

ORDER

1400.9

**AMERICANS WITH DISABILITIES ACT AND
REHABILITATION ACT OPERATING PROCEDURES**



November 18, 1999

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

Distribution: A-W (minus GC/CR/PP/AS/HR/AM)-1 A-W (GC/CR/PP/AS/HR/AM)-2; Initiated by: ACR-4
A-X (minus CR/AF/AS)-1; A-X (CR/AF/AS)-2; A-YZ (minus CR)-1; A-YZ (CR)-2;
A-FAS-O-(STD)

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FOREWORD

This order describes the standards and procedures essential for the Federal Aviation Administration's (FAA) implementation of Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 - 12213) and Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as Section 504 applies to the airport grant program.

The order also describes the procedures for referring complaints covered by Titles I and III of the Americans with Disabilities Act (ADA) and provides information concerning the Department of Transportation's (DOT) jurisdiction over the Air Carrier Access Act of 1986 (49 U.S.C. 1374(c)).

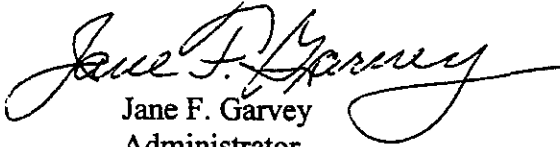
This order does not cover Titles IV and V of the ADA.

The ADA extends to individuals with disabilities comprehensive civil rights protection. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.

Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), extends similar protections to persons with disabilities under programs or activities conducted by Federal agencies or under programs or activities receiving Federal financial assistance.

This order addresses FAA's responsibility to ensure that airport grant recipients and public entities comply with Section 504 and Title II of the ADA, respectively.

This order does not address FAA's obligation under Sections 501 and 504 of the Rehabilitation Act to avoid discrimination against persons with disabilities in the agency's own employment practices or in other programs or activities that it conducts. (The ADA does not apply to the executive branch of the Federal Government.)



Jane F. Garvey
Administrator

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CHAPTER 1. GENERAL

1. **PURPOSE.** This order describes the standards and procedures essential for the Federal Aviation Administration's (FAA) implementation of Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 - 12213) and Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as Section 504 applies to the airport grant program. The order also describes the procedures for referring complaints covered by Titles I and III of the Americans with Disabilities Act (ADA) and provides information concerning the Department of Transportation's (DOT) jurisdiction over the Air Carrier Access Act of 1986 (49 U.S.C. 41705).

2. **DISTRIBUTION.** This order is distributed to the director level in the offices, services, regions, and centers; to the division level in the Offices of the Chief Counsel, Civil Rights, Airport Planning and Programming, Airport Safety and Standards, Human Resource Management, and Aviation Medicine; and to the Civil Rights Staffs, Airway Facilities Divisions, Airports Divisions, and to all Airports District Offices.

3. **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. The ADA does not apply to the executive branch of the Federal Government. However, it does cover Congress and other entities in the legislative branch of the Federal Government.

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 prohibits discrimination in employment on the basis of disability. The Equal Employment Opportunity Commission (EEOC) has responsibility for ensuring compliance with Title I under its regulations at 29 CFR Part 1630. FAA's responsibilities for handling employment discrimination issues are discussed in Paragraph 42.

(2) 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 Appendix 1 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 that do not receive Federal grant funds. Department of Justice (DOJ) regulations at 28 CFR Part 35, Section 35.190(b)(8), delegate authority to the Department of Transportation (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 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 and DOJ's regulations at 28 CFR Part 36. Part 36 is enforced by DOJ. 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 that allows the airport to meet its Title II obligations. DOT's 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 of the ADA addresses telecommunications. This order does not address any agency responsibilities under Title IV.

(5) Title V of the ADA addresses a number of miscellaneous matters, including the provision giving the Architectural and Transportation Barriers Compliance Board the authority to issue minimum guidelines and requirements for accessible design for facilities covered by Titles II and III of the Act. This order does not address any responsibilities under Title V.

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 FAA employees 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 disability, 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 serious and pervasive social problems.

(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 people 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 ensure 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.

4. **OVERVIEW OF THE REHABILITATION ACT OF 1973.** This order covers only the agency's responsibilities under Section 504, as it applies to the airport grant program. (See section c(1) of this paragraph.) For informational purposes, other provisions of the Act are highlighted below as well.

a. **Section 501** is implemented through EEOC's regulations at 29 CFR Part 1614 that require Federal agencies to provide equal employment opportunity and prohibit discrimination because of handicap. Under the rule, an agency must make reasonable accommodation to the known physical or mental limitations of qualified applicants and handicaps, unless the accommodation would impose an undue hardship on the operation of the agency's program. Procedures for filing individual and class complaints of discrimination on the basis of handicap are set forth in the rule.

b. **Section 503** requires certain Federal contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Section 504 also prohibits discrimination in the employment practices of such Federal contractors. Compliance with Section 503 is the responsibility of the Department of Labor, Office of Federal Contract Compliance Programs.

c. **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.

(1) DOT/FAA'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.

(2) DOT/FAA's regulation implementing Section 504 in the programs and activities that it conducts is found at 49 CFR Part 28. The departmental Office of Civil Rights is responsible for investigating complaints under Part 28.

This order does not cover the FAA's responsibilities under Part 28.

5. **OVERVIEW OF THE AIR CARRIER ACCESS ACT OF 1986.** The Air Carrier Access Act (ACAA) of 1986 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 Assistant 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. DOT's regulation implementing the ACAA is found at 14 CFR Part 382. FAA has no responsibility to enforce this regulation. However, some ACAA provisions overlap with those of 49 CFR Part 27, as discussed in paragraph 47.

6. **SCOPE OF ORDER.** This order addresses FAA's responsibilities in monitoring airport grant recipients and public entities for compliance with Section 504 and Title II of the ADA. This order does not address the obligations of FAA as a Federal agency under the authorities referenced in paragraph 4a and c(2).

7. **AUTHORITY TO CHANGE THIS ORDER.** Unless specifically reserved by the Administrator, the Assistant Administrator of Civil Rights may approve changes to this order, except those affecting policy, delegation of authority, and assignment of responsibilities.

8. **DEFINITIONS.** Appendix 1, Definitions, contains the definitions of terms used in this order.

9.-19. **RESERVED.**

CHAPTER 2. RESPONSIBILITIES

20. **ASSISTANT ADMINISTRATOR FOR CIVIL RIGHTS.** The Assistant Administrator for Civil Rights (ACR-1) serves as the FAA's principal advisor on matters concerning the agency's responsibilities under the ADA and Section 504. In this capacity, ACR-1 assists the Administrator in carrying out the provisions of statutory and regulatory authorities described in this order. ACR-1 is delegated the authority to act for, represent, and speak for the Administrator.

21. **THE OFFICE OF CIVIL RIGHTS AND REGIONAL CIVIL RIGHTS STAFFS.** ACR and the Regional Civil Rights Staffs (RCRS) are responsible for conducting investigations of complaints of discrimination filed under the ADA and Section 504 and for conducting periodic reviews of airport grant recipient compliance with Section 504. Civil Rights also provides technical assistance to airport sponsors, other public airports, and organizations as needed to facilitate compliance with program requirements. RCRS and ACR shall also provide appropriate assistance to members of the public who desire additional information on compliance requirements, including copies of the regulations and information on filing a complaint of discrimination or violation of the regulations.

Where appropriate, the term RCRS includes the Center Civil Rights Staff.

22. **OFFICE OF THE CHIEF COUNSEL.** The Office of the Chief Counsel (AGC) is responsible for developing and recommending policies and procedures to ensure the agency's actions comply with the requirements of the law. As necessary, AGC and the regional counsel offices will act as counsel for the agency and its officers in the determination of an airport authority's or other entity's compliance with the applicable statutes and regulatory provisions.

23. **HEADQUARTERS AIRPORTS ORGANIZATIONS.**

a. The Associate Administrator for Airports and Directors, Offices of Airport Planning and Programming (APP) and Airport Safety and Standards (AAS), are responsible for reporting to ACR, any information indicating a possible failure to comply with Title II of the ADA or Section 504.

b. APP and AAS, as appropriate, are responsible for developing advisory circulars and other technical assistance that will facilitate administration of the airport grant program.

24. REGIONAL AIRPORTS DIVISIONS AND AIRPORTS DISTRICT OFFICES are responsible for:

- a. Reporting to the RCRS any information indicating a possible failure to comply with Title II of the ADA or Section 504.
- b. Carrying out appropriate grant-related sanctions following completion of enforcement proceedings.

25. DEPARTMENTAL OFFICE OF CIVIL RIGHTS. Under its delegated authority from the Secretary, the departmental Office of Civil Rights (DOCR) is responsible for providing leadership, direction, and guidance in carrying out DOT's civil rights programs. Specific functions include:

- a. Establishing departmental policy concerning the implementation of DOT and DOJ regulations.
- b. Providing appropriate training to the modal agencies.
- c. Periodically reviewing and evaluating the programs of the modal agencies.
- d. Assigning case numbers to complaints.
- e. Tracking the status of complaints.

26. OFFICE OF THE ASSISTANT GENERAL COUNSEL FOR AVIATION ENFORCEMENT AND PROCEEDINGS. Under its delegated authority from the Secretary, the Office of the General Counsel for Aviation Enforcement and Proceedings is responsible for enforcing the Air Carrier Access Act of 1986 and implementing regulations at 14 CFR Part 382.

27.-39. RESERVED.

CHAPTER 3. BASIC REGULATORY REQUIREMENTS OF THE ADA, SECTION 504, AND THE ACAA.

40. OVERVIEW. This chapter is intended as a summary and a reference only. FAA Civil Rights personnel are expected to be knowledgeable of all applicable regulations. In addition, an advisory circular will be issued by the Office of Airport Safety and Standards, which addresses in great detail the specific regulatory requirements of the ADA, Section 504, and the ACAA. The Advisory Circular will provide the agency's policy interpretation of the various requirements of those statutes and regulations and shall be used as the agency's resource and guidance for determining an airport's responsibilities to comply with the regulations. This chapter does not reiterate or supercede that information; instead it provides a framework for an understanding of the basic requirements of the various laws and regulations, indicating where they overlap and where they vary. Because public entity airports have limited obligations under DOT's regulations, 49 CFR Parts 37 and 38, this chapter focuses primarily on the DOJ Title II regulation, 28 CFR Part 35, and DOT's Section 504 regulation, 49 CFR Part 27. To be in compliance with Section 504, an airport sponsor must also comply with all applicable requirements of the ADA (42 U.S.C. 12101-12213) including DOT's ADA regulations (49 CFR Parts 37 and 38), the regulations of the DOJ implementing Title II of the ADA (28 CFR Part 35), and the regulations of the Equal Employment Opportunity Commission (EEOC) implementing Title I of the ADA (29 CFR Part 1630) (49 CFR Section 27.19(a)). 28 CFR Part 35 is not to be construed to apply a lesser standard than those established under 49 CFR Part 27 (28 CFR Section 35.103(a)). Further, as amended on November 1, 1996, and effective December 2, 1996, 49 CFR Part 27 requires airport sponsors to ensure that terminal facilities and services shall be readily accessible to and usable by individuals with disabilities, including individuals using wheelchairs. A sponsor is considered to comply with this obligation if it meets requirements applying to state and local government programs and facilities under DOJ's Title II rule 28 CFR Part 35 (49 CFR Section 27.71(b)). The DOJ rule also incorporates provisions of Titles I and III of the ADA that are consistent with Section 504 regulations.

41. ADMINISTRATIVE REQUIREMENTS.

a. **Coordinators.** Both Title II and Section 504 regulations require the designation of a responsible employee to coordinate efforts to comply with the applicable regulations.

(1) Title II requires entities that employ 50 or more people to designate a coordinator (28 CFR Section 35.107(a)). The entity must make the name, address, and telephone number available to all interested individuals.

(2) Section 504 requires airport sponsors that employ 15 or more persons to designate a coordinator (49 CFR Section 27.13(a)). The recipient must notify the RCRS and the public of the name, address, and telephone number of the individual(s) appointed.

b. **Complaint Procedures.** Both Title II and Section 504 require the adoption of complaint procedures for the prompt and equitable resolution of complaints alleging violations of the applicable regulations.

(1) Title II requires entities that employ 50 or more persons to adopt and publish grievance procedures (28 CFR Section 35.107(b)).

(2) Section 504 requires recipients that employ 15 or more persons to adopt procedures that incorporate appropriate due process standards. The procedures must be filed with RCRS. Due process includes, among other things, prompt and equitable resolution, an opportunity for the complainant to provide additional information, notice of whom to call to determine the status of the complaint, and an appeal procedure (49 CFR Section 27.13(b)).

c. **Notice.** Both Title II and Section 504 require notice to various parties of the relevant regulations.

(1) Title II requires entities also to provide notice to "applicants, participants, beneficiaries, and other interested persons" of the applicability of the regulation to its programs and services and of the protections against discrimination. Entities may choose the manner in which this notice is provided (28 CFR 35.106).

(2) Section 504 has more specific notice requirements. Recipients must provide initial and continuing notice to "participants, beneficiaries, applicant, and employees" including those with hearing and vision impairments, and to unions. The notice must include the following information:

(a) that the recipient does not discriminate on the basis of disability in admission to, access to, treatment of, or employment in its programs and activities, and

(b) identification of the 504 Coordinator. Section 504 provides a variety of ways to meet the notice requirements (49 CFR Section 27.15).

d. **Self Evaluations.** Both Title II and Section 504 require airports to review their services, policies, and practices, to evaluate their compliance with the applicable regulation, and to take any appropriate remedial action. Both implementing regulations require that the airports provide for the participation of interested persons, including persons with disabilities and organizations representing persons with disabilities in the evaluation. Under Title II, if an airport had previously conducted a self-evaluation under Section 504, only those policies and practices that were not included need to be evaluated. Paragraph 112 provides information on aids to assessing accessibility of facilities.

(1) Title II required all entities to conduct the evaluation by July 26, 1992. Participation by interested persons was to be provided for by their submitting comments. Entities with 50 more employees must retain the document for public inspection for at least 3 years after the evaluation is completed, including a list of the interested persons consulted, a description of areas examined and any problems identified, and a description of any modifications made (28 CFR Section 35.105).

(2) Section 504 required that all recipients conduct the evaluation within 180 days of May 31, 1979, and notify FAA of the persons responsible for evaluating its compliance and of the completion of the evaluation. Recipients were specifically required to take the following actions:

- (a) evaluate current policies and practices;
- (b) identify shortcomings and describe the methods to remedy;
- (c) make modifications within 1 year. After each of these steps, the recipient must consult with persons with disabilities and organizations representing persons with disabilities.

