



U.S. Department
of Transportation

Federal Aviation
Administration

Access to Airports by Individuals with Disabilities

Advisory Circular 150/5360-14

Date: 6/30/99





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**Subject: ACCESS TO AIRPORTS BY INDIVIDUALS
WITH DISABILITIES**

Date: 6/30/99

AC No: 150/5360-14

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Change:

1. PURPOSE. This advisory circular (AC) is designed to assist airports in complying with the current laws and regulations regarding individuals with disabilities by: (1) identifying the relevant statutes and regulations which impact upon airports; (2) presenting in a single document the main features of each of the statutes and regulations; (3) providing legal citations to facilitate research; (4) listing sources of assistance or additional information; and (5) identifying Final Rules. It presents and reconciles the federal accessibility regulations implementing the Americans with Disabilities Act of 1990 (ADA); the Air Carrier Access Act of 1986 (ACAA); the Rehabilitation Act of 1973, as amended (RA); and the Architectural Barriers Act of 1968, as amended (ABA) which affect the architectural or program accessibility of airports in the U. S. transportation system and employment opportunities on these airports for individuals with disabilities.

2. FOCUS. This AC applies to airports operated by public entities and those receiving federal financial assistance. The AC implements the objectives set forth in the ADA to provide technical assistance to assist entities and persons affected by its requirements to understand the law and its implementing regulations. This AC has been broadened to provide technical assistance on the Architectural Barriers Act, the Rehabilitation Act of 1973, as amended, and the Air Carrier Access Act of 1986, since these also have an impact upon the entities and persons subject to or covered by the ADA.

This AC includes legal citations, the effective dates of regulations, and compliance dates to assist the reader in differentiating between the requirements of the applicable statutes and regulations.

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Director of Airport Safety and Standards

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CHAPTER 1. INTRODUCTION

100. BASIS. The following standards and regulations were used as a basis for this advisory circular. The architectural standards, in many instances, also have been published as regulations, as appendices thereto, or have been established as requirements through regulatory action. The architectural standards, including those published as regulations, are listed in Paragraph 100.a. of this AC. Other regulations, dealing with requirements under the accessibility acts, which served as basis for this AC, appear in Paragraph 100.b. Many of these documents may have been modified. The versions used in the production of this AC were current as of March 1, 1999.

a. Architectural Standards. The following architectural standards were used as a basis for this AC, either to determine existing requirements or to determine conflicts and unresolved issues:

(1) Uniform Federal Accessibility Standards (UFAS). The UFAS were issued by four standard-setting agencies to prescribe standards for buildings subject to the ABA. The standard-setting agencies are the General Services Administration (GSA), the Department of Defense (DOD), the Department of Housing and Urban Development (HUD), and the U. S. Postal Service (USPS). The UFAS initially were published in 49 FR 31528, August 7, 1984. They were adopted and incorporated in the standards, regulations, or directives of the standard setting agencies, as follows: GSA, 41 CFR 101-19.6.

(2) Americans with Disabilities Act Accessibility Guidelines (ADAAG). The ADAAG were issued, amended, and corrected as follows: Architectural and Transportation Barriers Compliance Board (ATBCB), Department of Justice (DOJ), and Department of Transportation (DOT) Joint Final Rule, 36 CFR Part 1191, 28 CFR Part 36, and 49 CFR Part 37, respectively. This joint final rule suspended ADAAG requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools until July 26, 2002.

(3) The American National Standards Institute (ANSI) Standards. The "Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped," originally were adopted as ANSI A117.1-1961 (1961-R1971, 1980, 1986, 1998).

b. Regulations. The following regulations were used as a basis for this advisory circular:

(1) Rehabilitation Act.

(a) DOT Final Rule, 49 CFR Part 27, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal financial assistance." This final rule was issued by the DOT, implementing Section 504 of the RA of 1973 (29 U.S.C. 794), 44 FR 31442, May 31, 1979, effective date, July 2, 1979.

(b) DOT Final Rule, 49 CFR Part 27, "Transportation for Individuals with a Disability." This final rule was published in 56 FR 45621, September 6, 1991, amending 49 CFR Part 27, to make it compatible with ADA requirements. Basically, the amended rule makes compliance with Section 504 of the RA dependent upon compliance with the requirements of the ADA. It was effective October 7, 1991, except the deletions of Subparts B and C thereof and the redesignation of Subpart F as Subpart C and Subpart D as Subpart B, which were effective January 26, 1992. It also clarifies that the Section 504 requirements apply to private parties receiving federal financial assistance, as well as to public entities receiving such assistance. Finally, it clarifies that entities subject to 49 CFR Part 37, implementing the ADA, must utilize the design, construction, and alteration standards in Appendix A of 49 CFR Part 37, while other entities may select either the Appendix A standards or the UFAS.

(2) Air Carrier Access Act.

(a) DOT Final Rule, 14 CFR Part 382, "Nondiscrimination on the Basis of Handicap in Air Travel." This final rule was published in 55 FR 8008, March 6, 1990, effective April 5, 1990, implementing the ACAA of 1986 (49 U.S.C.S. app. Section 1301 (1991)).

(b) DOT Final Rule, 14 CFR Part 382. This final rule was published in 55 FR 12236, Apr. 3, 1990, amending Part 382 to extend the compliance date to June 4, 1990 for certain requirements and requesting comments on whether a further extension should be given.

(c) **DOT Final Rule, 14 CFR Part 382.** This final rule was published in 55 FR 23539, June 11, 1990, effective June 4, 1990, extending the compliance dates for certain requirements to August 5, 1990, and for certain others to October 5, 1990.

(3) **Architectural Barriers Act. ATBCB Final Rule, 36 CFR Part 1190, "Minimum Guidelines and Requirements for Accessible Design."** This rule of the ATBCB implements section 502(b)(7) of the RA of 1973 (29 U.S.C. 792(b)(7), as amended), which requires the ATBCB to establish minimum guidelines and requirements for standards issued under the ABA of 1968 (42 U.S.C. 4151 et seq.).

(4) **Americans with Disabilities Act.**

(a) **Title I - Employment - 29 CFR Part 1630, "Equal Employment Opportunities for Individuals with Disabilities"; 29 CFR Parts 1602 and 1627, "Recordkeeping and Reporting under Title VII of the Civil Rights Act of 1964 and Title I of the ADA."** The rule for Part 1630 was issued by the Equal Employment Opportunity Commission (EEOC) in 56 FR 35725 (Part V at 2), effective July 26, 1992. The rules for Parts 1602 and 1627 were issued in 56 FR 35725 at 35753 (Part V at 29), July 26, 1991, effective August 26, 1991.

(b) **Title II - Services, Programs, and Activities.**

1 **Subtitle A - State and Local Governments, 28 CFR Part 35, "Nondiscrimination on the Basis of Disability in State and Local Government Services."** This rule was issued by the DOJ in 56 FR 35693, Part IV, July 26, 1991, effective January 26, 1992.

2 **Subtitle B - Transportation Provided by Public Entities, and Title III, Public Accommodations Provided by Private Entities, 49 CFR Parts 27, 37, and 38.** The DOT issued "Transportation for Individuals with Disabilities," 49 CFR Parts 27, 37, and 38, in 56 FR 45583, September 6, 1991 as amended.

(c) **Title III - Places of Public Accommodation by Private Entities, 28 CFR Part 36, "Nondiscrimination on the Basis of Disability by Public Accommodations and in**

Commercial Facilities." This rule was published by the DOJ in 56 FR 35543, July 26, 1991, effective January 26, 1992.

101. RELATED READING MATERIAL.

a. EEOC, "A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, January 1992.

b. DOJ, "Americans with Disabilities Act, Title II, Technical Assistance Manual," and Supplements.

c. DOJ, "Americans with Disabilities Act, Title III, Technical Assistance Manual," and Supplement, 1994.

d. EEOC and DOJ, "Americans with Disabilities Handbook," October 1991.

e. Air Transport Association of America/American Association of Airport Executives/Airports Council International-North America/Airports Consultants Council, "Guidelines for Airport Signing and Graphics, Terminals and Landside," Second Edition 1994. This may be ordered from Apple Designs, Inc., 1146 Celebration Blvd., Celebration, FL 34747. Telephone Number: (407) 566-2775, Fax: (407) 566-1004.

f. Federal Aviation Administration (FAA) Advisory Circular No. 150/5220-21, "Guide Specification for Lifts Used to Board Airline Passengers with Mobility Impairments," July 26, 1996, initiated by the FAA, Office of Airport Safety and Standards, AAS-100, 800 Independence Avenue, S.W., Washington, D.C. 20591. This may be ordered from: U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Ave., Landover, MD 20785. It is also available via internet at www.faa.gov/arp.

102. OVERVIEW OF THE AMERICANS WITH DISABILITIES ACT (ADA). The ADA is the first federal statute that protects individuals from discrimination based on disability regardless of whether they are seeking employment or access to services from a public or private entity or from an agency that receives federal financial assistance. The ADA guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services,

and telecommunications. It extends comprehensive civil rights protection to individuals with disabilities.

a. Digest of the ADA. The ADA has five separate titles, which are briefly described below. This order covers the agency's responsibilities to enforce Title II and describes procedures for referring complaints subject to Titles I and III.

(1) Title I. Title I prohibits discrimination in employment on the basis of disability. The EEOC has responsibility for ensuring compliance with Title I under its regulations at 29 CFR Part 1630.

(2) Title II. Title II prohibits discrimination on the basis of disability by public entities. Public entities include (1) any state or local government; and (2) any department, agency, special purpose district, or other instrumentality of a state or states or local government (See paragraph 502s. for the complete definition of "public entity."). Title II, Subtitle A applies to all services, programs, or activities made available by a public entity, regardless of whether it receives federal financial assistance. Under this Subtitle, DOT and FAA have jurisdiction over public airports, including those, which do not receive federal grant funds. DOJ regulations at 28 CFR Part 35, Section 35.190(b)(8) delegate authority to the DOT to investigate complaints alleging transportation-related violations of Title II of the ADA and to conduct other compliance activities under Title II, DOT has delegated authority to the modal administrations to conduct compliance reviews and other enforcement activities (49 CFR Part 1, Section 1.45). An airport owned by a public entity is required to comply with only those provisions of 49 CFR Parts 37 and 38 pertaining to designated or fixed route public transportation systems, found in Sections 37.33(a) and (b).

(3) Title III. Title III of the ADA addresses public accommodations, defined generally as private entities that affect commerce. Privately owned airports and airport facilities operated by concessionaires are subject to Title III of the ADA and DOJ regulations at 28 CFR Part 36. Part 36 is enforced by DOJ and other federal laws, or state or local laws to include State common laws that provide greater or equal protection for the rights of individuals with disabilities or individual associated with them. FAA does not have authority to enforce these regulations. However, even though a concessionaire is not subject to Title II, the airport is responsible to

ensure that its lessees operate their businesses in a manner which allows the airport to meet its Title II obligations. DOT regulations at 49 CFR Parts 37 and 38 also cover Title III. Taxi service providers operating at an airport and private jitney or shuttle service between an airport and the surrounding area are subject to 49 CFR Sections 37.5, 37.29, and 37.33(c). Transportation services provided by hotel and car rental concessionaires are subject to 49 CFR Part 37, [See 49 CFR Section 37.37(b)].

(4) Title IV. Title IV of the ADA addresses telecommunications. This AC does not address any responsibilities under Title IV, since Title IV addresses the responsibilities of telecommunications providers, e.g. telephone companies (47 U.S.C. 22S).

