

issued thereunder, or (2) any other regulations or instructions, insofar as such other regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible NASA official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to financial assistance to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Administrator may assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in §1250.109), including the achievement of effective coordination and maximum uniformity within NASA and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action has been taken by the responsible official of this agency.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973; 68 FR 51350, Aug. 26, 2003]

§ 1250.112 Relationship with other officials.

NASA officials, in performing the functions assigned to them by this part, are responsible for recognizing the delegations of authority and responsibility of other NASA officials and for seeing the actions taken or instructions issued by them are properly coordinated with the offices and divisions having joint interests.

APPENDIX A TO PART 1250—NASA FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

1. Grants made under the authority of Pub. L. 85-934, approved September 6, 1958 (42 U.S.C. 1891-1893).

2. Contracts with nonprofit institutions of higher education or with nonprofit organizations whose primary purpose is the conduct of scientific research, wherein title to equipment purchased with funds under such contracts may be vested in such institutions or organizations under the authority of section 2 of Pub. L. 85-934, approved September 6, 1958 (42 U.S.C. 1892).

3. Training grants made under the authority of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451-2460, 2472-2473).

4. Facilities grants made under authority in annual NASA authorization and appropriation acts.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

PART 1251—NONDISCRIMINATION ON BASIS OF DISABILITY

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1251.571–1251.579 [Reserved]
1251.580 Direct threat.
1251.581 Reasonable accommodation.
1251.582 Illegal use of drugs
1251.583–1251.999 [Reserved]

AUTHORITY: Sec. 504 (29 U.S.C. 794)

SOURCE: 51 FR 26862, July 28, 1986, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1251 appear at 81 FR 3709, Jan. 22, 2016.

Subpart 1251.1—General Provisions

§ 1251.100 Purpose and broad coverage.

(a) *Purpose.* This part effectuates section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving Federal financial assistance.

(b) *Broad scope of coverage.* Consistent with the Americans with Disabilities Act Amendments Act of 2008's purpose (ADA Amendments Act) of reinstating a broad scope of protection under the ADA and section 504, the definition of "disability" applicable to this part shall be construed broadly in favor of

expansive coverage to the maximum extent permitted by the terms of this part. The primary object of attention in cases brought under this part should be whether entities covered under section 504 have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability. The question of whether an individual meets the definition of disability under this part should not demand extensive analysis.

[81 FR 3709, Jan. 22, 2016]

§ 1251.101 Application.

This part applies to each recipient of Federal financial assistance from the National Aeronautics and Space Administration and to each program or activity that receives such assistance.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 1251.102 Definitions

As used in this part, the term:

(a) *2004 ADAAG* means the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities requirements set forth in appendices B and D to 36 CFR part 1191 (2009).

(b) *2010 Standards* means the 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in 28 CFR 35.151.

(c) *Applicant for assistance* means one who submits an application, request, or plan required to be approved either by a NASA official or by a recipient, as a condition to becoming a recipient.

(d) *Associate Administrator* means the Associate Administrator for Diversity and Equal Opportunity Programs for NASA.

(e) *Auxiliary aids and services* means services or devices that enable persons with sensory, manual, or speech disabilities to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the recipient. Auxiliary aids and services include:

(1) Qualified interpreters onsite or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written

notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

(f) *Direct threat* means a significant risk to the health or safety of others that cannot be eliminated by a change to policies, practices or procedures, or by the provision of auxiliary aids or services as provided in § 1251.110 of this part.

(g) *Disability* means the definition given that term in the Department of Justice's regulation implementing title II of the ADA at 28 CFR part 35.

(h) *Drug* means a controlled substance as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

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

(j) *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 agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

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

(ii) 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.

(k) *Illegal use of drugs* means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term *illegal use of drugs* does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(l) *Individual with a disability* means any individual who has a disability as defined in 28 CFR part 35. The term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the recipient acts on the basis of such use.

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, 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

(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 (m)(1), (2), or (3) of this section.

(n) *Qualified individual with a disability* means:

(1) With respect to any aid, benefit, or service, provided under a program or activity subject to this part, an individual with a disability who, with or without reasonable accommodations in rules policies, or procedures, the removal of architectural, communication, or transportation barriers, or the provision auxiliary aids or services, meets the essential eligibility requirements for participation in, or receipt from, that aid, benefit, or service, and

(2) With respect to employment, the definition given that term in the Equal Employment Opportunity Commission's regulation at 29 CFR part 1630, implementing Title I of the Americans with Disabilities Act of 1990, which regulation is made applicable to this part by §1251.2.

