

with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (appendix A to 28 CFR part 36) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of ADAAG shall not apply. 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.

(d) *Alterations: Historic properties.* (1) Alterations to historic properties shall comply, to the maximum extent feasible, with section 4.1.7 of UFAS or section 4.1.7 of ADAAG.

(2) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of §35.150.

(e) *Curb ramps.* (1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

(2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

[56 FR 35716, July 26, 1991, as amended by Order No. 1694–93, 58 FR 17521, Apr. 5, 1993]

§§ 35.152–35.159 [Reserved]

Subpart E—Communications

§ 35.160 General.

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

§ 35.161 Telecommunication devices for the deaf (TDD's).

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.

§ 35.162 Telephone emergency services.

Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems.

§ 35.163 Information and signage.

(a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

§ 35.164 Duties.

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee

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after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

§§ 35.165–35.169 [Reserved]

Subpart F—Compliance Procedures

§ 35.170 Complaints.

(a) *Who may file.* An individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part.

(b) *Time for filing.* A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency for good cause shown. A complaint is deemed to be filed under this section on the date it is first filed with any Federal agency.

(c) *Where to file.* An individual may file a complaint with any agency that he or she believes to be the appropriate agency designated under subpart G of this part, or with any agency that provides funding to the public entity that is the subject of the complaint, or with the Department of Justice for referral as provided in § 35.171(a)(2).

§ 35.171 Acceptance of complaints.

(a) *Receipt of complaints.* (1)(i) Any Federal agency that receives a complaint of discrimination on the basis of disability by a public entity shall promptly review the complaint to determine whether it has jurisdiction over the complaint under section 504.

(ii) If the agency does not have section 504 jurisdiction, it shall promptly determine whether it is the designated agency under subpart G of this part responsible for complaints filed against that public entity.

(2)(i) If an agency other than the Department of Justice determines that it does not have section 504 jurisdiction and is not the designated agency, it shall promptly refer the complaint, and notify the complainant that it is referring the complaint to the Department of Justice.

(ii) When the Department of Justice receives a complaint for which it does not have jurisdiction under section 504 and is not the designated agency, it shall refer the complaint to an agency that does have jurisdiction under section 504 or to the appropriate agency designated in subpart G of this part or, in the case of an employment complaint that is also subject to title I of the Act, to the Equal Employment Opportunity Commission.

(3)(i) If the agency that receives a complaint has section 504 jurisdiction, it shall process the complaint according to its procedures for enforcing section 504.

(ii) If the agency that receives a complaint does not have section 504 jurisdiction, but is the designated agency, it shall process the complaint according to the procedures established by this subpart.

(b) *Employment complaints.* (1) If a complaint alleges employment discrimination subject to title I of the Act, and the agency has section 504 jurisdiction, the agency shall follow the procedures issued by the Department of Justice and the Equal Employment Opportunity Commission under section 107(b) of the Act.

(2) If a complaint alleges employment discrimination subject to title I of the Act, and the designated agency does not have section 504 jurisdiction, the agency shall refer the complaint to the Equal Employment Opportunity Commission for processing under title I of the Act.

(3) Complaints alleging employment discrimination subject to this part, but not to title I of the Act shall be processed in accordance with the procedures established by this subpart.