(5) Title V. Title V of the ADA addresses a number of miscellaneous matters, including the provision giving the ATBCB the authority to issue minimum guidelines and requirements for accessible design for facilities covered by Titles II and III of the ADA.

b. Congressional Findings. In passing the ADA, Congress enumerated a number of findings that provide background for the legislation. The findings are presented below to provide those responsible for implementing the ADA with a better understanding of the context of the requirements.

(1) Some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older.

(2) Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.

(3) Discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.

(4) Unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of

disability have often had no legal recourse to redress such discrimination.

(5) Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.

(6) Census data, national polls, and other studies have documented that individuals with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally.

(7) Individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.

(8) The Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.

(9) The continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and lack of productivity.

103. OVERVIEW OF THE ARCHITECTURAL BARRIERS ACT OF 1968 (ABA). The four standard setting agencies (GSA, HUD, USPS, or DOD) establish and enforce standards for design, construction, and alteration of particular types of buildings and facilities. It is possible that more than

one of the standard-setting agencies could have jurisdiction under the ABA over a given airport. The Access Board has the responsibility for enforcing the ABA under standards issued by GSA in facilities that receive federal financial assistance. This AC limits its discussion to the responsibilities of airport managers or operators receiving federal financial assistance from DOT. This is the only entity over which DOT has jurisdiction under the ABA.

104. OVERVIEW OF THE REHABILITATION ACT OF 1973 (RA). This AC covers only the airport's responsibilities under Section 504, as it applies to the FAA airport grant program. Section 504 prohibits discrimination against any qualified individual with a disability solely by reason of his or her disability in any program or activity receiving federal financial assistance or under any federally conducted program or activity. DOT's regulation implementing Section 504 in its federal financial assistance programs is found at 49 CFR Part 27. Section 504 applies to services, programs, and activities provided by recipients of federal financial assistance, either directly or through contractual, licensing, or other arrangements. It also covers employment and physical accessibility. To be in compliance with Section 504, recipients must also be in compliance with all applicable regulations under the ADA including 29 CFR Part 1630, 29 CFR Part 1640, 28 CFR Parts 35 and 36, and 49 CFR Parts 37 and 38.

105. OVERVIEW OF THE AIR CARRIER ACCESS ACT OF 1986 (ACAA). The ACAA provides that no air carrier may discriminate against any otherwise qualified individual with a disability, by reason of such disability in the provision of air transportation. Responsibility for enforcing the ACAA has been delegated to the DOT's Office of the General Counsel for Aviation Enforcement and Proceedings. The ACAA covers aircraft accessibility; airport facilities (air carriers are responsible only for those facilities or services at an airport that they own, lease, operate, or otherwise control); and provisions of services such as refusal of service, seat assignments, stowage of personal equipment, boarding and deplaning, accommodations, service animals, etc. DOT's regulation implementing the ACAA is found at 14 CFR Part 382. However, some ACAA provisions overlap with those of 49 CFR Part 27.

106. TO 199. RESERVED.

CHAPTER 2. ARCHITECTURAL BARRIERS ACT OF 1968, AS AMENDED

200. BACKGROUND.

a. Act. Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 et seq.).

b. Compliance Agency. ATBCB, established under Section 502 of the RA, 29 U.S.C. 792.

c. Standard-Setting Agencies. GSA, HUD, USPS, and DOD.

d. Standards:

(1) ANSI. Utilized by the four standard setting agencies from September 2, 1969 to October 13, 1980.

(2) Individual Standards. Set by each of the four standard-setting agencies under their individual statutory authority; utilized between October 14, 1980 to July 31, 1984;

(3) UFAS. Four standard setting agencies and the DOJ developed the UFAS, published originally on August 7, 1984, 49 FR 31528, to minimize the differences in the standards previously issued by the four standard setting agencies.

201. COVERAGE. The following requirements apply to recipients of federal financial assistance from DOT (see Chapters 3 through 5).

Structural accessibility is required for individuals with disabilities in buildings or facilities that are:

a. to be constructed or altered by or on behalf of the United States;

b. to be leased in whole or in part by the United States after August 12, 1968;

c. to be financed in whole or in part by a grant or a loan made by the United States after August 12, 1968, if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan; or

d. to be constructed under authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III

of the Washington Metropolitan Area Transit Regulatory Compact.

202. GENERAL APPLICABILITY AND RESPONSIBILITY. On any given airport, it is conceivable that more than one of the four standard setting agencies could have jurisdiction - the GSA over airport facilities built with federal financial assistance, usually from the DOT; the USPS over a postal facility, and the DOD if military operations are present. For purposes of this advisory circular, the discussion will be limited to the responsibilities of an airport owner or operator that has received federal financial assistance from the DOT, since this is the only entity over which the DOT, as the provider of federal assistance, has jurisdiction under the ABA. As a recipient, it would be responsible for compliance with the ABA, the UFAS, and any other applicable GSA regulations. In the event the recipient leases portions of the federally assisted building to other public or private entities, the responsibility would remain with the recipient. The recipient, however, could ensure compliance on the part of the lessees through requirements included in the lease document or other agreement executed.

203. EXCEPTIONS TO COMPLIANCE REQUIREMENTS. Under UFAS, the following exceptions, waivers, and modifications of standards are available. (Section numbers in Paragraph 203.a. and b. of this AC relate to 41 CFR Chap. 101, the GSA regulation implementing UFAS).

a. Exceptions to GSA Standards. Section 101-19.604 of 41 CFR Chap. 101 provides that the GSA's accessibility standards shall not apply to:

(1) the design, construction, alteration, or lease of any portion of a building which need not, because of its intended use, be made accessible to, or usable by, the public or by people with disabilities;

(2) the alteration of an existing building if the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible to installation or improvements to accommodate people with disabilities;

(3) the alteration of an existing building, or of portions thereof, to which application of the standards is not structurally possible;

(4) the construction or alteration of a building for which plans and specifications were completed or substantially completed on or before September 2, 1969; provided, however, that any building defined in Section 101-19.602(a)(4) [Constructed under authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulation Compact] shall be designed, constructed, or altered in accordance with the standards prescribed in Section 101-19.603 regardless of design status or bid solicitation as of September 2, 1969; and

(5) the leasing of space when it is found after receiving bids or offers and otherwise legally acceptable that a proposal meets most of the requirements of the UFAS. If no offeror or bidder meets all the requirements, then preference must be given to the offeror or bidder who most nearly meets the standards in Section 101-19.603. If the award is proposed for a firm other than the one that most nearly meets the UFAS and whose bid or offer is reasonable in price and is otherwise legally acceptable, a waiver or modification of the standards must be obtained.

b. Waiver or Modification of Standards.

Section 101-19.605 provides: the applicability of the standards set forth in this subpart may be modified or waived on a case-by-case basis upon application to GSA by the head of the department, agency, or instrumentality of the United States concerned only if the Administrator of the General Services determines that such waiver or modification is clearly necessary.

c. Other UFAS Exceptions: UFAS also contains numerous scoping and technical exceptions.

204. COMPLIANCE, ENFORCEMENT, AND REMEDIES

a. Practice and Procedure for Compliance Hearings. The ATBCB's practice and procedure rule is set forth in 36 CFR Ch. XI, Part 1150. Copies may be obtained from the ATBCB, 1331 F Street, NW, Suite 1000, Washington, DC 20004-1111. This paragraph, therefore, is limited to the provision of information needed prior to the filing of a complaint and to information on remedies.

b. Policy of Amicable Resolution. It is the policy of the ATBCB to encourage voluntary and informal resolution at any stage of the proceedings. Agreements to settle amicably shall be submitted to the Executive Director or to the Administration Law Judge and shall be accompanied by an appropriate proposed order. The Executive Director is authorized to resolve

any proceeding on behalf of the ATBCB unless otherwise directed by the ATBCB and may file appropriate stipulations or notice that the proceeding is discontinued.

c. Key Definitions applying to ADA.

(1) **"Agency"** means federal department, agency, or instrumentality as defined in sections 551(1) and 701(b)(1) of Title 5 U.S.C., or an agency official authorized to represent the agency. It includes any executive department or independent establishment in the Executive Branch of the government, including wholly owned government corporations, and any establishment in the legislative or judicial branch of the government, except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction.

(2) **"Alteration"** means any change in a building or facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangement in structural parts, and extraordinary repairs. It does not include normal maintenance, reroofing, interior decoration, or changes to mechanical systems.

(3) **"Facility"** means all or any portion of buildings, structures, equipment, roads, walks, parking lots, parks, sites, or other real property or interest in such property.

(4) **"Complaint"** means any written notice of an alleged violation, whether from an individual or organization, or other written information reasonably indicating to the Executive Director of the ATBCB a violation of the ATBCB standard.

d. Filing Complaints. Complaints must be in writing and addressed to: Executive Director, Architectural and Transportation Barriers Compliance Board, 1111 18th Street, Suite 501, Washington, DC 20036-3894. Complaint forms are available at that address. The complaint may, but need not, contain (1) the complainant's name and location; (2) the facility or building, and, if known, the funding agency, and (3) a brief description of the barriers in the facility or building.

e. Confidentiality. The ATBCB holds in confidence the identity of all persons submitting complaints unless the person submits a written authorization otherwise.

205. TO 299. RESERVED.

CHAPTER 3. REHABILITATION ACT OF 1973, AS AMENDED

300. BACKGROUND.

a. Act. Section 504 of the Rehabilitation Act, as amended (29 U.S.C. 794).

b. Compliance Agencies. DOT, as established by 49 CFR 27.125.

c. Architectural Standard. UFAS and/or ADAAG.

301. COVERAGE. The following requirements apply to recipients of federal financial assistance from DOT (see Chapter 2, 4, and 5). Some provisions may be superceded by other regulations.

a. Programs. Nondiscrimination by the airport owner or operator in the provision of access to programs operated with or benefiting from federal financial assistance.

b. Employment. Nondiscrimination by the airport owner or operator in the employment of persons with disabilities.

c. Compliance planning. Designation of a liaison; evaluation of policies and practices; adoption of a complaint procedure by recipients employing 15 or more persons; notice to participants, beneficiaries, applicants and employees; and inclusion of a statement of nondiscrimination policy in any general information or recruitment publications made available to participants, beneficiaries, applicants, or employees.

d. Responsibility. Part 27 requires assurances from the recipient offered financial assistance. The DOT consistently has interpreted Part 27 to require nondiscrimination by the other parties to these agreements and to require action by the recipient in the event of noncompliance by tenants, contractors, or similar parties.

e. General Applicability. Requirements apply to recipients, defined as any state, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality, 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 DOT is extended directly or through another recipient, for any federal program, including any successor, assignee, or transferee

thereof, but such term does not include any ultimate beneficiary under such program (on airports, basically the public utilizing the airport).

f. Accessibility.

(1) New Construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such a manner that the facility is readily accessible to and useable by individuals with disabilities, if the construction was commenced after January 26, 1992. Prior to January 26, 1992, new construction was required to comply with UFAS. During the period January 26, 1992, through December 1, 1996, public entities had discretion to choose between UFAS and ADAAG. Beginning December 2, 1996, all public entities are required to use ADAAG in accordance with 49 CFR Section 27.71 (e).

(2) Alterations. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992. Prior to January 26, 1992, new construction was required to comply with UFAS. During the period January 26, 1992, through December 1, 1996, public entities had discretion to choose between UFAS and ADAAG. Beginning December 2, 1996, all public entities are required to use ADAAG in accordance with 49 CFR Section 27.71 (e).

(3) Existing Facilities.

(a) Accessibility. In facilities in which construction began on or before January 26, 1992, 28 CFR Part 35 requires that, subject to certain limitations, each service, program, or activity, when viewed in its entirety, shall be readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes to existing facilities where other methods are effective in achieving compliance.

(b) Transition Plans. Where extensive structural changes are necessary to achieve

accessibility, transition plans are to be submitted to the appropriate FAA Regional Office of Civil Rights.

