

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law, including the Free Speech and Free Exercise Clauses of the First Amendment, 42 U.S.C. 2000bb *et seq.*, 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e-1(a) and 2000e-2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(c) A faith-based organization may not use direct Federal financial assistance from the Department of Justice to support or engage in any explicitly religious activities except where consistent with the Establishment Clause and any other applicable requirements. An organization receiving direct Federal financial assistance also may not, in providing services funded by the Department of Justice, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

APPENDIX B TO PART 38—NOTICE OF AWARD OR CONTRACT

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law, including the Free Speech and Free Exercise Clauses of the Constitution, 42 U.S.C. 2000bb *et seq.*, 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e-1(a) and 2000e-2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(b) A faith-based organization may not use direct Federal financial assistance from the Department of Justice to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving direct Federal financial assistance also may not, in providing services funded by the Department of Justice, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

**PART 39—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF JUSTICE**

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- 39.170 Compliance procedures.

AUTHORITY: 29 U.S.C. 794.

SOURCE: Order No. 1065–84, 49 FR 35734, Sept. 11, 1984, unless otherwise noted.

**§ 39.101 Purpose.**

This part effectuates 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 handicap in programs or activities conducted by Executive agencies or the U.S. Postal Service.

**§ 39.102 Application.**

This part applies to all programs or activities conducted by the agency.

**§ 39.103 Definitions.**

For purposes of this part, the term—*Agency* means the Department of Justice.

*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking

skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

*Complaint Adjudication Officer* means the Complaint Adjudication Officer appointed by the Assistant Attorney General for Civil Rights.

*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.

*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.

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

(1) *Physical or mental impairment* includes—

(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; genitorurinary; 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, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

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

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

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

*Official or Responsible Official* means the Director of Equal Employment Opportunity for the Department of Justice or his or her designee.

*Qualified handicapped person* means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

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## § 39.130

*Respondent* means the organizational unit in which a complainant alleges that discrimination occurred.

*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 by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

### §§ 39.104–39.109 [Reserved]

#### § 39.110 Self-evaluation.

(a) The agency shall, by October 11, 1985, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, 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 handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until October 11, 1987, 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.

#### § 39.111 Notice.

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

### §§ 39.112–39.129 [Reserved]

#### § 39.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, 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 handicap—

(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 equal to that afforded others;

(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 that provided to others;

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

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person 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 handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of possibly 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 handicapped persons to discrimination on the basis of handicap; or

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

(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 handicapped persons 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 of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

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

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

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

§§ 39.131–39.139 [Reserved]

**§ 39.140 Employment.**

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 39.141–39.148 [Reserved]

**§ 39.149 Program accessibility: Discrimination prohibited.**

Except as otherwise provided in § 39.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, 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.

**§ 39.150 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 handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) 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 § 39.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General 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 handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* 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 handicapped persons. 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 handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by December 10, 1984, except that where structural changes in facilities are undertaken, such changes shall be made by October 11, 1987, 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 April 11, 1985, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide

an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition 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 handicapped persons;

(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.

**§ 39.151 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 handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

**§§ 39.152-39.159 [Reserved]**

**§ 39.160 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 a handicapped person 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 handicapped person.

(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.

(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 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 § 39.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General 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, handicapped persons receive the benefits and services of the program or activity.

§§ 39.161–39.169 [Reserved]

§ 39.170 Compliance procedures.

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

(b) *Employment complaints.* The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) *Responsible Official.* The Responsible Official shall coordinate implementation of this section.

(d) *Filing a complaint—(1) Who may file.* (i) Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint with the Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint with the Official.

(ii) Before filing a complaint under this section, an inmate of a Federal penal institution must exhaust the Bureau of Prisons Administrative Remedy Procedure as set forth in 28 CFR part 542.

(2) *Confidentiality.* The Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, except that complaints by inmates of Federal penal institutions shall be filed within 180 days of the final administrative decision of the Bureau of Prisons under 28 CFR part 542. The Official may extend this time limit for good cause shown. For

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purposes of determining when a complaint is timely filed under this subparagraph, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency.

(4) *How to file.* Complaints may be delivered or mailed to the Attorney General, the Responsible Official, or agency officials. Complaints should be sent to the Director for Equal Employment Opportunity, U.S. Department of Justice, 10th and Pennsylvania Avenue, NW., Room 1232, Washington, DC 20530. If any agency official other than the Official receives a complaint, he or she shall forward the complaint to the Official immediately.

(e) *Notification to the Architectural and Transportation Barriers Compliance Board.* The agency shall promptly send to the Architectural and Transportation Barriers Compliance Board a copy 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), or section 502 of the Rehabilitation Act, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons. The agency shall delete the identity of the complainant from the copy of the complaint.