(o) *Recipient* means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(p) *Section 504* means section 504 of the Act.

(q) *The Act* means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended, 29 U.S.C. 794 *et seq.*

[81 FR 3709, Jan. 22, 2016]

§ 1251.103 Discrimination prohibited.

(a) *General.* No qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

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

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

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

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

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

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with disabilities and individuals without disabilities, but must

afford individuals with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Recipients shall take appropriate steps to ensure that no individual with disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program or activity receiving Federal financial assistance because of the absence of auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

(4) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified individual with a disability the opportunity to participate in such programs or activities that are not separate or different.

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

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to individuals with disabilities; or

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

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

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

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

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

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

(c) *Aid, benefits, or services limited by Federal law.* The exclusion of individuals without disabilities from aid, benefits, or services limited by Federal statute or Executive order to individuals with disabilities from aid, benefits, or services limited by Federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this part.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 1251.104 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Associate Administrator, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to NASA.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

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(3) In all other cases, the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from NASA, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(3) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from NASA, the covenant shall also include a condition coupled with a right to be reserved by NASA to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on the property for the purposes for which the property was transferred, the Associate Administrator may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003; 81 FR 3711, Jan. 22, 2016]

§ 1251.105 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Associate Administrator finds that a recipient has discriminated against persons on the basis of disability in violation of section 504 or this part, the recipient shall take such remedial action as the

Associate Administrator deems necessary to overcome the effects to the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of disability in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Associate Administrator, where appropriate, may require either or both recipients to take remedial action.

(3) The Associate Administrator may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action:

(i) With respect to individuals with disabilities who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred; or

(ii) With respect to individuals with disabilities who would have been participants in the program or activity had the discrimination not occurred; or

(iii) With respect to individuals with disabilities presently in the program or activity, but not receiving full benefits or equal and integrated treatment within the program or activity.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified individuals with disabilities.

(c) *Self-evaluation.* (1) A recipient shall, within 1 year of the effective date of this part; or within 1 year of first becoming a recipient:

(i) Evaluate, with the assistance of interested persons, including individuals with disabilities or organizations representing individuals with disabilities, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including individuals with disabilities or organizations representing individuals with disabilities, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including individuals with disabilities or organizations representing individuals with disabilities, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs 15 or more persons shall, for at least 3 years, follow completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Associate Administrator upon request:

(i) A list of the interested persons consulted;

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

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

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003; 81 FR 3711, Jan. 22, 2016]

§ 1251.106 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not to be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 1251.107 Notice.

(a) A recipient that employs 15 or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with vision or hearing disabilities, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it

does not discriminate on the basis of disability in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated pursuant to § 1251.106(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, transmission via electronic mail or text message, publication on the recipient's internet Web site, or in newspapers and magazines, placement of notices in recipient's publication, and distribution of memoranda or other written communications.

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

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003; 81 FR 3711, Jan. 22, 2016]

§ 1251.108 Administrative requirements for small recipients.

The Associate Administrator may require any recipient with fewer than 15 employees, or any class of such recipients, to comply with §§ 1251.106 and 1251.107, in whole or in part, when the Associate Administrator finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

[51 FR 26862, July 28, 1986, as amended at 81 FR 3711, Jan. 22, 2016]

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§ 1251.109 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of disability, imposes prohibitions or limits upon the eligibility of qualified individuals with disabilities to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for individuals with disabilities than for individuals without disabilities.

§ 1251.110 Direct threat.

(a) This part does not require a recipient to permit an individual to participate in or benefit from the services, programs, or activities of that recipient when that individual poses a direct threat to the health or safety of others.

(b) In determining whether an individual poses a direct threat to the health or safety of others, a recipient must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable accommodations in policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

[81 FR 3711, Jan. 22, 2016]

§ 1251.111 Reasonable accommodation.

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

[81 FR 3711, Jan. 22, 2016]

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§ 1251.112 Communications.

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

(b)(1) A recipient shall furnish appropriate auxiliary aids or services where necessary to afford qualified individuals with disabilities, including applicants, participants, beneficiaries, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a program or activity of the recipient.

(i) In determining what type of auxiliary aid or service is necessary, the recipient shall give primary consideration to the requests of the individual with a disability.

(ii) The recipient need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the recipient communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TTY's) or equally effective telecommunication systems shall be used to communicate with persons who are deaf or hard of hearing or have speech impairments.

(c) This section does not require the recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the recipient believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the recipient has the burden of proving that compliance with § 1251.112 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the chief executive officer of the recipient or his or her designee after considering all of the recipient's resources available for use in the funding and operation of the conducted 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

section would result in such an alteration or such burdens, the recipient 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 and services of the program or activity.

[81 FR 3711, Jan. 22, 2016]

§ 1251.113 Illegal Use of Drugs

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A recipient shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* (1) A recipient shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) *Drug testing.* (1) This part does not prohibit a recipient from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in this paragraph (c) shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

[81 FR 3711, Jan. 22, 2016]

Subpart 1251.2—Employment Practices

§ 1251.200 Discrimination prohibited.

(a) *General.* No qualified individual shall, on the basis of disability, be subjected to discrimination in employment under any program or activity to which this part applies.

(b) *Employment discrimination standards.* The standards used to determine whether paragraph (a) of this section has been violated shall be the standards applied under Title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 *et seq.*) and, as such sections relate to employment, the provisions of sections 501 through 504 and 510 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as amended by the ADA Amendments Act of 2008 (Pub. L. 110–325), as such standards are implemented in the Equal Employment Opportunity Commission's regulation at 29 CFR part 1630. The procedures to be used to determine whether paragraph (a) of this section has been violated shall be the procedures set forth in §1251.400 of this part.

[81 FR 3712, Jan. 22, 2016]

§ 1251.201 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with disabilities unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by individuals with disabilities; and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

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(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified applicant or employee with a disability if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 1251.202 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out individuals with disabilities or any class of individuals with disabilities unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests of criteria that do not screen out or tend to screen out as many individuals with disabilities are not shown by the Associate Administrator to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

[51 FR 26862, July 28, 1986, as amended at 81 FR 3712, Jan. 22, 2016]

§ 1251.203 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment

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medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a individual with a disability or as to the nature or severity of a disability. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 1251.105(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its Federally assisted program or activity pursuant to § 1251.105(b), or when a recipient is taking affirmative action pursuant to section 504 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary of affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:

(1) All entering employees are subjected to such an examination regardless of disability; and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of individuals with disabilities and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart 1251.3—Accessibility

§ 1251.300 Discrimination prohibited.

No qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 1251.301 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which his part applies so that when each part is viewed in its entirety it is readily accessible to individuals with disabilities. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by individuals with disabilities.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through such means as redesign of equipment; reassignment of classes or other services to accessible buildings; assignment of aides to beneficiaries; home visits; delivery of health, welfare, or other social services at alternate accessible sites; alteration of existing facilities and construction of new facilities in conformance with the requirements of § 1251.302; or any other methods that result in making its program or activity accessible to individuals with disabilities. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the require-

ment of paragraph (a) of this section, a recipient shall give priority to those methods that serve to individuals with disabilities in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within 60 days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within 3 years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including individuals with disabilities or organizations representing individuals with disabilities. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to individuals with disabilities;

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

(3) Specify the schedule for taking the steps necessary to achieve full accessibility under paragraph (a) of this section and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) *Safe harbor.* For the purposes of complying with this section, elements that have not been altered in existing facilities on or after January 23, 2017, and that comply with the corresponding technical and scoping specifications for those elements in the Uniform Federal Accessibility Standards (UFAS), Appendix A to 41 CFR part 101-19.6, 49 FR 31528, app. A (Aug. 7, 1984), are not required to be modified to be brought into compliance with the

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requirements set forth in the 2010 Standards.

(f) *Notice of location of accessible facilities*—(1) *General*. The recipient shall adopt and implement procedures to ensure that interested individuals, including individuals with vision or hearing disabilities, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by individuals with disabilities.

(2) *Signs at primary entrances*. The recipient shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to an accessible facility or a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance to a facility.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003; 81 FR 3712, Jan. 22, 2016]

§ 1251.302 New construction.

(a) *Design and construction*. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities.

(b) *Alteration*. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities.

(c) *Accessibility standards and compliance dates*—(1) *Applicable accessibility standards*. (i) New construction and alterations undertaken prior to the compliance dates specified in paragraph (c)(2) of this section must comply with either UFAS or the 2010 Standards.

(ii) New construction and alterations on or after the compliance dates specified in paragraph (c)(2) of this section must comply with the 2010 Standards.

(iii) New construction and alterations of buildings or facilities undertaken in compliance with the 2010

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Standards shall comply with the requirements for a “public building or facility” as defined in the 2010 Standards regardless of whether the recipient is a public or private entity.

(iv) 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.

(2) *Compliance dates*—(i) *New Construction and alterations by recipients that are private entities*. (A) New construction and alterations in which the last application for a building permit or permit extension for such construction or alterations is certified to be complete by a state, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the state, county, or local government) is prior to January 23, 2017, or if no permit is required, if the start of physical construction or alterations occurs prior to January 23, 2017, then such new construction and alterations must comply with either the Uniform Federal Accessibility Standards or the 2010 Standards.

(B) New construction and alterations in which the last application for a building permit or permit extension for such construction or alterations is certified to be complete by a state, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the state, county, or local government) is on or after January 23, 2017, or if no permit is required, if the start of physical construction or alterations occurs on or after January 23, 2017, then such new construction and alterations shall comply with the 2010 Standards.

(ii) New construction and alterations by recipients that are public entities. (A) If physical construction or alterations commence prior to January 23, 2017, then such new construction and alterations must comply with either UFAS or the 2010 Standards.

(C) If physical construction or alterations commence on or after January 23, 2017, then such new construction and alterations shall comply with the 2010 Standards.

(3) For the purposes of this section, ceremonial groundbreaking or razing of structures prior to site preparation will not be considered to commence or start physical construction or alterations.

TABLE OF APPLICABLE STANDARDS FOR COMPLYING WITH 14 CFR 1251.302(C)

| Compliance dates for new construction and alterations | Applicable standards for complying with 14 CFR 1251.302(c) |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| Prior to January 23, 2017 | UFAS or the scoping and technical requirements for a "public building or facility" in the 2010 Standards. |
| On or after January 23, 2017 ... | Scoping and technical requirements for a "public building or facility" in the 2010 Standards. |

(4)[Reserved]

(5) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical disabilities.

(6) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[51 FR 26862, July 28, 1986, as amended at 55 FR 52138, 52140, Dec. 19, 1990; 81 FR 3712, Jan. 22, 2016]

Subpart 1251.4—Procedures

§ 1251.400 Compliance Procedures.

(a) The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) are hereby adopted and apply to this section 504 regulation. These procedures are found at §§ 1250.105 through 1250.110 of this chapter.

(b) The Agency shall ensure that complaints alleging violations of section 504 with respect to employment are processed according to the procedures established by the EEOC in 29 CFR part 1640 and the United States DOJ at 28 CFR part 37.

[81 FR 3713, Jan. 22, 2016]

Subpart 1251.5—Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the National Aeronautics and Space Administration

SOURCE: 53 FR 25882, 25885, July 8, 1988, unless otherwise noted.

§ 1251.501 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1251.502 Application.

This regulation (§§ 1251.501–1251.570) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

§ 1251.503 Definitions.

As used in this part, the term:

(a) *Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(b) *Auxiliary aids and services* means services or devices that enable persons with sensory, manual, or speech disabilities to have an equal opportunity

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to participate in, and enjoy the benefits of, programs or activities conducted by the agency. Auxiliary aids and services include:

(1) Qualified interpreters onsite or through Video Remote Interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

(c) *Complete complaint* means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. 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.

(d) *Direct threat* means a significant risk to the health or safety of others that cannot be eliminated by a change to policies, practices or procedures, or

by the provision of auxiliary aids or services as provided in §1251.110 of this part.

(e) *Disability* means the definition given that term in the Department of Justice's regulation implementing title II of the ADA at 28 CFR part 35.

(f) *Drug* means a controlled substance as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(g) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(h) *Historic preservation programs* means programs conducted by the agency that have preservation of historic properties as a primary purpose.

(i) *Historic properties* means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate state or local government body.

(j) *Illegal use of drugs* means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(k) *Individual with a disability* means any person who meets the definition of "disability" under 28 CFR part 35.

(l) *Qualified individual with a disability* means any person who meets the definition of "qualified individual with a disability" under §1251.102(i) of this part.

(m) *Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended.

[81 FR 3713, Jan. 22, 2016]

§§ 1251.504–1251.509 [Reserved]

§ 1251.510 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that

do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1251.511 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1251.512–1251.529 [Reserved]

§ 1251.530 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, 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 individual with disabilities the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with disabilities an opportunity to partici-

pate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with disabilities 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 that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives

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of a program or activity with respect to individuals with disabilities.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of individuals without disabilities from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§§ 1251.531–1251.539 [Reserved]

§ 1251.540 Employment.

(a) *General.* No qualified individual shall, on the basis of disability, be subjected to discrimination in employment under any program or activity to which this part applies.

(b) *Employment discrimination standards.* The standards used to determine whether paragraph (a) of this section has been violated shall be the standards applied under Title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12,111 *et seq.*) and, as such sections relate to employment, the provisions of sections 501 through 504 and 510 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as amended by the ADA Amendments Act of 2008 (Pub. L. 110–325), as such

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standards are implemented in the Equal Employment Opportunity Commission's regulation at 29 CFR part 1630, as amended.

[81 FR 3713, Jan. 22, 2016]

§§ 1251.541–1251.548 [Reserved]

§ 1251.549 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1251.550, no qualified individual with disabilities shall, because the agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1251.550 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic preservation programs, require the Agency to take any action that would threaten or destroy the historic significance of historic properties.

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1251.550(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by

a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General*. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of §1251.550(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of §1251.550(a)(2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with disabilities into or through portions of historic properties

that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance*. The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) *Transition plan*. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency 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 (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

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

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

(3) 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

(4) Indicate the official responsible for implementation of the plan.

[53 FR 25882, 25885, July 8, 1988, as amended at 81 FR 3713, Jan. 22, 2016]

§ 1251.551 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements,

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and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR part 102–76, subpart C, apply to buildings covered by this section.

[81 FR 3714, Jan. 22, 2016]

§§ 1251.552–1251.559 [Reserved]

§ 1251.560 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with disabilities.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency 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.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action

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would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1251.560 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted 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 section would result in such an alteration or such burdens, the agency 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 and services of the program or activity.

§§ 1251.561–1251.569 [Reserved]

§ 1251.570 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the agency.

(b) The Agency shall process complaints alleging violations of section 504 of the Rehabilitation Act with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1640 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Associate Administrator for Diversity and Equal Opportunity shall be responsible for coordinating implementation of this section. Complaints may be sent to the Office of Diversity and Equal Opportunity, NASA Headquarters, 300 E Street SW., Washington, DC 20546.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with disabilities.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 1251.570(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 25882, 25885, July 8, 1989, as amended at 81 FR 3714, Jan. 22, 2016]

§§ 1251.571–1251.579 [Reserved]

§ 1251.580 Direct threat.

(a) This part does not require the Agency to permit an individual to participate in or benefit from the services, programs, or activities of that recipient when that individual poses a direct threat to the health or safety of others.

(b) In determining whether an individual poses a direct threat to the health or safety of others, the Agency must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable accommodations in policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

[81 FR 3714, Jan. 22, 2016]

§ 1251.581 Reasonable accommodation.

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

[81 FR 3714, Jan. 22, 2016]

§ 1251.582 Illegal use of drugs

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) The Agency shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

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(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* (1) The Agency shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) *Drug testing.* (1) This part does not prohibit the Agency from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in this paragraph (c) shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

[81 FR 3714, Jan. 22, 2016]

§§ 1251.583–1251.999 [Reserved]

PART 1252—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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1252.410 Exhaustion of administrative remedies.

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AUTHORITY: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.* (45 CFR part 90).

SOURCE: 50 FR 13311, Apr. 4, 1985, unless otherwise noted.

Subpart 1252.1—General

§ 1252.100 What is the purpose of NASA's age discrimination regulations?

The purpose of these regulations is to set out NASA's policies and to implement agencywide or agency procedures under the Age Discrimination Act of 1975 according to the government-wide age discrimination regulations at 45 CFR part 90. (Published at 44 FR 33768, June 12, 1979.) The Act and the government-wide regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the governmentwide regulations permit federally assisted programs or activities and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and the governmentwide regulations.

[50 FR 13311, Apr. 4, 1985, as amended at 68 FR 51352, Aug. 26, 2003]

§ 1252.102 To what programs or activities do these regulations apply?

(a) These regulations apply to each NASA recipient and to each program or activity operated by the recipient