(4) Other Requirements.

(a) Airport Facilities. All airports must the special requirements in 49 CFR 27.71(e).

(b) Boarding assistance for small aircraft at airports with 10,000 enplanements or more.

1 Lifts, Ramps, or Other Suitable Devices. Lifts, ramps, or other suitable devices not normally used for the movement of freight, must be available, if the terminals at such airports are not equipped with passenger loading bridges or passenger lounges for boarding and unboarding. Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of assistance devices. 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 parties. The agreement shall be made available, on request, to representatives of the DOT. 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 enplanements); December 4, 1999 for small commercial service hub airports (those with between 250,000 and 1,199,000 annual enplanements); or December 4, 2000 for non-hub commercial service primary airports (those with between 10,000 and 249,000 annual enplanements). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement (see 49 CFR 27.72(c)(1) and (2)).

2 Passenger Services. Provisions for assisting passengers with disabilities upon request in movement into, out of, and within the terminal, and in the use of terminal facilities, including baggage handling.

3 All Recipient Airports. All recipient airports must provide access to terminals and facilities for seeing eye and hearing guide dogs (The DOT's incorporation of the ADA requirements has broadened this to include all service animals).

302. COMPLIANCE, ENFORCEMENT, AND REMEDIES.

a. Compliance Information. All recipients shall keep on file for 1 year all complaints of noncompliance; a record in summary form of such complaints for 5 years; and shall provide reports at the times prescribed by the FAA's Office of Civil Rights (ACR). It shall make information available during normal business hours to the ACR, and shall make known to participants, beneficiaries, and other interested persons the provisions of 49 CFR Part 27.

b. Complaints and Investigations. Any person alleging noncompliance may file a complaint with the ACR, not later than 180 days from the date of the alleged discrimination. The ACR or designee investigates promptly if a complaint, compliance review, report or other information indicates a possible noncompliance.

c. Informal Resolution. If the results of the investigation point toward noncompliance, the ACR shall inform the recipient and may attempt informal resolution. If the investigation does not appear to support the complaint, the ACR shall so inform the complainant.

d. Intimidation and Retaliation. The identity of the complainant shall be kept confidential at the complainant's election during the investigation. If such confidentiality hinders the conduct of the investigation, however, the ACR may advise the complainant to waive that privilege. No employee or a contractor of a recipient shall intimidate, threaten, coerce, or discriminate against any individual asserting his or her rights and privileges under Section 504 of the RA or under 49 CFR Part 27.

e. Remedies. If there is reasonable cause to believe that noncompliance has occurred, the ACR may recommend suspension or termination of, or refusal to grant or to continue federal financial assistance, or take any other steps authorized by law, including but not limited to:

(1) Referral to the DOJ. The ACR may recommend that appropriate proceedings be brought to enforce any rights of the United States under federal or state law (including other titles of the RA) or any assurance or other contractual agreement.

(2) Instituting Any Applicable Proceeding under State or Local Law.

f. Rights of the Recipient.

(1) Sanctions. No order suspending, terminating, or refusing to grant or to continue federal financial assistance shall become effective until there has been:

(a) Notification to the recipient.

(b) Determination that informal resolution is not possible.

(c) An express finding on the record, after opportunity for a hearing, that noncompliance has occurred.

(2) Limitation on Sanction. Any sanction is limited to the particular recipient that has failed to comply and is limited to the particular program or part thereof in which noncompliance has been found.

(3) Other Actions Authorized by Law. No other actions may be instituted until:

(a) There has been notification to the recipient.

(b) The expiration of at least 10 days from the mailing of the notice, during which informal resolution has been pursued.

(4) Hearings. Whenever an opportunity for a hearing is required under 49 CFR Part 27, the recipient is entitled to notice by registered or certified mail, return receipt requested; to a hearing date not less than 20 days after the date of such notice; and notification of the actual date. The recipient is entitled to consideration of a hearing location other than Washington, D.C., to representation by counsel, and to written findings, setting forth the proposed decision by an Administrative Law Judge, based on the hearing record. The recipient also is entitled to waive a hearing, and to elect, instead, to submit written information and argument for the record.

(5) Final Decisions. Final decisions are made by the Secretary of Transportation on the certified record.

(6) Restoration to Full Eligibility. Following satisfaction of the terms and conditions of an adverse decision, the recipient is restored to full eligibility for federal financial assistance. A request for restored eligibility, supported by evidence of compliance, may be made to the ACR at any time. If the request is denied, the recipient may request a prompt hearing. While proceedings are pending, the sanctions imposed by the order remain in effect.

303. TO 399. RESERVED.

CHAPTER 4. THE AIR CARRIER ACCESS ACT OF 1986

400. BACKGROUND.

a. Act. Air Carrier Access Act of 1986 (49 U.S.C. 1374(c)).

b. Enforcement Agency. DOT.

c. Standards. UFAS prior to December 2, 1996, ADAAG after December 2, 1996, and other specific requirements set forth in 14 CFR Part 382.23.

401. COVERAGE.

a. Discrimination on the Basis of Disability within Aircraft. Prohibits discrimination by U. S. air carriers on the basis of disability, within the aircraft, consistent with the safe carriage of all passengers. Includes general and administrative provisions concerning physical facilities and services to be provided to passengers with disabilities. (Note: Since this AC deals with the responsibilities of airport owners and operators and not with those of the airlines, regarding accessibility within the aircraft, the latter requirements are not set forth herein. For airline responsibilities see 14 CFR Part 382, March 6, 1990.)

b. Discrimination on the Basis of Disability within Terminals. Prohibits discrimination within terminal facilities owned, leased, or operated on any other basis by an air carrier at an air carrier airport defined as a public commercial service airport which emplanes annually 2500 or more passengers and receives scheduled air service, including parking and ground transportation facilities.

402. APPLICABILITY AND RESPONSIBILITY.

a. United States Air Carriers. Applies to all U. S. air carriers providing air transportation.

b. United States Air Carriers and Airport Owners and Operators. Applies to U. S. air carriers and airport owners and operators of air carrier airports for the provision of terminal, parking, and ground transportation accessibility, in accordance with respective responsibilities specified in the contracts or leases between the air carriers and airport owners or operators, as required by section 382.23 of 14 CFR Part 382, DOT regulation to implement the ACAA.

403. TERMINALS, PARKING, AND GROUND TRANSPORTATION. The following requirements apply to airport owners and operators and air carriers.

a. Facilities and Services. Facilities and services, which, when viewed as a whole, must be accessible to and usable by individuals with disabilities.

b. Design, Construction, and Alterations. There must be compliance with the UFAS prior to December 2, 1996 or ADAAG after December 2, 1996, or a substantially equivalent standard, in all facilities designed, constructed, or altered after April 5, 1990, the effective date of 14 CFR Part 382.

c. Accessibility. Each existing fixed facility must be accessible.

d. Accessible Route. There must be at least one accessible route from an accessible entrance to those areas in which the air carrier conducts activities related to the provision of air transportation; and

e. Boarding Assistance. Boarding shall be by level entry boarding platforms or accessible passenger lounges, where these means are available. Where not available, carriers shall use ramps, mechanical lifts, or other devices (not normally used for freight) for enplaning and deplaning qualified individuals with disabilities who need them. Such devices shall be maintained in proper working order (see AC 150/5220-21).

404. EXCEPTIONS TO REQUIREMENTS; WAIVERS. Departures from the scoping and technical standards are permitted where substantially equivalent or greater access to and usability of the buildings or other fixed facilities is provided.

405. COMPLIANCE, ENFORCEMENT, AND REMEDIES.

a. Complaint Resolution Mechanisms. Each carrier providing scheduled service shall provide a complaint resolution mechanism, making available one or two complaints resolution officials (CRO) at each airport it serves and establishing a procedure for the acceptance of written complaints.

b. Complaint Procedures. CROs shall accept oral complaints (delivered personally or by telephone)

and written complaints postmarked no more than 45 days after the date of the alleged violation. Telephone or assisted calls shall be made available to the complainant without cost to him or her. If the CRO agrees that the complaint is valid, the CRO shall take action to prevent noncompliance or to rectify it, if it already has occurred. A written statement, summarizing the facts, and setting forth the provision of denial of a remedy shall be provided to the complainant within 10 calendar days of the complaint and shall inform the complainant of his or her right to pursue enforcement action by the DOT.

c. Written Complaints. Written complaints shall state whether a CRO has been contacted, the name of the CRO, and the date of the contact, and shall include any written response received from the CRO. The carrier shall make a dispositive written response within 30 days of receipt of the written complaint.

d. Enforcement Action by the DOT. Any complainant believing that a carrier has violated a provision of 14 CFR 382 may contact the DOT Office of the General Counsel at the following address:

Assistant Director for Aviation Consumer
Protection
Office of the Assistant General Counsel for
Aviation Enforcement and Proceedings
US Department of Transportation
400 7th Street, SW
Washington, DC 20590
Telephone (202) 366-5960
Fax (202) 366-5944

Formal complaints may be filed under the applicable provisions of 14 CFR 302.

406. to 499. RESERVED.

CHAPTER 5. AMERICANS WITH DISABILITIES ACT OF 1990

SECTION 1. GENERAL

500. BACKGROUND. The Americans with Disabilities Act of 1990 (ADA) is codified at 42 U.S.C. 12101 et seq. It contains five titles:

a. Title I - Employment.

b. Title II - Services, Programs, and Activities Provided by Public Entities.

(1) **Subtitle A** - Subtitle A covers all services, programs, and activities provided by public entities. It includes transportation, except by aircraft, to the extent not covered under Subtitle B.

(2) **Subtitle B** - Subtitle B covers transportation provided by public entities. It excludes transportation by aircraft and does not deal with airport terminals as such, but affects airport owners and operators as public entities.

c. Title III - Public Accommodations Provided by Private Entities.

d. Title IV - Telecommunications

e. Title V Miscellaneous Provisions.

501. APPLICABILITY (GENERAL) TO AIRPORTS. The specific requirements of the Titles I, II, III, and V of the ADA are set forth in this chapter. Title IV will not be addressed in this AC.

a. Title I, Employment. Title I covers virtually all private and public employers who affect commerce and who have 15 or more employees. (Note: Title II of the ADA, covering State and local government programs and activities, as set forth below, includes a prohibition against job discrimination by State and local government, regardless of the number of employees, after January 26, 1992.) Airports and airport authorities owned or operated by any State or local governmental structure are "public employers" for purposes of Title I and "public entities" for purposes of Title II. For those public employers who are subject to Title I, Title II adopts the employment standards of Title I. All other public employers are subject to the employment requirements of Section 504 of the RA. The Title I and Section 504 employment requirements now have been harmonized.

b. Title II, Services, Programs, and Activities of Public Entities. In effect, Title II applies to everything a public entity does. Airports and airport authorities owned or operated by any state or local governmental structure are "public entities" for purposes of Title II, even though airport terminals, per se, are not subject to the DOT's regulations implementing Subtitle B of Title II. All new buildings constructed by a public entity must be accessible. When alterations are undertaken, public entities must make the altered sections accessible. Facilities that existed on January 26, 1992, must be made "program accessible," when viewed in their entirety, through one or more methods such as alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or a program, or the provision of services at alternate accessible sites.

Public entities that receive federal financial assistance also are subject to program or structural accessibility requirements in Section 504 of the RA, the ABA, and, as specified therein, to the ACAA. See Paragraph 517 of this AC for further discussion of conflicts between the accessibility acts, resolutions reached, and outstanding questions.

(1) **Subtitle A, Public Entities.** Subtitle A covers all programs, including transportation provided by public entities, except by aircraft, to the extent not covered by Subtitle B.