(3) The recipient must then also:

- (a) take remedial steps for the effects of any discrimination caused by the violations; and
- (b) establish a system for periodically reviewing and updating the evaluation. All recipients must keep the evaluation on file for 3 years (49 CFR Sections 27.11(c)(2) and (3)).

42. EMPLOYMENT. Both the Title II ADA and Section 504 regulations incorporate the prohibition on employment discrimination from Title I of the ADA (28 CFR Section 35.140 and 49 CFR Section 27.19). Both rules also incorporate the EEOC requirements 29 CFR Part 1630, including prohibitions on discrimination in job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment, as well as recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities. To prevent duplicative efforts of Federal agencies who are responsible for enforcing these laws, the Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC) established procedures for coordinating and investigating employment-related disability complaints at 29 CFR Part 1640 and 28 CFR Part 37.

a. **Title I** employment provisions apply to private employers and state and local governments (as well as employment agencies and labor unions) that employ at least 15 employees. Title I is enforced by the EEOC under its regulations at 29 CFR Part 1630. FAA has no authority to investigate Title I employment complaints. Any Title I employment complaints received by FAA shall be forwarded to EEOC in accordance with the DOJ/EEOC regulations.

b. **Employment provisions of DOJ's Title II** rule apply to all entities covered, regardless of the number of employees they may have. Standards for compliance are EEOC's regulations at 29 CFR Part 1630. If the public entity is not also covered by Title I, the standards for compliance are found at DOJ regulations at 28 CFR Part 41. Only Title II employment complaints that are not also covered by Title I or Section 504 are investigated by FAA. For example, FAA would investigate a complaint against a public airport that has fewer than 15 employees.

c. **Section 504** covers employment for all recipients, regardless of the number of employees (49 CFR Section 27.19). Compliance with the EEOC regulation at 29 CFR Part 1630 is a condition of compliance with Section 504. Individual complaints of employment discrimination against airport sponsors over which FAA has Section 504 jurisdiction must be forwarded to EEOC for investigation under Title I, unless the complainant requests that FAA investigate instead of EEOC (29 CFR Sections 1640.6(d)(ii)). By contrast, employment discrimination complaints against an airport sponsor that also allege discrimination in other practices or services by the airport or those that allege a pattern or practice of employment discrimination must be investigated by FAA and not referred to EEOC (29 CFR Section 1640.6(d)(iii) and (iv)).

43. PROGRAM ACCESSIBILITY. Program accessibility refers to the public entity's responsibilities to ensure that its services, programs, or activities are accessible to persons with disabilities (28 CFR Section 35.150(a)). Public entities are not required to make structural changes to their existing facilities, facilities constructed prior to July 26, 1992, unless other methods are not effective. Other methods may include redesign of equipment, reassignment of services to accessible buildings, delivery of services at accessible facilities, or any other methods that result in accessibility. Public entities must give priority to the method that provides the most integrated setting appropriate for persons with disabilities (28 CFR Section 35.150(b)). In addition, public airports must make reasonable modifications to its policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the airport can demonstrate that the modifications would fundamentally alter the nature of the service, program, or activity (28 CFR Section 35.130(b)(7)). Paragraph 44e includes information on standards under 49 CFR Part 27 that apply to sponsors. Title II also clarifies that a public entity is not required to take any action that will result in a fundamental alteration in the nature of a service, program, or activity or would result in undue financial and administrative burdens (28 CFR Section 35.150(a)(3)).

44. PHYSICAL ACCESSIBILITY. The design and construction of new buildings and the alterations and the necessary structural modifications to existing buildings must comply with accessibility standards under Title II and Section 504.

a. (1) **Transition Plans.** Transition plans are the airport's specific plans to make structural modifications to existing buildings where necessary to meet accessibility standards, which are discussed below. (Chapter 7 provides information on FAA review of transition plans.)

(2) **Section 504.** All airports under Section 504 were required to submit a transition plan to the FAA for approval "where extensive structural changes" were necessary. The November 1, 1996, amendments to the rule required the airport sponsor who had not previously submitted a plan to FAA to do so by March 3, 1997 (49 CFR Section 27.71(g)).

(3) **Title II.** Airports subject to Title II regulations that employ 50 or more persons and which needed any structural modifications were to develop transition plans by July 26, 1992. The plan has specific requirements. The public entity was required to provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the plan. If an airport already had developed a transition plan under Section 504, it needed only to review the policies and practices that were not included in the previous transition plan (28 CFR Section 35.150(d)(4)).

b. **Accessibility Standards.** DOJ's Title II rule allows airports to use either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for Buildings and Facilities. In addition, the DOJ Title II rule states that public entities may depart from particular requirements of either if equivalent access is provided (28 CFR Section 35.151(c)). DOT's Section 504 rule, as amended November 1, 1996, and effective December 2, 1996, requires that airport sponsors use ADAAG as the standard for accessibility (49 CFR Section 27.71(e)).

(1) **ADAAG for Buildings and Facilities** was issued by the Architectural and Transportation Compliance Board on July 26, 1991, and applies to Titles II and III. Thus, airports must ensure that their entire facility is accessible, including concession spaces. The ADAAG Standards are located in Appendix A to 28 CFR Part 36 and Appendix A to 49 CFR Part 37. Section 10.4 of the ADAAG applies specifically to new airport construction.

(2) **UFAS.** UFAS Standards are found at 41 CFR Part 101-19, Subpart 101-19.6, Appendix A.

c. **Elevator Exemptions.** The exceptions for elevators in ADAAG Parts 4.1.3(5) and 4.1.6(1)(k) do not apply to airports or other public entities covered by the DOJ Title II regulations at 28 CFR Part 35 (28 CFR Section 35.151(c)).

d. **Historic Preservation.** The DOJ Title II regulation makes allowances for accessibility to historic properties (28 CFR Sections 35.150(a)(2), 35.150(b)(2), and 35.151(d)).

e. **Specific Airport Provisions.** Prior to the November 1, 1996, amendment, 49 CFR Section 27.71 identified specific areas in an airport facility that require access, including ticketing, baggage check-in, retrieval, etc. The November 1, 1996, amendment replaced that section with the following provisions:

(1) Sponsors must ensure that terminal facilities and services are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. A sponsor is considered to comply with this obligation if it meets the requirements applying to state and local government programs and facilities under DOJ's Title II rule (49 CFR Section 27.71(a)).

(2) Sponsors must ensure that there is an accessible path between the gate and the area from which aircraft are boarded (49 CFR Section 27.71(c)). (See paragraph 47c.)

(3) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the DOT's ADA rules (49 CFR Section 27.71(d)).

(4) The ADAAG, including Section 10.4 concerning airport facilities, is the standard for accessibility that applies to airports (49 CFR Section 27.71(e)). (See paragraph 44.)

(5) Contracts or leases between carriers and sponsors concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by 49 CFR Part 27 and provisions of 14 CFR Part 382 implementing the ACAA (49 CFR Section 27.71(f)). (See Paragraph 47c.)

(6) A requirement to submit a transition plan, if applicable, is required, as described in Subparagraph a(1).

45. **COMMUNICATIONS.** Airports must take appropriate steps to ensure that their communications with individuals with disabilities are as effective as communications with other applicants, beneficiaries, and members of the public. Generally, this means doing something different to accommodate an individual's disability, particularly those individuals with vision and hearing impairments. Title II clarifies that entities should give primary consideration to the individual's requested auxiliary aid when determining what kind of auxiliary aid would be effective.

a. **Title II** requires the following for persons with impaired hearing, vision, or speech:

(1) Where a public entity communicates by telephone with applicants and beneficiaries, TDD's or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing or speech (28 CFR Section 35.161);

(2) Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems (28 CFR Section 35.162);

(3) Access to information about the existence and location of services, activities, and facilities (28 CFR Section 35.163(a));

(4) Signage at all inaccessible entrances directing users to an accessible entrance or to information about accessible facilities (28 CFR Section 35.163(b));

(5) Use of the international symbol for accessibility at each accessible entrance (28 CFR Section 35.163(b));

(6) 28 CFR Part 35 does not specifically address the use of service animals. However, airports are required to modify policies as necessary to provide programs, services, and activities in a nondiscriminatory manner. To be consistent with the DOJ Title III rule (28 CFR Section 36.302(c)), the DOT Titles II and III rules (49 CFR Section 37.167(d)), and the ACAA rule (14 CFR Section 382.55(a)), FAA interprets 28 CFR Section 35.130(b)(7) to require airports to permit service animals accompany persons with disabilities throughout the facility.

b. ADAAG, Section 10.4.1(4), states that where public pay telephones are provided, and at least one is at an interior location, a public text telephone shall be provided in compliance with Section 4.31.9. Additionally, if four or more public pay telephones are located in any of the following locations, at least one public text telephone shall also be provided in that location:

- (a) a main terminal outside the security areas;
- (b) a concourse within the security areas; or
- (c) a baggage claim area in the terminal.

c. ADAAG, Section 10.4.1(6), provides that terminal information systems that broadcast information to the general public through a public address system shall provide a means to provide the same or equivalent information to persons with a hearing loss or who are deaf. Such methods may include, but are not limited to, visual paging systems using video monitors and computer technology. For persons with certain types of hearing loss, such methods may include, but are not limited to, an assistive listening system complying with Section 4.33.7.

d. ADAAG, Section 10.4.1. (7), states that where clocks are provided for use by the general public, the clock face shall be uncluttered so that its elements are clearly visible. Hands, numerals, and/or digits shall contrast with their background either light-on-dark or dark-on-light. Where clocks are mounted overhead, numerals and/or digits shall comply with Section 4.30.3. Clocks shall be placed in uniform locations throughout the facility to the maximum extent practicable.

Note: The foregoing discussion pertains only to communications and is not intended as a comprehensive review of all ADAAG standards applicable to airports.

46. **VEHICLE AND TRANSPORTATION SYSTEMS ACCESSIBILITY.** Under the DOT Title II, Subpart B, and Title III regulations at 49 CFR Parts 37 and 38, public entities that provide designated or specified public transportation or intercity or commuter rail transportation must provide access for disabled persons. Since transportation by aircraft is excluded from the definition of designated or specified transportation, these regulations have limited applicability to airport operators. The areas of the regulation that apply are summarized below.

47. **AIRPORT-OPERATED TRANSPORTATION SYSTEMS.**

(1) 49 CFR Section 37.33 specifically addresses airport operator responsibilities if they operate transportation systems that provide designated public transportation system and connect parking lots and terminals or provide transportation among terminals. Airports are subject to the requirements in 49 CFR Part 37 for fixed-route or demand-responsive systems, as applicable, operated by public entities. Airports that operate fixed-route transportation systems are subject to the requirements in 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 in 49 CFR Part 37 (49 CFR Section 37.33(a)).

(2) Fixed-route transportation systems operated by airports between the airport and a limited number of destinations in the area that it serves are subject to the requirements in 49 CFR Part 37 for commuter bus systems operated by public entities (49 CFR Section 37.33(b)).

a. **Private Entity Transportation Systems.** Private jitney or shuttle services that provide transportation between the airport and destinations in the area in a demand-response and route deviation mode must provide accessible services in accordance with 49 CFR Section 37.33(c) implementing Title III. Airport operators who contract with such services should be aware of these requirements and applicable requirements in 49 CFR Part 37, Subpart E, concerning the purchase or lease of vehicles.

b. **Taxis.** Private taxi providers are not required to purchase or lease accessible automobiles. However, if they purchase a vehicle other than an automobile, that vehicle must be accessible unless the provider can demonstrate equivalency as provided in Section 37.105. Taxi providers using automobiles only may not discriminate against disabled persons who are able to use the automobile, in accordance with 49 CFR Section 37.29 implementing Title III. Airport operators who contract with taxi services should be aware of these requirements and applicable requirements in 49 CFR Part 37, Subpart E, concerning the purchase or lease of vehicles.

c. **Private Entities Not Primarily Engaged in Transportation.** Shuttle systems and other transportation services operated by privately owned hotels, car rental companies, or other public accommodations are subject to the applicable sections of 49 CFR Part 37. (See Section 37.37(b)). Airport operators with concessionaires that provide transportation services should be aware of these requirements.

48. AIRCRAFT AND AIR CARRIER FACILITY ACCESSIBILITY. Although OST, rather than FAA, enforces the ACAA, Section 504 does place some responsibility for access to aircraft on the airport sponsor.

a. **Boarding Assistance for Small Aircraft.**

(1) In the event that airport sponsor personnel are involved in providing boarding assistance, the sponsor must ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers (49 CFR Section 27.72(d)).

(2) A sponsor of an airport having 10,000 or more annual enplanements, in cooperation with carriers serving the airport, must provide to individuals with disabilities boarding assistance using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs (49 CFR Section 27.72(b)). These sponsors must also negotiate in good faith with each carrier serving the airport concerning the acquisition and use of such boarding assistance devices. The sponsor must sign a written agreement with each carrier serving the airport for certain aircraft that have a capacity of from 19 to 30 seats. The agreement must address respective responsibilities for providing boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. The agreement must have been signed by September 2, 1997 (49 CFR Section 27.72(c)).

b. **Airport Facilities.** Airport terminal facilities include parking and ground transportation facilities, owned, leased, or operated by commercial service airports (49 CFR Section 27.71(a), as amended November 1, 1996). Under the ACAA, an air carrier is responsible for accessible facilities to the extent that it controls the selection, design, construction, or alteration of the property. Leases or contracts between airport operators and air carriers concerning the use of airport facilities shall define the respective responsibilities for providing accessible facilities and services to individuals with disabilities (49 CFR Section 27.71(f)).

c. **Accessible Path.** Airports must ensure that there is an accessible path between the gate and the area from which aircraft are boarded. It is the airport operator's responsibility to ensure that a passenger with a disability can move through the airport to the means of boarding the aircraft (49 CFR Section 27.71(c)).

