

[68 FR 35559, June 16, 2003]

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

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AUTHORITY: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16 (a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310 (a) and (f)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

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

EDITORIAL NOTE: Nomenclature changes to part 27 appear at 61 FR 56424, Nov. 1, 1996.

Subpart A—General

§ 27.1 Purpose.

The purpose of this part is to carry out the intent of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended, to the end that no otherwise qualified individual with a dis-

ability in the United States shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 27.3 Applicability.

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

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

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

§ 27.5 Definitions.

As used in this part:

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

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

Commercial service airport means an airport that is defined as a commercial service airport for purposes of the Federal Aviation Administration's Airport Improvement Program and that enplanes annually 2500 or more passengers and receives scheduled passenger service of aircraft.

Department means the Department of Transportation.

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

Facility means all or any portion of buildings, structures, vehicles, equipment, roads, walks, parking lots, or

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other real or personal property or interest in such property.

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

- (a) Funds;
- (b) Services of Federal personnel; or
- (c) Real or personal property or any interest in, or use of such property, including:
 - (1) Transfers or leases of such property for less than fair market value or for reduced consideration; and
 - (2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

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

(a) *Physical or mental impairment* means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular, reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; mental retardation; emotional illness; drug addiction; and alcoholism.

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

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

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

- (1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;
- (2) Has a physical or mental impairment that substantially limits major life activity only as a result of the attitudes of others toward such an impairment; or
- (3) Has none of the impairments set forth in paragraph (1) of this definition, but is treated by a recipient as having such an impairment.

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

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

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

- (1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
- (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

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

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

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

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

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

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

Qualified handicapped person means:

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

(2) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

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

Secretary means the Secretary of Transportation.

Section 504 means section 504 of the Act.

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

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

§ 27.7 Discrimination prohibited.

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

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

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

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

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

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped