1986. Redesignated at 56 FR 45621, Sept. 6, 1991, as amended at 79 FR 21405, Apr. 16, 2014]

#### § 27.77 Recipients of Essential Air Service subsidies.

Any air carrier receiving Federal financial assistance from the Department of Transportation under the Essential Air Service Program shall, as a condition of receiving such assistance, comply with applicable requirements of this part and applicable section 504 and ACAA rules of the Department of Transportation.

[61 FR 56425, Nov. 1, 1996, as amended at 68 FR 51391, Aug. 26, 2003]

### Subpart C—Enforcement

SOURCE: 44 FR 31468, May 31, 1979, unless otherwise noted. Redesignated at 56 FR 45621, Sept. 6, 1991.

#### § 27.121 Compliance information.

(a) *Cooperation and assistance.* The responsible Departmental official, to the fullest extent practicable, seeks the cooperation of recipients in securing compliance with this part and provides assistance and guidance to recipients to help them comply with this part.

(b) *Compliance reports.* Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years. Each recipient shall keep such other records and submit to the responsible Departmental official

or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Department official may prescribe. In the case in which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Departmental official or his/her designee during normal business hours to books, records, accounts, and other sources of information, and to facilities that are pertinent to compliance with this part. Where required information is in the exclusive possession of another agency or person who fails or refuses to furnish the information, the recipient shall so certify in its report and describe the efforts made to obtain the information. Considerations of privacy or confidentiality do not bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement is not disclosed by the Department, except in formal enforcement proceedings, where necessary, or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its application to the program or activity for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Departmental official finds necessary to apprise them of the protections against discrimination provided by the Act and this part.

[44 FR 31468, May 31, 1979. Redesignated at 56 FR 45621, Sept. 6, 1991. 68 FR 51391, Aug. 26, 2003]

#### § 27.123 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Departmental official or his/

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her designee, from time to time, reviews the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself/herself or any specific class of individuals to be harmed by failure to comply with this part may, personally or through a representative, file a written complaint with the responsible Departmental official. A Complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Departmental official or his/her designee.

(c) *Investigations.* The responsible Departmental official or his/her designee makes a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation includes, where appropriate, a review of the pertinent practices and policies of the recipient, and the circumstances under which the possible noncompliance with this part occurred.

(d) *Resolution of matters.* (1) If, after an investigation pursuant to paragraph (c) of this section, the responsible Departmental official finds reasonable cause to believe that there is a failure to comply with this part, the responsible Departmental official will inform the recipient. The matter is resolved by informal means whenever possible. If the responsible Departmental official determines that the matter cannot be resolved by informal means, action is taken as provided in § 27.125.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Departmental official or his/her designee so informs the recipient and the complainant, if any, in writing.

(e) *Intimidating and retaliatory acts prohibited.* No employee or contractor of a recipient shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 504 of the Act or this part, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, hearing, or proceeding, under this part. The identity of com-

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plainants is kept confidential at their election during the conduct of any investigation, hearing or proceeding under this part. However, when such confidentiality is likely to hinder the investigation, the complainant will be advised for the purpose of waiving the privilege.

### § 27.125 Compliance procedure.

(a) *General.* If there is reasonable cause for the responsible Departmental official to believe that there is a failure to comply with any provision of this part that cannot be corrected by informal means, the responsible Departmental official may recommend suspension or termination of, or refusal to grant or to continue Federal financial assistance, or take any other steps authorized by law. Such other steps may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Refusal of Federal financial assistance.* (1) No order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective until:

(i) The responsible Departmental official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means; and

(ii) There has been an express finding by the Secretary on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part.

(2) Any action to suspend, terminate, or refuse to grant or to continue Federal financial assistance is limited to the particular recipient who has failed to comply, and is limited in its effect to the particular program or activity, or part thereof, in which noncompliance has been found.

(c) *Other means authorized by law.* No other action is taken until:

(1) The responsible Departmental official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified by the responsible Departmental official of its failure to comply and of the proposed action;

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period, additional efforts are made to persuade the recipient or other person to comply with the regulations and to take such corrective action as may be appropriate.

[44 FR 31468, May 31, 1979. Redesignated at 56 FR 45621, Sept. 6, 1991. 68 FR 51391, Aug. 26, 2003]

#### § 27.127 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 27.125(b), reasonable notice is given by the responsible Departmental official by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice advises the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fixes a date not less than 20 days after the date of such notice within which the applicant or recipient may request a hearing; or

(2) Advises the applicant or recipient that the matter in question has been set for hearing at a stated place and time.

The time and place shall be reasonable and subject to change for cause. The complainant, if any, also is advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing constitutes a waiver of the right to a hearing under section 504 of the Act and § 27.125(b), and consent to the making of a decision on the basis of such information as may be part of the record.