49. SPECIFIC DISABILITIES.

a. Allergy to Cigarette Smoke. The DOJ has declined to state categorically that allergy or sensitivity to cigarette smoke is a disability, because the determination as to whether an impairment is a disability depends on whether, given the particular circumstances at issue, the impairment substantially limits one or more major life activities (or has a history of or is regarded as having such an effect). The DOJ states that sometimes respiratory or neurological functioning is so severely affected that an individual will satisfy the requirements to be considered disabled under the regulation. In other cases, an individual's sensitivity to smoke will not rise to the level needed to constitute a disability. For example, the major life activity of breathing may be somewhat, but not substantially, impaired. In these cases, the individuals are not disabled and are not entitled to the protections of the statute despite their sensitivity to environmental agents. (See Appendix A to 28 CFR Part 35.)

b. Smoking. The ADA does not preclude the prohibition of, or the imposition of restrictions on, smoking within airport facilities (28 CFR Section 35.132).

c. Conditions not considered Disabilities. Examples of such conditions include:

- (1) Sexual behavior disorders.
- (2) Compulsive gambling, kleptomania, and pyromania.
- (3) Psychoactive substance use disorders resulting from current illegal use of drugs.
- (4) Smoking.

50. ENFORCEMENT.

a. 28 CFR Part 35. An airport owned by a public entity that is not a recipient of Federal financial assistance is subject to the DOJ enforcement procedures established in 28 CFR Part 35. Under this rule, if DOT/FAA issues a noncompliance Letter of Finding to such an airport, it shall: (1) forward a copy of the Letter of Finding to the Assistant Attorney General; and (2) initiate negotiations with the public entity to secure compliance by voluntary means. If the matter cannot be resolved by voluntary means, it will be forwarded to the Attorney General with a recommendation for appropriate action (28 CFR Section 35.174). ACR will obtain the concurrence of DOCR prior to referral to the Attorney General. Because the ADA does not

require the exhaustion of administrative remedies, a complainant may elect to proceed with a private suit at any time during the complaint process. In some instances, DOT may suspend continuation of the complaint investigation until the court procedure is completed.

b. 49 CFR Parts 37 and 38. DOT has not established separate enforcement procedures for entities covered by its ADA rule (49 CFR Section 37.11). Public entities covered by DOT's ADA regulation and which are not recipients of Federal financial assistance are subject to DOJ enforcement rules at 28 CFR Part 35. Private entities covered by DOT's ADA regulation, like taxicab providers and shuttle bus providers, are subject to the DOJ enforcement procedures established in 28 CFR Part 36. Airport sponsors covered by DOT's ADA regulation are subject to the enforcement procedures of 49 CFR Part 27.

c. 49 CFR Part 27. All airport sponsors, including public entities and private owners of public-use airports, are subject to the enforcement procedures set forth in 49 CFR Part 27, Subpart C. If FAA finds reasonable cause to believe an airport sponsor is not in compliance, it will notify the sponsor in accordance with 49 CFR Section 27.123(d) and attempt to resolve the issue through informal means. (Appendix 8 contains a sample notice.) If the region is unable to resolve the matter by informal means within 180 days of issuing the Letter of Findings, it will refer the matter to ACR for coordination with AGC-600 under Section 27.125.

The region may make a recommendation of suspension or termination or other appropriate steps. (Although no timeframe to resolve issues informally is included in the regulations, ACR has determined that 180 days is a reasonable period of time.) AGC-600 undertakes appropriate coordination with the Office of the General Counsel in carrying out the provisions of 49 CFR Section 27.125. ACR will notify DOCR of the referral to AGC-600. Whenever the Office of the Secretary completes the enforcement proceedings set forth in 49 CFR Sections 27.125, 27.127, and 27.129, ACR-1 shall notify ARP-1 and request that ARP-1 directs the Regional Airport Divisions to implement appropriate grant-related sanctions.

51.-59. RESERVED.

CHAPTER 4. COMPLAINT PROCEDURES

60. OVERVIEW. Any person who believes himself/herself or any class of individuals to be harmed by or subjected to discrimination because of his/her disability in violation of the regulations discussed in this order may personally or through a representative file a complaint. This chapter provides procedural guidance to RCRS charged with the responsibility to investigate and resolve complaints of discrimination based on disability.

61. FILING FORMAL COMPLAINTS.

a. Timeframes. Complaints must be filed within 180 days of the alleged violation or discriminatory act unless the timeframe is extended by ACR (49 CFR Section 27.123(b), 28 CFR Section 35.170(b)). For complaints covered by Title II, filing the complaint with any Federal agency will satisfy the time requirements. Complaints covered by Section 504 must specifically be filed with the DOT.

b. Referrals to ACR. All complaints received directly by the regional or center Civil Rights Offices from complainants will be date stamped as received and forwarded to ACR within 5 working days of receipt. The region or center office shall notify the complainant or representative and ACR by telephone of the forwarding action.

c. Complete Complaint. A complete complaint, as defined in Appendix 1, must be in writing and signed by the complainant or a representative of the complainant.

d. Citation of Specific Statute/Regulation. A complainant need not specifically allege that Title II or Section 504 has been violated; an allegation of discrimination on the basis of disability by a public entity is sufficient.

e. Complainant Anonymity. Complainants may choose to remain anonymous throughout the complaint process. However, if the anonymity hinders the investigation, FAA must notify the complainant that the privilege may be waived (49 CFR Section 27.123(e)). If the complainant insists on anonymity and the investigation cannot proceed without divulging the complainant's identity, FAA will administratively close the complaint.

f. **ACAA Complaints.** If ACR determines that a complaint is covered by the ACAA, the complaint will be forwarded to the following address:

ATTN: Aviation Consumer Protection Division, C-75
Assistant General Counsel for Aviation Enforcement and Proceedings
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590
(202) 366-5957

g. **Concessionaire Complaints.** Complaints involving concessionaires are handled according to the following procedures.

(1) Concessions owned and operated by a private entity are covered by DOJ's rule implementing Title III of the ADA (28 CFR Part 36). Accordingly, such complaints will be forwarded to DOJ.

(3) Concessions owned and operated by a public entity are subject to 28 CFR Part 35 implementing Title II of the ADA.

h. **Privatization.** Services, programs, and activities provided or made available by a private firm under contract with a public entity are subject to Title II of the ADA and 28 CFR Section 35.130(b)(3).

62. ACCEPTANCE OF COMPLAINTS. Authority to accept or reject complaints of discrimination against airport authorities is reserved to ACR. In accordance with applicable regulations, acceptance is based on the following factors:

- a. Whether it is timely;
- b. Whether it is a complete complaint; and
- c. Whether FAA has jurisdiction. (See Paragraph 63.)

a. **Assignment of Case Numbers.** When the departmental Office of Civil Rights (DOCR) receives a complaint, it will assign a DOCR docket number to the complaint and forward it to ACR. It may also notify the complainant that the complaint has been forwarded to ACR. If ACR receives a complaint, it notifies the complainant in a letter of acknowledgment. ACR also provides a copy of the complaint to DOCR, Chief, External Policy and Program Development Division (EPPD), and requests a DOCR docket number.

b. **Request for Additional Information from the Complainant.** In the event the complaint lacks sufficient information to determine jurisdictional responsibility or the information is otherwise incomplete, ACR shall promptly request supplemental information from the complainant. The complainant will be required to submit this information within 30 days following receipt of ACR's letter. If the information is not submitted, ACR will administratively close the complaint without prejudice, unless a satisfactory explanation is provided as to why additional time is needed.

c. **Letters of Acceptance/Rejection.** If ACR accepts a complaint for investigation, it will promptly notify the complainant in writing and list the issues to be investigated. (See Appendix 2.) If one or more of the allegations of the complaint is not accepted, the letter will provide an appropriate explanation why the allegations are dismissed. The letter will also identify any allegations that are referred to another agency or to the DOCR for further review.

d. **Assignment of Cases.** When a complaint is accepted for investigation, ACR-4 will forward the complete case file to the appropriate RCRS. The assigned RCRS is the responsible office for the duration of the investigation.

e. **Timeframe for Completion.** The RCRS devises a schedule for investigating a complaint so as to complete the investigation and issue a letter of findings to the parties within 180 days of receiving the complaint from ACR.

63. DETERMINING JURISDICTION.

a. Jurisdiction is based on two factors:

(1) Whether the allegations are covered by 28 CFR Part 35, 49 CFR Part 27, an applicable section of 49 CFR Part 37 and 38, or 29 CFR Part 1640; and

(2) Whether the respondent is subject to the specific regulatory provision identified.

b. As part of a determination under paragraph 63 a (1), it must be ascertained whether the complainant meets the regulatory definition of qualified individual with a disability.

c. As appropriate, ACR will seek advice from AGC-600 in making these determinations. If ACR and AGC-600 determine that the complaint presents a novel issue, ACR will consult with DOCR to agree on an appropriate course of action prior to initiating an investigation. Novel issues are those that raise substantive legal or policy questions, which are not addressed in existing regulations or guidelines. ACR establishes jurisdiction prior to accepting the complaint and forwarding it to the region or center for investigation. However, it is also the region's and center's responsibility to review and understand the jurisdictional determination prior to proceeding with an investigation. Appendix 3 contains a checklist of steps to be taken in processing the beginning with jurisdictional determinations.

64. IDENTIFYING ISSUES.

a. **Issue Defined.** An issue is a precise statement, written in the form of a question ("Was the Complainant..." or "Whether or not the Complainant..."), of the alleged specific manner in which the complainant was treated differently or affected differently or in which the respondent failed to comply with the regulatory requirements. It includes the following information, as applicable:

- (1) Identity of complainant(s).
- (2) Specific alleged discriminatory act or violation.
- (3) Date and place of alleged act or violation.
- (4) Identity of respondent.
- (5) Basis of discrimination.
- (6) Specific regulatory citation that is applicable.

b. **Example.** An example of an issue is: "Was John Doe discriminated against on the basis of disability when he was forced to park in an inaccessible space on May 1, 1997, in the short-term parking lot at Danson Regional Airport, in violation of 49 CFR Sections 27.7(a) and (b)(5), 27.19(a), and 28 CFR Section 35.151(c)?" or "Did the Danson Regional Airport comply with applicable nondiscrimination provisions and accessibility standards by providing sufficient accessible spaces in the short-term parking lot in accordance with 49 CFR Sections 27.7(a) and (b)(5), 27.19(a) and 28 CFR Section 35.151(c)?"

d. Purpose for identifying issues. The issues assist the FAA in determining the focus of the investigation. Failure to identify the specific issues to be investigated can produce undesirable results, for example, the investigator may pursue irrelevant lines of inquiry offered by either the complainant or respondent.

e. Process for identifying issues. Generally, ACR will identify the issues to be investigated. These may or may not be identical to the allegations stated in the complaint. In some instances, it may not be possible to determine whether an airport facility is under the control of the airport sponsor or an air carrier without contacting the airport. The investigator can make this determination as part of the inquiry.

65. PLANNING THE INVESTIGATION. Prior to conducting the investigation, the investigator may develop an investigative approach, analyze all data received, and further modify the approach if necessary. ACR may request that a written Investigative Plan be developed and discussed with ACR-4 prior to proceeding with the investigation. An investigator may also request ACR's comments to a proposed plan. All employees charged with investigating ADA and Section 504 complaints are required to work through the logical process of investigative planning. (Appendix 4 contains a sample plan.)

a. Contacting the Complainant. The investigator's first step is to contact the complainant by telephone, if possible, to identify himself/herself as the investigator, determine whom at the airport the complainant has talked with since the complaint was filed and what was discussed, confirm that the complainant still wants to pursue the complaint, and ask the complainant what he/she requests as a remedy to resolve the complaint. A letter is sent to the complainant that identifies the investigator and confirms any telephone conversation between the investigator and complainant. (A sample notice is included as Appendix 5.)

b. Purpose of the Investigative Plan. The Investigative Plan is a written statement of the basis for and approaches to be taken in investigating a complaint. The Plan is a working document to assist the investigator in focusing on the issues during the investigation. The Plan also serves the following purposes:

- (1) To determine the scope of the investigation.
- (2) To ensure that all issues are thoroughly addressed.
- (3) To identify relevant data needs.

(4) To help develop relevant theories or standards of proof.

(5) To ensure a logical and efficient investigation.

c. Developing the Investigative Plan. The process and format for developing a written Investigative Plan include the following items/steps:

(1) **Identifying Data.** The DOCR docket number of the complaint and the names of the complainant, respondent, and investigator.

(2) **Statement of Jurisdiction.** A statement of the legal authority, evidence that the airport is a recipient (if applicable), timeliness of filing the complaint.

(3) **Statement of Allegations.** The specific statements of what the complainant alleges to have happened in violation of law or regulation.

(4) **Statement of the Issues.** See paragraph 64.

(5) **Summary of Background.** A chronology of complaint activity to date, the dates of any contact with the complainant or respondent and any relevant information obtained, and any relevant background obtained in airport files that may provide context for the complainant's allegations (e.g., date of terminal construction, AIP grants for ADA rehabilitation).

(6) **Analysis of the Issues.** A listing, in a logical progression, of the essential questions that must be answered (through the collection of data) in order to answer the issues. All questions should be listed, whether the answers are already known or not, in order to provide a reference point for analysis once the data are gathered. In all ADA or Section 504 complaints in which complainants allege that they were treated differently or denied services, benefits, employment, etc., on the basis of disability, the following question must be answered: Is the complainant a "qualified individual with a disability" according to the regulatory definition? (See Appendix 1 for definition of this term and the definition of "disability.")

(7) **Identification of Data Needs, Sources, and Use for Each Issue.** A listing of the specific pieces of data needed to answer the questions raised above and the suggested sources for those data.

(8) **Proposed Activity Schedule.** An outline of how, when, and where the investigator will obtain the needed data, complete the investigation, the Investigative Report, and draft Letter of Findings.

(9) **Respondent Information Request.** A complete and specific listing of all data that the respondent should submit to the investigator. In addition to the items listed in Section VII of the Investigative Plan, the information request should always include:

- (a) the respondent's response to the allegations;
- (b) the identification of those employees responsible for ensuring compliance with ADA and Section 504;
- (c) a copy of the airport's complaint procedure;
- (d) a copy of the airport's self-evaluation (if still on file); and
- (e) a copy of the airport's transition plan, if applicable to the issues investigated.