(2) **Subtitle B, Public Entities Transportation.** This Subtitle covers transportation provided by any public entity, including an airport, and private entity providing transportation under contract to the public entity. Such services include but are not limited to inter-terminal connectors, parking shuttles, inter-airport connectors, etc.

c. Title III, Public Accommodations Provided by Private Entities. Title III requires that all new places of public accommodation and commercial facilities be designed and constructed so as to be readily accessible and requires that examinations or courses related to licensing or certification for professional and trade purposes be accessible. The ADA enumerates 12 categories of "places of public accommodation" whose operations affect commerce and thus are covered. In existing facilities, barrier removal needs be accomplished only when it is "readily

achievable" to do. If barrier removal is not possible under this standard, alternative steps that are readily achievable must be taken. Transportation operated by private entities, such as rental cars, hotels, motels, shopping malls, individual concessions, etc., are also covered under this title.

d. Title IV, Telecommunications. Title IV requires that each telecommunications common carrier providing telephone voice transmission services provide telecommunications relay services, which enable persons with hearing disabilities to communicate by telephone with the assistance of telecommunications devices. It also requires that any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of the Federal Government shall include closed captioning of the verbal content of such announcement. The lead agency is the Federal Communications Commission, charged with the issuance of regulations to implement Title IV. Title IV is not the responsibility of the airport. The provision of TTYs is covered under Title II and III in this chapter.

e. Title V, Implementing Provisions. Title V covers miscellaneous provisions concerning the applicability of standards; the relationship of the ADA to other Federal laws or laws of any State or political subdivision of any State or jurisdiction; insurance and medical service policies; the non-immunity of States under the ADA; prohibitions against retaliation and coercion; the issuance of ADA guidelines or standards; attorney's fees; technical assistance; coverage of the Congress and the agencies of the Legislative Branch; the illegal use of drugs; exclusions from the definition of "disability; certain amendments to the RA; alternative means of dispute resolution; and severability of unconstitutional provisions.

502. KEY DEFINITIONS. This paragraph does not include definitions commonly understood such as "Transportation Authority," definitions which appear elsewhere in this AC such as "Disability," or definitions not relevant to airport operations such as "Commuter Rail Car."

a. "Alteration " means a change to a facility, including but not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts, elements, or the plan for configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to

mechanical or electrical systems are not "alterations," unless they affect the usability of the building or facility.

b. "Automated Guideway Transit System (AGT)" or "People Mover" means a fixed-guideway transit system, which operates with driverless individual vehicles or multi-car trains. Service may be on a fixed schedule or in response to passenger-activated call buttons.

c. "Auxiliary Aids" include qualified interpreters, notetakers, transcription services, writing materials, telephone headset amplifiers, assistive listening devices, assisted listening systems, telephones compatible with hearing aids, closed caption decoders, closed and open caption decoders, text telephones (telephone devices such as TTYs), videotext displays, or other aural delivery devices; qualified readers, taped text audio recordings, Braille materials, large print materials, or other materials for visual delivery; or the acquisition or modification of equipment and devices.

d. "Bus" means a self-propelled vehicle, generally rubber-tired, used on streets, highways, and busways, including but not limited to minibuses, 40- and 30-foot buses, articulated, double-deck, and electrically-powered trolley buses, used by public entities to provide designated public transportation service and by private entities to provide transportation service, including, but not limited to, specified public transportation services. Self-propelled, rubber-tired vehicles designed to look like antique or vintage trolleys are considered buses.

e. "Commerce" means travel, trade, traffic, commerce, transportation, or communication--

(1) among the several states;

(2) between any foreign country or any territory or possession and any state; or

(3) between points in the same state but through another state or foreign country.

f. "Commercial Facilities" means facilities--

(1) whose operations will affect commerce;

(2) that are intended for nonresidential use by a private entity; and

(3) that are not--

(a) Facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968, as amended (42 U.S.C. 3601-3631);

(b) Aircraft; or

(c) Railroad locomotives, railroad freight cars, railroad cabooses, computer or intercity passenger rail cars (including coaches, dining cars, sleeping cars, lounge cars, and food services cars), any other railroad cars described in section 242 of ADA, or railroad rights of way. For purposes of this definition, "rail" and "railroad" have the meaning given "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

g. **"Commuter Bus Service"** means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district, and outlying suburbs. Commuter bus service may also include other service, specified in the provisions of the DOT rule, that is characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation (such as city buses, taxis, etc.).

h. **"Demand Responsive System"** means any system of transporting individuals, including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including but not limited to specified public transportation, which is not a fixed route system.

i. **"Disability"** means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

j. **"Designated Public Transportation"** means transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis.

k. **"Facility "** means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

l. **"Fixed Route System"** means a system of transporting individuals (other than by aircraft) including the provision of transportation service by public entities and the provision of transportation service by private entities, including but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule.

m. **"Individual with a disability"** means a person who has a disability. The term "individual with a disability" does not include an individual who is currently engaging in illegal use of drugs, when the private entity acts on the basis of such use.

(1) **Physical impairments.** These include the following: orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease (symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(2) **Mental impairments.** These include the following: mental or psychological, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(3) **Major life activities.** These include the following: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) **Illegal Use of Drugs.** Individuals who are engaged in the current illegal use of drugs are not protected by Title III of the ADA.

(5) **Exclusions.** Exclusions to Title III of the ADA include the following: transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorder resulting from current illegal use of drugs.

n. **"Operates"** includes, with respect to a fixed route or demand responsive system, the provision of transportation service by the public entity itself or by

a person under a contractual or other arrangement or relationship with a public entity.

o. "Over-the-Road Buses" means a bus characterized by an elevated passenger deck located over a baggage compartment.

p. "Private club" means a private club of establishment form coverage under title of the Civil Rights Act of 1964, 42 U.S.C. 2000a(e).

q. "Public accommodation" means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the 12 categories listed:

- (1) Places of lodging.
- (2) Establishments serving food or drink.
- (3) Places of exhibition or entertainment.
- (4) Places of public gathering.
- (5) Sales or rental establishment.
- (6) Service establishments.
- (7) Stations used for specific public transportation.
- (8) Places of public display or collection.
- (9) Places of recreation.
- (10) Places of education.
- (11) Social service center establishments.
- (12) Places of exercise or recreation.

Additionally, to be considered a public accommodation with Title III obligations, the entity must be private; and it must be owned, leased, leased to, or operated by a place of public accommodation.

r. "Private Entity" means any entity other than a public entity.

s. "Public Entity" means--

- (1) Any state or local government;

(2) Any department, agency, special purpose district, or other instrumentality of a state or states or local government.

t. "Qualified interpreter" means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

u. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable factors to be considered include--

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

v. "Rapid Rail" means a subway-type transit vehicle railway operated on exclusive private rights of way with high-level platform stations. Rapid rail also may operate on an elevated or at grade level track separated from other traffic.

w. "Religious entity" means a religious organization or entity controlled by a religious organization, including a place of worship.

x. "Service animal" means any guide dog, signal dog, or other animal individually trained to do

work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

y. "Specified Public Transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) provided by a private entity in the business of providing transportation to the general public, with general or special service (including charter) on a regular and continuing basis.

z. "State" means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

aa. "Undue burden" means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include--

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administration or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

ab. "Vanpool" means a voluntary commuter ridesharing arrangement, using vans with greater than seven seats (including the driver's), or buses, which provides transportation to groups traveling directly from their homes to their regular places of work within the same geographical area, and in which the commuter/driver does not receive compensation beyond reimbursement for the cost of providing the service.

ac. "Wheelchair" means a mobility aid belonging to any class of three or four-wheeled devices, usable indoors, whether operated manually or powered. A "common wheelchair" does not exceed 30 inches in width and 48 inches in length, measuring two inches above the ground, and does not weigh more than 600 pounds when occupied.

SECTION 2. TITLE I - EQUAL EMPLOYMENT OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES, THE AMERICANS WITH DISABILITIES ACT SPECIFIC PROVISIONS

503. BACKGROUND.

a. Act. American with Disabilities Act of 1990, Title I (42 U.S.C. 12111, et seq.).

b. Enforcement Agency. EEOC

c. Standards. EEOC Standards in Title I regulation 29 CFR Part 1630; and same standards for Public Employers subject to Section 504 as well as the ADA.

504. APPLICABILITY.

a. Private Entities. Title I is applicable to businesses, corporations, partnerships, associations, unions or other labor organizations, employment agencies, labor-management committees, management organizations, and any other form of private entity. Employers must have 15 or more employees to be covered.

b. State and Local Governments. Employment practices of state and local governments are covered by both Title I and Title II of the ADA.

Title I standards apply to the employment practices of the state and local government employers. Airport authorities and boards are covered.

c. Exemptions. The ADA is not applicable to the following organizations: bonafide private, membership clubs that are tax-exempt; and Indian tribes.

d. Persons Protected. Title I protects qualified individuals with disabilities from employment discrimination.

e. Disabilities. A disability is defined as a physical or mental impairment that substantially limits a major life activity such as seeing, hearing, speaking, breathing, performing manual tasks, walking, caring for oneself, learning or working.

f. Impairments. Impairments, in and of themselves, do not constitute disabilities. To meet the definition of disability, the impairment must "substantially limit" one or more "major life activities."

(1) Physical Impairments. These include: physiological disorders or conditions; cosmetic disfigurement, or anatomical loss, affecting one or more of the body systems - neurological; musculoskeletal; special sense organs (including speech organs that are not respiratory such as vocal cords, soft palate, tongue, etc.); respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.

Specific examples include: orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease (symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. (See Paragraph 509. c., d., and f. below for exceptions relating to the illegal use of drugs, alcoholism, and direct threats to health and safety).

(2) Mental Impairments. These include mental or psychological disorders, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

g. Qualified Individuals with a Disability. To be a qualified individual with a disability, the person must meet the skill, education, experience and other job related requirements of the position held or

desired, and must be able to perform the essential functions of a job with or without reasonable accommodation. Title I also protects persons who have a relationship with or associate with individuals with disabilities.

h. Essential Functions of a Job. A function would be considered essential if the position exists to perform the function. Other factors include the number of other employees available to perform the function, and any special expertise or ability required to perform the function.

505. EMPLOYMENT PRACTICES. All covered entities must ensure that they do not discriminate against a qualified individual with a disability, on the basis of disability in any aspect of employment, including: recruitment; hiring; promotion; training; lay-off; pay; firing; job assignments; leave; benefits; and all other employment-related activities or practices.

506. EMPLOYMENT COVERAGE UNDER TITLE II AND SECTIONS 503 AND 504 OF THE RA. Title I standards for employment discrimination apply to entities covered by other federal laws on disability discrimination in employment, including Title II of the ADA and section 504 of the Rehabilitation Act.

507. REASONABLE ACCOMMODATION. The purpose of reasonable accommodation is to enable an otherwise qualified applicant or employee with a disability to apply for a position, or perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. The employer must make reasonable accommodation to the known physical or mental limitations of otherwise qualified applicants and employees with disabilities, unless accommodations would impose an undue hardship. Reasonable accommodation may include: providing or modifying equipment or devices; job restructuring; part-time or modified work schedules; reassignment to a vacant position; adjusting or modifying examinations, training materials, or policies; providing readers and interpreters; and making the workplace readily accessible.

508. MEDICAL EXAMINATIONS; PREEMPLOYMENT QUESTIONS. Employers may ask an applicant questions about their ability to perform job-related functions, but the questions may not be phrased in terms of a disability or in a way that

is likely to elicit information about disability. Employers also may ask applicants to describe or to demonstrate how, with or without reasonable accommodation, they will perform job-related functions. It is unlawful to make a disability-related inquiry or to require an applicant to take a medical examination before a job offer is made.