(f) *Acceptance of complaint.* (1) The Official shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the agency has jurisdiction. The Official shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the Official receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Official shall dismiss the complaint without prejudice.

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

(g) *Investigation/conciliation.* (1) Within 180 days of the receipt of a complete complaint, the Official shall complete the investigation of the complaint, attempt informal resolution, and, if no informal resolution is achieved, issue a letter of findings.

(2) The Official may require agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required by the Official to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The Official shall furnish the complainant and the respondent a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and respondent with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and respondent have agreed.

(h) *Letter of findings.* If an informal resolution of the complaint is not reached, the Official shall, within 180 days of receipt of the complete complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested, containing—

(1) Findings of fact and conclusions of law;

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

(3) A notice of the right of the complainant and respondent to appeal to the Complaint Adjudication Officer; and

(4) A notice of the right of the complainant and respondent to request a hearing.

(i) *Filing an appeal.* (1) Notice of appeal to the Complaint Adjudication Officer, with or without a request for

hearing, shall be filed by the complainant or the respondent with the Responsible Official within 30 days of receipt from the Official of the letter required by paragraph (h) of this section.

(2) If a timely appeal without a request for hearing is filed by a party, any other party may file a written request for hearing within the time limit specified in paragraph (i)(1) of this section or within 10 days of the date on which the first timely appeal without a request for hearing was filed, whichever is later.

(3) If no party requests a hearing, the Responsible Official shall promptly transmit the notice of appeal and investigative record to the Complaint Adjudication Officer.

(4) If neither party files an appeal within the time prescribed in paragraph (i)(1) of this section, the Responsible Official shall certify that the letter of findings is the final agency decision on the complaint at the expiration of that time.

(j) *Acceptance of appeal.* The Responsible Official shall accept and process any timely appeal. A party may appeal to the Complaint Adjudication Officer from a decision of the Official that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the Official.

(k) *Hearing.* (1) Upon a timely request for a hearing, the Responsible Official shall appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The complainant and respondent shall be parties to the hearing. Any interested person or organization may petition to become a party or amicus curiae. The administrative law judge may, in his or her discretion, grant such a petition if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and may contribute materially to the proper disposition of the proceedings.

(3) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act). The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to—

(i) Arrange and change the date, time, and place of hearings and pre-hearing conferences and issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(iii) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her; and

(vii) Take any action permitted to the administrative law judge as authorized by this part or by the provisions of the Administrative Procedure Act (5 U.S.C. 551-559).

(4) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph, but rules or principles designed to assure production of credible evidence and to subject testimony to cross-examination shall be applied by the administrative law judge whenever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(5) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Persons employed by the agency, shall, upon request to the agency by the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing shall, at the request of the administrative law judge and with the approval of the employing agency, be on official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the agency to pay travel expenses necessary for the complainant to attend the hearing.

(v) The respondent shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the party, the intervening party, or amicus curiae incurring them.

(6) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the Complaint Adjudication Officer within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Complaint Adjudication Officer.

(7) Within 15 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to the decision with the Complaint Adjudication Officer. Thereafter, each party will have ten days to file reply exceptions with the Officer.

(1) *Decision.* (1) The Complaint Adjudication Officer shall make the decision of the agency based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of receipt of the trans-

mittal of the notice of appeal and investigative record pursuant to §39.170(i)(3) or after the period for filing exceptions ends, whichever is applicable. If the Complaint Adjudication Officer determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Complaint Adjudication Officer shall have 60 days from receipt of the additional information to render the decision on the appeal. The Complaint Adjudication Officer shall transmit his or her decision by letter to the parties. The decision shall set forth the findings, remedial action required, and reasons for the decision. If the decision is based on a hearing record, the Complaint Adjudication Officer shall consider the recommended decision of the administrative law judge and render a final decision based on the entire record. The Complaint Adjudication Officer may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) Any respondent required to take action under the terms of the decision of the agency shall do so promptly. The Official may require periodic compliance reports specifying—

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final decision has not yet been taken; and

(iii) The steps being taken to ensure full compliance.

The Complaint Adjudication Officer may retain responsibility for resolving disagreements that arise between the parties over interpretation of the final agency decision, or for specific adjudicatory decisions arising out of implementation.

**PART 40—STANDARDS FOR INMATE GRIEVANCE PROCEDURES**

**Subpart A—Minimum Standards for Inmate Grievance Procedures**

- Sec.
- 40.1 Definitions.
- 40.2 Adoption of procedures.