66. CONDUCTING THE INVESTIGATION. Questions regarding the appropriateness of initiating an investigation or how an investigation should be conducted may be directed to ACR-4.

a. Notice to Airport. The notice to the airport authority should include a cover letter, the Information Request, and a copy of the applicable regulations. (An example is included as Appendix 6.) It should be sent to the airport's chief executive officer. The cover letter must include the following information:

- (1) Acceptance of the complaint and FAA's authority to investigate;
- (2) Complainant's name and date of complaint (unless the complainant has requested anonymity);
- (3) Identification of the issues to be investigated;
- (4) Brief summary of the investigative procedure;
- (5) Timeframe for response to Information Request;
- (6) Proposed timeframe for onsite (if applicable); OR
- (7) Notice that an onsite may be necessary; and

(8) **Identification of investigator's name, title, and telephone number.**

b. Review of Information Request Response. Once the data are received from the respondent, the investigator reviews them for usefulness and to determine what additional information is needed. Often the receipt of information from the respondent will raise additional questions. The information also assists in deciding on interviews if an onsite is necessary. Some general questions to be asked include:

- (1) Are the data authentic? Do they need to be signed, dated?
- (2) Are the data timely? Does the timeframe capture the same as that of the issue/allegation?
- (3) Does the document stand on its own or does it need validation, verification, or support?
- (4) Are the data responsive and relevant to the complaint?
- (5) Do the data conflict with other data collected?
- (6) Does the originator of the data have established expertise?

The investigator is responsible for clarifying and obtaining any additional data from the respondent.

c. On-site Preparation. An on-site visit to the airport facility will not be necessary for all ADA/Section 504 complaint investigations. After a review of the information request material, the investigator must determine what other information is necessary and if that information must be collected on-site. Prior to conducting an on-site investigation, the investigator should notify the respondent well ahead of time, make a specific appointment schedule with all relevant employees, and arrange for time and place for the review of all records maintained onsite.

d. Entrance Conference. The entrance conference is to be held with the respondent's chief executive officer or, in his/her absence, the most senior official available to meet with the investigator. The entrance meeting has several purposes:

- (1) introductions;
- (2) brief summary of issues and procedures, including timeframes;

(3) notification that additional staff or records may need to be available depending upon the scheduled interviews,

(4) confirmation of the on-site schedule; and

(5) response to any questions from the respondent.

e. Purpose of On-Site Data Collection. Data are gathered throughout the investigation to answer two questions:

(1) what happened; did the alleged violations even occur?

(2) Why; are the reasons alleged accurate?

f. Procedures for Gathering Data. The following procedures are employed in gathering data.

(1) Documentation. All data collected on-site should be dated when received, should indicate the source of the data, and should be initialed by the investigator.

(2) Interview Procedures. The investigator will advise the airport chief executive officer or a designee what information is needed and request a list of airport officials who may have pertinent knowledge, so that the investigator can select interviewees. Based on the Investigative Plan, investigators should know what specific information is needed. Interviews may be conducted by telephone, through written interrogatories, or in person during an on-site. FAA has no authority under the ADA or Section 504 to administer oaths or affirmations. Telephone interviews may not be recorded without the knowledge and approval of the party. Investigators may write up the interviews conducted by telephone or on-site and ask the interviewee to initial or sign for verification of the information, but it is not required. If an interviewee requests to see the investigator's credentials prior to the interview, the investigator shall use his/her official FAA identification card.

(3) Interview Notes. The investigator is responsible for producing legible, detailed notes of the interviews for the record. The notes should be developed in such a manner that others reviewing the file understand the context of the information provided. To decrease possible misinterpretations and strengthen the evidence gathered, the notes should include as many verbatim statements as possible. (Appendix 7 provides further information on interviewing techniques.)

(4) **Record Reviews.** The airport must provide the investigator with appropriate documents that respond to the information request. Documentation of data gathered from the review of records is particularly important if it will be used as evidence. When possible, copies of applicable records should be made. Any notes made should clearly indicate the exact title of the record, the location of the record, the specific section of the record that was reviewed, and verbatim information from the record.

(5) **Observations/Measurements.** Many ADA or Section 504 complaints concern compliance with ADAAG or UFAS standards. All measurements taken and observations made should be documented in the file, including dates, times, and the identification of others present, if applicable. If photographs are used, they should be mounted on a piece of 8-1/2" x 11" paper with a description of structure or property, the exact location of the structure or property, the date the photograph was taken, and by whom. When recording data through observations or measurements, it is helpful to include the required standard against which the observation or measurement is being made.

g. Exit Conference. Prior to the exit briefing, the investigator should review all evidence gathered against the Investigative Plan. The exit conference is an opportunity to summarize the data gathered briefly, identify additional data that may be necessary, and thank the respondents for their cooperation. The airport chief executive officer and all other officials having responsibility for implementation of ADA/Section 504 should be asked to attend the exit conference. This conference does not include any opinion whatsoever of the airport's compliance or noncompliance status.

h. Failure to Cooperate.

(1) It is the investigator's responsibility to seek cooperation from airport sponsors during complaint investigations. Under 49 CFR Part 27, airports are responsible for providing access during normal business hours to records that are pertinent to the investigation. Claims of confidentiality by the airport sponsor do not bar FAA from having access to the necessary documents (49 CFR Section 27.121). In the event that an airport sponsor fails or refuses to provide information requested by the case investigator, the RCRS shall immediately notify the airport sponsor in writing pursuant to Section 27.123(d) that FAA finds reasonable cause to believe that the airport has failed to comply with Part 27 and shall attempt to resolve the matter informally whenever possible. If the responsible region cannot resolve the matter informally, the region shall forward the case to ACR. ACR will coordinate the matter with the Office of the Chief Counsel with respect to any possible enforcement action.

(2) Under 28 CFR Part 35, if a public entity declines to enter into voluntary compliance negotiations or if such negotiations are unsuccessful, DOT shall refer the matter to the U.S. Attorney General with a recommendation for appropriate action (28 CFR Section 35.174).

67. ANALYSIS AND FINDINGS. The data should first be sorted and categorized by issue and sub-issue. Some data may be relevant to more than one issue. All irrelevant data should be set aside. The data are also analyzed to determine any patterns, depending upon the issues to be investigated. If the investigator knows what happened and why and can document these answers by the evidence collected, the data should be sufficient to reach a finding. When analyzing the data, the investigator shall take the following steps, as appropriate:

- a. Develop a clear understanding of what the document says; seek clarification if necessary.
- b. Accept the data at face value; do not read meaning into it.
- c. Determine the relevancy; if the data do not provide an answer, a direction to a resource, or raise additional questions, it probably is not relevant.
- d. Resolve any conflicting information.
- e. Put the data together so that it illustrates a logical continuity of dependent, or related independent, occurrences leading to a conclusion.
- f. Plug any gaps in information necessary to answer the investigative plan questions.
- g. Allow the data to speak for itself.
- h. Test conclusions by considering all possible rebuttal arguments.

68. INVESTIGATIVE REPORT. Preparing the Investigative Report is an essential step in the investigative process. Unless the data gathered during the investigation are presented in a manner that makes their meaning clear to all parties, it is of little use. The organization of the report should assist in understanding the content, provide a logical progression of ideas, and help the reader identify key information quickly.

a. Format. The investigative report shall reflect the following format:

- (1) Background, including date of complaint, date complaint received;
- (2) Statement of allegations;
- (3) Description of respondent's organization and jurisdiction;
- (4) Issues investigated;
- (5) Description of the investigation to include:
 - (a) Identity of investigator.
 - (b) Date complaint investigated.
- (6) Factual summary. All discussion of facts should include a reference to the appropriate exhibit in parentheses;
- (7) A statement of the complainant's position and the respondent's position;
- (8) Analysis of issues and conclusions as to whether the record provides reasonable cause to believe a violation of regulations occurred. This section is very important and deserves special attention. The facts must be analyzed and applied to relevant regulations and policy;
- (9) Description of a remedy for each violation found. (These can be outlined in an enclosed draft "Voluntary Compliance Agreement.") See Appendix 11.
- (10) List of tabbed exhibits, including all documents and interviews gathered during the investigation that contain information pertinent to answering the issues of the complaint; and
- (11) Notice of complainant's right to sue, whether or not a violation is found by the FAA (applies when the airport is not a recipient, and the complaint is subject to the enforcement procedures in 28 CFR Section 35.170.)

Appendix 8 contains a sample investigative report and letter of transmittal, when there is reasonable cause to believe that the respondent has failed to comply.

b. Timeframes. The investigator shall complete the investigative report within 30 days after the conclusion of the investigation and submit the original and three copies to the RCRS.

c. Case Distribution. The RCRS shall submit one copy of the report to the Assistant Administrator for Civil Rights. The RSRS shall retain one copy for its files. Investigative reports are designated "For Official Use Only" and are inherently sensitive, as they may contain confidential, proprietary, or privileged information protected under the Privacy Act. Release of reports to individuals other than those responsible for processing the complaint, including responses to requests under the Freedom of Information Act (FOIA), will not be made without prior coordination and review by the Office of the Chief Counsel or Regional Counsel. The report may also be made available to the respondent and complainant, as described in paragraph 69, if release of the report does not violate any disclosure law. Requests for copies of the report by all other parties shall be processed by ACR and RCRS under the FOIA.

69. LETTER OF FINDINGS (LOF). The LOF is the official notice to the respondent and complainant of the outcome of the investigation. Prior to issuing the LOF, the RCRS shall call the respondent and the complainant to notify them of the decision and to discuss resolution. The LOF should be issued as a certified, return-receipt letter.

a. Format. The LOF is signed by the RCRS and shall include the same elements as an investigative report, as referenced in Paragraph 68a, except that the LOF will not include exhibits. In lieu of an LOF, the RCRS may transmit a copy of the investigative report, to include any exhibits that can be released under disclosure laws, together with a letter of transmittal. In this case, the letter need not repeat the information in the investigative report. (Appendix 8 provides an example.) Whenever an LOF or investigative report is sent to the respondent, a draft "Voluntary Compliance Agreement" shall be forwarded if the investigation identifies any areas of noncompliance.

b. ACR Review. FAA is responsible for the proper resolution of complaints. All final dispositions shall be reviewed by the Regional Counsel. Prior to issuing a final decision, the RCRS may, at its discretion, submit a draft LOF to ACR for comment. ACR may also request that a draft LOF be submitted for its review. ACR will provide such comments within 30 days of receipt. If the complaint investigation raises questions that are not answered by existing law, regulations, or policy, ACR will consult with AGC-600 and, if appropriate, with DOCR. ACR shall send a copy of the final LOF to the DOCR.

c. **Findings of No Violation.** If the investigation determines that there has been no violation, the RCRS so informs the complainant and respondent, and the complaint is closed out. (Appendices 9 and 10 contain sample notifications.)

70. INFORMAL RESOLUTIONS. Informal resolutions include all methods to obtain voluntary compliance by the respondent prior to enforcement proceedings. Efforts to resolve a formal complaint informally will be deferred, until ACR has accepted the complaint. 49 CFR Section 27.123(d) and 28 CFR Section 35.172(a) require that compliance matters be resolved by informal means whenever possible. To resolve complaints in which a complainant was found to have been excluded, denied, or otherwise discriminated against, the resolution must address the respondent's remedial actions to overcome the effects of the violation (49 CFR Section 27.11).

a. **Exchange of Letters.** Prior to issuing an LOF or investigative report, the issues may be resolved through an exchange of letters between the respondent and the RCRS. The respondent must state in writing that it has already taken or will take specific action to remedy the specific issues of the complaint. The file must include documentation of a face-to-face or telephone interview between FAA and the respondent, in which both parties have a mutual understanding of the actions to be taken. FAA's letter must reiterate the specific issues of the investigation, the specific corrective actions the respondent has taken, and the schedule for taking additional necessary actions. FAA's letter closes the complaint. The RCRS will forward a copy of both the respondent's letter and FAA's letter to ACR. The same procedure can also be employed when a complainant has withdrawn the complaint, but the RCRS has elected to conduct a compliance review of the issues raised.

b. **Voluntary Compliance Agreements.** A voluntary compliance agreement is one means of informally resolving compliance matters after the issuance of an LOF. For public airports that are not also recipients, a voluntary compliance agreement shall be used if agreement is reached with the respondent after FAA has issued an LOF (28 CFR Section 35.173). Although 49 CFR Part 27 does not specify the means of informally resolving compliance matters raised against airport sponsors, FAA interprets this rule to include voluntary compliance agreements as informal means of resolving complaints with recipients of Federal financial assistance. A voluntary compliance agreement must:

- (1) Be in writing and signed by the RCRS and a representative of the respondent who can commit the airport to the necessary corrective actions.
- (2) Address each cited violation.

(3) Specify the corrective or remedial action to be taken, within a stated period of time, to resolve the compliance matters. Complainants are provided individual remedies to the extent necessary to overcome the effects of the discrimination (49 CFR 27.11).

(4) Provide for submission of appropriate documents to the FAA, such as bid specifications, drawings, plans, or blueprints, that verify that the respondent has executed the steps agreed to.

(5) Specify the actions that the FAA will take if the respondent fails to implement the corrective or remedial action.

(6) In lieu of item (5), voluntary compliance agreements for airports that are not recipients of Federal financial assistance must:

(a) Provide for assurance that the discrimination will not recur (28 CFR Section 35.173(b)(4)); and

(b) Provide for enforcement by the Attorney General (28 CFR Section 35.173(b)(5)). (A Sample Voluntary Compliance Agreement is included as appendix 11.)

c. Alternative Dispute Resolutions. DOJ's ADA regulations specifically encourage alternative dispute resolution techniques (28 CFR Section 35.176). DOT/FAA's Section 504 regulations state only that complaints shall be resolved by informal means whenever possible (49 CFR Section 27.123(d)). FAA has interpreted informal means to include alternative dispute resolution techniques including settlement negotiations, conciliation, facilitation, mediation, and factfinding.

(1) **Formal Complaints.** A formal complaint is a written complaint. After receiving approval from ACR, the RCRS may use alternative means of dispute resolution for formal complaints.

(2) **Informal Complaints.** An informal complaint is a verbal complaint. Any FAA employee responsible for ensuring compliance with ADA/Section 504 shall notify any person who makes a verbal complaint of the procedure for filing a formal complaint. The employee shall also provide the respondent's name and telephone number (the Section 504/ADA Coordinator, if known) to the complainant as an alternative recourse to resolving the allegations. The RCRS shall provide technical assistance to the regional Airports Division to resolve verbal complaints received by that division informally. If appropriate, persons making such informal

complaints shall be advised of their right to file a formal complaint. The RCRS may, at its discretion, maintain a log of informal verbal complaints, which includes the name, address, and telephone number of the complainant, the date the verbal complaint was received, and what action the employee took.

71. CLOSURE LETTER. The closure letter is notification to the respondent and the complainant that the complaint has been closed for a specifically stated reason. Administrative closure letters, prior to acceptance of a complete complaint, are signed and issued by ACR. Sample closure letters to the respondent and complainant, following resolution of compliance matters, are found in Appendix 12 and 13, respectively.

72. REQUEST FOR RECONSIDERATION. On May 30, 1996, the DOCR established a process under which a complainant could request reconsideration of adverse findings. LOF's covered by this procedure included the paragraph set forth below. Effective August 24, 1998, DOCR suspended the process. The language set forth below is not included in LOF's issued after that date. However, DOCR will continue to review any requests for reconsideration based on prior decisions covered by the procedure.

"In accordance with the policy of the Department of Transportation, you may request a reconsideration of the findings of no violation that are adverse to you. The request must be in writing and received by the Departmental Office of Civil Rights within 30 days of the date of this letter. The request must identify (1) the specific findings(s) that you wish to have reconsidered, and (2) the basis on which you are making your request, including any facts or evidence to support your position. Requests for reconsideration based solely on general disagreements with the investigative findings or remedies negotiated to bring the respondent into compliance with the law will not be accepted. Please address your appeal to: Director, Departmental Office of Civil Rights, U.S. Department of Transportation, 400 7th Street, SW, Washington, D.C. 20590."

73. ENFORCEMENT. In the event that efforts to resolve a compliance matter resulting from a complaint investigation are unsuccessful, the RCRS will follow the enforcement procedures set forth in paragraph 50.

74. FOLLOWUP MONITORING. The RCRS will carry out appropriate monitoring activities to ensure that a respondent implements the remedial steps to which it committed in a voluntary compliance agreement or in a letter to the RCRS. Upon learning that the terms of such an agreement have not been implemented, the RCRS immediately notifies ACR. ACR will, in consultation with RCRS and other appropriate agency officials, determine whether the matter should be referred to AGC-600 for commencement of enforcement proceedings in accordance with Paragraph 49.

75. COMPLAINT WITHDRAWALS. If, at any time, a complainant wishes to withdraw his/her complaint, he/she must do so in writing. If the investigator receives a written withdrawal, he/she immediately notifies the RCRS. The RCRS will determine whether the investigator shall continue to inquire into the issues of the complaint as a compliance review under Section 504 or a compliance issue under ADA. The RCRS will forward a copy of the letter to ACR and will notify the respondent of the complaint withdrawal and of any plans by the agency to pursue the issues of the complaint.

76. REPORTING REQUIREMENTS.

a. Regional Reports. RCRS must submit copies of all complaint investigation correspondence to ACR. This information is necessary to update DOCR on the status of complaints and to identify training needs, as appropriate.

b. DOCR Reports. ACR will maintain information and submit reports on the status of ADA/Section 504 complaints to DOCR as requested.

77.-89. RESERVED.

CHAPTER 5. COMPLIANCE REVIEWS

90. OVERVIEW. Under DOT's Section 504 regulations, FAA is responsible for periodically reviewing the practices of recipients to determine their compliance status (49 CFR Section 27.123(a)). There is no comparable requirement under DOJ's Title II regulations. However, in order for an airport sponsor to be in compliance with Section 504, it must also be in compliance with all applicable requirements of the ADA, including 49 CFR Parts 37 and 38, DOJ's regulations 28 CFR Parts 35 and 36, and EEOC's regulations 29 CFR Part 1630. (DOJ is responsible for enforcing 28 CFR Part 36.)

91. SELECTING THE AIRPORT. The RCRS shall consider the following factors when selecting an airport for a Section 504 compliance review.

- a. Whether there have been complaints against the airport.
- b. Whether the airport has received or is anticipated to receive AIP funding for alteration or construction of facilities to meet accessibility standards.
- c. Whether the airport is designing a new or remodeled terminal.
- d. Whether the airport has completed a transition plan.

92. DETERMINING THE ISSUES. The RCRS may conduct a separate, indepth review of a recipient for compliance with Section 504. Alternatively, the RCRS may add the administrative requirements and accessibility issues to a compliance review conducted under DOT's regulation 49 CFR Part 21, implementing Title VI of the Civil Rights Act of 1964, as amended, and/or 49 CFR Part 23, DOT's disadvantaged business enterprise rule. The RCRS is also responsible for enforcing these regulations.

a. Issues for all Compliance Reviews. All Section 504 compliance reviews should include the following issues.

- (1) Whether or not the airport sponsor has designated an ADA/Section 504 Coordinator.
- (2) Whether or not the airport sponsor conducted a Self-Evaluation.

(3) Whether or not the airport sponsor developed and implemented a Transition Plan.

(4) Whether or not the airport sponsor has a grievance/complaint procedure for resolving complaints raised under ADA/Section 504.

(5) Whether or not the airport sponsor has provided notice in accordance with ADA/Section 504.

b. Issues for indepth Compliance Reviews. In addition to the administrative requirements listed above, the RCRS shall, at a minimum, include a review of compliance with 49 CFR Sections 27.71, 27.72, ADAAG Section 10.4.1 (if applicable), and other pertinent provisions of ADAAG or UFAS which apply, as well as pertinent provisions of 28 CFR Part 35. (See Paragraphs 43 and 44 for a review of these requirements.) Accessibility in the areas listed below and any others subject to the regulation should be reviewed for persons with hearing and vision disabilities as well as those with mobility impairments.

- (1) Airport terminal circulation and flow
- (2) Use of the international accessibility symbol at accessible building entrances
- (3) Ticketing
- (4) Baggage check-in and retrieval
- (5) Public telephones
- (6) Telecommunication Devices for the Deaf
- (7) Passenger loading and unloading
- (8) Parking
- (9) Waiting area, public spaces, and restrooms
- (10) Airport terminal information
- (11) Public services

(12) Passenger services

(13) Use of service animals

93. CONDUCTING THE COMPLIANCE REVIEW. Procedures for conducting Section 504 compliance reviews parallel those for conducting complaint investigations except for the following deviations.

a. An Investigative Plan is not necessary, although FAA employees shall be knowledgeable of the regulatory requirements prior to conducting the review.

b. A compliance determination by the RCRS does not need to be coordinated with ACR-1, unless specifically requested to do so by ACR-1.

c. The compliance review report includes exhibits of only those documents that are not already in the possession of the sponsor or public entity.

d. The RCRS includes a copy of the compliance report with the Letter of Findings to the recipient and submits a copy to ACR-4.

e. Voluntary compliance agreements are not necessary. Resolutions are reached through an exchange of letters.

94. ENFORCEMENT. See paragraph 49c.

95.-99. RESERVED.

CHAPTER 6. TECHNICAL ASSISTANCE

100. Overview. ACR-1 and RCRS have opportunities to provide technical assistance to airports, the public, and to other FAA employees with ADA implementation responsibilities. For example, RCRS can provide presentations at airport management organizations and seminars sponsored by regional Airports Divisions on obligations under the ADA and Section 504. RCRS can offer guidance and assistance in the resolution of informal, verbal issues raised to regional Airports Divisions. Further, RCRS can provide information to individuals and organizations requesting information concerning airport obligations under the DOJ and DOT disability regulations. Information on filing complaints of discrimination, the applicable regulations, and other guidance can be found on ACR's home page on the internet. The address is <http://www.faa.gov/acr/acrhome.htm>. Access the file under "Public Information."

101. TECHNICAL ASSISTANCE RESOURCES. An array of technical assistance materials and organizations exist that the RCRS and other FAA employees can use to increase their own, the airports', and the public's understanding of the ADA/Section 504 requirements. In addition to those organizations listed below, FAA employees are encouraged to become familiar with and develop a resource list of organizations in their own communities and regions.

a. Written Materials.

- (1) The Americans with Disabilities Act Title II Technical Assistance Manual, U.S. Department of Justice (covers Title II, Subtitle A, 28 CFR Part 35)
- (2) The Americans with Disabilities Act Title III Technical Assistance Manual, U.S. Department of Justice (covers Title III, 28 CFR Part 36)
- (3) The Americans with Disabilities Act: Questions and Answers, U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice Civil Rights Division (generally covers Titles I, II, and III)
- (4) New Horizons for the Air Traveler with a Disability, U.S. Department of Transportation
- (5) Interim Complaint Processing Procedures, DOCR
- (6) EEOC Compliance Manual, Directive Number 915.002, 3/14/1995 (provides guidance for determining whether an individual has a disability as defined by the ADA)

(7) Legal Rights of Persons with Disabilities: An Analysis of Federal Law, LRP Disability Law Series

(8) The ADA Action Guide for State and Local Governments, Adaptive Environments Center, LRP Publications (covers Title II and Section 504 and was reviewed by DOJ)

(9) Survival Guide to The Americans with Disabilities Act, Patricia A. Morrissey, LRP Publications (comprehensive coverage)

(10) A Technical Assistance Manual on the Employment Provisions, Title I, Equal Employment Opportunity Commission, 1992

(11) "Enforcement of Title II of the ADA," letter to DOCR from DOJ Civil Rights Division, 1/24/1992

(12) "National Disability Law Reporter"

(13) ADA, An Implementation Guide, Disability Rights Education and Defense Fund, 1993

(14) Americans with Disabilities Act Handbook, EEOC and DOJ, October 1991

b. Organizations/Agencies.

(1) Disability and Business Technical Assistance Centers located in each of the 10 Federal regions. The toll-free number for reaching any of the regional centers is 800-949-4232.

(2) State vocational rehabilitation centers (often located in social and human services or labor and training divisions)

(3) U.S. Architectural and Transportation Barriers Compliance Board (Access Board), 1-800-USA-ABLE, 1-800-272-5434

(4) National organizations such as:

(a) American Council of the Blind, Washington, D.C.

Arlington, VA

- (b) American Foundation for the Blind, New York, NY
- (c) Congress of Organizations for the Physically Handicapped,
- (d) Little People of America, Inc., Owatonna, MN
- (e) National Center for a Barrier Free Environment, Washington, D.C.
- (f) National Organization for Disability, Washington, D.C.
- (g) Center for Independent Living, Berkeley, CA
- (h) National Information Center on Deafness, Washington, D.C.
- (i) Disability Rights Education and Defense Fund

102.-109. RESERVED.

CHAPTER 7. REVIEW OF TRANSITION PLANS

110. TECHNICAL ASSISTANCE. A November 1, 1996, amendment to 49 CFR Part 27, Section 27.71(g) required airport sponsors to develop transition plans for existing airport facilities if they did not do so previously. The amendment, published in the Federal Register at 61 Fed. Reg. 56409 (November 1, 1996), became effective December 2, 1996. Following is guidance on reviewing transition plans required by 49 CFR Part 27 and 28 CFR Part 35.

111. TRANSITION PLAN STANDARDS. FAA has notified commercial service airports to comply with the standards in DOJ regulation 28 CFR Part 35. Section 35.150(d) "Transition plan," quoted below, is pertinent.

"(1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity...shall develop...a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the [Americans with Disabilities] Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

(3) The plan shall, at a minimum-

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan."

a. The foregoing omits a portion of the DOJ rule which specifies that the transition plan requirement applies to public entities employing 50 or more persons. FAA interprets 49 CFR Section 27.71(g), as amended, to override that provision. It states:

If an airport operator who receives Federal financial assistance for an existing airport facility has not already done so, the recipient shall submit a transition plan....

b. Thus, each airport operator receiving Federal financial assistance must develop and submit a transition plan, regardless of how many persons it employs (including, of course, less than 50). This interpretation is based on 28 CFR Sections 35.103, which states:

(a) Rule of Interpretation. Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.

(b) Other laws. This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws...that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

c. Except as provided in paragraph 116, commercial service airports were required by the November 1, 1996, amendment to submit a current transition plan and implementation schedule in accordance with 49 CFR Section 27.71(g). This section of the rule refers to 49 CFR Section 27.65(d), which is no longer in the published regulation. Airport sponsors must use the criteria for developing a transition plan in accordance with 28 CFR Part 35. The implementation schedule for achieving compliance must be as expeditious as possible since all sponsors were previously required to implement a transition plan under either Section 504 or the ADA.

d. The RCRS shall take appropriate steps to ensure that general aviation airports receiving Federal financial assistance comply with the requirement for a transition plan. Such steps shall include, but not be limited to, the following:

(1) Written notification from the RCRS to the airport that it is required to develop and implement a plan.

(2) Requiring an obligated airport notify the RCRS in writing when it has developed and/or implemented the plan.

(3) Requiring an obligated airport to submit its plan to the RCRS for review in accordance with the guidelines in this chapter.

112. WRITTEN AIDS. Regional offices may supply airport operators with written aids to assist in determining whether its facilities comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

- a. These aids include a Self-Evaluation Checklist developed by the Adaptive Environments Center, which is available from ACR. (See paragraph 41d.)
- b. Other written materials should be approved by ACR prior to dissemination to airports.

113. FAA RESPONSE.

- a. Regional offices will provide written notice in response to submission of a transition plan. The response—
 - (1) acknowledges receipt of the plan;
 - (2) states whether the plan addresses the items referenced in 28 CFR Section 35.150(d); and
 - (3) includes any other appropriate comments.
- b. Sample letters are provided at the end of this chapter (see Figures 1 and 2). At the appropriate time, the region requests submission of documents by the airport, like bid specifications, drawings, plans, or blueprints, verifying that the steps outlined in the plan to make facilities accessible are being implemented. (See Figure 1.)
- c. It is FAA's policy not to provide written approval of a transition plan, since the regulations do not require it, and changes to the plan may need to be requested at a future date based on information obtained through a complaint or other source. Without conducting an on-site review of the facility, FAA has no way of knowing whether the plan identifies all physical obstacles that limit accessibility. Approval of a deficient plan could compromise FAA's authority to require an airport to make appropriate changes to the plan.

114. EXISTING FACILITIES. Under 28 CFR Part 35, an existing facility is one in which construction began on or before January 26, 1992.

a. 28 CFR Section 35.150 requires that, subject to certain limitations, each service, program, or activity operated by a public entity, 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. Such other methods include redesign of equipment, reassignment of services to accessible buildings, and assignment of aides to beneficiaries.

b. Appendix A to 28 CFR Part 35 reinforces these concepts. It states in part: Structural changes in existing facilities are required only when there is no other feasible way to make the public entity's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alteration to a loadbearing structural member.) The requirements of Section 35.151 for alterations apply to structural changes undertaken to comply with this section. (28 CFR Part 35, Appendix A, Section 35.150, page 484).