Pre-employment inquiries are allowed if specifically required by another Federal law or regulation, such as those applicable to disabled veterans and veterans of the Vietnam era. A job offer, however, may be conditioned on the results of a medical examination if all applicants for that type of position are required to take the examination before they start work. Medical information must be kept confidential and in separate files. (See EEOC Enforcement Guidance: "Pre-employment Disability-Related Questions and Medical Examinations", available via internet at www.eeoc.gov, "Enforcement and Litigation").

509. EXCEPTIONS.

a. Undue Hardship. Reasonable accommodations need be made only to the known physical or mental limitations of individuals with disabilities and only if they do not impose undue hardship (significant difficulty or expense) on the operation of the organization, considered in light of its size, resources, nature, and structure of the employer's operation. When a particular accommodation imposes an undue hardship exists, the employer must consider alternative accommodations, or, if the individual with disabilities is willing and it is legally permissible, allow the employee or applicant to pay that portion of the cost which would constitute an undue hardship (See 29 CFR Section 1630.2(p).)

b. Modification of Existing Facilities. Title I does not impose a general requirement to alter existing facilities to make them accessible. Accessibility is not required until a particular applicant or employee needs reasonable accommodation (See Paragraph 604. above). However, Titles II and III of the ADA, as well as other laws, levy requirements that, in effect, often make modification of existing facilities necessary.

c. Direct Threats to Health and Safety. Employers need not hire or retain an individual with a disability that poses a direct threat, i.e., a significant risk of substantial harm, to his or her health or safety or that of others in the workplace. The "direct threat" must be established through the best available, objective, medical evidence. Employers must consider

whether the direct threat can be eliminated or reduced by reasonable accommodation.

d. Alcohol Use that Adversely Affects Performance. Alcoholism is considered a disease and thus is protected by the ADA to the extent that reasonable accommodation, such as the provision of time for attendance at rehabilitation sessions, must be afforded. Where alcoholism continues despite such reasonable accommodation and where it affects performance or conduct, an employer can discipline, discharge, or deny employment.

e. Sexual and Other Behavior Disorders. Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders are not covered. Similarly, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from the current illegal use of drugs are not protected. However, other mental impairments may be disabilities under the ADA (See Section 601. (g) (2)).

f. Current Illegal Use of Drugs. The ADA applies to persons who are addicted to drugs only if they are no longer engaging in the illegal use of drugs and have completed or are participating in a drug rehabilitation program or otherwise have been rehabilitated successfully. The distinction between former users and individuals who are still "currently" engaging in the illegal use of drugs is made on a case-by-case basis. "Current" use is not limited to the same day or within a few weeks, but may be established if the illegal use of drugs occurred recently enough to justify the employer's reasonable belief that the involvement with drugs is an ongoing problem. Persons currently using drugs illegally are not "qualified individuals with a disability" and are not covered by the ADA. Tests for the illegal use of drugs are not considered "medical examinations" under the ADA, which is neutral regarding drug tests in that it does not encourage, prohibit, or authorize drug tests.

g. Homosexuality and Bisexuality. Homosexuality and bisexuality are not disabilities under the ADA and are not covered.

h. Smoking. The ADA does not prohibit smoking nor does it require state or local governments to accommodate smokers by permitting them to smoke in public transportation facilities.

510. COMPLIANCE, ENFORCEMENT AND REMEDIES. The EEOC will typically try to resolve the charge before litigation. The EEOC may decide to sue the employer on behalf of the charging party or the charging party may initiate suit.

a. Complainant's Responsibility. Complainants may file a charge with the EEOC up to 180 days after the discrimination or up to 300 days if the charge arises in a jurisdiction having a state or local fair employment practices agency with subject matter jurisdiction over the charge. Charges may also be filed with the state or local agency within the time period set by state or local law. Under the ADA, the EEOC must defer charges of discrimination to the designated State human rights agencies (also termed State and Local Fair Employment Practice Agencies or FEPAs). Where a worksharing agreement so specifies, the charge may be processed initially by either the EEOC or the FEPA. If a State or local law also provides relief, in most cases, the complainant has 300 days to file a charge with the EEOC.

b. EEOC Action. The EEOC or the FEPA will investigate the charge. The procedures are the same as those followed under Title VII of the Civil Rights Act of 1964.

c. Remedies. The ADA incorporates the remedies available under Title VII of the Civil Rights Act of 1964, including hiring, promotion, reinstatement, back pay, front pay, restored benefits, expert witness fees, court costs, and attorney's fees. The ADA also provides reasonable accommodation as a remedy. Compensatory and punitive damages may be available in cases of intentional discrimination or where the employer did not make a good faith effort to provide reasonable accommodation.

d. Coordination between Lead Agencies. In view of their respective lead roles, the EEOC, DOJ, and DOL coordinate their enforcement actions.

SECTION 3. TITLE II, SUBTITLE A - NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES, THE AMERICANS WITH DISABILITIES ACT SPECIFIC PROVISIONS

511. BACKGROUND.

a. Act. Americans with Disabilities Act of 1990 Title II, Subtitle A (42 U.S.C. 12131, et seq.).

b. Enforcement Agencies. EEOC, DOJ and eight designated Federal agencies (See paragraph 519. of this AC).

c. Standards. UFAS or ADAAG for program and architectural accessibility; Title I or UFAS for employment.

public entities for program beneficiaries and participants.

c. Employment Practices. Title II of the ADA applies to all activities of public entities, including employment practices, regardless of the workforce size.

d. Contracting Practices. A public entity may not discriminate on the basis of disability in contracting for the purchase of goods and services.

e. Licensing Practices. A public entity may not discriminate on the basis of disability in its licensing, certification, and regulatory activities.

512. COVERAGE. The following categories of programs or activities are covered by Title II of the ADA:

a. General Public Contact. This category of programs or activities includes communication with the public (telephone contacts, office walk-ins, or interviews).

b. Programs that Provide State or Local Benefits or Services to the Public. These include programs or activities directly administered by the

513. APPLICABILITY.

a. Public Entities. Subpart A of Title II of the ADA applies to all public entities, defined as State and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of State and local governments, whether or not they received federal financial assistance, and, in regard to employment practices, regardless of workforce size. Airports and airport authorities owned

or operated by a State or local governmental structure are "public entities" for purposes of Subpart A of Title II, even though airport terminals, per se, are not subject to the DOT's regulations implementing Subpart B of Title II, and transportation by aircraft is not covered in either Subpart A or B of Title II, due to coverage under the ACAA.

b. Persons Protected. Title II protects qualified individuals with a disability - those who meet the essential eligibility requirements for receipt of services or participation in a public entity's programs, activities, or services, with or without --

(1) Reasonable Modifications.

Reasonable modifications must be made to a public entity's rules, policies, or practices;

(2) Removal of Barriers. Architectural, communication, or transportation barriers must be removed;

(3) Provision of Auxiliary Aids and Services. Aids and services must be provided, other than those that are purely personal in nature.

c. Discrimination Due to Association. Title II also protects persons who have a relationship with or associate with persons with disabilities.

d. Disabilities Covered. See paragraph 504 of this AC, concerning Title I, "Equal Employment Opportunity for Individuals with Disabilities," of the ADA.

514. EMPLOYMENT. For those public entities that are subject to Title I of the ADA, Title II adopts the standards of Title I. In all other cases, the Section 504 standards of the RA apply.

515. PROGRAM ACCESSIBILITY.

a. Existing Facilities. The deadline for achieving program accessibility was January 26, 1992. If structural changes were needed, they were to be completed by January 26, 1995.

(1) Compliance Standard. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. The standard applies to all existing facilities, but public entities are not necessarily required to make each of their existing facilities accessible.

(2) Alternatives to Structural Changes.

Nonstructural methods for achieving accessibility to programs include acquisition or redesign of equipment, assignment of aides to beneficiaries, and revision of services at alternate accessible sites. A public entity also may offer separate or special programs, if they are specifically designed to meet the needs of the individuals with disabilities who will use them. Public entities cannot deny qualified individuals with disabilities the right to participate in the regular program, however, and special programs cannot be used to avoid the requirements of Title II. The special programs should be considered a form of access for those individuals with disabilities, rather than as a substitute for overall accessibility to regular programs.

b. New Construction and Alterations. All facilities designed, constructed, or altered by, on behalf of, or for the use of a public entity must be readily accessible to or usable by individuals with disabilities, if the construction or alteration was begun after January 26, 1992. Public entities had discretion to choose between UFAS and ADAAG during the period January 26, 1992, through December 1, 1996. Beginning December 2, 1996, all public entities are required to use ADAAG in accordance with 49 CFR Section 27.71(e). Under ADAAG, public entities are not entitled to the elevator exemption (permitting certain buildings under 3,000 square feet per floor or under three stories to be constructed without an elevator).

c. Additional Requirements.

(1) Maintenance. Public entities must maintain accessible features in working order and make repairs promptly.

(2) Existing Parking Lots and Garages. Public entities must provide an adequate number of accessible parking spaces in all lots and garages within their jurisdiction.

(3) Historic Preservation Programs. Priority must be given to physical access in achieving program accessibility, since physical access is necessary to experience the primary benefits of the programs. Where the usual standards will result in destruction of the historic significance of a building, alternative standards may be used, following consultation with the appropriate advisory board designated in the UFAS or ADAAG and after inviting the participation of interested persons.

(4) Surcharges. Public entities may not impose surcharges on accessibility features provided for individuals with disabilities.

(5) Unnecessary Inquiries. A public entity may not make unnecessary inquiries into a prospective program participant's disability. Inquiries to ensure safe participation and other valid purposes are permissible.

(6) Communications. Public entities have the responsibility to ensure that their communications with individuals with disabilities are as effective as with other persons and must provide auxiliary aids and services, as follows:

(a) Hearing. The following may be needed: qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices (TDDs), videotext displays, and exchanges of written notes. (See Paragraph 516 of this chapter for exceptions.)

In the case of public service announcements or other television programming produced by public entities, closed captioning is sufficient to meet the requirement.

(b) Vision. Examples of aids and services include: qualified readers, taped texts, audio recordings, Braille materials, large print materials, and assistance in locating items.

(c) Speech. Examples include: TTYs, computer terminals, speech synthesizers, and communication boards.

(7) Telephone Communications. Public entities may meet their telephone communications requirements through telephone relay services. Where such services are available, public employees must be trained to accept and handle relayed calls.

Where a public entity provides emergency telephone services such as "911" services, it must also do so for individuals with hearing or speech disabilities through a "direct access" system that does not involve relays. The direct access must be to all the emergency services offered - typically, police, fire, ambulance, and poison control.

(8) Information and Signage. Public entities must ensure that all interested persons can obtain information on accessible services, activities, and facilities. The international symbol for accessibility shall be used at all accessible entrances. Signage at inaccessible entrances shall direct persons to accessible entrances and information.