(b) If the applicant or recipient waives its opportunity for a hearing, the responsible Departmental official

shall notify the applicant or recipient that it has the opportunity to submit written information and argument for the record. The responsible Departmental official may also place written information and argument into the record.

(c) *Time and place of hearing.* Hearings are held at the office of the Department in Washington, DC, at a time fixed by the responsible Departmental official unless he/she determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings are held before an Administrative Law Judge designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(d) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the responsible Departmental official have the right to be represented by counsel.

(e) *Procedures, evidence and record.* (1) The hearing, decision, and any administrative review thereof are conducted in conformity with sections 554 through 557 of title 5 of the United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving notice subsequent to those provided for in paragraph (a) of this section, taking testimony, exhibits, arguments and briefs, requests for findings, and other related matters. The responsible Departmental official and the applicant or recipient are entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing. Any person (other than a government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the government's behalf, attends at a time and place scheduled for a hearing provided for by this part may be reimbursed for his/her travel and actual expenses in an amount not to exceed the amount payable under the standardized travel regulations applicable to a government employee traveling on official business.

(2) Technical rules of evidence do not apply to hearings conducted pursuant

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to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross examination are applied where reasonably necessary by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record are open to examination by the parties and opportunity is given to refute facts and arguments advanced by either side. A transcript is made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions are based on the hearing record and written findings shall be made.

(f) *Consolidation or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this regulation with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under section 504 of the Act, the responsible Departmental official may, in agreement with such other departments or agencies, where applicable, provide for consolidated or joint hearings. Final decisions in such cases, insofar as this regulation is concerned, are made in accordance with § 27.129.

[44 FR 31468, May 31, 1979. Redesignated at 56 FR 45621, Sept. 6, 1991. 68 FR 51391, Aug. 26, 2003]

### § 27.129 Decisions and notices.

(a) *Decisions by Administrative Law Judge.* After the hearing, the Administrative Law Judge certifies the entire record including his recommended findings and proposed decision to the Secretary for a final decision. A copy of the certification is mailed to the applicant or recipient and to the complainant, if any. The responsible Departmental official and the applicant or recipient may submit written arguments to the Secretary concerning the Administrative Law Judge's recommended findings and proposed decision.

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(b) *Final decision by the Secretary.* When the record is certified to the Secretary by the Administrative Law Judge, the Secretary reviews the record and accepts, rejects, or modifies the Administrative Law Judge's recommended findings and proposed decision, stating the reasons therefor.

(c) *Decisions if hearing is waived.* Whenever a hearing pursuant to § 27.125(b) is waived, the Secretary makes his/her final decision on the record, stating the reasons therefor.

(d) *Rulings required.* Each decision of the Administrative Law Judge or the Secretary contains a ruling on each finding or conclusion presented and specifies any failures to comply with this part.

(e) *Content of orders.* The final decision may provide for suspension or termination, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this first regulation applies. The decision may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended unless and until the recipient corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(f) *Subsequent proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section is restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may, at any time, request the responsible Departmental official to restore its eligibility, to receive Federal financial assistance. Any request must be supported by information showing that the applicant or recipient has met the requirements of paragraph (f)(1) of this section. If the responsible Departmental official determines that those requirements have been satisfied, he/

she may restore such eligibility, subject to the approval of the Secretary.

(3) If the responsible Departmental official denies any such request, the applicant or recipient may submit a request, in writing, for a hearing specifying why it believes the responsible Departmental official should restore it to full eligibility. It is thereupon given a prompt hearing, with a decision on the record. The applicant or recipient is restored to eligibility if it demonstrates to the satisfaction of the Secretary at the hearing that it satisfied the requirements of paragraph (f)(1) of this section.

(4) The hearing procedures of § 27.127(b) through (c) and paragraphs (a) through (d) of this section apply to hearings held under paragraph (f)(3) of this section.

(5) While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

[44 FR 31468, May 31, 1979. Redesignated at 56 FR 45621, Sept. 6, 1991. 68 FR 51391, Aug. 26, 2003]

## PART 28—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF TRANSPORTATION

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AUTHORITY: 29 U.S.C. 794

SOURCE: 56 FR 37296, Aug. 6, 1991, unless otherwise noted.

### § 28.101 Purpose.

The purpose of this part is to carry out section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies, including this Department, or the United States Postal Service. 49 CFR part 27 implements section 504 in the Department's financial assistance programs.

### § 28.102 Application.

This part applies to all programs or activities conducted by the Department except for programs and activities conducted outside the United States that do not involve individuals with handicaps in the United States.

### § 28.103 Definitions.

For purposes of this part, the term—*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Department. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the Department's alleged discriminatory actions in sufficient detail to inform the Department of the nature and