115. UPDATING REQUIREMENTS. 49 CFR Section 27.11(c)(2)(v) requires recipients to establish a system for periodically reviewing and updating the self-evaluation required by paragraph (c)(2) of that section. However, neither Part 27 nor 28 CFR Part 35 requires periodic updating of the transition plans. 28 CFR Section 35.151 requires that new construction and alterations be accomplished in accordance with appropriate guidelines, which is ADAAG in the case of airports. Since a transition plan addresses structural changes to existing facilities only, the plan need not be updated to reflect new construction or alterations.

116. PREVIOUS COMPLIANCE.

a. If an airport already had conducted a self-evaluation, developed a transition plan, and implemented structural changes, it was still required to respond to the region's request pursuant to the November 1, 1996, amendment by submitting information verifying its compliance as follows:

(1) Verification that the airport conducted and implemented a transition plan in accordance with 49 CFR Part 27. The plan was to be submitted to FAA in 1980. Verification could include a copy of the original transition plan or a description of the changes that were made to ensure accessibility for disabled individuals and the approximate dates that the changes were made.

(2) Verification that the airport conducted and implemented a transition plan in accordance with 28 CFR Part 35. 28 CFR Section 35.150(d) required public airports that did not develop a transition plans in accordance with 49 CFR Part 27 to develop plans by July 26, 1992. Section 35.150(d) applies only to public entities that employ 50 or more persons

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b. A sponsor that has taken the steps as referenced above is not required to develop another transition plan or update its previous one. See paragraph 115.

117.-119. RESERVED.

Figure 1

Sample Letter When Changes to a Transition Plan are not Requested

Dear Airport Sponsor:

We received the transition plan for the Burns County Airport, which was forwarded with your letter of April 4, 1997. The plan is required by 49 CFR Part 27, the Department of Transportation regulation implementing Section 504 of the Rehabilitation Act of 1973, as amended, and 28 CFR Part 35, the Department of Justice regulation implementing Title II of the Americans with Disabilities Act.

Your transition plan will be kept on file in our office. We reserve the right to request changes to it at a future date if information obtained during a complaint investigation, compliance review, or other means indicates that a change is needed.

Please submit appropriate documents to our office, such as bid specifications, drawings, plans, or blueprints, verifying that the steps outlined in your plan for making facilities accessible are implemented in accordance with the schedule.

We appreciate your cooperation. If we can be of further assistance, please contact _____ or me on _____.

Sincerely,

Regional Civil Rights Officer

Figure 2**Sample Letter When Changes to a Transition Plan are Requested**

Dear Airport Sponsor:

We received the transition plan for the Burns County Airport, which was forwarded with your letter of April 4, 1997. The plan is required by 49 CFR Part 27, the Department of Transportation regulation implementing Section 504 of the Rehabilitation Act of 1973, as amended, and 28 CFR Part 35, the Department of Justice regulation implementing Title II of the Americans with Disabilities Act. Our March 7, 1997, letter stated that the standards in 28 CFR Part 35 are to be used in developing a plan.

Based on our review, we offer the following comments.

1. Curb ramps. 28 CFR Section 35.150(d) states that if a public entity has responsibility or authority over streets, roads, or walkways, the transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving the public entity, including transportation, places of public accommodation, and employers, followed by walkways serving other areas.

Your plan does not refer to curb ramps which cross roads, streets, or walkways at the Burns County Airport.

If these facilities are accessible to persons with disabilities, please state in return correspondence when the ramps were constructed and whether they meet the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS).

If, however, the facilities are not accessible, you are required to resubmit the transition plan to include the following information, as required by 28 CFR Section 35.150(d)(3).

(a) Identification of physical obstacles in the airport's facilities that limit the accessibility of its programs or activities to persons with disabilities;

(b) A detailed description of the methods that will be used to make the facilities accessible;

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(c) A timetable or schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than 1 year, identification of steps that will be taken during each year of the transition plan; and

(d) Identification of the official responsible for implementing the plan.
As we previously advised you, 49 CFR Section 27.71(e) (as amended November 1, 1996) requires that design, construction, or alterations of airport facilities after December 2 conform to ADAAG, including Section 10.4, which specifically concerns airports.

2. Restrooms. Your transition plan states that restrooms on the blue concourse will be made accessible to persons with disabilities. In particular, the plan states that mirrors and sinks will be lowered, and the exposed hot water pipes under the sinks will be insulated.

The plan does not provide the information referenced above in items a(1) through (4). Please resubmit the plan which addresses these items.

3. Drinking fountains. Your transition plan states that drinking fountains in the main terminal building and the international arrivals building are not accessible to persons with disabilities. The plan provides the information referenced above in items a(1) through (4).

Please submit a reply to the matters discussed in items a and b within 45 working days of your receipt of this letter.

We appreciate your cooperation. If we can be of further assistance, please contact _____ or me on _____.

Sincerely,

Regional Civil Rights Officer

APPENDIX 1. DEFINITIONS

The following definitions are to be used for this order. Where appropriate, a citation of the existing regulation from which the definition is taken is cited. For the term "program or activity," the order incorporates the statutory definition. Although the term is not defined in 49 CFR Part 27, a definition is included below to facilitate jurisdictional determinations and other matters of program administration.

1. **AIRPORT IMPROVEMENT PROGRAM (AIP).** The current airport grant program, which authorizes the FAA to provide Federal financial assistance for airport planning and development projects and noise compatibility planning and programs.
2. **AIRPORT SPONSOR.** A public agency or private owner of a public-use airport that submits to the Secretary an application for Federal financial assistance from the FAA under the AIP.
3. **APPLICANT.** One who submits an application, request, or plan to be approved by the departmental official or by a primary recipient as a condition to eligibility for Federal financial assistance, and APPLICATION means such an application, request, or plan. (49 CFR Section 27.5)
4. **AUXILIARY AIDS AND SERVICES** includes-
 - a. Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
 - b. Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;
 - c. Acquisition or modification of equipment or devices; and
 - d. Other similar services and actions. (28 CFR Section 35.104)

5. COMMERCIAL SERVICE AIRPORT. A public airport that enplanes 2,500 or more passengers annually and receives scheduled passenger aircraft service.

6. COMPLETE COMPLAINT. A written statement that contains the complainant's name and address and describes the public entity's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination. (28 CFR Section 35.104)

7. DESIGNATED PUBLIC TRANSPORTATION. Transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyances (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. (49 CFR Section 37.3)

8. DISABILITY. With respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. (28 CFR Section 35.104)

9. FACILITY.

a. For purposes of Section 504, the term means all or any portion of buildings, structures, vehicles, equipment, roads, walks, parking lots, or other real or personal property or interest in such property. (49 CFR Section 27.5)

b. For purposes of Title II of the ADA, the term means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located. (28 CFR Section 35.104)

10. FEDERAL FINANCIAL ASSISTANCE. Any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

- a. Funds;
- b. Services of Federal personnel;

c. Real or personal property or any interest in, or use of such property, including:

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

(2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government. (49 CFR Section 27.5)

11. FIXED ROUTE SYSTEM. A system of transporting individuals (other than by aircraft), 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 service, on which a vehicle is operated along a prescribed route according to a fixed schedule. (49 CFR Section 37.3)

12. HANDICAP. See Disability. The November 1, 1996, amendment to 49 CFR Part 27 (61 F.R. 56422 and 56424) substituted the term "disability" in lieu of "handicap" to reflect an amendment to Section 504 and to be consistent with the ADA and the ACAA.

13. INVESTIGATOR. The FAA employee assigned to conduct a complaint investigation under the ADA or Section 504.

14. PRIMARY RECIPIENT. Any recipient that is authorized or required to extend Federal financial assistance from the Department of Transportation to another recipient for the purpose of carrying out a program. (49 CFR Section 27.5)

15. PRIVATE ENTITY. A person or entity other than a public entity.

16. PROGRAM OR ACTIVITY. With respect to Section 504, the term has the same meaning given to it in 29 U.S.C. Section 794, as follows: all of the operations of-

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

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

Appendix 1

b. (1) a college, university, or other postsecondary institution or a public system of higher education; or

(2) a local educational agency (as defined in section 8801 of Title 20) system of vocational education, or other school system;

c. (1) an entire corporation, partnership, or other private organization, or an entire sole proprietorship-

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

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

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

c. any other entity which is established by two or more of the entities described in paragraph a, b, or c; any part of which is extended Federal financial assistance.
(29 U.S.C. 794(b))

17. PUBLIC ACCOMMODATION. A private entity that owns, leases, (or leases to), or operates a place of public accommodation. (28 CFR Section 36.104)

18. PUBLIC ENTITY.

a. Any State or local government;

b. Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

c. The National Railroad Passenger Corporation, and any commuter authority (as defined in Section 103(8) of the Rail Passenger Service Act at 45 U.S.C. 541). (28 CFR Section 35.104)

- 19. QUALIFIED INDIVIDUAL WITH A DISABILITY.** An individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. (28 CFR Section 35.104)
- 20. RECIPIENT.** Any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, organization, or the entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance from the Department of Transportation 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 any such program. (49 CFR Section 27.5)
- 21. RESPONDENT.** An airport (whether or not it is an airport sponsor under Section 504 or a public entity under Title II of the ADA) or a private entity covered under 49 CFR Parts 37 and 38 that is the subject of a complaint alleging violations of regulatory requirements.
- 22. SERVICE ANIMAL.** Any guide dog, signal dog, service 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.

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APPENDIX 2. SAMPLE LETTER OF ACCEPTANCE

Paragraph 62 provides information on notices accepting a complaint.

Mr. John Doe
[Complainant's Address]

Dear Mr. Doe:

DOT Case Number [97-000]

The Federal Aviation Administration (FAA), Office of Civil Rights, Washington, D.C., has received your letter of complaint filed against [respondent] on [date of letter]. By copy of this letter, we are forwarding your complaint to our [region name] regional office for investigation of the following [include or list specific issues to be investigated with all applicable regulatory citations]. FAA's authority to investigate these issues is based on [cite appropriate regulatory authority(ies)].

We are dismissing the following allegations of your complaint because [provide reasons]

[List allegations.]

----- In addition, FAA does not have jurisdiction to investigate your allegation concerning [list allegation(s)]. We have forwarded your letter to the agency named below for review and any appropriate action in response to those allegations.

Please refer to the above Department of Transportation (DOT) case number in all future correspondence. You should address future correspondence to:

[Region's address and phone no.]

If you have any questions, please contact [RCRS] at [phone number].

Sincerely,

Fanny Rivera
Assistant Administrator for Civil Rights

cc:
[Region] Civil Rights Officer (with enclosure)

APPENDIX 3. COMPLAINT PROCESSING CHECKLIST

This appendix is intended to assist in all aspects of processing a complaint in accordance with Chapter 4.

JURISDICTION

- _____ Disability(ies) of the complainant(s)?
- _____ Determine whether complaint is complete
- _____ Identify missing information
- _____ Determine regulatory authority
- _____ Should complaint be referred to another agency?
- _____ Should the case be administratively closed?

DETERMINE ISSUE(S)

- _____ List allegations
- _____ Translate into issues (who, what, where, when, how, why?)

DATA COLLECTION

- _____ Verify date submitted with complaint
- _____ Identify relevant data needed
- _____ Identify sources of needed data
- _____ Determine strategy for data analysis
- _____ Select appropriate data collection methods
- _____ Send data request

_____ Decide whether onsite is necessary

_____ Arrange the onsite visit

_____ Write an investigative plan

ONSITE

_____ Conduct an opening conference

_____ Review onsite records for relevant data

_____ Conduct interviews

_____ Write up interview notes

_____ Conduct an exit conference

DATA ANALYSIS

_____ Reassess relevance of data against data analysis strategy

_____ Determine what questions the data answers

_____ Sort and categorize information by issues and sub-issues

_____ Develop patterns established by the information

DEVELOPMENT OF FINDINGS

_____ Synthesize the complainant's position

_____ Synthesize the respondent's position

_____ Precisely articulate the issue(s)

_____ Organize the relevant data collected

_____ Develop and articulate preliminary/recommended conclusions

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- _____ Develop and articulate final conclusions
- _____ Write the investigative report
- _____ Write the Letter of Findings
- _____ Send Letter of Findings to ACR for review

APPENDIX 4. SAMPLE INVESTIGATIVE PLAN

Investigative plans are discussed in paragraph 65.

I. IDENTIFYING DATA

A. DOT Complaint No. 93-000

B. Complainant: John Doe

Address:

Telephone Number:

C. Respondent: Port of Danson

Danson Regional Airport

Address:

Contact: Name and Title

504 Coordinator:

Telephone Number:

D. Investigator: Name and Title

Address:

Telephone Number:

II. STATEMENT OF JURISDICTION

A. Timeliness: Complaint alleges ongoing violations.

B. Recipient Status: Airport received AIP Grants, including #W, May 1989

- C. Legal Authority: 49 CFR Part 27; 28 CFR Part 35

III. STATEMENT OF ALLEGATIONS

The complainant alleges the following violations of 49 CFR Part 27 and 28 CFR Part 35:

A. The Port of Danson (Port) has not designated an official to oversee its compliance with 49 CFR Part 27.

B. The Port has not established a procedure for responding to complaints by persons with disabilities.

C. There are insufficient accessible parking spaces in the short-term parking lot at the Danson Regional Airport. The complainant was forced to park in an inaccessible space prior to taking a trip on May 1, 1997.

D. The Port has not submitted a transition plan to the FAA.

E. The mirrors and sinks in the men's restrooms on the blue concourse are too high to be used by a wheelchair user. Also, there are exposed hot water pipes under the sinks that pose a hazard to a wheelchair user.

F. The ticket counters used by ABC Airlines are too high and inaccessible to a wheelchair user.

IV. SUMMARY BACKGROUND

Investigator called complainant on [date]. The complainant stated that he wanted to continue to pursue the complaint, and that he was at the airport last week and saw no changes had been made since his complaint. He did not know whether a Coordinator for 49 CFR Part 27 matters had been designated since his complaint was filed.

On [date], the investigator called the Executive Director of Danson Regional Airport. When asked to be referred to the Part 27 Coordinator, he was informed that none had been designated, but was referred to Ms. Jones, Assistant Director, for processing this complaint. Advised Ms. Jones of the allegations. She was unaware which accessibility standards the airport used when the terminal was constructed or when subsequent alterations were made. Ms. Jones said that she believed that individual airlines control design and construction of facilities in their leased premises, including ticket counters. Need to obtain written verification.

VI. ANALYSIS OF THE ISSUES

How many employees does the recipient have?

Does the airport have a Coordinator for 49 CFR Part 27? Who is it?

Does the airport have a complaint procedure for Part 27?

When was the terminal designed and constructed?

When did any subsequent alterations or new construction commence?

Did the airport develop and submit a transition plan under Part 27?

Did the airport conduct a transition plan under 28 CFR Part 35?

Did the transition plan use UFAS or ADAAG standards?

Did the transition plan address the terminal building?

Did the transition plan address parking and restrooms?

What alterations were made to come into compliance?

When were the alterations made?

How many parking spaces are available in the short-term parking lot?

How many accessible parking spaces are available?

Are accessible spaces located on the shortest accessible route close to the terminal entrance?

Are there other parking lots at the airport? If so, where are they located in relationship to the terminal and short-term parking?

How many men's restrooms are there on the Blue Concourse?

How high are the mirrors mounted above the floor surface in the restrooms?

How high are the sinks mounted above the floor surface?

Are there hot water and drain pipes exposed under sinks?

Are they insulated or otherwise configured so as to protect against contact?

Are the men's restrooms otherwise accessible?

Are other restrooms throughout the terminal, including women's, accessible?

If the restrooms are not accessible, what is not in compliance?

VII. IDENTIFICATION OF DATA NEEDS, SOURCES, AND USES

Copy of Transition Plan or documentation that it was developed and submitted (Source: Regional Files)

Schematic map of airport terminal parking showing accessible spots (Source: Respondent) etc.

VIII. PROPOSED ACTIVITY SCHEDULE

Notification and Data Request by [date]

Response due from respondent by [date]

Onsite [date anticipated]

Analysis of data by [date]

Discuss settlement with respondent by [date]

Either settlement agreement or draft report and findings to ACR by [date]

Note: The schedule should be devised in order to complete the investigation within 180 days of receiving complaint from ACR, whenever feasible, or as soon after as possible.

IX. RESPONDENT INFORMATION REQUEST (See appendix 6.)

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APPENDIX 5. SAMPLE COMPLAINANT NOTIFICATION LETTER

Paragraph 65a provides guidance on issuing a notice to the complainant.

CERTIFIED-RETURN RECEIPT

Mr. John Doe
[Address]

Dear Mr. Doe:

DOT Complaint No. 97-000

This letter is to confirm that on [date] we received a copy of your [date] complaint in which you alleged that [airport name] violated provisions of 28 CFR Part 35, implementing the Americans with Disabilities Act of 1990 (ADA) and 49 CFR Part 27, implementing Section 504 of the Rehabilitation Act of 1973. The FAA's Office of Civil Rights has notified you of the issues to be investigated.

We are in the process of notifying the airport and conducting an inquiry into your complaint. As we discussed on the telephone on [date], we will contact you for additional information as necessary. If you have any questions, please call me at [number].

Sincerely,

[Name]
Civil Rights Officer [Region]

cc:
ACR-4

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APPENDIX 6. SAMPLE RESPONDENT NOTIFICATION LETTER AND INFORMATION REQUEST

Paragraph 66 provides guidance on notifying and requesting information from the respondent.

CERTIFIED-RETURN RECEIPT

[Respondent's Name]

[Address]

Dear Mr./Ms. [Name]:

DOT Complaint No.: 97-000

The Federal Aviation Administration's Office of Civil Rights has the responsibility for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, and the implementing regulations at 28 CFR Part 35 and 49 CFR Parts 27, 37, and 38. These authorities prohibit discrimination on the basis of disability in employment, provisions of services, and accessibility of the facilities.

On [date], we received a copy of a [date] letter from [complainant's name, unless the complainant has requested anonymity] who alleged that the [airport's name] discriminated against him on the basis of disability. Specifically, the complainant alleged that: [include or list specific allegations, grouped by issues, and all applicable regulatory citations].

An amendment to 49 CFR Part 27, Section 27.3, which became effective January 26, 1992, allowed airports to choose whether or not to comply with the accessibility standards of the Uniform Federal Accessibility Standards (UFAS), found at 41 CFR Part 101-19, subpart 101-19.6, Appendix A, or the Americans with Disabilities Act Accessibility Guidelines (ADAAG), found at 49 CFR Part 37, Appendix A. A November 1, 1996, amendment to 49 CFR Part 27 requires all alterations or construction begun after December 2, 1996, to comply with the ADAAG.

In order for the FAA to review the allegations of the complaint in more detail, please provide to this office the information listed in the enclosed Information Request within 20 days of our receipt of this letter. If you have any questions, please call me at [number].

Sincerely,
[Name]
Civil Rights Officer

Enclosure

cc: ACR-4

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INFORMATION REQUEST
(DOT Complaint No. 97-000)
[Port of Danson]

Provide the following documentation to FAA, Civil Rights Office [Routing symbol, address].

1. Your response to the allegations of the complaint.
2. The name of the individual(s) involved in airport programs who has been designated pursuant to 49 CFR Section 27.13(a) to coordinate the Port's efforts to comply with 49 CFR Part 27.
3. A copy of the Port's procedure for resolving complaints of discrimination based on disability, as required by 49 CFR Section 27.13(b).
4. A map or layout of the terminal building and parking lots which identifies the accessible parking spaces designated for persons with disabilities and the route from these parking spaces to the terminal.
5. The date construction commenced for any alterations or new construction to the airport facility after January 26, 1992.
6. Identification of whether the Port relied upon the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) in designing and constructing these alterations or new construction projects.
7. A floor plan for each public restroom in the terminal building including specific dimensions and an assessment by the Port of whether these restrooms meet the requirements of the UFAS or ADAAG. The assessment must include the airport's rationale for its determination of accessibility.
8. Written verification of your recent telephone conversation with Mr. John Smith, of our office, that each air carrier has authority under its respective lease agreement with the Port to construct and configure its ticket counters.

APPENDIX 7. EFFECTIVE INTERVIEWING TECHNIQUES

This appendix is intended to assist the investigator in the event that the investigation includes interviews, which are discussed in paragraph 66.

Interviewing is one of the most effective data collection tools to:

- * Acquire information that is not documented in records or other written material
- * Corroborate information obtained from other information
- * Obtain clarification on written records
- * Obtain a broader context of the issues involved

Preparing for the interview requires significant preparation as oral communication is generally less organized than written communication. The following list includes reminders for conducting effective interviews.

1. Interview only those whom you have determined as likely to have relevant information.
2. Develop an interview strategy, including an introductory statement, what information is needed, what questions will be asked and in what order, what techniques will be used to establish rapport and elicit more specific information, and how uncooperative interviewees will be handled.
3. Make logistical arrangements for the interviews including the time, approximate length of interview, and a private place. When making the appointments, explain the purpose of the interview, indicate what written documents the interviewee should bring to the interview, avoid jargon, be prepared to respond to questions concerning the investigative process, confirm the interview date, time, and place, and give a telephone number to call in case the appointment needs to be rescheduled.
4. After the introductory statement, begin the interview with more general questions. Save the tougher questions until later when the interviewee is more comfortable and some rapport has been established.
5. In the more substantive part of the interview, ask only neutral questions. Probe to get the interviewee to expand or clarify and to focus on issue. Avoid probing that leads to a specific response. Neutral probing techniques include: asserting interest and understanding, being silent, and repeating the question.

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6. Use active listening skills to hear and understand, for example:
 - * Occasionally summarize what you have heard to make sure you understand
 - * Ask for further clarification until you understand
 - * Listen for patterns of avoidance of certain topics
 - * Listen for information that both supports and refutes the allegations
7. Maintain control of the interview.
8. Take detailed notes as unobtrusively as possible. Identify them with the complaint number, the interviewee's name, and the date and time of the interview. Rewrite the notes to reflect the content of the interview, including questions and answers. Try to record key statements or words verbatim. The notes should not include the investigator's interpretations or opinions.

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**APPENDIX 8. SAMPLE INVESTIGATIVE REPORT AND REASONABLE CAUSE
NOTICE**

Guidance on investigative reports and reasonable cause notices is found in Paragraphs 49, 68, 69, and 70.

CERTIFIED-RETURN RECEIPT

[Respondent's Name]

[Address]

Dear Mr./Ms. [Name]:

DOT Complaint No.: 97-000

We have completed our investigation into the subject complaint, which was filed by Mr. John Doe. The complaint alleged violations of 49 CFR Part 27, the U.S. Department of Transportation (DOT) regulation implementing Section 504 of the Rehabilitation Act of 1973, as amended; and 28 CFR Part 35, the Department of Justice Regulation implementing Title II of the Americans with Disabilities Act (ADA).

Enclosed is a copy of the investigative report, which sets forth our findings. The findings, together with our recommendations, were discussed with you and your staff during our recent meeting.

As we noted at that time, we wish to resolve the compliance matters enumerated in the report by informal means. Accordingly, we have prepared the enclosed draft "Voluntary Compliance Agreement." It lists remedial steps that will resolve each item.

If you concur with these steps, we recommend that you execute the agreement and return it to our office within 20 calendar days. We are available to meet with you to discuss the report or our recommendations further if you wish. We are also available to discuss them by telephone. Please contact me or _____ of my staff on _____ for this purpose.

Sincerely,

Regional Civil Rights Officer

Enclosures

Investigative Report

1. Background. On August 18, 1997, Mr. John Doe filed a complaint with the Federal Aviation Administration (FAA), Office of Civil Rights. The complaint alleged violations of regulations implementing the Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended (Section 504). The respondent named in the complaint is:

Port of Danson

[Address]

By memorandum dated August 25, 1999, the FAA Office of Civil Rights requested that the [] region conduct an investigation in accordance with agency procedures. The complaint, memorandum, and related correspondence are attached as Exhibit 1.

2. Nature of Allegations. The allegations of the complaint are:

a. The Port of Danson (Port) has not designated an official to oversee its compliance with 49 CFR Part 27.

b. The Port has not established a procedure for responding to complaints by persons with disabilities.

c. There are insufficient accessible parking spaces in the short-term parking lot at the Danson Regional Airport. The complainant was forced to park in an inaccessible space prior to taking a trip on May 1, 1997.

d. The Port has not submitted a transition plan to the FAA.

e. The mirrors and sinks in the men's restrooms on the Blue Concourse are too high to be used by a wheelchair user. Also, there are exposed hot water pipes under the sinks that pose a hazard to a wheelchair user.

f. The ticket counters used by ABC Airlines are too high and inaccessible to a wheelchair user.

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3. Description of Organization/Jurisdiction.

The Port which owns and operates Danson Regional Airport is a recipient of FAA grants authorized by the Airport Improvement Program (AIP). Grants received by the Port include AIP # w (1989), x (1992), y (1993), and z (1996).

Danson Regional Airport is classified as a commercial service airport, which had over 10,000 enplanements during 1996.

Recipients of AIP grants are required to comply with 49 CFR Part 27, implementing Section 504. 49 CFR Section 27.19(a) requires grantees also to comply with all applicable requirements of the ADA. ADA regulations applicable to airports include the Department of Justice (DOJ) rule implementing Title II, found at 28 CFR Part 35.

Further, 49 CFR Section 27.71(b) states that airport operators shall ensure that terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. An airport operator is deemed to comply with this provision if it meets requirements applying to state and local government programs and facilities under 28 CFR Part 35.

4. Issues Investigated. The investigation inquired into the following issues:

- a. Has the Port designated at least one individual to coordinate its efforts to comply with 49 CFR Part 27, as required by Section 27.13(a)?
- b. Has the Port adopted and filed with FAA procedures for resolving complaints, as required by Section 27.13(b)?
- c. Was the complainant discriminated against on the basis of disability when he was forced to park in an inaccessible space on May 1, 1997, in the short-term parking lot at Danson Regional Airport in violation of 49 CFR Sections 27.7(a) and (b)(5) and 28 CFR Sections 35.130(a),(b)(4), and 35.151(c)?
- d. Has the Port submitted a transition plan in accordance with 49 CFR Section 27.71(g)?
- e. Do the men's restrooms on the Blue Concourse comply with 49 CFR Section 27.71(e) and appropriate accessibility standards?

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5.. Description of the Investigation. An investigation was conducted by Mr. John Smith, External Program Manager, [identify region] region.

The investigation included a review of documents, an onsite inspection of the Danson Regional Airport, September 16-18, 1997, and interviews with appropriate individuals.

6. Factual Summary. In a letter dated [], the Regional Civil Rights Staff (Region) requested that the Port of Danson submit information pertinent to the investigation (Exhibit 2)

a. Mr. Ronald Harvey, the Port's Executive Director, wrote in a letter dated [], which states at paragraph 4:

"To date, the Port has not appointed an individual to oversee or coordinate our efforts to comply with the Department of Transportation's Regulations 49 CFR Part 27. (Exhibit 3)

49 CFR Section 27.13(a), "Designation of responsible employee," states:

"Each recipient that employs fifteen or more persons shall...forward to the head of the operating administration that provides financial assistance to the recipient, with a copy to the responsible Departmental official, the name, address, and telephone number of at least one person designated to coordinate its efforts to comply with this part. Each such recipient shall inform the head of the operating administration of any subsequent change." (Pertinent portions of the regulations and accessibility standards are included as Exhibit 4.)

In an interview conducted September 17, Mr. Harvey told the investigator that the Port has 57 employees involved in airport operations and a total of 103 involved in all types of operations (Exhibit 5).

7. Mr. Harvey's letter of [date] states at paragraph 7:

"The Port has not established a formal internal mechanism for resolving complaints filed by persons with disabilities concerning facilities at the Danson Regional Airport. We were not aware of this requirement."

49 CFR Section 27.13(b), "Adoption of complaint procedures," states:

"A recipient that employs fifteen or more persons shall...adopt and file with the head of the operating administration procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part."

8. The complainant alleged that on May 1, 1997, he was forced to park in an inaccessible space located at the far end of the short-term parking lot relative to the terminal building.

During the onsite inspection conducted on September 16-18, the investigator observed that the short-term parking lot at Danson Regional Airport is located adjacent to the main terminal building. It has one accessible parking space out of a total of 150 spaces. The one accessible space is located at a greater distance from the main entrance of the airport terminal building than 35 non-accessible spaces.

In an interview with Mr. Harvey, the investigator ascertained that on at least 5 instances in the past 12 months, the airport had received verbal complaints from other persons with disabilities that the short-term parking lacked sufficient accessible spaces (Exhibit 5a).