516. EXCEPTIONS. Accessibility requirements may be modified or do not apply in the following situations:

a. Current Illegal Use of Drugs. The ADA applies to persons who are addicted to drugs only if they are no longer engaging in the illegal use of drugs and have completed or are participating in a drug rehabilitation program or otherwise have been rehabilitated successfully.

b. Sexual and Other Behavior Disorders. As in the employment situation, transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, and other sexual behavior disorders are not protected under the ADA's requirements for program accessibility. Similarly, other behavior disorders not resulting from physical impairments, such as compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from the current illegal use of drugs are not protected.

c. Safety Considerations. A public entity may impose legitimate safety requirements necessary for the operation of its services, programs, or activities, but these must be based on real risks and not speculation.

d. Alteration of the Fundamental Nature of a Program, Practice, or Activity. Public entities must reasonably modify its programs, practices, or activities, but not to the extent where the accommodation would alter their fundamental nature.

e. Personal Services and Devices. A public entity need not provide personal or individually prescribed devices, such as wheelchairs, prescription eyeglasses, hearing aids, prostheses, etc. It need not provide assistance in eating, dressing, toileting, and other personal functions, unless the public entity is in the business of doing so as a hospital, nursing home, or similar organization.

f. Activities of Licensed or Certified Entities. The activities of persons or organizations

licensed or certified by a public entity are not covered under Title II of the ADA, simply on the basis that the license or certificate was issued by a public entity.

g. Homosexuality and Bisexuality. As in the case of employment, homosexuality and bisexuality are not considered impairments and are not covered by the ADA.

h. Auxiliary Aids and Services. Primary consideration must be given to providing the auxiliary aid or service requested by an individual with a disability, unless the public entity can demonstrate that another method is equally effective, or that the chosen method would fundamentally alter the service or program, or that the chosen method would result in an undue financial or administrative burden.

i. Telephone Relay Service within a Public Entities' Own Emergency System. An exception to the "direct access" requirement exists where a public entity operates a relay system within its own emergency system, provided that the services for non-voice calls are as effective as those for voice calls.

517. RELATIONSHIPS BETWEEN PUBLIC ENTITIES AND PRIVATE ENTITIES. In all instances final responsibility for adherence with Title II requirements rests with the public entity, which it must meet either directly or through the agreements it executes with lessees and sub-lessees. The relationships between public entities and private organizations can result in dual responsibilities. Following are examples:

a. Concessions on Airports. A restaurant, news and gift, candy, and T-shirt concession, operated by entrepreneurs as private entities, lease space on an airport owned by a local government. As private entities operating public accommodations, the concessions are subject to Title III of the ADA. The airport, as a public entity, however, is subject to Title II. The airport is obligated to ensure through the leases executed with the concessionaires or through its own actions that the Title II obligations are met, even though the concessions are not directly subject to Title II.

Airport operators and owners have flexibility in determining how and to what extent the Title II responsibilities and costs will be apportioned between the airport and concessionaires. Following are examples based on information provided by various airports:

(1) New or Empty Concession Space. Some airports assume total responsibility for meeting the requirements of Title II when requesting bids on new or empty concession space, on the theory that this enhances the value of the space and attracts bidders.

(2) Small or Disadvantaged Business Enterprises (DBE). Some airports assume partial or total responsibility for meeting the requirements of Title II when dealing with existing small or DBE concessions or when attempting to meet small or DBE goals, as part of the airports' programs to encourage such participation.

(3) Major Concessions and Sub-lessees. Some airports require major concessions, whether current or prospective tenants, to assume total responsibility for the Title II, as well as the Title III, requirements, while other airports permit the major concessionaire to decide how the responsibility will be allocated between the major concessionaire and its sub-lessees.

b. Airport Terminals Owned by Private Entities. An airline leases space on an airport owned by a city to build its own terminal. After 30 years, the terminal will revert to the airport. In the meantime, the airline pays a guaranteed minimum monthly rent plus a portion of its gross receipts. Although the airline is subject to the Air Carrier Access Act as a form of transportation, rather than to Titles II and III of the ADA, and even though airline terminals are not covered as such under Title III of the ADA, the terminal is a public accommodation operated by a private entity and is covered, therefore, by Title III. Since it is located on an airport owned by a city, that public entity is subject to Title II and must ensure that the airline meets these requirements through the leasing arrangement. During the time the terminal is operated as a private entity, the airline must ensure that all Title III requirements are met by itself, as well as by its own lessees and sublessees. The airport must ensure, through its leasing agreement with the airline that the latter also will cause its lessees and sublessees to conduct their operations in ways that will enable the airport to meet its Title II obligations, as well. Once the terminal reverts to the airport, this public entity must continue to ensure adherence to Title II requirements, and the private entities must continue to adhere, as well, to the Title III requirements.

c. Industrial Parks. A city leases land on an airport owned by it to a number of private businesses to operate an industrial park. Although all of the

businesses are private entities, subject ordinarily only to Title III, the city, as a public entity, subject to Title II, has the responsibility to ensure that Title II requirements are met. As in the case of the concessions, the city may ensure this through its leasing arrangements and may apportion the responsibilities and costs as it deems appropriate. The ultimate responsibility for Title II compliance, however, remains with the city.

d. Off-Airport Investment or Other Properties. A State Department of Transportation owns two buildings not located on airports. Employees of the State Department of Transportation occupy one; the second is rented out to private entities as an investment to help support the State's transportation programs, including the airports. In the building occupied by the State's employees, the State is subject to Title II, and there are no Title III requirements. In the second building, the State, as a public entity and landlord is subject to Title II, while its tenants, if private entities, are subject to Title III, but also subject to Title II indirectly, through the leasing agreements, in order to allow the State to meet its Title II obligations.

518. ADMINISTRATIVE REQUIREMENTS.

a. Compliance Planning. As was the case under the RA, Title II calls for compliance planning, as follows: preparation of a self-evaluation; development of a grievance procedures, designation of a person to oversee Title II compliance; development of a transition plan for necessary structural changes; and retention of the self-evaluation for three years. Compliance with the requirements of Title II by January 26, 1992 was necessary whether or not the self-evaluation had been completed. Self-evaluations completed under Section 504 of the RA cannot serve as self-evaluations under Title II, unless it is clear that all possible areas of self-evaluation were covered at that time and remain relevant. For information on what should be contained in a self-evaluation and transition plan, see the DOJ Technical Assistance Manual For Title II.

b. Notice to the Public. A public entity must provide notice to the public concerning its Title II responsibilities. Methods include: handbooks, manuals, pamphlets, the display of posters, or the broadcast of information by television or radio. In providing the notice, the public entity must comply with the Title II requirements for communicating effectively with individuals with disabilities.

519. COMPLIANCE, ENFORCEMENT, AND REMEDIES.

a. Complaints Regarding Programs, Benefits, and Services. Complaints must be filed in writing with 180 days of the alleged discrimination (unless the time has been extended by the Federal agency receiving the complaint), describe the alleged discrimination and date of same, include the name and address of the complainant, and be signed by the complainant or his or her representative. Class complaints shall provide the identity (by name, if possible) of the alleged victims of discrimination. Complaints involving more than one Federal agency must be filed with the DOJ to: Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P. O. Box 66738, Washington, D.C. 20035-6738. The DOJ will determine which agency will serve as the designated agency.

b. Processing Agencies. Complaints may be filed with any of the following agencies:

(1) Federal agencies providing financial assistance, if that agency is the subject of the complaint.

(2) Federal agencies designated under Title II to investigate Title II complaints.

(3) The DOJ.

c. Remedies. The federal processing agency will resolve the complaint informally; or, issue a detailed letter with findings of fact, conclusions of law, and the steps to be taken as remedies, where appropriate; or, where voluntary compliance is not possible, refer the matter to the DOJ for enforcement. The DOJ may proceed by filing suit in a Federal District Court. Individuals also have a private right of action under both Section 504 of the RA and under the ADA. In cases where there is federal funding, termination of funding is an enforcement option. Remedies in either an administrative proceeding or court action include attorney's fees and litigation expenses (expert witness fees, travel expenses, costs, etc.) for either the prevailing complainant/plaintiff or defendant, except the United States. A prevailing defendant, however, cannot recover attorney's fees and litigation costs unless a court finds that the plaintiff's action was frivolous, unreasonable, or without foundation.

SECTION 4. TITLE II, SUBTITLE B - TRANSPORTATION PROVIDED BY PUBLIC ENTITIES, AND TITLE III, TRANSPORTATION PROVIDED BY PRIVATE ENTITIES, THE AMERICANS WITH DISABILITIES ACT SPECIFIC PROVISIONS

520. BACKGROUND.

a. Act. Americans with Disabilities Act of 1990 Title II, Subtitle B (42 U.S.C. 12141, et seq.).

b. Enforcement Agencies. DOT, for recipients of federal financial assistance from the DOT, under 49 CFR Part 27. The DOJ also serves as a compliance agency for public entities, whether or not they receive federal financial assistance. In addition, the DOJ serves as the compliance agency for private agencies, whether or not they receive federal financial assistance, as provided in 28 CFR Part 36, the DOJ regulations implementing Title III of the ADA.

c. Standards. The standards set forth in 49 CFR Part 37, in the ADAAG standards that serve as Appendix A to Part 37, and 49 CFR Part 38 apply.

521. COVERAGE. 49 CFR Part 37 covers the transportation related provisions of Titles II and III of the ADA. 49 CFR Part 38 provides the accessibility specifications for transportation vehicles.

522. GENERAL APPLICABILITY. The transportation requirements apply to the following as specified:

a. Public Entities Providing "Designated Public Transportation" or Intercity or Commuter Rail Transport. Public entities, whether or not they receive federal financial assistance, are covered if they provide designated public transportation or intercity or commuter rail transport.

(1) Transportation systems operated by public airport operators, which provide designated public transportation and connect parking lots and terminals or provide transportation among terminals, are subject to the requirements of 49 CFR Part 37 for fixed route or demand responsive systems, as applicable, operated by public entities.

(2) Public airports, which operate fixed route transportation systems, are subject to the requirements of 49 CFR Part 37 for commuter bus service operated by public entities. The provision by an airport of additional accommodations (e.g. parking

spaces in a close-in lot) is not a substitute for meeting the requirements of 49 CFR Part 37.

b. Private Entities Providing "Specified Public Transportation." Private entities such as contractors or independent organizations operating specified public transportation, such as charter buses, are covered. When these serve in a route-deviation or other variable mode, private jitney or shuttle services are subject to the provisions of Part 37 for private entities primarily engaged in the business of transporting people which provide demand responsive service. They may meet equivalency requirements through sharing or pooling accessible vehicles among operators in a way that ensures equivalent service.

c. Private Entities Not Primarily Engaged in the Business of Transporting People. Private entities not primarily engaged in the business of transporting people, but who operate a demand responsive or fixed route system or otherwise transport individuals, are covered. This form of transportation operated by privately owned hotels, car rental agencies, theme parks, and other public accommodations are subject to the requirements of Part 37 for private entities not primarily engaged in the business of transporting people. Requirements for demand responsive or fixed route service may apply, depending on the characteristics of the systems.

d. Transportation Services Provided by an Employer Solely for Its Own Employees. Such services are not subject to 49 CFR Part 37 but to the regulations of the EEOC under Title I of the ADA (29 CFR part 1630), and, with respect to public entities, to the regulations of the DOJ under Title II of the ADA (28 CFR Part 35).

e. Entities Providing Services under Contract. The airport assumes responsibility for ensuring that lessees and licensees on the airport comply with the requirements of both Titles II and III, as applicable, as part of the airport's own compliance responsibilities under Title II. Both public entities and private entities involved in the provision of services under contract to the public entity, are subject to ADA requirements, as follows:

(1) A public entity entering into a contractual or other arrangement with a private entity to operate fixed route or demand responsive services must ensure that the private entity meets the requirements of this part that would apply to the public entity itself, if it provided the services.

(2) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement with a public entity, shall acquire accessible vehicles where the public entity would have had to do so by this part.

(a) Private Entities Not Primarily Engaged in the Business of Transporting People, which Solicit or Purchase vehicles after August 25, 1990.

1 Fixed Route System, Vehicle Capacity over 16 (Including Driver). Entity must ensure that the vehicle is accessible to and usable by individuals with disabilities, including wheelchair users.

2 Fixed Route System, Vehicle Capacity of 16 or Fewer (Including Driver). Entity shall ensure accessibility unless the system, when viewed in its entirety, meets the standard for equivalent service of Section 37.105 of 49 CFR Part 37.

3 Demand Responsive System, Vehicle Capacity over 16 (Including Driver). Entity shall ensure accessibility unless the system, when viewed in its entirety, meets the standard for equivalent service of Section 37.105 of 49 CFR Part 37.

(c) Private Entities Primarily Engaged in the Business of Transporting People and Whose Operations Affect Commerce, Who Solicit a Purchase or Lease of New Non-Rail Vehicles after August 25, 1990.

1 Fixed Route Systems. Entities purchasing or leasing new vehicles other than automobiles, vans that seat less than eight persons (including the driver), or over-the-road buses, shall ensure accessibility.

2 Demand Responsive Systems. Entities purchasing or leasing new vehicles

shall ensure accessibility unless the system, when viewed in its entirety, meets the standard for equivalent service of section 37.105 of 49 CFR Part 37.

3 Fixed Route or Demand Responsive Systems Purchasing or Leasing Vans with a Capacity of Fewer than 8 Persons, after Feb. 25, 1992. Entities shall ensure accessibility unless the system, when viewed in its entirety, meets the standard for equivalent service of Section 37.105 of 49 CFR Part 37, set forth below in Paragraph 523.e.(5).

(3) A public entity which enters into a contractual or other arrangement with a private entity to provide fixed route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

(4) A private entity that provides fixed route or demand responsive transportation service under a contract or other arrangement with another private entity shall be governed, for the purposes of the transportation provided, by the provisions of this part applicable to the other entity.

(5) Equivalent Service Standard. A fixed route or demand responsive service, deemed to provide equivalent service when it is provided in the most integrated setting needs of the individual and is equivalent to that provided to others in the following respects:

(a) schedules/headways (if the system is fixed route).

(b) response time (If the system is demand responsive).

(c) geographic area of service.

(d) hours and days of service.

(e) availability of information.

(f) reservations capability (if the system is demand responsive).

(g) any constraints on capacity of service availability.

(h) restrictions priorities based on trip purpose (if the system is demand responsive).

f. Private Entities Providing Taxi Service Are Covered as Follows:

(1) Providers of taxi service are subject to the requirements for private entities primarily engaged in the business of transporting people which provide demand responsive service.

(2) Providers of taxi service are not required to purchase or lease accessible automobiles. In purchasing or leasing vehicles other than automobiles, they must acquire accessible vehicles unless the provider demonstrates equivalency as provided in Section 37.105 of 49 CFR Part 37. A provider of taxi service is not required to purchase vehicles other than automobiles in order to have a certain number of accessible vehicles in its fleet.

(3) Private entities providing taxi service shall not discriminate against individuals with disabilities by actions including, but not limited to, refusing to provide service to individuals with disabilities who can use taxi vehicles, refusing to assist with the stowing of mobility aids, and charging higher fares or fees for carrying individuals with disabilities and their equipment than are charged to other persons.

g. Public Entities Operating Vanpools. Public entities operating vanpools or vanpools in which public entities own, purchase, or lease vehicles are subject to the requirements of 49 CFR Part 37 for demand responsive service for the general public. The provision of a vehicle usable by an individual with a disability who elects to use a particular vanpool is deemed the provision of equivalent service by the vanpool service.

h. Entities to Which DOJ Requirements Apply. Entities subject to 49 CFR Part 37 of the DOT regulations also may be subject to DOJ regulations, 28 CFR Part 35 or 36 as applicable.

523. COMPLIANCE, ENFORCEMENT, AND REMEDIES.

a. Enforcement.

(1) **DOT Recipients.** Recipients of federal financial assistance from the DOT are subject to enforcement of 49 CFR Part 37 under the provisions of 49 CFR Part 27. (See paragraph 405.d. for address.)

(2) **Public Entities.** Public entities, whether or not the recipients of federal financial

assistance, are subject to enforcement action, as provided by the DOJ.

(3) **Private Entities.** Private entities, whether or not the recipients of federal financial assistance are subject to enforcement action, as provided in the regulations of the DOJ, implementing title III of the ADA (28 CFR Part 36).

b. Remedies. See Paragraph 519 for remedies under Title II and Paragraph 537.c. for remedies under Title III of the ADA.

524. EXCEPTIONS; WAIVERS.

a. Seriously Disruptive, Violent, or Illegal Conduct. An entity may refuse transportation to an individual with a disability who is seriously disruptive, violent, or engaging in illegal conduct, but may not do so merely because that individual has a disability which results in appearance or involuntary behavior that may offend, inconvenience, or annoy others.

b. Equivalent Facilitation. Entities wishing to employ equivalent facilitation must submit a request to the Administrator of the Federal Railroad Administration or the Federal Transit Administration, including: the entity's name, address, telephone, and contact person; the specific provision with which the entity is unable to comply; the reasons for the inability to comply; the alternative proposed that meets or exceeds the requirements with which it is unable to comply; and the public participation used to develop the alternative.

c. Over-the-Road Buses. Over-the-road buses acquired by an entity or by a contractor to that entity must comply with Subpart G of 49 CFR Part 38, rather than with 49 CFR Part 37 (See Paragraph 528).

525. PROVISION OF SERVICE

a. Maintenance of Accessible Features by Public and Private Entities. Accessibility facilities and vehicles, including but not limited to lifts and other means of access to vehicles, securement devices, elevators, signage, and systems to facilitate communications with persons with impaired vision or hearing must be maintained in operative condition.

b. Prompt Repairs; Reasonable Attempts to Accommodate During Repairs. Accessibility features shall be repaired promptly and reasonable efforts must

be made to accommodate persons with disabilities while the repairs are being made.

c. Isolated, Temporary Interruptions of Service. These are not prohibited by 49 CFR Part 37.

d. Public Entities – Keeping Vehicle Lifts in Operative Condition.

(1) **Maintenance.** Entities shall establish a system of regular and frequent maintenance checks.

(2) **Breakdowns.** Must be promptly reported by operators.

(3) **Inoperable Lifts.** Except where removal of the inoperable lift and lack of a spare would reduce the overall transportation service of the entity, inoperable lifts shall be taken out of service before the beginning of the vehicle's next service day and be repaired promptly. Where immediate removal of the malfunctioning vehicle would reduce the overall transportation capacity, entities serving areas of 50,000 population or less may delay removal of the inoperable lift for five days; or three days, where the area has a population of over 50,000.

(4) **Fixed Routes with Headways of More than 30 Minutes.** Entities shall provide alternative transportation to individuals with disabilities, when a lift is not usable.

e. Lift and Securement Use. The following applies to public and private entities.

(1) **Designated Securement Areas.** All common wheelchairs and their users shall be transported in the vehicles designed for that purpose, but riding may be limited to designated securement locations in the vehicles, where such designated areas exist.

(2) **Vehicles Subject to Guidelines for Securement.** Vehicles subject to the minimum accessibility guidelines contained in 49 CFR Part 38 must use securement systems, which meet those guidelines.

(3) **Vehicles Not Subject to Guidelines.** Other vehicles shall use securement systems that will retain the wheelchairs in the securement area.

(4) **Requiring Securement.** The entity may require securement.

(5) **Prohibition against Denial of Transportation.** The entity may not deny transportation on the grounds that a wheelchair cannot be restrained by the system in place.

(6) **Recommending Transfer to a Seat.** The entity may recommend but may not require that a wheelchair user transfer to a seat.

(7) **Assistance by Personnel.** Where necessary or upon request, the entity's personnel shall assist the individuals with disabilities with the use of securement systems, ramps, and lifts.

(8) **Use of Ramp or Lift.** The entity shall permit individuals with disabilities, who do not use wheelchairs, including standees, to use a vehicle's ramp or lift to enter the vehicle.

f. Other Service Requirements for Public and Private Entities Operating Fixed Route Systems.

(1) **Stop Announcements.** The entity shall announce stops at least at transfer points with other fixed routes; other major intersections and destination points; and intervals along a route to permit individuals with visual impairments or other disabilities to be oriented to their location.

(2) **Requests for Announcements of Stops.** The entity shall announce any stop upon the request of a person with a disability.

(3) **Identification of Conveyances.** Where vehicles or other conveyances serve the same stop, the entity shall provide a means whereby the individuals with disabilities can identify the proper vehicle or be identified to the operator of the route sought.

(4) **Service Animals.** The entity shall allow service animals to accompany individuals with disabilities.

(5) **Use of Accessibility Features.** The entity shall ensure that operators make use of the accessibility features required.

(6) **Accessible Transportation Information.** The entity shall supply transportation information in accessible formats and through technology.

(7) Refusal of Disembarkment. The entity shall not refuse disembarkment to a passenger using a lift at any designated stop, unless the lift cannot be deployed, will be damaged if deployed, or temporary conditions at the stop not under the control of the entity preclude safe use of the stop by all passengers.

(8) Respirators and Portable Oxygen. The entity shall not prohibit an individual with a disability from traveling with a respirator or portable oxygen supply that complies with DOT rules on hazardous materials (49 CFR Subtitle B, Chap. 1, Subchapter C).

(9) Time for Boarding and Disembarking. The entity shall provide adequate time to persons with disabilities for boarding and disembarking.

g. Interim Requirements for Private Entities Operating Over-the-Road Service.

(1) Provisions of 49 CFR Part 37. Private entities operating over-the-road service shall comply with all applicable provisions of 49 CFR Part 37.

(2) Assistance. Private entities shall provide assistance by trained personnel, as needed, to individuals with disabilities in boarding and disembarking, including moving to and from the seat.

(3) Stowage of Aids in Passenger Compartments. To the extent possible, wheelchairs and other assistive or mobility aids shall be stowed in appropriate passenger compartments within the buses. When the bus is at rest at a stop, the driver or other personnel shall assist individuals with a disability with the stowage or retrieval of these aids.

(4) Stowage of Aids in Baggage Compartments. Wheelchairs and other assistive devices that cannot be accommodated in the passenger compartment shall be stowed in the baggage compartment of the bus, unless the size of the baggage compartment prohibits this.

(5) Priority Stowage. At any given stop, individuals with disabilities shall have priority for stowage of wheelchairs and other assistive devices in the baggage compartment, but baggage or cargo already in the bus does not have to be off-loaded to make room for such devices.

(6) Advance Notice. The entity may require up to 48 hours advance notice for providing boarding assistance. If notice is not given, the entity shall make a reasonable effort to provide assistance, without delaying the bus service.

h. Equivalency Requirement for Demand Responsive Service Operated by Private Entities Not Primarily Engaged in the Business of Transporting People. A private entity not primarily engaged in the business of transporting people, which operates, a demand responsive system shall ensure that its system, when viewed in its entirety, provides equivalent service to individuals with disabilities, including those who use wheelchairs. The standards of Section 37.105 of 49 CFR Part 37 shall be used to determine equivalency.

i. Training Requirements. Each public or private entity which operates a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, to operate vehicles and equipment safely and to properly assist and treat individuals in a respectful and courteous way, with appropriate attention to the differences among individuals with disabilities.

526. OTHER FORMS OF TRANSPORTATION NOT COVERED. Since this AC has been produced for airport owners and operators, it does not include the ADA or other requirements relating to trains, commuter rail systems, dedicated bus service to commuter rail systems, university transportation systems, paratransit systems, transportation for elementary and secondary school systems, and other requirements in 49 CFR Part 37 which do not generally apply to airports, airport tenants or licensees, or contractors utilized by the airport owner or operator, its tenants or licensees. However, if the airport operator contracts to operate such system, they are covered. The AC also does not cover the construction of transportation facilities, since airports are not defined as such in the ADA. The ADA covers airports as public entities under Subtitle A of Title II of the ADA.

527. APPENDIX A TO 49 CFR PART 37 - STANDARDS FOR ACCESSIBLE TRANSPORTATION FACILITIES. Although airports are not defined as "transportation facilities" in the ADA and therefore not subject per se to the transportation requirements of Subtitle B of Title II, they are "public entities" for purposes of Subtitle A of Title II. Many public airports are also subject to

Section 504 of the RA. Private airports that receive federal financial assistance also are subject to Section 504 of the RA. (As "private entities" providing a "public accommodation," they also are subject to Title III of the ADA. Title III requirements are covered in Chapter 9 of this AC). DOT requires compliance with ADAAG codified as Appendix A of 49 CFR Part 37.

528. "AMERICANS WITH DISABILITIES ACT ACCESSIBILITY SPECIFICATIONS FOR TRANSPORTATION VEHICLES," 49 CFR PART 38. 49 CFR Part 38 provides minimum guidelines and

requirements for accessibility standards in 49 CFR Part 37 for transportation vehicles required to be accessible by the ADA of 1990 (42 U.S.C. 12101 et seq.) 49 CFR Part 38 provides general requirements in Subpart A and specific requirements on three forms of transportation relevant to airport operations in three additional subparts-Subpart B, "Buses, Vans, and Systems," Subpart G, "Over-the-Road Buses and Systems," and Subpart H - Other Vehicles and Systems, covering such forms as "people movers." In this AC, the general requirements for each are presented. Other forms of transportation that are not relevant to airports are not covered in this AC.

SECTION 5. TITLE III - NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES (NON-TRANSPORTATION), AMERICANS WITH DISABILITIES ACT

529. BACKGROUND.

a. Act. Americans with Disabilities Act of 1990 Title III (42 U.S.C. 12181, et seq.).

b. Enforcement Agencies. DOJ.

c. Standards. The standards set forth under Title V of the Rehabilitation Act of 1973 as amended (29 U.S.C. 790-794), the ADAAG, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and other Federal laws, or State or local laws to include state common laws that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

530. COVERAGE. Title III, Implemented in 28 CFR Part 36, covers the activities of public accommodations (i.e., private entities that own, operate, lease, or lease to places of public accommodation); commercial facilities; and private entities that offer certain examinations and courses related to educational and occupation certification.

531. GENERAL APPLICABILITY. Title III of the ADA covers "Private entities" that offer examinations or courses related to applications, licensing, certification, or credentialing for secondary or post secondary education, professional, or trade purposes.

532. EXEMPTIONS. The following areas are not covered under Title III of the ADA:

a. Religious entities are exempt, including places of worship.

b. Private clubs are exempt unless they make their facilities available for use by nonmember as places of public accommodation.

c. State and local governments are exempt and are covered by the Department of Justice's Title II regulation.

533. GENERAL REQUIREMENTS. An individual with a disability may not be discriminated against in the operation of a place of public accommodation. Individuals with disabilities may not be denied full and equal enjoyment of the "goods, services, facilities, privileges, advantages, or accommodations" offered by a place of public accommodation. The phrase mentioned in this paragraph applies to the goods and services a public accommodation provides to their customers or clients. Individuals with disabilities must be provided equal opportunities in places of public accommodations. Three broad principles form the basis for the nondiscrimination requirements of Title III of the ADA.

a. Equal opportunity to participate;

b. Equal opportunity to benefit; and

c. Receipt of benefits in the most integrated setting appropriate.

534. SPECIFIC REQUIREMENTS.

a. Eligibility criteria. Public accommodations cannot impose eligibility requirements which may be used to screen out individuals with disabilities from enjoying goods,

services, privileges, advantages, and accommodations. Public accommodations may impose safety requirements, which are necessary for the safe operation of the place of public accommodation. These safety requirements must be based on the actual risk and not on speculation, stereotypes, or generalizations. Additionally, if a public accommodation incurs cost in the compliance with the ADA, these costs in the form of a surcharge, may not be passed on to individuals with disabilities.

b. Modifications. Public accommodations must make reasonable modification in their policies, practices, and procedures in order to accommodate individuals with disabilities. If the modifications functionally alter the goods, services, or operations of the place of public accommodations, it is not required to make the modification. Modifications in the public accommodation policies on the use of service animals are required unless it alters or jeopardizes the public accommodation's safe operations. Additionally, it is not discriminatory for a public accommodation with a specialty in a particular area to refer an individual with a disability to a different public accommodation, if the individual is seeking a service or treatment outside the public accommodation's area of expertise; and would make a similar referral for an individual who does not have a disability.

c. Barrier Removal. Barriers in public accommodations must be removed when "readily achievable." Consideration is given on a case by case basis as determined by resources available. Safety requirements may be considered in ascertaining what is readily achievable. Barrier removable measures should comply with the ADAAG, which are contained in the appendix to the DOJ's rule. There is a continuing obligation by the public accommodation for barrier removal. Barrier removal that was initially not readily achievable may, become achievable at a later date, due to changes in circumstances.

535. NEW CONSTRUCTION. All newly constructed places of public accommodations and commercial facilities must be accessible to individuals with disabilities to the extent that it is not structurally impracticable.

a. General. These new construction requirements apply to all those facilities occupied after January 26, 1993, for which the last application for a building permit or permit extension is certified as complete after January 26, 1992.

b. Application of ADAAG. The Department of Justice has adopted the ADAAG. These standards

for new construction were issued by the ATBCB. If a specific technical provision does not exist, then the ADAAG provisions shall be applied to the extent possible. In the case where ADAAG has no specific requirements for an element or space, a reasonable number but no less than one shall be accessible.

c. Exemption. Elevators in a building of under three stories or fewer than 3000 square feet per floor are not required with the exception of a shopping center or mall, professional office of health care providers, public transit station, or airport passenger terminal.

536. ALTERATIONS. Alterations in places of public accommodations and commercial facilities, which were begun after January 26, 1992, must be accessible to the maximum extent possible.

a. Application of ADAAG. Architectural standards for accessibility in alterations are included in the DOJ's Appendix A to 28 CFR Part 36.

b. Path of Travel. An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function (e.g. ticket counters) shall be made so as to ensure that, to the maximum extent feasible, the "path of travel" to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless the cost of such alterations is disproportionate to the cost of the overall alteration. A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach, an entrance to the facility, and other parts of the facility.

(1) Disproportionate Costs. Alterations undertaken after January 26, 1992 to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

(2) Applicable Costs. Costs that may be counted as expenditures required to provide an accessible path of travel may include:

(a) Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;

(b) Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls.

(c) Costs associated with providing accessible telephones, such as relocating the telephone to an accessible height, installing amplification devices, or installing a telecommunications device for deaf persons (TTY);

(d) Costs associated with relocating an inaccessible drinking fountain.

(3) Duty to Provide Accessible Features in the Event of Disproportionality. When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

(4) Priority. In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order:

- (a) An accessible entrance;
- (b) An accessible route to the altered area;
- (c) At least one accessible restroom for each sex or a single unisex restroom;
- (d) Accessible telephones;
- (e) Accessible drinking fountains; and
- (f) When possible, additional accessible elements such as parking, storage, and alarms.

(5) Series of Smaller Alterations. The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(6) Subsequent Alterations. If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three

years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

c. Exemption. No alteration of an existing element, space, or area of a building or facility shall impose a requirement for greater accessibility than that which would be required for new construction. For example, if the elevators and stairs in a building are being altered and the elevators are, in turn, being made accessible, then no accessibility modifications are required to the stairs connecting levels connected by the elevator. If stair modifications to connect unsafe conditions are required by other code, the modifications shall be done in compliance with these guidelines unless technically infeasible.

537. COMPLIANCE, ENFORCEMENT, AND REMEDIES.

a. Enforcement. The ADA established two avenues for enforcement of the requirements of Title III.

(1) Private Suits. Suits of this type are brought by individuals to stop discrimination or threaten discrimination.

(2) Suits by the DOJ. The DOJ may bring suit if there is reasonable cause to believe that there is a pattern or practice of discrimination, or discrimination that raises an issue of general public importance.

b. Investigation and Compliance Reviews. DOJ is charged with investigating alleged violations of Title III and conducting periodic reviews of compliance of covered entities.

Complaints may be sent to the following:

Public Access Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738

c. Remedies. In suits by the Attorney General, the courts may grant any equitable relief it deems appropriate; monetary damages (excluding punitive damages); and may impose a civil penalty (not to exceed \$50,000 for the first offense and \$100,000 for each subsequent offense). The court also may award attorney's fees, litigation expenses and costs.

In private suits, the court may award a permanent or temporary injunction, restraining order, or other order, but not monetary damages or civil penalties. In cases involving readily achievable barrier removal, accessibility in new construction, and alterations, remedies may include orders to correct the deficiency or violation. The remedy also may include requiring an auxiliary aid or service, policy modification, or alternative methods for barrier removal.

538. TECHNICAL ASSISTANCE. The ADA recognizes the necessity of educating the public about its rights and responsibilities under the Act and requires the DOJ, in consultation with other agencies, to provide technical assistance to assist covered entities and individuals with disabilities in understanding their rights and responsibilities under the ADA.

The purpose of technical assistance is two fold: to inform the public (including individuals with rights protected under the ADA) and the covered entities about their rights and duties; and to provide information about cost-effective methods and procedures to achieve compliance.

DOJ has developed and continues to develop technical assistance through publication, exhibits, videotapes

and audiotapes, and public service announcements. It has developed a number of technical publications, to include the Americans with Disabilities Act, Title III Technical Assistance Manual, Nov. 1993, 1994 Supplement, from which this section 911 was developed. DOJ has established a Speaker Bureau to provide speakers for events such as conferences, workshops, and training programs. Additionally, DOJ in conjunction the EEOC has developed the "Americans with Disabilities Handbook", Oct. 1991, which provides an analysis of 28 CFR 36, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities.

For additional information on technical assistance, contact:

Disability Rights Office
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6738
(800) 514-0301 (Voice)
(800) 514-0383 (TDD)
(202) 514-6193 (Electronic Bulletin Board)

SECTION 6. TITLE V - MISCELLANEOUS PROVISIONS

539. BACKGROUND.

a. Act. Americans with Disabilities Act of 1990 Title V (42 U.S.C. 12201).

b. Enforcement Agencies. The enforcement agencies established under each title of the ADA.

540. COVERAGE. In addition to the subjects covered above, Title V covers the following miscellaneous matters:

a. Relationship to Other Laws. Nothing in the ADA invalidates or limits the rights, remedies, and procedures of any Federal law or law of any state or political subdivision of any state or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by the ADA. Nothing in the ADA precludes the prohibition of or the imposition of restrictions on, smoking in places of employment covered by Title I, in transportation covered by Title II or III, or in places of public accommodation covered by Title III.

b. Insurance. Titles I through IV of the ADA do not prohibit or restrict insurers, hospitals, medical

service companies, health maintenance organizations, or any agents or entities that administer benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law, as long as such actions are not a subterfuge to evade the purpose of the ADA.

c. Benefit Plans. Similarly, Titles I through IV of the ADA do not prohibit the establishment, sponsorship, observation, or administration of a bona fide benefit plan that is based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law or that is not subject to state laws, as long as it is not a subterfuge to evade the purpose of the ADA.

d. Non-Immunity for States. A state shall not be immune under the 11th Amendment of the Constitution of the United States from an action in a Federal or State Court of competent jurisdiction for a violation of the ADA. Remedies both at law and in equity are available.

e. Technical Assistance. Technical assistance on the ADA can be obtained from EEOC,

DOT, ATBCB, and the FCC. Other Federal agencies also may be helpful, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, and the Small Business Administration.

f. Attorney's Fees. In any action or administrative proceeding commenced pursuant to the

ADA, the court or agency may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

541. to 599. RESERVED.