49 CFR Section 27.7(a) prohibits grantees from discriminating against a qualified person with a disability, solely by reason of his disability, in any program or activity receiving or benefiting from Federal financial assistance from the Department of Transportation. 49 CFR Section 27.7(b)(5) states that in determining the site or location of a facility, a recipient may not make selections that have the purpose or effect of subjecting a person with a disability to discrimination. 28 CFR Part 35 contains similar prohibitions at Sections 35.130(a) and (b)(4), which apply to the Port as a public entity.

Mr. Harvey's letter of [date] states that the short-term parking lot was newly constructed in August 1995 and that the Port of Danson elected to follow the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR part 36) in constructing it.

All airports were subject to the provisions of 28 CFR Section 35.151(a), (b), and (c) with respect to design, construction, or alteration of facilities which commenced after January 26, 1992, through December 1, 1996.

28 CFR Section 35.151(a), "Design and construction," states:

"Each facility or part of a facility constructed by, on behalf of, or for use of a public entity shall be designed and constructed in such manner that the facilities or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992."

28 CFR Section 35.151(c), "Accessibility standards," provides as follows:

"Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (appendix 41 to part 101-19.6) or with the [ADAAG] shall be deemed to comply with the requirements of this section with respect to those facilities... Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided."

Section 4.1.2(5)(a) of ADAAG states:

"If parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces...shall be provided in each such parking area in conformance with the table below. Spaces required by the table need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured."

The table referenced in this section indicates that at least 5 accessible spaces are required in a parking lot having 101 to 150 total spaces.

A review of the map of the airport indicates that the other airport parking facility is located more than one-half mile from the terminal building and short-term parking lot.

Section 4.6.2 of ADAAG states in part:

"Accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance."

Section 4.1.1(1) of ADAAG states:

"All areas of newly designed or newly constructed buildings and facilities required to be accessible by 4.1.2 and 4.1.3...shall comply with these guidelines, 4.1 through 4.35, unless otherwise provided in this section or as modified in a special application section."

9. 49 CFR Section 27.71(g) states that if an airport operator that receives Federal financial assistance for an existing airport has not already done so, the recipient shall submit a transition plan to FAA.

By letter dated [], the Port of Danson submitted its transition plan to the FAA Regional Office (Exhibit 6). Exhibit 7 is the FAA's letter of [date], acknowledging receipt of the plan.

10. Mr. Harvey's letter dated [] states:

"Alterations to the men's restrooms on the Blue Concourse were made in March 1997." (Exhibit 2)

49 CFR Section 27.71(e), as amended on November 1, 1996, states that ADAAG, including section 10.4 concerning airport facilities, shall be the standard of accessibility of airports. The amendment became effective December 2, 1996.

The investigator inspected the three men's restrooms on the Blue Concourse. Based on measurements made by him, it was determined that in all cases, the bottoms of the reflecting surfaces of the mirrors measure 50 inches above the floor. The counter or rim of all sinks in these restrooms are mounted 40 inches above the floor. All sinks have exposed uninsulated hot water pipes. (Exhibit 8 is a record of these measurements.)

ADAAG states the following:

"Mirrors shall be mounted with the bottom edge of the reflecting surface no higher than 40 in (1015 mm) above the finish floor." (Section 4.19.6)

"Sinks shall be mounted with the counter or rim no higher than 34 in. (865 mm) above the finish floor." (Section 4.24.2)

"Hot water and drain pipes exposed under sinks shall be insulated or otherwise configured so as to protect against contact." (Section 4.24.6) (Exhibit 3)

Appendix 8

The investigator inspected other restrooms throughout the terminal building and recorded the findings in Exhibit 9.6. Mr. Harvey's letter dated [] states that the height of the ticket counters at the Danson Regional Airport are set by the air carriers, not by the Port of Danson. The letter also states that the Port's lease agreements give the air carriers authority to configure these facilities.

G. Analysis of Issues and Conclusions.

As a recipient of AIP grants, the Port is subject to the requirements in 49 CFR Part 27. Its obligations under this rule date back to 1989, when it received its first grant.

Since the Port employs 103 persons, it is required to designate one or more of its officials to coordinate its efforts in complying with 49 CFR Part 27. Any recipient of DOT funding having more than 15 employees is obligated to do so. The investigation found, however, that the Port has not complied with this requirement.

By virtue of employing more than 15 persons, the Port is also obligated to adopt procedures for promptly and equitably resolving complaints by persons with disabilities. The record shows, however, that the Port has failed to implement these procedures.

Construction of the main terminal building and short-term parking lot at Danson Regional Airport commenced August 1995, based on information obtained during the investigation. Under 28 CFR Section 35.151(c), the Port had discretion at that time to construct the facilities in conformance with either ADAAG or the UFAS.

While the Port indicated that it selected ADAAG, the short-term parking facilities do not meet those standards. The record shows that only one of the 150 total short-term parking spaces is designated for persons with disabilities. ADAAG requires at least 5 such spaces for lots of this size.

The investigation also revealed that the sole accessible space is not located on the shortest accessible route of travel to the main entrance of the terminal building, as specified in ADAAG. Thirty five nonaccessible spaces were located closer to the terminal building than the sole accessible one.

Alterations were made to the men's restroom facilities on the Blue Concourse in March 1997. 49 CFR Part 27 required the Port to use the ADAAG standards in making these alterations.

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The investigation supports the complainant's allegation that these restrooms do not comply with ADAAG. There are three such facilities. In each one, mirrors and sinks were mounted higher than is required, and there were exposed hot water pipes which lacked any form of insulation.

Accordingly, the FAA finds reasonable cause to believe that the Port did not comply with provisions referenced in Paragraphs 1, 2, and 3 of the "Factual Summary" set forth above.

In other respects (other than the mirrors, sinks, and pipes), the men's restrooms on the Blue Concourse conform to ADAAG, based on the investigator's inspections. Further, other restrooms throughout the airport (both men's and women's) comply with appropriate accessibility standards.

The record shows that the Port submitted its transition plan to FAA in accordance with 49 CFR Part 27 and implementing instructions issued by the regional office. The plan is currently under review. It does not contain a reference to proposed changes to the short-term parking lot or to the men's restrooms along the Blue Concourse.

The complainant's allegation that the ticket counters of ABC Airlines are too high and inaccessible to wheelchair users is not within FAA's authority. These facilities are under the control of ABC Airlines pursuant to its lease agreement with the Port.

Thus, this allegation has been transferred to the office named below for review and any action that it deems appropriate pursuant to 14 CFR Part 382, implementing the Air Carrier Access Act of 1986. 14 CFR Section 382.23(a), "Airport facilities," states that this section applies to all terminal facilities and services owned, leased, or operated on any basis by an air carrier at a commercial service airport, including parking and ground transportation facilities.

ATTN: Assistant Director of Aviation Consumer Protection Division
Office of the General Counsel for Aviation Enforcement
and Proceedings (C-75)
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

H. Recommendations. The FAA recommends that the Port execute the attached "Voluntary Compliance Agreement" in order to resolve the noncompliance matters referenced in this report.

(See Appendix 10)

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**APPENDIX 9. SAMPLE CLOSURE LETTER TO RESPONDENT
(FINDINGS OF NO VIOLATION)**

Paragraph 69c provides guidance on closure letters.

CERTIFIED-RETURN RECEIPT

[Respondent's Name]

[Address]

Dear Mr./Ms. [Name]:

DOT Complaint No.: 97-000

We have completed our investigation into the subject complaint, which was filed by Mr. John Doe. The complaint alleged that the Port of Danson discriminated against Mr. Doe because of his disability in violation of 49 CFR Part 27, the U.S. Department of Transportation implementing Section 504 of the Rehabilitation Act of 1973, as amended, and 28 CFR Part 35, the Department of Justice regulation implementing Title II of the Americans with Disabilities Act of 1990.

Enclosed is a copy of the investigative report, which sets forth our findings. The findings were discussed with you and your staff during our recent meeting.

As set forth in the report, the FAA has determined that the Port of Danson did not discriminate against Mr. Doe because of his disability in violation of the regulations referenced above. Accordingly, we have closed DOT Complaint #97-000 and forwarded a copy of this letter to our national headquarters, which will notify DOT.

Thank you for your cooperation in this matter. Please extend our appreciation to [name] for her assistance. If you have any questions, please call me at [number].

Sincerely,

[Name]

Manager, Civil Rights Staff [Region]

Enclosure

cc:

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**APPENDIX 10. SAMPLE CLOSURE LETTER TO COMPLAINANT
(FINDINGS OF NO VIOLATION)**

Paragraph 69c contains guidance on closure letters.

CERTIFIED-RETURN RECEIPT

[Complainant's Name]

[Address]

Dear Mr./Ms. [Name]:

DOT Complaint No.: 97-000

On [date], we notified you that we were conducting an investigation of your complaint against the Port of Danson (Port), which you filed on [date]. As we discussed by telephone on [date], we have completed our investigation and notified the Port of the results of our investigation.

Enclosed is the investigative report. As set forth in the report, the FAA has determined that the Port did not discriminate against you because of your disability in violation of Section 504 of the Rehabilitation Act of 1973, as amended, or Title II of the Americans with Disabilities Act.

Based on these findings, we have closed your complaint.

Thank you for your cooperation throughout the investigation. If you have any questions, please call me at [number].

Sincerely,

[Name]
Manager, Civil Rights Staff [Region]

Enclosure

cc:
ACR-4

APPENDIX 11. SAMPLE VOLUNTARY COMPLIANCE AGREEMENT

Guidance on developing and using voluntary compliance agreements is found in paragraphs 68, 69, and 70.

DRAFT VOLUNTARY COMPLIANCE AGREEMENT

Port of Danson
[Date]

This voluntary compliance agreement constitutes the resolution of a complaint filed by Mr. John Doe (DOT # No. 97-000) against the Port of Danson under 49 CFR Part 27, implementing Section 504 the Rehabilitation Act of 1973, as amended, and 28 CFR Part 25, implementing the Americans with Disabilities Act (ADA). The parties agree that this complaint shall be voluntarily settled pursuant to 49 CFR 27.123 in accordance with the following terms and conditions. Further, this agreement addresses other compliance matters brought to the attention of the Federal Aviation Administration (FAA) in the course of conducting the investigation. Although these issues were not included in DOT Complaint #97-000, they are part of this agreement.

In the event that the Port of Danson fails to implement the corrective actions referenced in this agreement, the FAA may commence appropriate enforcement proceedings in accordance with 49 CFR Part 27.

A. In accordance with 49 CFR Section 27.13(a), the Port will, by [date], designate one or more officials as the Coordinator for 49 CFR Part 27 compliance and provide notice to the public of the name(s) of the person(s), his or her address, title, general responsibilities, and telephone number. The information will be forwarded to the FAA Regional Civil Rights Staff. The Port will notify the FAA of any subsequent changes.

B. In accordance with 49 CFR Section 27.11(c), the Port will, by [date], develop and adopt procedures which incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging violations of 49 CFR Part 27.

C. By [date], the Port agrees to make the following modifications to its physical facilities to conform to regulations referenced above and to the ADA Accessibility Guidelines (ADAAG). The Port will amend its transition plan to reflect these modifications.

1. Increase accessible parking spaces in the short-term parking lot to 5 of the 150 total spaces (ADAAG Section 4.1.2).

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2. Locate all 5 spaces on the shortest accessible route of travel to the main entrance of the terminal building (ADAAG Section 4.6.2).

3. With respect to the men's restrooms on the Blue Concourse--

(a) Adjust the height that the mirrors are mounted above the floor to conform to ADAAG 4.19.6.

(b) Adjust the height that the sinks are mounted above the floor to conform to ADAAG 4.24.2.

(c) In accordance with ADAAG Section 4.24.6, insulate the exposed hot water and drain pipes or otherwise configure them so as to protect against contact. Ensure that there are no sharp or abrasive surfaces.

D. The Port will furnish the FAA Regional Civil Rights Office with copies of appropriate documents, such as bid specifications, drawings, plans, or blue prints, which verify that the steps outlined in item C. of this agreement are implemented in accordance with the timeframes indicated.

E. The Port will take appropriate steps to ensure that discrimination against persons with disabilities with not recur.

[Name]
Executive Director

Date

[Name]
Manager, Civil Rights Staff, [Region], FAA

Date

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Appendix 12

APPENDIX 12. SAMPLE CLOSURE/RESOLUTION LETTER TO RESPONDENT

Paragraph 71 provides guidance on closure letters.

CERTIFIED-RETURN RECEIPT

[Name]
Executive Director
Airport
[Address]

Dear Mr./Ms. [Name]:

DOT Complaint No.: 97-000

By letter dated [date], we notified you of the results of our investigation of the subject complaint, which was filed with the U.S. Department of Transportation (DOT), pursuant to regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

In a [date] meeting, the Airport agreed to take specific actions to address the compliance matters that were listed in the investigative report. The actions agreed upon are outlined in the enclosed signed Voluntary Compliance Agreement. On the basis of this Agreement, we have determined that the compliance matters are resolved.

Accordingly, we have closed DOT Complaint #97-000 and forwarded a copy of this letter to our national headquarters, which will notify DOT.

Please submit copies of the documents to our office as referenced in the Voluntary Compliance Agreement.

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Thank you for your cooperation in this matter. Please extend our appreciation to [name] for her assistance. If you have any questions, please call me at [number].

Sincerely,

[Name]

Manager, Civil Rights Staff [Region]

Enclosure

cc:

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Appendix 13

APPENDIX 13. SAMPLE CLOSURE LETTER TO COMPLAINANT FOLLOWING RESOLUTION

Paragraph 71 provides guidance on closure letters.

CERTIFIED-RETURN RECEIPT

Mr. John Doe

[Address]

Dear Mr. Doe:

DOT Complaint No. 97-000

On [date], we notified you that we were conducting an investigation of your complaint against the Port of Danson (Port), which you filed on [date]. As we discussed by telephone on [date], we have completed our investigation and notified the Port of the results of our investigation.

Enclosed is the investigative report of and Voluntary Compliance Agreement with the Port. The agreement resolves certain issues cited in your complaint. The issues concern the Port's compliance with Section 504 of the Rehabilitation Act of 1973, as amended, and Title II of the Americans with Disabilities Act of 1990.

Based on this signed Voluntary Settlement Agreement, we have closed your complaint. One allegation cited in your complaint has been referred to the Department of Transportation's Office of the General Counsel for further review. Please correspond directly with that office, which is named in the investigative report, for further information on the disposition of that allegation.

Thank you for your cooperation throughout the investigation. If you have any questions, please call me on [telephone].

Sincerely,

[Name]

Manager, Civil Rights Staff [region]

Enclosure

cc:

ACR-4

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